

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

In the Matter of the Petition for Reinstatement of:

EDUARDO SANTILLAN, Petitioner

Agency Case No. 2012-7

OAH Case No. 2021020578

DECISION

This matter was heard on March 9, 2021, by video conference before a quorum of the Structural Pest Control Board (Board). Timothy J. Aspinwall, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, presided.

Laura Pedicini, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Eduardo Santillan (petitioner) represented himself.

Evidence was received, the record closed, and the matter submitted for decision on March 9, 2021.

FACTUAL FINDINGS

License and Disciplinary History

1. On June 6, 2003, the Board issued petitioner Operator's License No. OPR 10743 in Branch 1 (OPR 10743).¹

2. In a Decision and Order effective May 8, 2014 (2014 Decision), *In the Matter of the Accusation Against Master Fume, Inc., Eduardo Santillan, and Eduardo Santillan, Jr.*, Case No. 2012-7, pursuant to a Stipulated Settlement signed by petitioner, the Board revoked OPR 10743, stayed the revocation, and placed the license on probation for three years, with terms and conditions. The grounds for discipline included that petitioner: (1) aided and abetted a Branch 2 registered company in performing Branch 3 work without Branch 3 registration, (2) failed to compile a proper fume log as required by applicable regulations, and (3) commenced work on a project without having an inspection performed by a Branch 3 representative or operator.

3. In a Decision and Order effective April 20, 2018 (2018 Decision), *In the Matter of the Petition to Revoke Probation Against Master Fume, Inc., Eduardo Santillan, and Eduardo Santillan, Jr.*, Case No. 2012-7, pursuant to a Stipulated Settlement signed by petitioner, the Board revoked OPR 10743. The grounds for revocation included that petitioner failed to comply with terms and conditions of

¹ The practice of pest control is classified into the following three branches: Fumigation (Branch 1); General Pest Control (Branch 2); and Termite (Branch 3). (Bus. & Prof. Code, § 8560, subd. (a).)

probation in the 2014 Decision, including that he obey all laws, submit quarterly reports to the Board, and reimburse the Board for its costs of investigation and enforcement (cost recovery) in the amount of \$4,012.86. The specific grounds to revoke OPR 10743 were as follows:

- (a) Petitioner failed to obey all laws in that he failed to file approximately 314 fumigation reports and fees for fumigations during May through August 2014, in violation of the Structural Pest Control Act.
- (b) Petitioner failed to obey all laws in that he failed to timely submit proof of continuing education to the Board as required for renewal of OPR 10743. Also, on May 29, 2015, the Board issued petitioner Citation and Fine No, 2015-442 in the amount of \$1,300 with an order of abatement requiring petitioner to complete 10 hours of technical education courses in specific areas within 90 days. Petitioner paid the fine on June 8, 2015, and complied with the order of abatement on June 17, 2015.
- (c) Petitioner failed to timely submit 11 quarterly reports to the Board during 2014 through 2017. The untimely reports included two in 2014, four in 2015, four in 2016, and one in 2017.
- (d) Petitioner failed to timely pay cost recovery in the amount of \$4,012.86. The Board's written payment plan for petitioner included 12 monthly payments in the amount of \$334.40 beginning in June 2014 through May 8, 2015. The Board received full cost recovery with untimely payments in August, November, and December 2014, February and May 2015, and December 2016.

4. The 2018 Decision states that prior to reinstatement of OPR 10743, petitioner must pay cost recovery to the Board in the amount of \$7,965, and re-take and pass the operator examination.

Petition for Reinstatement

5. On August 31, 2020, petitioner signed and subsequently filed his Petition for Reinstatement of OPR 10743 (Petition). On August 31, 2020, petitioner also signed an acknowledgement that he received and reviewed the Board's Guidelines for Petitions for Reinstatement or Reduction of Penalty (Guidelines).

6. Petitioner completed the requirements stated in the 2018 Decision. He paid cost recovery to the Board in the amount of \$7,965, on July 22, 2020, and passed the Branch 1 Operator Examination on August 24, 2020.

7. Petitioner completed nine training courses through Ace Professional Termite and Pest Control during March 2017 through May 2020. The training courses completed by petitioner include: Rules and Regulation; Branch 1 Fumigation Operator's Course; Branch 1 Pre-Operator's Exam Preparatory Class; Contract Law, Business Practice, Rules and Regulations; and Ethics.

Testimony

8. Petitioner testified that his failure to comply with the terms of probation in the 2014 Decision are mainly attributable to his former secretary's malfeasance and the fact that he did not supervise her closely enough. He feels his biggest mistake was that he trusted his secretary to handle his money and written correspondence with the Board while he spent his time working on projects outside the office.

9. Petitioner learned in August 2014, that his secretary had been embezzling money from his business. On August 14, 2014, petitioner went to the Torrance Police Department with documentation showing that his secretary had embezzled \$15,744, and possibly more. Petitioner terminated his secretary's employment. Petitioner also learned in August 2014 that his secretary had not been sending quarterly reports to the Board, and that she had not shown him written correspondence from the Board.

10. Petitioner's daughter, Mariela Gutierrez, began working in his office in August 2014, when he learned that his secretary had been embezzling money. She is now handling his business paperwork. Petitioner testified that he will be more careful and responsible in the future, and that he understands his past mistakes.

11. Petitioner has not performed any community service since his license was revoked. Petitioner has not read the Guidelines regarding rehabilitation criteria, which he received on August 31, 2020, and which are set at Factual Finding 14, below.

12. Mariela Gutierrez testified that she is petitioner's daughter. When she started working for petitioner in August 2014, she noticed that petitioner had not been filing quarterly reports or making cost recovery payments as required by the 2014 Decision. Ms. Gutierrez made an effort to comply with the terms of probation, but had difficulty catching up with cost recovery payments because petitioner's secretary had embezzled so much of his money.

13. Ms. Gutierrez works full-time for petitioner. She feels that he is a good "hard-working person" and that he is "doing everything he can" to run a better business. She is now "on top of things" and can help him better manage his business.

Discussion

14. Under the Guidelines, the Board in evaluating a petition for reduction of penalty, such as early termination of probation, considers various factors, including the following:

- (a) The original violation(s) for which action was taken against the petitioner's license including:
 - 1. The type, severity, number, and length of violation(s).
 - 2. Whether the violation(s) involved intentional, negligent or other unprofessional conduct.
 - 3. Actual or potential harm to the public.
 - 4. The length of time since the violation(s) was committed.

- (b) Prior disciplinary and criminal actions also taken against the petitioner by the Board, any State, local or Federal agency or court including:
 - 1. The petitioner's compliance with all terms of probation, parole, previous discipline or other lawfully imposed sanctions including any order of restitution.
 - 2. Whether the petitioner is currently on or has been terminated from probation or other lawfully imposed sanction.

3. The petitioner's legal and regulatory history prior to and since the violation(s).
- (c) The petitioner's attitude toward his or her commission of the original violation(s) and his or her attitude in regard to compliance with legal sanctions and rehabilitative efforts.
- (d) The petitioner's documented rehabilitative efforts including:
1. Efforts to maintain and/or upgrade professional skills and knowledge through continuing education or other methods.
 2. Efforts to establish safeguards to prevent repetition of the original violation(s).
 3. Service to community or charitable groups.
 4. Voluntary restitution to those affected by the original violation(s).
 5. Use of appropriate professional medical or psychotherapeutic treatment.
 6. Participation in appropriate self-help and/or rehabilitation groups.
- (e) Assessment of the petitioner's rehabilitation and corrective efforts including:

1. Whether the efforts relate to the original violation(s).
2. The date rehabilitative efforts were initiated.
3. The length, time and expense associated with rehabilitative efforts or corrective actions.
4. The assessment and recommendations of qualified professionals directly involved in the petitioner's rehabilitative efforts or acting at the request of the Board, including their description of the petitioner's progress and their prognosis of the petitioner's current ability to practice structural pest control.
5. The petitioner's reputation for truth, professional ability and good character since the commission of the original violation(s).
6. The nature and status of ongoing and continuing rehabilitative efforts.

15. Petitioner readily acknowledged his failures to comply with the terms and conditions of probation in the 2014 Decision. However, petitioner casts blame on his secretary's malfeasance, and testified that his biggest error was to trust his secretary to handle the paperwork regarding his compliance with probation. In reality, petitioner's biggest error was not that he trusted his secretary, but that he failed to personally ensure that he was in full compliance.

16. The fact that Ms. Gutierrez began working for petitioner in August 2014, is a positive development. However, some of petitioner's probation violations occurred

after August 2014. Specifically, petitioner filed late quarterly reports in 2015 through 2017, and made late cost recovery payments in November and December 2014, February and May 2015, and December 2016. Based on this evidence, petitioner has not demonstrated that sufficient safeguards are in place to prevent similar violations in the future.

17. It is also concerning that petitioner has not reviewed the Guidelines provided to him by the Board in August 2020. Subdivisions (c), (d), and (e), of the Guidelines list rehabilitation criteria that can be met by petitioner if he chooses to do so. While it is commendable that petitioner has taken steps such as pursuing continuing education, there is not significant evidence of other rehabilitation efforts.

18. Based on the evidence as a whole, petitioner has not provided sufficient evidence of rehabilitation to support a conclusion that it would be consistent with the public interest to reinstate OPR 10743 at this time, even with terms and conditions of probation. In the event that petitioner chooses to file another petition for reinstatement at a later date, he is encouraged to review and act upon the Guidelines provided.

LEGAL CONCLUSIONS

1. "A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition." (Gov. Code, § 11522.)

2. In a proceeding to restore a revoked license, the burden rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his

license fully restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The standard of proof is clear and convincing evidence. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092). "The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a high probability [citations]." (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899; italics omitted.)

3. Based on the Factual Findings as a whole, petitioner failed to demonstrate that reinstatement of OPR 10743 would be consistent with the public interest at this time. Therefore, the Petition must be denied.

ORDER

The Petition for Reinstatement of Operator License Number OPR 10743, Branch 1, filed by petitioner Eduardo Santillan, is DENIED.

This Decision is hereby adopted by the Structural Pest Control Board.

This Decision shall become effective on May 2, 2021.

IT IS SO ORDERED.

DATE: April 2, 2021

CURTIS GOOD
President
Structural Pest Control Board