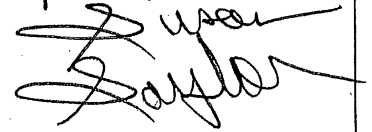


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FILED

Date 12/19/12 By



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

13 In the Matter of the Accusation Against:

Case No. 2013-26

14 **MICHAEL ALLEN CAVINS**
15 **14554 Woodworth Way**
16 **Victorville, CA 92394**

A C C U S A T I O N

17 **Operator's License No. OPR 11218**

Respondent.

18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about November 17, 2005, the Structural Pest Control Board issued Operator's
24 License Number OPR 11218, Branch 2, to Michael Allen Cavins (Respondent). The Operator's
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on June 30, 2014, unless renewed.

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JURISDICTION

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

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

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

6. Section 8625 of the Code states:

The lapsing or suspension of a license or company registration by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license or company registration shall not deprive the board of 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.

STATUTORY PROVISIONS

7. Section 482 of the Code states:

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

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

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

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

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1 8. Section 490 of the Code states:

2 (a) In addition to any other action that a board is permitted to take against a
3 licensee, a board may suspend or revoke a license on the ground that the licensee has
4 been convicted of a crime, if the crime is substantially related to the qualifications,
5 functions, or duties of the business or profession for which the license was issued.

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

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

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

27 9. Section 493 of the Code states:

28 Notwithstanding any other provision of law, in a proceeding conducted by a
board within the department pursuant to law to deny an application for a license or to
suspend or revoke a license or otherwise take disciplinary action against a person who
holds a license, upon the ground that the applicant or the licensee has been convicted
of a crime substantially related to the qualifications, functions, and duties of 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."

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1 10. Section 8649 of the Code states:

2 Conviction of a crime substantially related to the qualifications, functions, and
3 duties of a structural pest control operator, field representative, applicator, or
4 registered company is a ground for disciplinary action. The certified record of
5 conviction shall be conclusive evidence thereof.

6 11. Section 8655 of the Code states:

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

19 REGULATORY PROVISION

20 12. California Code of Regulations, title 16, section 1937.1 states:

21 For the purposes of denial, suspension or revocation of a license or company
22 registration pursuant to Division 1.5 (commencing with Section 475) of the code, a
23 crime or act shall be considered to be substantially related to the qualifications,
24 functions or duties of a licensee or registered company under Chapter 14 of Division
25 3 of the code if to a substantial degree it evidences present or potential unfitness of
26 such licensee or registered company to perform the functions authorized by the
27 license or company registration in a manner consistent with the public health, safety,
28 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 13. 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
5 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:

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

7 (2) Total criminal record.

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

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

11 (5) If applicable, evidence of expungement proceedings pursuant to Section
12 1203.4 of the Penal Code.

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

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

16 **COST RECOVERY**

17 14. Section 125.3 of the Code provides that a Board may request the administrative law
18 judge to direct a licentiate found to have committed a violation or violations of the licensing act to
19 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

20 **CAUSE FOR DISCIPLINE**

21 **(February 22, 2012 Criminal Conviction for Grand Theft In Excess of \$400)**

22 15. Respondent is subject to disciplinary action under Code sections 490 and 8649 in that
23 Respondent was convicted of a crime that is substantially related to the qualifications, functions,
24 and duties of an operator. The circumstances are as follows:

25 16. On February 22, 2012, in a criminal proceeding entitled *The People of the State of*
26 *California v. Michael Allen Cavins*, in the Riverside County Superior Court, Case Number
27 RIF1103828, Respondent was convicted by his plea of guilty to violating Penal Code section
28 487(a) (grand theft), a felony.

1 17. As a result of the above conviction, the Court placed Respondent on three years
2 summary probation and ordered him to obey all laws, ordinances and court orders, and ordered
3 him to serve one day in the Riverside County Jail, with one day credit for time served, pay a fine
4 and penalty assessment of \$1,000, and submit person, automobile, home, premises, garage,
5 storage areas and personal/leased property, with or without cause by probation officer or law
6 enforcement, to search and seizure.

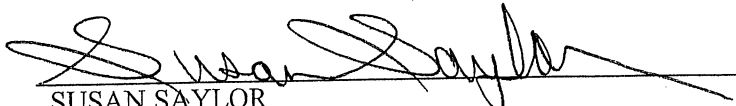
7 18. The circumstances that led to the conviction are that in or about August 18, 2010, the
8 State of California Employment Development Department (EDD) began an investigation related
9 to Respondent's unemployment insurance claims. The investigation revealed that Respondent,
10 while gainfully employed, failed to report to EDD his earnings for the period June 7, 2009
11 through May 29, 2010, submitted claims he was not entitled to and knowingly withheld material
12 facts to obtain \$8,075 in unemployment insurance payments.

13 **PRAYER**

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

- 16 1. Revoking or suspending Operator's License Number OPR 11218, Branch 2, issued to
17 Michael Allen Cavins;
18 2. Ordering Michael Allen Cavins to pay the Structural Pest Control Board the
19 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
20 Professions Code section 125.3;
21 3. Taking such other and further action as deemed necessary and proper.

22
23 DATED: 12/19/12


24 SUSAN SAYLOR
25 Interim Registrar/Executive Officer
26 Structural Pest Control Board
27 Department of Pesticide Regulation
28 State of California
Complainant

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