

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

**In the Matter of the Petition for Early Termination of
Probation of:**

GEORGE KENNETH WEBB, Petitioner

Agency Case No. 2016-24

OAH Case No. 2020100013

DECISION

This matter was heard on October 20, 2020, by WebEx videoconference before a quorum of the Structural Pest Control Board (Board). Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, presided.

Laura Pedicini, Deputy Attorney General, appeared pursuant to Government Code section 11522.

George Kenneth Webb (petitioner) represented himself.

Evidence was received, the record closed, and the matter submitted for decision on October 20, 2020.

FACTUAL FINDINGS

Licenses and Certificates

1. On November 4, 1994, the Board issued petitioner Operator License Number OPR 9331, Branch 3 (OPR 9331).¹ OPR 9331 will expire on June 30, 2021, unless renewed or revoked.

2. On November 4, 1994, the Board issued Company Registration Certificate Number PR 2644, Branch 3 (PR 2644), to George Webb Termite Control (GWTC), with petitioner as the owner and Qualifying Manager. On July 17, 2017, PR 2644 was cancelled due to GWTC's re-registration as a corporation.

3. On July 14, 2017, the Board issued Company Registration Certificate Number PR 7766, Branch 3 (PR 7766) to George Webb Termite Control, Inc. (GWTCI). Petitioner is the CEO and Qualifying Manager of GWTCI.

Prior Accusation and Resulting Discipline

4. On October 20, 2015, the Board's Executive Officer, in her official capacity, signed and filed Accusation No. 2016-24 (Accusation) against OPR 9331 and PR 2644. The Accusation alleged cause for discipline related to petitioner's initial May

¹ Licenses issued to operators, field representatives, or applicators shall be limited to the branch or branches of pest control for which the applicant has qualified by application and examination. The practice of pest control is classified into the following three branches: Fumigation (Branch 1); General Pest Control (Branch 2); and Termite (Branch 3). (Bus. & Prof. Code, § 8560, subd. (a).)

2014 termite inspection and subsequent treatment at a property located on Knollwood Drive, in Cameron Park, California ("Knollwood project") based on 11 grounds: performing an improper inspection; failure to properly treat subterranean termites; failure to complete work in a quality and workmanlike manner; fraud or misrepresentation after inspection; failure to file a notice of work completed and not completed with the Board; failure to register address; failure to comply with record requirements; failure to comply with reporting requirements; failure to make inspection records available; failure to properly label and store pesticides; and failure to supervise daily operations. Additionally, the Accusation sought an award of restitution to the homeowner, as well as the Board's reasonable investigation and enforcement costs.

5. On January 22, 2016, petitioner entered into a Stipulated Settlement and Disciplinary Order (Stipulated Settlement) submitted for the Board's consideration. By virtue of the Stipulated Settlement, petitioner admitted that the Accusation's charges and allegations, if proven, constituted cause for discipline, and waived his right to contest those charges. Additionally, petitioner agreed that OPR 9331 and PR 2644 be placed on probation for five years on various terms and conditions, including serving a 15-day suspension or alternatively paying a \$3,000 civil penalty; filing quarterly reports; completing a four-hour Board-approved Rules and Regulations course; paying restitution to the homeowner; and paying the Board \$8,542.50 for its reasonable investigation and enforcement costs.

6. On April 25, 2016, the Board adopted the Stipulated Settlement as its final decision, which became effective May 25, 2016. The terms of the Board's final decision also currently apply to PR 7766, which was issued pursuant to a Stipulation

for a Probationary Registration effective July 14, 2017. The probationary term will expire on May 25, 2021.

7. Following imposition of probation, OPR 9331 was suspended twice for failure to maintain a surety bond as required by Business and Professions Code section 8697, and once for failure to maintain general liability insurance as required by Business and Professions Code section 8690. PR 7766 was suspended once for failure to maintain general liability insurance as required by Business and Professions Code section 8690. In each of these cases, the suspensions were lifted after petitioner cured the underlying violations.

Petition for Early Termination of Probation

8. On January 27, 2020, petitioner signed and subsequently filed his Petition for Early Termination of Probation (Petition). On March 10, 2020, petitioner also signed an acknowledgement that he had received and reviewed the Board's Guidelines for Petitions for Reinstatement or Reduction of Penalty (Guidelines).

9. Petitioner testified at hearing. He is 75 years old, a graduate of San Jose University, a veteran honorably discharged from the military police in 1968, and has no criminal record.

10. Petitioner accepts full responsibility for the mistakes he made during his inspection and work on the Knollwood project. His violations were not intentional, nor were they intended to deceive anyone. He has "learned greatly" from the situation and now has a much better understanding of how to conduct his business according to the Board's rules and regulations. He always attempts to promptly address homeowner concerns.

11. On May 25, 2016, petitioner paid a \$3,000 civil penalty in lieu of the 15-day suspension. Additionally, he has made restitution to the homeowner involved in the Knollwood project. Although the homeowner would not allow him back on the property to fix his mistakes, he settled a civil lawsuit filed by the homeowner for \$12,500, which he paid in full. Furthermore, on May 30, 2019, petitioner paid off the Board's cost recovery award.

