

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JOSEPH T.W. WALKER

Field Representative License No. FR 43838

Respondent.

No. 2013-43

OAH No. 2013090428

PROPOSED DECISION

Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 17, 2014, in San Diego, California,

Karen L. Gordon, Deputy Attorney General, represented the complainant.

Respondent Joseph T.W. Walker represented himself.

On October 7, 2014, Administrative Law Judge Alan S. Meth issued his Proposed Decision regarding this matter. On January 14, 2015, the Board issued its Notice of Non Adoption of the Proposed Decision. On February 11, 2015 the Board issued its Order Fixing Date for Submission of Written Argument. Complainant submitted additional written argument, but Respondent failed to do so. After review of the entire administrative record, including the transcript and written argument, the Board hereby renders and enters this decision in the matter.

FACTUAL FINDINGS

1. On April 30, 2013, Susan Saylor, Registrar/Executive Officer, Structural Pest Control Board, State of California (Board) filed Accusation No. 2013-43 in her official capacity. Respondent filed a timely Notice of Defense.

2. On July 31, 2007, the Board issued Applicator License No. RA 47788 inactive in Branches 2 and 3. On August 20, 2007, the license reflected employment with Premier Pest Control and Termite and TAC Exterminators. The license was downgraded to include Branch 3 only on December 3, 2008, and was cancelled on July 31, 2010.

On December 3, 2008, the Board issued Field Representative's License No. FR 43838 to respondent in Branches 2 and 3 in the employ of TAC Exterminators. Respondent left TAC Exterminators on April 21, 2012, and began employment with A TAC in Hemet. At all relevant times, the license was in full force and effect.

3. On May 11, 2012, in the Superior Court of California, County of Riverside, respondent pleaded guilty and was convicted of violating Vehicle Code sections 23152, subdivision (a) [driving under the influence of alcohol and drugs] and 14601.1, subdivision (a)[driving on a suspended license], both misdemeanors. The court placed respondent on summary probation for three years on condition, among others, that he serve 20 days in custody, with credit for time served of one day and with the custody to be served in the work release program, pay a fine of \$1664 plus additional fines and fees, and enroll in and complete a First Offender Drinking Driver Program.

4. The facts and circumstances of the offense according to the police report are as follows: On March 8, 2012, a security officer of the Soboda Indian Casino observed respondent driving erratically and nearly striking other cars in the parking lot of the casino before he parked his car. The security officer went to respondent's car and observed respondent hunched over and passed out. He escorted respondent to the security office and called the CHP. Officer Burke of the CHP responded to the call. The security officer told Officer Burke that he wanted to place respondent under citizen's arrest.

Officer Burke contacted respondent and advised him of the reason for the detention. The officer observed several signs and symptoms of intoxication. Respondent told the officer he had taken Norco (a narcotic medication for pain), Klonopin for anxiety and medical marijuana earlier. Respondent said he did not feel the effects of the Norco and marijuana but felt "buzzed" from the Klonopin. Officer Burke had respondent perform a series of field sobriety tests. Respondent failed to perform properly. The officer then arrested respondent for driving under the influence. When he searched respondent, he found a plastic bottle containing marijuana, a glass pipe with burnt marijuana in the bowl, and a clear glass pipe that appeared to have the residual of a burnt powdery substance and which was typically used to smoke methamphetamine.

Respondent provided a blood specimen for testing and it was found to be positive for amphetamines, methamphetamine, opiates and hydrocodone.

5. On November 5, 2012, in the Superior Court of California, County of Riverside, respondent pleaded guilty and was convicted of violating Health and Safety Code section 11377, subdivision (a) [possession of a controlled substance-methamphetamine] and Penal Code section 466 [possession of burglary tools], both misdemeanors. The court placed respondent on summary probation for three years on condition, among others, that he be committed to the custody of the sheriff for 15 days with credit for two days served and the remaining 13 days to be served in the work release program, pay a fine of \$400 plus additional fines and fees, and complete a 30-day residential rehabilitation program consecutive to the work release.¹

1. In fact, respondent started the 30-day residential treatment program on October 30, 2012, a week before he was sentenced.

