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FILED

Date 2/18/14 By *Susan Saylor*

8
9 **BEFORE THE**
10 **STRUCTURAL PEST CONTROL BOARD**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2014-41

12 **JASON A. COHEN**
13 **1631 North Placentia Avenue, Suite C**
14 **Anaheim, CA 92806**

ACCUSATION

15 **Field Representative License No. FR 48614,**
16 **Branch 3**

Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Susan Saylor (Complainant) brings this Accusation solely in her official capacity as the
22 Registrar/Executive Officer of the Structural Pest Control Board, Department of Consumer
23 Affairs.

24 2. On or about March 19, 2013, the Structural Pest Control Board issued Field
25 Representative License Number FR 48614, Branch 3 to Jason A. Cohen (Respondent). The Field
26 Representative License was in full force and effect at all times relevant to the charges brought
27 herein and will expire on June 30, 2015, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Structural Pest Control Board (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section references
4 are to the Business and Professions Code (Code) unless otherwise indicated.

5 4. Section 118 of the Code provides that the expiration of a license shall not deprive the
6 Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a
7 decision imposing discipline on the license.

8 5. Section 8620 of the Business and Professions Code (Code) provides, in pertinent part,
9 that the Board may suspend or revoke a license when it finds that the holder, while a licensee or
10 applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu
11 of a suspension may assess a civil penalty.

12 6. Section 8625 of the Code states:

13 The lapsing or suspension of a license or company registration by
14 operation of law or by order or decision of the board or a court of law, or the
15 voluntary surrender of a license or company registration shall not deprive the board of
16 jurisdiction to proceed with any investigation of or action or disciplinary proceeding
against such licensee or company, or to render a decision suspending or revoking such
license or registration.

17 **STATUTORY PROVISIONS**

18 7. Section 482 of the Code states:

19 Each board under the provisions of this code shall develop criteria to
evaluate the rehabilitation of a person when:

20 (a) Considering the denial of a license by the board under Section 480; or

21 (b) Considering suspension or revocation of a license under Section 490.

22 Each board shall take into account all competent evidence of rehabilitation
23 furnished by the applicant or licensee.

24 8. Section 490 of the Code states:

25 (a) In addition to any other action that a board is permitted to take against
26 a licensee, 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.

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1 (b) Notwithstanding any other provision of law, a board may exercise any
2 authority to discipline a licensee for conviction of a crime that is independent of the
3 authority granted under subdivision (a) only if the crime is substantially related to the
4 qualifications, functions, or duties of the business or profession for which the licensee's
5 license was issued.

6 (c) A conviction within the meaning of this section means a plea or verdict
7 of guilty or a conviction following a plea of nolo contendere. Any action that a board
8 is permitted to take following the establishment of a conviction may be taken when the
9 time for appeal has elapsed, or the judgment of conviction has been affirmed on
10 appeal, or when an order granting probation is made suspending the imposition of
11 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
12 the Penal Code.

13 (d) The Legislature hereby finds and declares that the application of this
14 section has been made unclear by the holding in *Petropoulos v. Department of Real*
15 *Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a
16 significant number of statutes and regulations in question, resulting in potential harm
17 to the consumers of California from licensees who have been convicted of crimes.
18 Therefore, the Legislature finds and declares that this section establishes an
19 independent basis for a board to impose discipline upon a licensee, and that the
20 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session
21 do not constitute a change to, but rather are declaratory of, existing law.

22 9. Section 493 of the Code states:

23 Notwithstanding any other provision of law, in a proceeding conducted by
24 a board within the department pursuant to law to deny an application for a license or
25 to suspend or revoke a license or otherwise take disciplinary action against a person
26 who holds a license, upon the ground that the applicant or the licensee has been
27 convicted of a crime substantially related to the qualifications, functions, and duties of
28 the licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order
to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,'
and 'registration.'

10. Section 8649 of the Code states:

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.

11. Section 8654 of the Code states:

Any individual who has been denied a license for any of the reasons specified
in Section 8568, or who has had his or her license revoked, or whose license is under
suspension, or who has failed to renew his or her license while it was under
suspension, or who has been a member, officer, director, associate, qualifying
manager, or responsible managing employee of any partnership, corporation, firm, or
association whose application for a company registration has been denied for any of
the reasons specified in Section 8568, or whose company registration has been

1 revoked as a result of disciplinary action, or whose company registration is under
2 suspension, and while acting as such member, officer, director, associate, qualifying
3 manager, or responsible managing employee had knowledge of or participated in any
4 of the prohibited acts for which the license or registration was denied, suspended or
5 revoked, shall be prohibited from serving as an officer, director, associate, partner,
6 qualifying manager, or responsible managing employee of a registered company, and
7 the employment, election or association of such person by a registered company is a
8 ground for disciplinary action.

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10 12. Section 8655 of the Code states:

11 A plea or verdict of guilty or a conviction following a plea of nolo contendere
12 made to a charge substantially related to the qualifications, functions, and duties of a
13 structural pest control operator, field representative, applicator, or registered company
14 is deemed to be a conviction within the meaning of this article or Section 8568 of this
15 chapter. The board may order the license or registration suspended or revoked, or may
16 decline to issue a license, when the time for appeal has elapsed, or the judgment of
17 conviction has been affirmed on appeal or when an order granting probation is made
18 suspending the imposition of sentence, irrespective of a subsequent order under the
19 provisions of Section 1203.4 of the Penal Code allowing the individual or registered
20 company to withdraw a plea of guilty and to enter a plea of not guilty, or setting aside
21 the verdict of guilty, or dismissing the accusation, information or indictment.

22 REGULATORY PROVISION

23 13. California Code of Regulations, title 16, section 1937.1 states:

24 For the purposes of denial, suspension or revocation of a license or company
25 registration pursuant to Division 1.5 (commencing with Section 475) of the code, a
26 crime or act shall be considered to be substantially related to the qualifications,
27 functions or duties of a licensee or registered company under Chapter 14 of Division 3
28 of the code if to a substantial degree it evidences present or potential unfitness of such
licensee or registered company to perform the functions authorized by the license or
company registration in a manner consistent with the public health, safety, or welfare.
Such crimes or acts shall include, but not be limited to, the following:

(a) Any violation of the provisions of Chapter 14 of Division 3 of the code.

(b) Commission of any of the following in connection with the practice of
structural pest control:

(1) Fiscal dishonesty

(2) Fraud

(3) Theft

(4) Violations relating to the misuse of pesticides.

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1 14. California Code of Regulations, title 16, section 1937.2 states:

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

8 (1) Nature and severity of the act(s) or offense(s).

9 (2) Total criminal record.

10 (3) The time that has elapsed since commission of the act(s) or offense(s).

11 (4) Whether the licensee or registered company has complied with any terms of
12 parole, probation, restitution or any other sanctions lawfully imposed against the
13 licensee or registered company.

14 (5) If applicable, evidence of expungement proceedings pursuant to Section
15 1203.4 of the Penal Code.

16 (6) Evidence, if any of rehabilitation submitted by the licensee or registered
17 company.

18 (c) When considering a petition for reinstatement of a structural pest control
19 license or company registration, the board shall evaluate evidence of rehabilitation
20 submitted by the petitioner, considering those criteria specified in subsection (b).

21 **COST RECOVERY**

22 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
23 administrative law judge to direct a licentiate found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
26 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
27 included in a stipulated settlement.
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1 CAUSE FOR DISCIPLINE

2 **(May 15, 2013 Criminal Conviction for Theft of Personal Property on March 28, 2013)**

3 16. Respondent is subject to disciplinary action under Code sections 490 and 8649 in that
4 he was convicted of a crime that is substantially related to the qualifications, functions and duties
5 of a field representative. The circumstances are as follows:

6 a. On May 15, 2013, in a criminal proceeding entitled *The People of the State of*
7 *California v. Jason Alexander Cohen, aka Jason Cohen*, in the Superior Court of California,
8 County of San Bernardino, in case number MWV1302369, Respondent was convicted on his plea
9 of guilty of violating Penal Code section 484(A) (theft of personal property), a misdemeanor. As a
10 result of a plea bargain, a charge for violating Penal Code section 459 (2nd degree burglary), a
11 misdemeanor, was dismissed.

12 b. As a result of the conviction, the Court placed Respondent on three years
13 probation and ordered him to serve two days in the county jail, with two days credit for time
14 served, pay \$839 in fines, fees and restitution, and ordered him to stay away from Home Depot.

15 c. The circumstances that led to the conviction are that on March 28, 2013, at
16 approximately 1247 hours, San Bernardino Sheriff's Department Deputies responded to a call
17 from the Home Depot on Foothill Boulevard and Rochester Avenue regarding subjects in custody.
18 Upon arrival, Deputies made contact with the loss prevention officer who informed Deputies that
19 he witnessed two suspects, identified as Respondent and "SDC," conceal multiple items and exit
20 the store with no intention of paying for the merchandise. Deputies made contact with the
21 suspects in the loss prevention office and observed several items lying on the table which were the
22 items stolen by Respondent and SDC. Deputies interviewed SDC who informed Deputies that her
23 sole intent was to come into the Home Depot to steal items to return them later for money. SDC
24 told Deputies that her husband (Respondent) purchased three bags of cement in order to complete
25 a side job he was working on. Deputies asked SDC if they had done this at any other Home Depot
26 and she told them that they had previously stolen product and returned it at a later date for money.
27 When interviewed, Respondent gave Deputies the same account as his wife as to what transpired
28 that day at the Home Depot.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Structural Pest Control Board issue a decision:

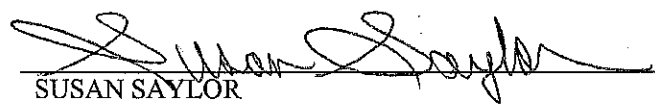
1. Revoking or suspending Field Representative License Number FR 48614, Branch 3, issued to Jason A. Cohen;

2. Prohibiting Jason A. Cohen from serving as an officer, director, associate, partner, qualifying manager or responsible managing employee of any registered company during the period that discipline is imposed on Field Representative License No. FR 48614, issued to Jason A. Cohen;

3. Ordering Jason A. Cohen to pay the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

4. Taking such other and further action as deemed necessary and proper.

DATED: 2/18/14



SUSAN SAYLOR
Registrar/Executive Officer
Structural Pest Control Board
Department of Consumer Affairs
State of California
Complainant

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