12. On September 18, 2016, petitioner completed a four-hour Rules and Regulations correspondence course approved by the Board. At hearing, petitioner could not recall exactly what he learned, noting that "it had been about two to three years since I took it." However, he observed that it was "always good to get a refresher on compliance."

13. Petitioner complied with all other terms of his probation, except for: (a) failure to submit quarterly reports for OPR 9331 and PR 7766 due November 25, 2018; and (b) two quarterly probationary inspections, dated August 7, 2017, and May 17, 2018, which found some violations and non-compliances, which petitioner promised to correct.

14. At the time of the Knollwood project, petitioner only had three employees. He now has nine employees, which include additional office staff to help him remain more organized. He intends to continue their employment after probation ends. Petitioner himself no longer performs any difficult inspections; he delegates those to his stepsons who are current Board licensees. Although petitioner remains the Qualifying Manager of GWTCI, his stepsons are working on getting their Operator Licenses, which would permit them to eventually substitute in as Qualifying Managers.

15. Petitioner does not engage in any community service or volunteer work. He primarily focuses on his family and attends church.

Discussion

16. Under the Guidelines, the Board in evaluating a petition for reduction of penalty, such as early termination of probation, considers various factors, including the following:

- (a) The original violation(s) for which action was taken against the petitioner's license including:
 - 1. The type, severity, number, and length of violation(s).
 - 2. Whether the violation(s) involved intentional, negligent or other unprofessional conduct.
 - 3. Actual or potential harm to the public.
 - 4. The length of time since the violation(s) was committed.

- (b) Prior disciplinary and criminal actions also taken against the petitioner by the Board, any State, local or Federal agency or court including:
 - 1. The petitioner's compliance with all terms of probation, parole, previous discipline or other lawfully imposed sanctions including any order of restitution.

2. Whether the petitioner is currently on or has been terminated from probation or other lawfully imposed sanctions.
 3. The petitioner's legal and regulatory history prior to and since the violation(s).
- (c) The petitioner's attitude toward his or her commission of the original violation(s) and his or her attitude in regard to compliance with legal sanctions and rehabilitative efforts.
- (d) The petitioner's documented rehabilitative efforts including:
1. Efforts to maintain and/or upgrade professional skills and knowledge through continuing education or other methods.
 2. Efforts to establish safeguards to prevent repetition of the original violation(s).
 3. Service to community or charitable groups.
 4. Voluntary restitution to those affected by the original violation(s).
 5. Use of appropriate professional medical or psychotherapeutic treatment.

6. Participation in appropriate self-help and/or rehabilitation groups.

(e) Assessment of the petitioner's rehabilitation and corrective efforts including:

1. Whether the efforts relate to the original violation(s).
2. The date rehabilitative efforts were initiated.
3. The length, time and expense associated with rehabilitative efforts or corrective actions.
4. The assessment and recommendations of qualified professionals directly involved in the petitioner's rehabilitative efforts or acting at the request of the Board, including their description of the petitioner's progress and their prognosis of the petitioner's current ability to practice structural pest control.
5. The petitioner's reputation for truth, professional ability and good character since the commission of the original violation(s).
6. The nature and status of ongoing and continuing rehabilitative efforts.

17. Petitioner commendably paid all restitution and cost recovery, and completed all required coursework. It is encouraging that petitioner has retained additional staff to better address his organizational issues. However, petitioner also

failed to timely submit two quarterly reports, and Board probationary inspections found some additional violations and non-compliances. Moreover, full compliance with probation requirements is expected and does not in itself merit early termination of probation. Petitioner took no significant steps towards rehabilitation beyond his probation requirements, such as voluntarily obtaining additional education or training. He does not engage in any community service.

18. In sum, petitioner has the burden to show that early termination of probation is warranted. When all the evidence is considered, petitioner failed to demonstrate that early termination of probation is consistent with the public interest.

LEGAL CONCLUSIONS

1. "A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition." (Gov. Code, § 11522.)

2. In a proceeding to restore a revoked license, the burden rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license fully restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The standard of proof is clear and convincing evidence. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092).

3. As set forth in Factual Findings 6 and 8, the Petition was filed more than a year after the effective date of the Board's final decision imposing probation. Consequently, the Petition is timely. Nevertheless, based on the Factual Findings as a whole, and specifically, Factual Findings 16 through 18, petitioner failed to

demonstrate that early termination of probation is consistent with the public interest. Therefore, the Petition must be denied.

ORDER

The Petition for Early Termination of Probation of Operator License Number OPR 9331, Branch 3, and Company Registration Certificate Number PR 7766, Branch 3, filed by petitioner George Kenneth Webb, is DENIED.

This Decision is hereby adopted by the Structural Pest Control Board.

This Decision shall become effective on January 14, 2021.

IT IS SO ORDERED.

DATE: December 15, 2020

CURTIS GOOD

President

Structural Pest Control Board