

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

In the Matter of the Petition for Reinstatement of:

GEORGE DON PEDRO,

Petitioner.

Case No. 2012-55

OAH No. 2017090500

ORDER OF DECISION

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 January 3, 2018.

IT IS SO ORDERED December 4, 2017.



DAVID TAMAYO

President, Structural Pest Control Board

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DECISION

This matter was heard before a quorum of the Structural Pest Control Board (Board) comprised of Dave Tamayo, President, Darren Van Steenwyk, Vice President, Curtis Good, and Mike Duran on October 10, 2017, in Sacramento, California. Administrative Law Judge Karen J. Brandt, Office of Administrative Hearings, presided.

Tim McDonough, Deputy Attorney General, appeared pursuant to Government Code section 11522.

George Don-Pedro (petitioner) represented himself.

Evidence was received, the record was closed, and this matter was submitted for decision on October 10, 2017.

FACTUAL FINDINGS

1. On July 28, 1988, the Board issued Operator's License No. OPR 8197, Branch 3, (operator's license) to petitioner as the owner and qualifying manager of DonPedro's Termite Control Co. (DonPedro's).
2. On July 28, 1988, the Board issued Company Registration Certificate No. PR 1450, Branch 3, (company registration) to DonPedro's, with petitioner as the owner and qualifying manager.

Disciplinary Actions and Citations Against Petitioner

3. In 2009, a consumer filed a complaint with the Board against petitioner and DonPedro's. On February 22, 2010, the Board issued an accusation against petitioner and DonPedro's in Case No. 2010-57 (2010 Accusation), alleging 15 causes for discipline. On February 9, 2011, petitioner and DonPedro's entered into a Stipulated Settlement and Disciplinary Order (Stipulated Settlement), in which petitioner and DonPedro's admitted all the allegations in the 2010 Accusation, including that they failed to maintain required insurance; furnished notices of work completed before the work was completed; failed to complete construction repairs for the price stated; improperly certified the property as free from infestation and infection; failed to comply with building codes; recommended use of pesticides not labeled for usage on the targeted pest; failed to maintain records; failed to report the excessive moisture condition that caused the infestation or infection; failed to include the name of an active ingredient of pesticides recommended for usage; and failed to report a rusted metal cabinet base. In addition, petitioner and DonPedro's admitted committing acts of gross negligence or fraud in furnishing a notice of work completed for the purpose of closing an escrow account when the work had not been completed, and by falsely reporting to the Board that they had not conducted inspections from March 3, 2007, to February 14, 2008, when in fact they had.

The Board adopted the Stipulated Settlement as its Decision and Order, effective June 2, 2011. Pursuant to the Decision and Order, petitioner's operator's license and DonPedro's company registration were revoked, but the revocations were stayed and the operator's license and company registration were placed on probation for three years. In addition, petitioner's operator's license and DonPedro's company registration were suspended for 60 days, and they were required to pay a \$50 inspection fee to the Board and \$14,715 in restitution to the complaining consumer.

4. On February 7, 2012, the Board issued Citation No. CF 12-89 (2012 Citation) against petitioner and DonPedro's. The 2012 Citation assessed a fine of \$2,550 based on violations of Business and Professions Code sections 8516, subdivision (b) (failure to file Wood Destroying Organisms Activities), and 8612 (failure to prominently display the Qualifying Manager's license in DonPedro's office).

5. On April 30, 2012, the Board filed an accusation and petition to revoke probation against petitioner and DonPedro's in Case No. 2012-55 (2012 Accusation and Petition to Revoke Probation), which alleged, among other things, that petitioner and DonPedro's had violated the terms of their probations by failing to pay the \$50 inspection fee to the Board and the \$14,715 restitution to the complaining consumer. The 2012 Accusation and Petition to Revoke Probation also included several matters in aggravation, including that petitioner and DonPedro's failed to pay the \$2,550 fine assessed by the 2012 Citation.

6. On September 26, 2012, a hearing was held before an administrative law judge on the 2012 Accusation and Petition to Revoke Probation. The administrative law judge prepared a proposed decision revoking petitioner's operating license and DonPedro's

company registration, finding that petitioner's and DonPedro's "performance on probation demonstrates very little effort at compliance." The Board adopted the proposed decision as its decision, effective February 21, 2013.

7. On October 3, 2017, the Board issued Citation No. CF 2018 114 (2017 Citation) against petitioner and DonPedro's, alleging they had violated Business and Professions Code sections 8550, subdivisions (a) and (e), 16240, and 17530, by engaging in the practice of structural pest control without a license. The 2017 Citation assessed penalties totaling \$5,000 against petitioner and DonPedro's.

Prior Petition for Reinstatement

8. On December 7, 2015, petitioner filed his first petition for reinstatement of his revoked operator's license. On May 25, 2016, the Board adopted a Decision, effective June 24, 2016, denying petitioner's first petition, finding petitioner had failed to submit clear and convincing evidence of rehabilitation.