6. The facts and circumstances of the offense according to the police report are as follows: On September 9, 2012, a deputy sheriff with the Riverside County Sheriff's Department was dispatched to a residential area to investigate a report of a suspicious person looking into vehicles. The report contained a description of the suspicious person. The deputy drove through the area and saw a person who fit the description. He stopped the person who identified himself as respondent. The deputy noticed an object protruding from respondent's rear pocket and conducted a patdown search. The deputy found a screw driver and a hammer with a "cats" claw and placed respondent under arrest for possession of burglary tools. A further search of respondent resulted in the discovery of a small zip-lock baggie that had a white crystal-like substance in it. The deputy believed the substance was methamphetamines and a field test confirmed that belief.

7. On February 5, 2013, in the Superior Court of California, County of Riverside, respondent pleaded guilty and was convicted of violating Penal Code section 459 [burglary], a felony. The court placed respondent on formal probation for three years on condition, among others, that he be committed to the custody of the sheriff for 90 days with credit for 60 days served and the remaining 30 days to be served in the work release program, pay a fine of \$450 plus additional fines and fees, pay restitution in the amount of \$1038.68, and complete a 30-day residential rehabilitation program consecutive to the work release.

8. The facts and circumstances of the offense according to the police report are as follows: On October 22, 2012, respondent's brother went to the 5 Star Market in Hemet and cashed a check in the amount of \$1038.68. The clerk cashed the check because he knew respondent's brother and had never had any issues with him. Respondent's brother used his California identification card to identify himself. The check was on the account of Ramko Mfg., Inc.

A manager of El Toro Market, a sister store of 5 Star Market, routinely verified checks received by the stores. The manager did an internet search of the phone number on the check cashed by respondent's brother and determined the number belonged to a fitness training center that had been closed. She contacted the manager of the business who told her the check was fraudulent. The manager said the business did not use paper checks for payroll, he did not know respondent's brother, and respondent's brother did not have permission to possess the check. She then flagged the checks of this business as fraudulent.

Later that day, the manager of El Toro Market was working at the check-cashing counter when she was approached by respondent who handed her a check. Respondent identified himself with his California identification card. The manager immediately identified the check as a fraudulent check because it was the same as the check respondent's brother cashed earlier that day. When the manager made a copy of respondent's identification card, respondent appeared to become very anxious and asked for his identification back. He left the store without receiving any money and without the check.

The Hemet Police Department investigated the offenses and an officer interviewed respondent. Respondent said he knew the check he attempted to cash was fake because some

guy gave it to him and promised to give him half the money if he was successful. Respondent knew the check was a company payroll check and he did not work for the company. Respondent said he was not able to cash the check because the manager said it was a fake. Respondent said that the person who gave him the check was named "Mike" and he was the ex-stepfather of respondent's brother's wife. Respondent said he knew it was wrong and illegal to try and cash a fake check at a liquor store. Respondent denied writing the check but admitted signing the back of it while at the store.

9. Respondent's convictions are substantially related to the qualifications, functions, and duties of a licensee of the Board. (Cal. Code. Regs., tit. 16, § 1937.1, subd. (b).

10. Respondent is 27 years old. He is engaged to be married. His fiancé has two children and he helps raise them. He completed high school and one semester at a community college.

Respondent testified that in June 2011, his wife of three months was killed in an automobile accident and after that, his life went into a downhill spiral that reached the point where he did not care about his life. He testified his life ended the day he got the call from the coroner's office.

Respondent had smoked marijuana and drank alcohol recreationally, but after the death of his wife, he began to use methamphetamines and narcotic pain medications along with marijuana and alcohol, frequently "to the extreme." After he was arrested for attempting to cash a forged check, respondent realized he had to make a choice or he would wind up in prison or dead. He testified that was when he decided to enter a drug rehabilitation program.

11. Respondent entered the Above It All Treatment Center on October 30, 2012, before he pleaded guilty to the burglary charge, and remained in the program for 30 days. He was admitted with a diagnosis of amphetamine dependence and discharged with a diagnosis of amphetamine dependence in remission. The program is a 12-step program that included participation in daily group sessions, education, lectures, daily AA meetings, weekly individual sessions with a counselor and therapist, learning life skills and relapse prevention, and random drug testing.

12. The discharge summary indicated that respondent entered treatment as highly impacted physically, emotionally, mentally and spiritually by his extreme drug use and thought process associated with grief and guilt. The counselor wrote that respondent had lost his will to live and had resigned himself to self-destruction. Respondent began with small steps and soon found long sought answers to his deep pain and sadness. The counselor reported that respondent was able to find new motivation and purpose in the 12-step community and has a goal of giving back to the recovery community by service and continued participation in 12-step meetings. The counselor noted respondent had a sponsor

and played an active role in his brother's participation in treatment. He indicated that respondent left the program highly motivated to continue his recovery.

13. Respondent testified that he completed all the requirements imposed by probation. He indicated that he has been paying his fines and fees regularly and owes about \$500. Respondent completed all the required work release time on April 11, 2013. His work included performing cleanup in a cemetery every weekend for several months. He completed the DUI program and got his license back. Although the probation order for the burglary conviction indicated respondent had to make restitution, respondent never received any money when he tried to cash the forged check and therefore did not have to make restitution payments.

Respondent testified that since he completed the residential rehabilitation program, he has been attending NA or AA meetings about twice a week, although he admitted there were times when he was unable to attend both. He pointed out that his participation in the rehabilitation program was voluntary and became a part of probation as a way to reduce the length of his custody commitment. He had a sponsor in the past but presently does not have one.

Respondent testified he began using marijuana when he was about 16 but his drug problems became acute after his wife died. He began using methamphetamine then. He called the drug "evil" because it made him do anything to get it. He placed his sobriety day as October 31, 2013, about a year after he finished Above It All because he admitted that he relapsed on narcotic pain medications. He testified that all his convictions were associated with his drug use. He emphasized that he never used drugs while at work and did not believe his drug use affected his work.

14. Respondent's father is the owner of A TAC. Respondent began working for him in June 2009. Respondent's father laid him off in 2012 when he was having all his drug-related problems but rehired him in early 2014. Respondent wants to continue working as a field representative and believes he can continue to be successful in his recovery.

15. Thomas Walker, respondent's father, testified that respondent is the oldest of three children. He has been a licensee of the Board since 1973 and has owned businesses off and on for many years. Before buying a company called TAC Exterminators and changing the name to A TAC in July 2009, he owned World Termite and Pest Control in Crestline for about 10 years, until he got divorced and folded the company.

Both of Mr. Walker's sons work for A TAC as field representatives. He described respondent as a good employee who showed up on time, never let him down and was a big asset to the company. Despite respondent's criminal convictions, Mr. Walker did not believe respondent represented a risk to his customers and testified he would never do anything to jeopardize his customers or allow respondent to do anything that would harm them. He was willing to keep respondent employed at his company despite his knowledge that if respondent were to commit a violation such as stealing from a customer, his license would be on the line as well as respondent's.

Mr. Walker testified that after respondent's wife died, he saw respondent's life tumble into drugs and criminal behavior. As a result he laid respondent off in March 2012. He did not rehire respondent until February 2014 when he became convinced that respondent was no longer using drugs and could resume working successfully. Mr. Walker testified he would not allow his son to use drugs and continue working, and consequently he conducts random and unannounced drug testing of all his employees. He indicated respondent has never had a positive drug test. In addition, he installed GPS systems in his company vehicles and is able to track respondent whenever he is working. He has not found respondent to be anywhere other than where he was supposed to be during work hours except one time, he noticed that respondent had gone to a location where he knew NA meetings were being held. He has told respondent that if respondent ever used drugs or alcohol, he could no longer work for him.

Mr. Walker pointed out that regarding the burglary conviction, respondent did not forge the check and received no money when he tried to cash it. He believed that respondent had been corrupted into thinking he would receive cash that he could then use to buy drugs.

Mr. Walker believed respondent needed continuous support and that his work and his fiancé provided that support. He testified she played a big part in keeping him clean and would "kick him out" if respondent used drugs again. He recognized that relapse was a concern but he believed that respondent could stay clean.

16. Respondent submitted several letters from customers who attested to his good work, honesty, trustworthiness and reliability. Respondent's fiancé's mother, a correctional officer in New Jersey, wrote that she had observed respondent's positive attitude and his willingness to stay on track in his recovery and keep a clean home.

Ronald Honn, the Program Director of Hope By The Sea, wrote that he is employed in the field of chemical dependency and has worked with many people struggling with addiction. He wrote that respondent maintained a positive attitude and was motivated in his recovery, and added that respondent helped others.

Stuart Ryan, a retired correctional administrator, wrote that he has known respondent for five years and that respondent had displayed a high degree of integrity, responsibility, ambition and dependability. He indicated that respondent had shown a willingness to better himself through rehabilitation and other programs following the loss of his wife.

17. The Board incurred costs of investigation and enforcement of this matter in the amount of \$1,692.50 for the services of the Attorney General. The amount is reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code section 8649 provides; Conviction of a crime substantially related to the qualifications, functions, and duties of a structural pest control

operator, field representative, applicator, or registered company is a ground for disciplinary action. The certified record of conviction shall be conclusive evidence thereof.

2. Business and Professions Code section 490 provides in part:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere

3. Cause to suspend or revoke respondent's field representative's license pursuant to Business and Professions Code sections 8649 and 490 was established by Findings 3 through 9 in that respondent was convicted of crimes substantially related to the qualifications, functions, and duties of a structural pest control applicator.

4. California Code of Regulations, title 16, section 1937.2 provides in part:

¶ ...

(b) When considering the suspension or revocation of a structural pest control license or company registration on the grounds that the licensee or registered company has been convicted of a crime, the board, in evaluating the rehabilitation of such person or company and his or her or its present eligibility for a license or company registration will consider the following:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee or registered company has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee or registered company:
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any of rehabilitation submitted by the licensee or registered company.

5. The evidence in light of the criteria of rehabilitation shows that respondent was convicted of five offenses in three separate proceedings within a period of 11 months in 2012 and 2013. The most serious offense was the February 5, 2013, conviction for felony burglary. Respondent committed the burglary offense almost a year ago.

Respondent was placed on probation following each conviction. He violated the probation imposed on May 11, 2012, when he committed the offenses on September 9 and October 22, 2012. Respondent will remain on probation until February 4, 2016. He satisfied all the custody requirements imposed by the three orders of probation and is paying his fines in monthly payments. He was ordered to make restitution in the February 5, 2013, probation order but restitution was unnecessary since he did not receive any money from the victim when he attempted to cash a forged check. None of the convictions have been expunged. However, he failed to complete the court ordered counseling that was part of his criminal probation.

Respondent presented evidence of mitigation. While he admitted that he used marijuana and drank alcohol on an occasional basis since he was 16 years old, he did not use methamphetamine and narcotic pain pills heavily until after the death of his wife. Respondent was devastated by that and his life spiraled downward. It took him 16 months to begin his recovery from the trauma and it was during this time he turned to drugs and crime to help numb the pain. He finally realized that drug use would not solve his problems and he entered the Above It All Treatment Center. Respondent also presented evidence of rehabilitation. He completed the Above It All Treatment program and has followed a 12-step program. His father, who also is his employer, regularly and randomly tests respondent for drug and alcohol use and has found him to be clean and sober for the last seven months. Respondent's father was a credible witness. His fiancé appears to have a stabilizing influence on him.

6. The Administrative Law Judge ("ALJ") considered the Board's 2012 Manual of Disciplinary Guidelines and Model Disciplinary Orders ("manual") in his deliberations. The manual provides that the minimum level of discipline for a violation of Business and Professions Code section 8649 is revocation, stayed and three years probation. The manual also provides that the maximum level of discipline for a violation of Business and Professions Code section 8649 is revocation. In his proposed decision, the ALJ suggested the following level of discipline: revocation, stayed, three years probation and several optional conditions.

The Board's analysis and decision

7. The Board did not believe that the level of proposed discipline was sufficient to protect the public, and rejected the proposed decision and requested the transcript of the hearing. Both parties were informed of their opportunity to submit written argument but only Complainant's counsel chose to do so, as no argument was received from Respondent.

A. After reading the transcripts and reviewing the administrative record, the Board is not persuaded that allowing Respondent to retain his license, even in a probation status, furthers its obligation to protect the public as he has not fulfilled all the elements of his criminal probation. Specifically, Respondent was required to complete

court ordered counseling as part of his criminal probation, but failed to complete such requirement because he stated that "it just did not work out". (RT, 47:11-25) Furthermore, Respondent admitted to not starting court ordered work release for his first two convictions until after his third conviction. (RT, 35:3-25). The actions do not make Respondent a good candidate for administrative probation.

B. While Respondent has completed his substance abuse treatment program; he has relapsed about a year after and resumed his consumption of illegal substances for a limited period of time. He presently does not have a regular sponsor who will assist him in preventing another relapse. Respondent also stated that he attends Narcotics Anonymous (NA) on and off. (RT:49-7-13) His past relapse, the lack of a sponsor and his irregular attendance to NA meetings make him vulnerable to another return to the usage of illegal substances should difficult circumstances arise once more in his life. Without a stable and consistent support network, Respondent may experience strong temptations to return to his intakes of illegal substances when faced with difficult circumstances. If Respondent returns to the consumption of dangerous drugs, there is a significant risk that criminal behavior will follow.

C. The Board found that while Respondent has demonstrated some evidence of mitigation and rehabilitation, this evidence is outweighed by the recentness and the nature of the offenses. In addition to those offenses, his prior relapse and his present vulnerability to reverting to the consumption of illegal drugs are of particular concern to the Board. Given the gravity of his past actions and the serious consequences of Respondent performing pest control work in people's homes should he relapse, the public and the consumer would be exposed to potentially grave harm if he were to be put on probation and did not comply with the attendant terms and conditions. Admittedly, Respondent's father testified that he currently monitors Respondent's activities and that he will continue to do so in the future. Nonetheless, while praiseworthy, the monitoring of licensees is a function of the Board and the Board does not yield this power to other licensees. Consequently, the Board's obligation to public protection requires the revocation of Respondent's license.

8. Cause to order respondent to reimburse the Board for its costs of investigation and enforcement of this matter in the amount of \$1,692.50 was established by reason of Finding 17.

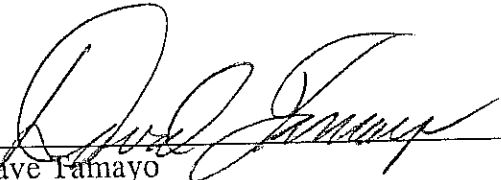
ORDER

1. Field Representative's License No. FR 43838 issued to respondent Joseph T. W. Walker is hereby revoked.

2. Respondent shall reimburse the Board for its cost of investigation and enforcement in this matter in the amount of \$1,692.50 within 180 days of the effective date of this decision

This decision shall become effective on June 4, 2015.

IT IS SO ORDERED THIS 5th day of May 2015.



Dave Tamayo
President of the
Structural Pest Control Board