

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

In the Matter of the Second Amended Accusation
Against:

QUALITY RODENTS & PEST CONTROL;
ELPIDIO MARTINEZ ZAMORA, Owner &
Qualifying Manager
Company Registration Certificate No. PR 6943,

and

ELPIDIO MARTINEZ ZAMORA,
Operator's License No. OPR 11405,

Respondent.


Case No. 2014-55

OAH No. 2014060311

ORDER OF DENIAL FOR PETITION FOR RECONSIDERATION

Respondent's Petition for Reconsideration is hereby denied. The Board's
Decision becomes effective on **March 2, 2015**.

IT IS SO ORDERED this 25th day of February 2015.



SUSAN SAYLOR, Registrar/Executive Officer
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

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

In the Matter of the Second Amended Accusation
Against:

QUALITY RODENTS & PEST CONTROL;
ELPIDIO MARTINEZ ZAMORA, Owner &
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Company Registration Certificate No. PR 6943,

and

ELPIDIO MARTINEZ ZAMORA,
Operator's License No. OPR 11405,

Respondent.

Case No. 2014-55

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**ORDER GRANTING 10 DAY STAY TO CONSIDER PETITION FOR
RECONSIDERATION**

Pursuant to Section 11521 of the Government Code, the Decision adopted by the Structural Pest Control Board in the above-entitled matter to become effective on February 20, 2015 is hereby stayed for ten (10) days until March 2, 2015, in order to permit the Board to decide whether to order reconsideration.

IT IS SO ORDERED this 19th day of February 2015.


SUSAN SAYLOR, Registrar/Executive Officer
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

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

In the Matter of the Second Amended
Accusation Against:

QUALITY RODENTS & PEST CONTROL,
Company Registration Certificate No. PR 6943

ELPIDIO MARTINEZ ZAMORA,
Operator's License No. OPR 11405

Respondent.

Case No.: 2014-55

OAH No.: 2014060311

DECISION

The Proposed Decision of Chris Ruiz, Administrative Law Judge, dated November 24, 2014, in Los Angeles, 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, paragraph 2, "Christina" is stricken and replaced with "Cristina".
2. On page 2, paragraph number 2, insert the prefix "FR" in front of "24260".
3. On page 2, paragraph number 3, insert the prefix "FR" in front of "33203".

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 20, 2015.

IT IS SO ORDERED January 21, 2015



FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

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

In the Matter of the Second Amended
Accusation Against:

QUALITY RODENTS & PEST CONTROL;
ELPIDIO MARTINEZ ZAMORA,
Company Registration Certificate No. PR
6943,

and

ELPIDIO MARTINEZ ZAMORA,
Operator's License No. OPR11405,

Respondent.

Case No. 2014-55

OAH No. 2014060311

PROPOSED DECISION

This matter was heard on October 27, 2014, in Los Angeles, by Chris Ruiz,
Administrative Law Judge of the Office of Administrative Hearings.

Susan Saylor (complainant), Registrar and Executive Officer of the Structural Pest
Control Board (Board), Department of Consumer Affairs, was represented by Van Korlaar,
Certified Law Clerk, and Christina Felix, Deputy Attorney General.

Elpidio Martinez Zamora (respondent) was present and represented himself. Carina
Feldman, Spanish-English interpreter, provided interpreting services for respondent.

This matter was submitted for decision on October 27, 2014.

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FACTUAL FINDINGS

Jurisdiction

1. On April 24, 2014, complainant filed an Accusation in her official capacity. On May 6, 2014, respondent filed a Notice of Defense, which requested a hearing. On October 10, 2014, complainant filed a Second Amended Accusation.

Respondent's Licensing History

2. On February 6, 1995, the Board issued Field Representative's License number 24260 to respondent. The license was cancelled on June 30, 2000.

3. On March 9, 2001, the Board issued Field Representative's License number 33203 to respondent. In conjunction with the issuance of the respondent's Operator's License, discussed in factual finding 4, the Board canceled respondents Field Representative License number 33203 on September 28, 2006.

4. On September 28, 2006, the Board issued Operator's License number OPR 11405 to respondent. The license was in full force and effect at all relevant times and will expire on June 30, 2015, unless renewed.

5. On October 11, 2011, respondent, under Operator's License number OPR 11405, became the Qualifying Manager of E Z Gopher's Pest Control.

