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

In the Matter of the Petition for Reinstatement of : HENRY P VILLAIRE, Petitioner.	Case No. OAH No. 2015120541 **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.

This Decision shall become effective on April 8, 2016.

IT IS SO ORDERED this 9th day of March 2016.

By: _____

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

In the Matter of the Petition for Reinstatement of Revoked License of: HENRY PATRICK VILLAIRE, Petitioner.	OAH No. 2015120541

DECISION

On January 13, 2016, in San Diego, California, a quorum of the Structural Pest Control Board of the State of California, comprised of Curtis Good, Cliff Utley, Ronna Brand, Marisa Quiroz, Mike Duran, and David Tamayo, President, with Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, presiding, heard this matter.

Petitioner Henry Patrick Villaire represented himself.

Langston Edwards, Deputy Attorney General, represented the Attorney General.

The matter was submitted on January 13, 2016.

FACTUAL FINDINGS

1. On September 21, 2015, petitioner signed a Petition for Reinstatement of Revoked License and submitted it to the Structural Pest Control Board of the State of California. Petitioner seeks reinstatement of his revoked license.

2. On November 5, 1993, the Board issued Operator's License No. OPR 9198, Branch 2, to petitioner.

3. On December 20, 2012, the Board's executive officer filed Accusation No. 2013-27 against petitioner. Petitioner requested a hearing. An administrative hearing was held on March 4, 2014, before an administrative law judge. The administrative law judge wrote a Proposed Decision dated March 27, 2014, and the Board, after making some minor

corrections, adopted the Proposed Decision on July 9, 2014. The Board's decision became effective on August 8, 2014.

The accusation alleged five causes for discipline against petitioner: 1) failing to supervise; 2) failing to report a change of address; 3) failing to post a manager's license; 4) allowing the display of a fraudulent document; and 5) allowing an unlicensed individual to use his operator's license. The evidence established Kevin Borges, petitioner's friend, told petitioner that a pest control company that he owned had lost its Qualifying Manager and that he wanted to use respondent's name and operator's license as its Qualifying Manager for two weeks until Mr. Borges obtained his own operator's license. Mr. Borges offered $500 to petitioner to allow him to use petitioner's operator's license. Neither petitioner nor Mr. Borges intended for petitioner to actually serve as the Qualifying Manager of the company. Petitioner agreed to allow Mr. Borges to use his operator's license and they signed and submitted the necessary forms to the Board. After two weeks, petitioner signed a form withdrawing as the Qualifying Manager and expected Mr. Borges to submit the form to the Board. Mr. Borges did not submit the form to the Board and continued to operate the company with petitioner as the registered Qualifying Manager.

The Board determined that petitioner's conduct constituted violations of Business and Professions Code sections 8610, subdivision (c), 8613, 8612, and 8639. The Board found that petitioner never served as a Qualifying Manager for a period of six months, did not report a change of address to the Board when the company changed its address, did not post his operator's license in the company's office, and improperly permitted the use of his operator's license which allowed Mr. Borges to evade the requirements imposed on pest control operators.

As its disciplinary order, the Board revoked respondent's operator's license and ordered him to pay $1,389.55 in investigation and enforcement costs.

4. Petitioner appeared at the hearing and testified that he should have followed up with Mr. Borges to make sure that he had, in fact, filed the disassociation form with the Board. Petitioner admitted that the phone call he made to Mr. Borges asking him if he had filed the form was insufficient. He agreed that his conduct was deceitful and he promised that he would never make a mistake like this again.

Petitioner has held various jobs since his license was revoked, primarily in sales. He obtained licenses in Texas and Arizona in the pest control field although he was not sure exactly what those licenses were. He performed 17 hours of continuing education.

Since his license was revoked, there have been no criminal charges filed against petitioner and no other disciplinary actions taken against him.

Petitioner had been licensed in California for nearly 21 years, without incident, before the accusation in this matter was filed. He had worked for a number of pest control companies over the years and had served as the Qualifying Manager of several companies. They were typically small companies.

5. Petitioner has not reimbursed the Board for is costs of investigation and enforcement.

6. The Attorney General took no position on the petition.

LEGAL CONCLUSIONS

1. Petitioner established he was rehabilitated by reason of Factual Finding 4.

2. Cause to grant the petition for reinstatement of a revoked license was established. However, petitioner did not establish the license should be reinstated without restrictions. Instead, petitioner's license should be placed on probation for three years and he must reimburse the Board for its costs of investigation and enforcement of the underlying matter, but he will be allowed to pay the costs over a period of six months.

ORDER

1. The application of petitioner Henry Patrick Villaire for reinstatement of a revoked license is granted and Operator's License No. OPR 9198, Branch 2, shall be issued to petitioner. However, said license shall immediately be revoked, the order of revocation stayed and petitioner shall be placed on probation for a period of three (3) years on the following conditions:

a. Obey All Laws

Petitioner shall obey all laws and rules relating to the practice of structural pest control.

b. Quarterly Reports

Petitioner shall file quarterly reports with the Board during the period of probation.

c. Tolling of Probation

Should petitioner leave California to reside outside this state, petitioner must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduction of the probationary period.

d. Notice to Employers

Petitioner shall notify all present and prospective employers of the decision in case No. 2013-27 and the terms, conditions and restriction imposed on petitioner by said decision and this Decision. Within 30 days of the effective date of this decision,

and within 15 days of petitioner undertaking new employment, petitioner shall cause his employer to report to the Board in writing acknowledging the employer has read the decision in case No. 2013-27 and this Decision.

e. Notice to Employees

Petitioner shall, upon or before the effective date of this decision, post or circulate a notice to all employees involved in structural pest control operations which accurately recite the terms and conditions of probation. Petitioner shall be responsible for said notice being immediately available to said employees.

"Employees" as used in this provision includes all full-time, part-time, temporary and relief employees and independent contractors employed or hired at any time during probation.

f. Completion of Probation

Upon successful completion of probation, petitioner's license will be fully restored.

g. Violation of Probation

Should petitioner violate probation in any respect, the Board, after giving petitioner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation is filed against petitioner during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

//

//

//

h. Investigation Costs.

Petitioner shall reimburse the Board for its costs of investigation and enforcement of this matter in the amount of $1,389.55. Petitioner may arrange with the Board to make regular payments, but the total amount must be paid within the first six months of probation.

DATED: January 25, 2016

This Decision shall become effective on April 8, 2016.

IT IS SO ORDERED this 9th day of March 2016.

DAVID TAMAYO, PRESIDENT
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA