

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

In the Matter of the Accusation Against:

THOMAS C. WALKER

Field Representative License No. FR 45521

Respondent.

Case No. 2013-44

OAH No. 2013090703

ORDER OF DECISION

DECISION

The Proposed Decision of Alan S. Meth, Administrative Law Judge, dated October 7, 2014, in San Diego, is attached hereto. Said decision is hereby amended, pursuant to Government Code section 11517(c)(2)(c) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. On page 1, in the heading, "DEPARTMENT OF PESTICIDE REGULATION" is stricken and replaced with "DEPARTMENT OF CONSUMER AFFAIRS".
2. On page 1, paragraph number 1, "Taylor" is stricken and replaced with "Saylor".

The Proposed Decision as amended is hereby accepted and adopted as the Decision and Order by the Structural Pest Control Board, Department of Consumer Affairs, State of California.

This Decision shall become effective on February 13, 2015.

IT IS SO ORDERED January 14, 2015



FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

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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 Thomas C. Walker represented himself.

The matter was submitted on September 17, 2014.

FACTUAL FINDINGS

1. On April 30, 2013, Susan Taylor, Registrar/Executive Officer, Structural Pest Control Board, State of California (Board) filed Accusation No. 2013-44 in her official capacity. Respondent filed a timely Notice of Defense.

2. On August 16, 2007, the Board issued Applicator License No. RA 47863 in Branches 2 and 3. The license reflected employment with Premier Pest Control and Termite. On September 1, 2007, the license reflected dual employment with TAC Exterminators. The license was downgraded to include Branch 3 only on May 13, 2010, and was cancelled on August 16, 2010.

On May 13, 2010, the Board issued Field Representative's License No. FR 45521 to respondent in Branch 2 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 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, and pay a fine of \$450.00 plus additional fines and fees, pay restitution in the amount of \$1038.68.

4. The facts and circumstances of the offense according to the police report are as follows: On October 22, 2012, respondent 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 and had never had any issues with him. Respondent 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 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, and respondent did not have permission to possess the check. She then flagged the checks of this business as fraudulent.

The Hemet Police Department investigated the offenses and an officer interviewed respondent. Respondent said he knew the check he cashed at the 5 Star Market was fake and that the person who gave him the check was named "Mike Brooks" who was the ex-stepfather of his wife's. Respondent said "Mike" made him cash the check and drove him to the store. He said the check was already imprinted with his name on it and he endorsed it on the back. Respondent told the officer that he gave the money to "Mike" and that "Mike" gave him \$100.00 for his efforts. Respondent said he knew he was cashing a fake check.

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

6. Respondent is 26 years old, married for three years, and has one child. His wife has a child from a prior relationship. He did not complete high school.

7. Respondent testified that in 2012 he developed a bad drug problem and it got out of control because of some events that had occurred earlier. Respondent has two siblings, an older brother and an older sister. They both have cystic fibrosis, a

serious illness that will shorten their life spans. Respondent testified that he constantly worries that they will get sick and die quickly and this made him angry. In 2011, his brother's wife was killed in an automobile accident. He believed that these concerns contributed to his decision to abuse drugs.

8. Respondent testified his mother-in-law's ex-husband was a career criminal and showed him how to make some fast money so he could buy drugs. He testified the ex-husband wrote the checks and kept most of the money that respondent obtained when he cashed the check at the 5 Star Market, and gave respondent about \$100.00. Respondent testified he tried to cash the check at another retailer but was refused.

9. Respondent decided he needed to change his life because it was out of control and unmanageable. His brother who was arrested at the same time for committing a similar offense entered a rehabilitation program called Above It All on October 30, 2012. When he completed the program, respondent entered it on November 29, 2012. Respondent testified the program changed his life. The in-patient program typically lasted 30 days but respondent felt it would be more beneficial to him if he stayed in the program longer, so he increased it to 66 days.

Respondent testified he learned to cope with his anger during the program. He realized that he was using drugs to numb the anger but it eventually came out anyway. Respondent testified that while he still gets angry, he knows how to handle it, using meditation and prayer.

Respondent also realized that it was easy to stay clean and sober while he was in a residential rehabilitation center because he was watched all the time, but life would be much different after he was "tossed out into society." After finishing the Above It All program, respondent entered the MFI outpatient recovery program on January 31, 2013. This program consisted of three sessions a week for a total of 24 sessions. Clients of the program have a combination of group and individual counseling, must attend at least two 12-step meetings a week, and are randomly drug tested. Since he completed the MFI program, respondent has been attending at least one AA meeting a day.

10. Respondent completed his work release requirement on April 11, 2013. He paid restitution to the 5 Star Market on the day he was sentenced. He has paid all his fines and got his driver's license back.