6. On October 11, 2011, the Board issued Company Registration Certificate number PR 6389 to E Z Gopher's Pest Control, with respondent's wife, Elisa Vega Zamora, as Owner and respondent as Qualifying Manager. The evidence was conflicting as to whether the registration certificate was in full force and effect at all relevant times, or was cancelled on October 11, 2011.

7. On January 10, 2014, respondent, under Operator's License number OPR 11405, became the Owner and Qualifying Manager of Quality Rodents and Pest Control (Quality Rodents).

8. On January 10, 2014, the Board issued Company Registration Certificate number PR 6943 to Quality Rodents, with respondent as Owner and Qualifying Manager. The registration certificate was in full force and effect at all relevant times.

9. The Second Amended Accusation alleges that respondent's operator's license and company registration certificate are subject to disciplinary action because respondent has been convicted of crimes which are substantially related to the qualifications, duties, or functions of a licensee, and because respondent failed to disclose his convictions in his application for a company registration.

Respondent's Convictions

10. Respondent's first conviction occurred on August 21, 1990. His most recent conviction was on August 20, 2014. Respondent has been convicted of 12 misdemeanor crimes in eight criminal cases. He has pleaded guilty twice, nolo contendere eight times, and has twice been found guilty by a court. A list of respondent's convictions, including the date, the type of crime, and the statute violated, is sufficient for purposes of this proposed decision. Respondent's convictions are as follows:

- a. August 1990
Failed to Obey Court Order - Penal Code section 166.4
- b. June 1998
False Pretense - Penal Code section 532
- c. May 2000
Driving with a Suspended License - Vehicle Code section 14601.5
- d. August 2000
Driving Under the Influence of Alcohol - Vehicle Code section 23152
- e. July 2013
 - i. Petty Theft - Penal Code section 484, subdivision (a)
 - ii. Hit and Run with Property Damage - Vehicle Code section 20002
 - iii. Driving Under the Influence of Alcohol - Vehicle Code section 23152, subdivision (a)
 - iv. Driving while Having 0.08% or more, by Weight, of Alcohol in Blood - Vehicle Code section 23152, subdivision (b)
 - v. Driving with a Suspended License - Vehicle Code section 14601.1, subdivision (a)
- f. September 2013
Driving without a License - Vehicle Code section 12500, subdivision (a).
- g. June 2014
Driving while Having 0.08% or more, by Weight, of Alcohol in Blood - Vehicle Code section 23152, subdivisions (b).
- h. August 2014
Driving with a Suspended License Knowing the Suspension was a Result of a Conviction for Driving the Influence of Alcohol - Vehicle Code section 14601.2, subdivision (a).

Respondent's Application for Company Registration Certificate

11A. On November 4, 2013, respondent filed an Application for Registration of Company (Quality Rodents) with the Board. Respondent answered "NO" to question number 11 of the application, which asked if he had ever been convicted of a felony or misdemeanor. As of that date, respondent had been convicted of 10 misdemeanor crimes, the most recent having occurred two months earlier in September 2013.

11B. Respondent did not offer a credible explanation regarding his failure to disclose his convictions. He testified that he "didn't know why" he failed to disclose any of his convictions. Respondent made a material misrepresentation by not disclosing his convictions in his application.

Substantially Related Crimes

12A. Respondent's convictions are considered substantially related to the qualifications, functions, and duties of respondent's license and registration. The convictions, to a substantial degree, evidence a present or potential unfitness to perform the functions authorized by his license in a manner consistent with the public health, safety, and welfare, as set forth immediately below.

12B. Respondent holds an operator's license and he is the owner of a Board registered company. Therefore, he is authorized to work in the structural pest control business. As a licensee, he is authorized to use dangerous chemicals and to perform dangerous procedures, such as tenting a structure for fumigation, where flammable natural gas may be present. Respondent's occupation also requires him to drive in order to provide services to his customers. Respondent's driver's license is presently suspended and he pays an employee to drive him in order to operate his business. Respondent stated that he will not drive without a valid driver's license.

12C. A pest control licensee must have sound judgment and be willing to abide by the Board's laws and regulations. Respondent's extensive criminal history established that he is willing to knowingly and continually violate the law. Respondent is not sufficiently rehabilitated and more time must pass before it can be determined whether respondent no longer poses a potential risk to the public. At present, respondent poses a risk to the public health, safety, or welfare.

Respondent's Testimony and Demeanor

13. In 2011, respondent's use of alcohol began to spiral out of control when he became divorced. He suffered alcohol-related convictions in 2013-2014. He and his ex-wife have two adult children and two minor children, ages 17 and 10. Respondent has joint legal custody of the minor children and he sees them regularly. He is the primary provider for his family and he pays his ex-wife child support.

14. Respondent stopped drinking alcohol in December 2013. However, he did not offer sufficient evidence to establish that he is committed to no longer using alcohol. Respondent offered only a two-page "DUI Program Tracking Sheet," which did not include his name. Respondent did not establish that he regularly attends Alcoholics Anonymous, that he is familiar with the 12 Step Program, or that he has a sponsor.

15. At the beginning of the hearing, respondent stated that the hearing was unwarranted and that the allegations against him were false. Respondent failed to provide sufficient evidence to support that contention. During closing argument, it appeared respondent began to appreciate the gravity of the situation and that complainant was seeking revocation of his license and company registration. Respondent did not express remorse for his criminal conduct or his material misrepresentation until closing argument, but then his remorse appeared motivated by the potential loss of his license, rather than for his past conduct.

16. The total cost of investigation and enforcement of this matter is \$6,015, which is reasonable.

LEGAL CONCLUSIONS

1. Under Business and Professions Code¹ section 8620, the Board has the authority to revoke or suspend respondent's Operator's License number OPR 11405 and Company Registration Certificate number PR 6943.

2A. Cause exists to suspend or revoke respondent's Operator's License number OPR 11405 and Company Registration Certificate number PR 6943, under sections 8620, 8649 and 8655, in conjunction with California Code of Regulations, title 16, section 1937.1, because respondent has been convicted of crimes which are substantially related to the duties, qualifications, or functions of a structural pest control licensee, as set forth in Factual Findings 10 and 12 and Legal Conclusion 2B-2C.

2B. Under California Code of Regulations, title 16, section 1937.1, a conviction is considered substantially related to the qualifications, functions or duties of a licensee if, to a substantial degree, it evidences a present or potential unfitness perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare.

2C. Respondent has a history of criminal convictions spanning from 1990 to 2014. The most recent convictions are related to his use of alcohol and willingness to drive under the influence of alcohol and in violation of restrictions imposed on driver's license due to earlier violations. Respondent's use of alcohol, as well as his willingness to disregard the

¹ All further statutory references are to the Business and Professions Code unless otherwise noted.

law, poses a significant present or potential danger to the public health, safety, and welfare. (Factual Findings 10-15.)

3. Cause exists to suspend or revoke respondent's Operator's License number OPR 11405 and Company Registration Certificate number PR 6943, under section 8637, because respondent made a material misrepresentation by failing to disclose his convictions in his Application for Registration of Company. (Factual Finding 11.)

4. Cause exists to suspend or revoke Company Registration Certificate number PR 6943, under section 8624, because respondent's Operator's License number OPR 11405 is subject to suspension or revocation, as set forth in Legal Conclusion 2.

5. Cause exists to prohibit respondent from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company, under section 8654, because respondent's Operator's License number OPR 11405 is subject to suspension or revocation, as set forth in Legal Conclusion 2.

6. The Board is entitled to recover costs of investigation and prosecution pursuant to section 125.3, based on Legal Conclusions 2-5. The total reasonable costs are \$6,015. However, given that respondent's earning potential will diminish as a result of this decision, it is appropriate to order that these costs be paid at such time as respondent files for licensure or reinstatement. (Factual Finding 16.)

ORDER

1. Operator's License number OPR 11405 issued to Elpidio Martinez Zamora is revoked pursuant to Legal Conclusions 2-3, separately and for all of them.

2. Company Registration Certificate number PR 6943 issued to Quality Rodents & Pest Control and Elpidio Martinez Zamora is revoked pursuant to Legal Conclusions 2-4, separately and for all of them.

3. Elpidio Martinez Zamora is prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee of any registered company during the time that Operator's License number OPR 11405 remains revoked.

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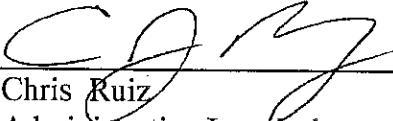
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4. Elpidio Martinez Zamora shall pay the sum of \$6,015 to the Board at such time as he files an application for licensure or a petition for reinstatement. The Board, in its discretion, may schedule a monthly payment program for Elpidio Martinez Zamora if such a program is requested.

November 24, 2014.


Chris Ruiz
Administrative Law Judge
Office of Administrative Hearings