Current Petition for Reinstatement

9. On May 24, 2017, the Board received petitioner's second petition for reinstatement of his revoked operator's license.¹ In this petition, petitioner identified the "cause for discipline" as "impaired due to financial hardship." With his petition, petitioner submitted: (a) information from the Contractors State License Board's website indicating that petitioner is licensed as a general building contractor; and (b) a Certificate of Completion dated June 14, 2017, from Dr. Richard S. Kaae, Professor of Pest Management, indicating that petitioner took the following courses: "Outdoor Vertebrates 4602 (4RR, 2 IPM, 2Br2TECH); History Labels 4953 (4RR); Termites 5961 (4Br1/3TECH) = 8RR, 2 IPM, 2BrTECH, 4 Br1/3TECH."

Petitioner's Testimony

10. At the petition hearing, petitioner testified that the charges against him were caused by his "financial difficulty." He asserted that he was unable to pay for insurance and a bond because of his financial situation, and that he did not intentionally violate the law. He has not paid the \$14,715 restitution to the complaining consumer because he is financially unable to do so. He apologized for being unable to pay. He has four children and an ill wife. He is struggling financially and is finding it difficult to make ends meet. He believes that if his license were reinstated, he would be able to "recoup" his losses. He stated that he was told that the complaining consumer to whom he owes the \$14,715 restitution has died.

¹ In his petition, petitioner did not request that DonPedro's company registration be reinstated. At the petition hearing, petitioner stated that his failure to include this request in his petition was an "oversight." Also, in his petition, petitioner identified the number of his operator's license as "OPR 8127." At the hearing, he stated that that number was a typo, and he meant to state "OPR 8197."

11. Petitioner asserted that he had “worked hard” to be a law-abiding operator and that he had taken classes to rehabilitate himself be a better operator.

12. Petitioner admitted that he “broke the rules” by treating a friend’s place in July 2017, as alleged in the 2017 Citation, but he asserted that he did not get paid for the treatment he provided and that he followed all the rules with regard to that treatment. He asserted further that he initially told his friend that his license was suspended, but his friend kept “pushing,” so petitioner “fell” and provided the treatment. He admitted that he received \$200 from his friend for an inspection, even though he was not allowed to conduct the inspection when he was not licensed.

13. Prior to the October 10, 2017 petition hearing, petitioner had not paid the \$50 inspection fee, the \$2,550 fine from the 2012 Citation, the \$5,000 fine from the 2017 Citation, or the \$14,715 restitution to the complaining consumer. At the petition hearing, petitioner stated that he had earlier attempted to pay the \$50 inspection fee, but his check had bounced. He offered to pay that \$50 fee. He admitted that he had not made any effort to pay the other fines and restitution he was ordered by the Board to pay.

Discussion

14. As set forth in California Code of Regulations, title 16, section 1937.2, subdivisions (b) and (c), when considering a petition for reinstatement, the Board evaluates evidence of rehabilitation submitted by the petitioner, considering the following criteria: (a) the nature and severity of the acts or crimes under consideration; (b) evidence of any acts committed subsequent to the acts or crimes under consideration; (c) the time that has elapsed since commission of the acts or crimes referred to in (a) and (b); (d) the extent to which the petitioner has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed; and (e) evidence, if any, of rehabilitation submitted by the petitioner.

15. At the petition hearing, petitioner did not present sufficient evidence of rehabilitation to establish that his operator’s license should be reinstated. Petitioner’s operator’s license was revoked as a result of his multiple violations of the laws governing structural pest control. Petitioner attributed his violations to his financial difficulties. By doing so, he failed to take responsibility for his own repeated failures to follow the Board’s laws and regulations. He did not demonstrate that he has gained any insight into the nature and scope of his wrongful conduct. He has made no effort to pay any of the fines or restitution he was ordered to pay. He recently violated the Board’s laws by practicing structural pest control without a license. In light of his past violations, petitioner did not show that he can be relied upon to comply with the structural pest control laws in the future.

16. When all the evidence is considered in light of the criteria set forth in California Code of Regulations, title 16, section 1937.2, subdivisions (b) and (c), in order to protect the public health, safety and welfare, petitioner’s petition for reinstatement of his revoked operator’s license must be denied.

LEGAL CONCLUSIONS

1. In a proceeding for reinstatement of a revoked license, the burden at all times is on the petitioner to establish rehabilitation. (See *Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398, citing *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091-1092; *Feinstein v. State Bar* (1952) 39 Cal.2d 541.)

2. As set forth in Finding 15, petitioner failed to establish by clear and convincing evidence that he has engaged in sufficient rehabilitation to ensure that the public would be adequately protected if his operator's license were reinstated. Consequently, to protect the public health, safety and welfare, his petition for reinstatement must be denied.

ORDER

The petition of petitioner George Don-Pedro for reinstatement of his revoked Operator's License No. OPR 8197 is DENIED.

This Decision shall become effective on January 3, 2018.

IT IS SO ORDERED December 4, 2017.



DAVID TAMAYO

President

Structural Pest Control Board