11. Respondent began working for Premier Pest Control in 2006 at first doing sales. He was living with his father at the time. In 2009 he moved to Hemet and began working for A TAC, a company his father owned. Respondent obtained his field representative license in 2010 and stayed at A TAC, but in 2012, respondent's father laid him off because he was not doing well and was not making his appointments on time. Respondent attributed his poor work performance to his drug use. After he was laid off, according to respondent, his drug use increased and

he got comfortable not working. Respondent was amazed his wife stayed with him. He continued using drugs until he was arrested.

Respondent's father reinstated him with A TAC in February 2013 but he monitors him for drugs. He had to beg his father for his job back and had to convince his father that he was not using drugs anymore. Respondent testified his father gave him random, unannounced drug tests every month.

12. Respondent testified his sobriety date was November 29, 2012, and he has had no relapses since then. He testified that he began using methamphetamines at age 16, and used marijuana and drank alcohol as well. Before he was rehired at A TAC, respondent went to three AA meetings a day, but since he has been working, he has only been going once a day unless he started getting "weird crazy thoughts." Respondent testified he could rearrange his schedule if he felt he needed to go to an AA meeting. Respondent has a sponsor to whom he speaks every day.

13. Respondent was convicted of possession of drug paraphernalia in 2007. He completed a one-year period of probation and paid a fine. He was convicted of hit-and-run while he was a juvenile and received a sentence of house arrest for 90 days.

14. Thomas Walker, respondent's father, testified that respondent is the youngest 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 testified that he believed respondent learned a valuable lesson when he came out of rehabilitation and was both shocked and proud that his son would want to do the outpatient program to ensure that he learned the right things and would continue to do them.

Mr. Walker pointed out that respondent did not write the check he cashed and was stupid for hoping he would receive a few dollars with which to buy drugs.

Mr. Walker testified that he laid off respondent when his drug use increased. He noticed the increase after respondent's brother's wife died. Since he rehired respondent, he has randomly drug-tested him on a regular basis and believes that respondent has remained clean and sober. He also installed GPS on the company vehicles so he could monitor respondent's whereabouts. Despite respondent's criminal conviction and prior drug use, 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 knowing 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. He pointed out that his field representatives never entered vacant homes and he trusted respondent not to steal from his customers even if they were not present in the home.

15. The Board incurred costs of investigation and enforcement of this matter in the amount of \$1,005.00 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 5 in that respondent was convicted of a crime 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 one felony offense 19 months ago. He remains on probation. He satisfied the requirements that he make restitution, serve 30 days of work release, and pay fines. The conviction has not been expunged. Respondent was convicted of a minor drug offense seven years ago and a hit and run offense when he was a juvenile.

Respondent presented evidence of mitigation. He established that his increase in drug use was related to the death of his brother's wife in 2011, and his ongoing guilt and anger stemming from the serious illnesses his siblings contracted.

Respondent presented substantial evidence of rehabilitation. He completed an extended Above It All Treatment program and an out-patient 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.

6. The Board's 2012 Manual of Disciplinary Guidelines and Model Disciplinary Orders provides that for a violation of Business and Professions Code section 8649, the recommended minimum penalty was a revocation, stayed, and three years probation, and the recommended maximum penalty was revocation.

Respondent's felony conviction is recent and he remains on probation. His offense involves dishonesty. These considerations point toward imposition of the maximum penalty. On the other hand, respondent's evidence of mitigation and rehabilitation demonstrate that the maximum penalty is too harsh and that imposition of the minimum penalty is more appropriate. It is also appropriate to prohibit

respondent from serving as an officer, director, associate, partner or qualifying manager of any registered company during probation.

7. Cause to order respondent to reimburse the Board for its costs of investigation and enforcement of this matter in the amount of \$1,005.00 was established by reason of Finding 15.

ORDER

1. Field Representative's License No. FR 45521 issued to respondent Thomas C. Walker is revoked. However, the revocation is stayed, and respondent is placed on probation for three (3) years on the following terms and conditions:

1. Respondent shall obey all laws and rules relating to the practice of structural pest control.
2. Respondent shall file quarterly reports with the Board during the period of probation.
3. Should respondent leave California to reside outside this state, he must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduction of the probationary period.
4. Respondent shall notify all present and prospective employers of the decision in case No. 2013-44 and the terms, conditions and restrictions imposed on respondent by said decision. Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking new employment, respondent shall cause his employer to report to the Board in writing acknowledging the employer has read the decision in case No. 2013-44.
5. Upon successful completion of probation, respondent's license will be fully restored.
6. Should respondent violate probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.
7. Respondent is prohibited from serving as an officer, director, associate, partner, qualifying manager or branch office manager of any

registered company during the period that discipline is imposed on Field Representative's License No. FR 45521.

2. Respondent shall reimburse the Board for its cost of investigation and enforcement in this matter in the amount of \$1,005.00 within 60 days of the effective date of this decision.

DATED: October 7, 2014



ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings