

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

In the Matter of the Petition for Modification or Early
Termination of Probation of:

JAIME CHAVEZ,

Operator License No. OPR 11254

Petitioner.

Case No. 2012-58

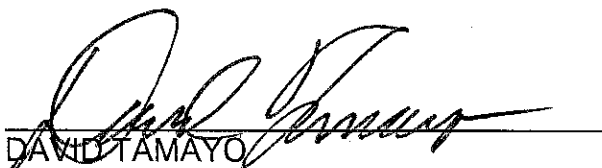
OAH No. 2015070088

DECISION

The attached Proposed Decision of the Administrative Law Judge, is hereby adopted by the Structural Pest Control Board as its Decision in the above-entitled matter.

The Decision shall become effective on September 30, 2015.

IT IS SO ORDERED August 31, 2015.



DAVID TAMAYO
President, Structural Pest Control Board

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

In the Matter of the Petition for Modification
or Early Termination of Probation of:

JAIME CHAVEZ,

Petitioner.

Case No. 2012-58

OAH No. 2015070088

DECISION

On July 22, 2015, in Ontario, California, a quorum of the Structural Pest Control Board, Department of Consumer Affairs, State of California, heard and decided the Petition for Early Termination of Probation.

Administrative Law Judge Kimberly J. Belvedere, Office of Administrative Hearings, State of California, presided over the hearing.

Deputy Attorney General Kevin Rigley appeared on behalf of the Office of the Attorney General, State of California.

Petitioner, Jaime Chavez, represented himself.

The record was closed, the matter was submitted, and the decision rendered following deliberation in Executive Session on July 22, 2015.

FACTUAL FINDINGS

Background

1. On January 27, 2006, the board issued Operator's License Number OPR 11254 (Branch 1) to petitioner.

2. On June 7, 2012, an Accusation was filed against petitioner. The Accusation asserted fifteen causes of action against three companies. Petitioner was qualifying manager for two of the companies at the time of the alleged misconduct. With respect to petitioner, two causes of action alleged violations of the Business and Professions Code and California

Code of Regulations, for the failure to complete a fumigation, and failure to notify the board in writing of the change in location of petitioner's principal office. The Accusation also alleged, as disciplinary considerations, six fines that the Los Angeles County Agricultural Commissioner levied against petitioner's license between 2009 and 2011 for various violations of the Food and Agriculture Code and California Code of Regulations.

3. On January 29, 2014, petitioner signed a Stipulated Settlement. By order effective April 4, 2014, the board revoked petitioner's operator's license, stayed the revocation, and placed petitioner on probation for three years subject to certain terms and conditions. Included in the terms and conditions of probation was an order that petitioner pay investigation and enforcement costs of \$1,958 and a general order that petitioner obey all laws.

4. Subsequent to the order, petitioner agreed with the board to repay the \$1,958 in \$100 per month increments. Petitioner made four payments between April 2014 and September 2014. Petitioner still owes approximately \$1,558 to the board.

5. On April 1, 2015, and on June 8, 2015, petitioner was cited by the Los Angeles County Agricultural Commission for violations of the California Code of Regulations and Food and Agriculture Code. His fines total \$750. To date, petitioner has not paid either fine.

6. On April 4, 2015, petitioner filed a petition for early termination or modification of probation. In the application, petitioner checked the box that he has complied with all terms and conditions of his probation. He stated that he has made the required payments to the board on time.

7. The Attorney General did not take a position on the petition.

Petitioner's Evidence

8. Petitioner testified that he came to the hearing in order to argue why the original discipline should not have been imposed. He said that he only agreed to the stipulated settlement because at the time of the proceedings, he was "having a lot of problems."

9. Petitioner stated that he stopped paying the board its costs because he was waiting to be able to file his petition for modification or termination of probation and have a hearing on the merits of his original case. Petitioner stated that it is a "headache" to have to comply with the terms of probation.

10. Regarding the most recent citations by the Los Angeles County Agricultural Commission, petitioner stated that he did not receive any information on either citation. However, when he does receive information, he will pay the fines.¹

11. Petitioner did not produce any documentation in support of his petition. Petitioner did not present any character witnesses in support of his petition. Petitioner did not present any evidence of rehabilitation.

LEGAL CONCLUSIONS

1. In a proceeding involving a request for early termination of probation, the burden at all times rests on the petitioner to prove by clear and convincing evidence that he has rehabilitated himself and is entitled to have his probation terminated. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The showing must be sufficient to overcome the former adverse determination. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d, 308, 315-316.)

2. In its evaluation of whether a person seeking early termination or modification of probation is sufficiently rehabilitated, the board considers the following criteria: the type, severity, number and length of violations; whether the violations involved intentional, negligent or unprofessional conduct; actual or potential harm to the public; the length of time since the violations were committed; compliance with any criminal sanctions imposed by the court; prior disciplinary history; petitioner's attitude toward his or her commission of the original violations and in regard to compliance with rehabilitative efforts; efforts to maintain or upgrade professional skills; efforts to establish safeguards to prevent repetition of the misconduct; community service; therapeutic treatment; participation in self-help groups; voluntary restitution to those affected by the misconduct; and any other evidence of rehabilitation submitted by petitioner. (Cal. Code Regs., tit. 16, § 1937.11.)

Evaluation

3. Petitioner was provided with the regulations specifying precisely what evidence is required to establish rehabilitation. Yet, it did not appear to the board that petitioner made an effort to meet his burden. Petitioner did not present any witnesses to testify as to his good character and did not provide any documentation in support of his petition. Although he testified, petitioner did not provide any testimonial evidence to the board that addressed any of the factors the board considers with respect to rehabilitation.

Moreover, petitioner has not complied with probation. He stopped making payments to the board in September 2014, yet he represented on his application, in April 2015, that he

¹ Petitioner truthfully disclosed the citations in his petition. Thus, when he stated that he did not receive any information regarding the citations, it appears that he meant that he did not receive any information about the fine amounts.

had made all payments on time. Also, petitioner has not obeyed all laws as required by his probation; recently received two work-related citations; and has not paid the fines for the citations.

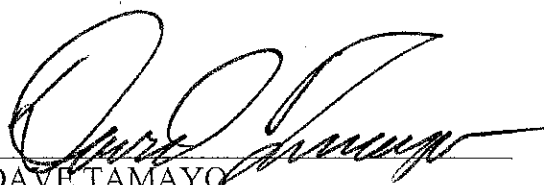
Petitioner is encouraged to review the disciplinary guidelines, and pay special attention to the rehabilitation criteria. If petitioner decides to file a subsequent petition for early termination or modification of probation, he may want to consider providing additional evidence in the form of witness testimony, letters of recommendation, and/or witness declarations, attesting to his rehabilitation and addressing the rehabilitation criteria outlined in the disciplinary guidelines.

Given petitioner's failure to establish sufficient rehabilitation, early termination or modification of probation is not appropriate at this time. Petitioner is also reminded that, should he fail to make the required payments to the board, his probation will not terminate in April 2017, as currently scheduled.

ORDER

The Petition for Early Termination or Modification of Probation is denied.

DATED: July 30, 2015



DAVE TAMAYO
President,
Structural Pest Control Board
Department of Consumer Affairs
State of California