

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

In the Matter of the Accusation Against:

ONE STOP TERMITE, INC.;
JAMES NOH, aka YUN HAN,
1128 South Mariposa Avenue
Los Angeles, CA 90006

Company Registration Certificate No. PR 3808

Respondent.

Case No.: 2015-1

OAH No.: 2014090572

DECISION

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

This Decision shall become effective on _____ May 6, 2015 _____.

IT IS SO ORDERED April 6, 2015 _____.



FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

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STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ONE STOP TERMITE, INC.,
James Noh, a.k.a. Yun Han, President

Company Registration Certificate Number
PR 3808, Branch 3,

Respondent.

Case No. 2015-1

OAH No. 2014090572

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on January 12, 2015, in Los Angeles. The record was closed and the matter submitted for decision at the conclusion of the hearing.

Michelle McCarron, Deputy Attorney General, represented Susan Saylor (Complainant).

Yun Han Noh, a.k.a. James Noh, president of One Stop Termite, Inc., was present and represented himself.¹ Mr. Noh was assisted by a Korean interpreter.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant brought the Accusation in her official capacity as the Registrar/ Executive Officer of the Structural Pest Control Board (Board), which is within the California Department of Consumer Affairs (Department). Respondent submitted a Notice of Defenses, which contained a request for the hearing that ensued.

2. On December 6, 2000, the Board issued Company Registration Certificate Number PR 3808, in Branches 1 and 3, to One Stop Termite, Inc., James Noh, a.k.a. Yun Han, President (Respondent), and Coleman Leon Hart, Jr., as Qualifying Manager.

¹ Respondent uses the name Yun Han Noh, not Yun Han.

3. Due to the subsequent death of Mr. Hart, and his replacement by someone without the requisite qualifications, Respondent's license was downgraded to Branch 3 only in June 2013.

4. From December 2003 through March 2014, Respondent's license was suspended six times for failure to maintain general liability insurance, failure to maintain a surety bond and failure to have a qualifying manager. The license was subsequently reinstated after Respondent remedied the problems. However, on January 6, 2015, the license was again suspended due to failure to maintain general liability insurance. Respondent testified that he has been unable to obtain insurance so the license remains suspended.

Respondent's Regulatory Compliance Problems

5. On August 7, 2012, the Board issued a citation against Respondent, containing a \$2,550.00 fine for violating Business and Professions Code sections 8516, subdivision (b), and 8518² [failure to file reports on 20 wood destroying organisms activities]. The citation included an order of abatement for Respondent to file reports, within 30 days, for the 20 outstanding wood destroying organisms activities that Respondent conducted from December 1 to December 10, 2010. The citation became final.

6. On or about July 12, 2013, the Board received a \$200.00 payment toward the fine, but Respondent made no further payments.

7. Respondent has not complied with the order of abatement.

8. Respondent filed a "Wood Destroying Pest and Organisms Inspection Report" with the Board on January 16, 2013, and a "Standard Notice of Work Completed and Not Completed" on January 17, 2013, indicating that Respondent used pesticides at a property in Chino Hills. However, Respondent did not submit any pesticide use report for January 2013 with the San Bernardino County Agricultural Commissioner, which report was required by law due to Respondent's use of pesticides that month in Chino Hills.

9. On March 18, 2013, an outside party informed the Board that Respondent's qualifying manager, Mr. Hart, had died on January 10, 2013. Respondent had not notified the Board of the situation.

10. On March 21, 2013, the Board suspended Respondent's company registration certificate because he had no qualifying manager. The suspension notice sent to Respondent was returned as undeliverable.

11. On June 28, 2013, the Board reinstated the certificate after Respondent registered a new qualifying manager with the Board.

² All further statutory references are to the Business and Professions Code.

12. During the period of suspension, however, Respondent reported to the Board that it conducted wood destroying organisms activities for the following dates: March 22, 2013; April 6, 2013; April 8, 2013; April 10, 2013; April 13, 2013 (three activities); April 20, 2013; April 22, 2013; April 23, 2013; May 24, 2013; May 28, 2013; June 7, 2013 (two activities); and June 18, 2013.

13. Respondent has been subject to the following regulatory fines:

A. On September 10, 2003, the Orange County Agricultural Commissioner levied a \$50.00 fine against Respondent's company registration certificate for violating section 8505.17, subdivision (c). The fine was paid on June 10, 2004.

B. On October 30, 2003, the Orange County Agricultural Commissioner levied a \$100.00 fine against Respondent's company registration certificate for violating section 8505.17, subdivision (c). The fine was paid on December 17, 2003.

C. On February 20, 2004, the Orange County Agricultural Commissioner levied a \$150.00 fine against Respondent's company registration certificate for violating section 8505.17, subdivision (c). The fine was paid on April 29, 2004.

Respondent's Evidence

14. Respondent testified during the hearing that in 2012 he was involved in a divorce and he fell off a roof and sustained injuries which prevented him from going to the office. Respondent attributes many of his problems to those adverse events.

15. With regard to not having a qualifying manager for so many months, Respondent testified that Mr. Hart went away on vacation in January 2013 and did not return. Respondent testified that he did not know that Mr. Hart had passed away until he was notified by the Board. By Respondent's own admission, Mr. Hart was in the office two or three times a week. Respondent testified that he did not think it was strange that Mr. Hart never returned from his vacation. Respondent's testimony was not persuasive.

16. With regard to the work done while the license was suspended, Respondent testified that he was not aware of the suspension until May 2013, presumably because the initial suspension notice had not been delivered. Respondent testified that thereafter, he found two people willing to take over as the qualifying manager and believed that he had timely processed the necessary paperwork with the Board. However, the Board's Enforcement Specialist involved in this matter convincingly testified that he saw no such paperwork at Respondent's office when he visited there and he was never able to confirm with the two individuals that they had agreed to serve as qualifying managers. In addition, Board records do not reflect any paperwork was filed by Respondent with the Board at that time.

17. Respondent testified that he has not paid the citation fine because he has no money due to his divorce and injuries. Respondent's explanation for not complying with the abatement order requiring him to file 20 reports was unconvincing.

18. Respondent testified that he was unaware the company had thrice been fined by the Orange County Agricultural Commissioner.

19. Respondent testified that he is better physically and wants to start working again. He wants to borrow money from a source in Korea to pay the citation and obtain insurance necessary to reinstate his license from suspension. The company is presently out of business for that reason.

Costs

20. The Board incurred costs in the amount of \$8,135.58 investigating and prosecuting this case. However approximately \$3,000 of that amount was incurred by attorneys and staff who worked on this case before the matter was reassigned to the attorney who prosecuted the matter at hearing. The prior work appears to be duplicative and thus not reasonable. Therefore, it was established that the Board incurred reasonable costs of \$5,000 investigating and prosecuting this matter.

LEGAL CONCLUSIONS

Cause for Discipline

1. First Cause for Discipline (Failure to Pay Citation Fine). Respondent is subject to discipline for failing to pay a citation fine issued by the Board, in violation of section 125.9, subdivision (b)(5), and California Code of Regulations, title 16 (Regulation), section 1920, subdivision (d). (Factual Findings 5-6.)

2. Second Cause for Discipline (Failure to Comply With Order of Abatement). Respondent is subject to discipline for failing to comply with an order of abatement issued by the Board, in violation of Regulation 1920, subdivision (d). (Factual Findings 5-7.)

3. Third Cause for Discipline (Failure to Submit Monthly Report of Pesticide Use with County Agricultural Commissioner). Respondent is subject to discipline for failing to submit a monthly report of pesticide use with the requisite county agricultural commissioner, in violation of sections 8641 and 8505.17, subdivision (c), in that Respondent reported to the Board that pesticides were used at a property in Chino Hills, but Respondent did not submit the required pesticide use report for January 2013 with San Bernardino County Agricultural Commissioner. (Factual Finding 8.)

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4. Fourth Cause for Discipline (Failure to Notify Board within 10 Days of Change in Qualifying Manager). Respondent is subject to discipline for failing to inform the Board within 10 days that its qualifying manager was no longer connected with the company, in violation of sections 8641 and 8571. (Factual Finding 9.)

5. Fifth Cause for Discipline (Individual Conducting Pest Control Activities While License Suspended). Respondent is subject to discipline for an individual conducting pest control activities while the license was suspended, in violation of sections 8641 and 8550, subdivision (a). (Factual Findings 10-12.)

6. Sixth Cause for Discipline (Corporation Conducting Pest Control Activities While License Suspended). Respondent is subject to discipline for a corporation conducting pest control activities while its license was suspended, in violation of sections 8641 and 8550, subdivision (e). (Factual Findings 9-12.)

Disposition

7. A. Reference is made to the Board's Manual of Disciplinary Guidelines (Nov. 2010). Respondent essentially ignored the Board's citation issued to him in 2012. He thereafter failed to file a required report, failed to notify the Board that his company no longer had a qualifying manager and engaged in licensed activity after his license had been suspended. The common theme of the established cause for discipline is that Respondent has consistently failed to comply with the rules and regulations adopted by the Board in violation of section 8641. The discipline for such violations suggested by the Guidelines ranges from three years of probation to revocation of the license.

B. In this case, placing Respondent on probation is not likely to assure the public will be protected. In addition to the violations described above, Respondent's license has been frequently suspended for various failures, such as not obtaining liability insurance or a surety bond. Respondent did not know his company thrice had been fined by the Orange County Agricultural Commissioner. In his testimony, Respondent provided no assurance that he is actually in control of his business. In fact, his company is currently out of business. Under these circumstances, it is not likely that Respondent would be able to comply with the various conditions and requirements that would come with a probationary license, just as he has been unable to comply with basic rules and regulations adopted by the Board in operating his company. The order below is therefore warranted to protect the public. (Factual Findings 1-19.)

Other Disciplinary Considerations

8. A. Under section 8624, if the Board suspends or revokes an operator's license and one or more branch offices are registered under the name of the operator, the suspension or revocation may be applied to each branch office.

B. Section 8624 also provides that if the Board suspends or revokes an operator's license and the operator is the qualifying manager, a partner, responsible officer, or owner of a registered structural pest control company, the suspension or revocation may be applied to the company registration.

C. Section 8624 also provides that the performance by any partnership, corporation, firm, association, or registered company of any act or omission constituting cause for disciplinary action, likewise constitutes a cause for disciplinary action against any licensee who, at the time the act or omission occurred, was the qualifying manager, a partner, responsible officer, or owner of the partnership, corporation, firm, association, or registered company whether or not he or she had knowledge of, or participated in, the prohibited act or omission.

D. In this case, no evidence was presented indicating that Respondent is affiliated with another licensee to warrant an order specified under section 8624. Nor did Complainant request that such an order be issued with respect to the current qualifying manager of Respondent's company. Thus, no order for such relief will be included below.

9. Under section 8654, if discipline is imposed on a licensee, any individual, while acting as such member, officer, director, associate, qualifying manager, or responsible managing employee who had knowledge of or participated in any of the prohibited acts for which the license or registration was denied, suspended or revoked, shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company during the time the discipline is imposed, and any registered company which employs, elects, or associates that individual shall be subject to disciplinary action.

10. Section 125.3 states, in pertinent part, that a board may request the administrative law judge to direct a licensee found to have committed a violation of its licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement. In this case, it was established that Respondent violated rules and regulations applicable to structural pest control operators and that the Board's reasonable costs incurred in investigating and prosecuting this case were \$5,000.00. (Factual Finding 20.)

ORDER

Company Registration Certificate Number PR 3808, Branch 3, issued to Respondent One Stop Termite, Inc., James Noh, a.k.a. Yun Han, President, is revoked.

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Respondent shall pay the Board \$5,000 as the reasonable costs of investigating and enforcing this matter.

DATED: February 19, 2015



ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings