

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition to
Revoke Probation Against:

DONPEDRO'S TERMITE CONTROL CO.
Company Registration Certificate No. PR 1450,

and

GEORGE DON PEDRO
Operator's License No. OPR 8197,

Respondents.

Case No. 2012-55

OAH No. 2012060683

DECISION

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

This Decision shall become effective on February 21, 2013.

IT IS SO ORDERED January 22, 2013.



A handwritten signature in black ink, appearing to be 'C. J. ...', is written over a horizontal line.

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition to
Revoke Probation Against:

Case No. 2012-55

DONPEDRO'S TERMITE CONTROL CO.
Company Registration Certificate No. PR 1450,

OAH No. 2012060683

and

GEORGE DON PEDRO
Operator's License No. OPR 8197,

Respondents.

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter on September 26, 2012, in Oakland, California.

Deputy Attorney General Susana Gonzalez represented complainant William H. Douglas, Interim Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation.

Respondent George Don Pedro was present and was self-represented.

The matter was submitted on September 26, 2012.

FACTUAL FINDINGS

1. On July 28, 1988, the Structural Pest Control Board issued Company Registration Certificate No. PR 1450, Branch 3, to DonPedro's Termite Control Company, with George Don Pedro as the owner and qualifying manager (respondent company). As of December 16, 2010, the address of record for respondent company was changed to 2825 Garden Street, Suite A, Oakland, California. Board records reflect that the company registration was renewed through June 30, 2012.

2. On July 28, 1988, the board issued Operator's License No. OPR 8197, Branch 3, to respondent George Don Pedro, the owner and qualifying manager of respondent company (respondent operator). As of December 16, 2010, the address of record of respondent operator was changed to 2825 Garden Street, Suite A, Oakland, California. Board records reflect that the operator license was renewed through June 30, 2012.

3. In 2009, consumer Linda R. Lewallen filed a complaint with the board regarding respondent company and respondent operator. Thereafter on February 22, 2010, complainant issued an accusation against respondents in Case No. 2010-57, alleging 14 causes for discipline, the majority which stemmed from pest control clearances (certification) and notices of work completed that respondents issued in February and March 2007 in connection with the refinancing Lewallen's home. Based on a stipulated settlement and disciplinary order, the board issued a decision effective May 3, 2011, in which it revoked the company registration certificate and the operator license, stayed both revocations, and placed both on probation to the board for three years. Terms and conditions of probation included a 60-day suspension, payment of a \$50 inspection fee, and proof of payment of \$14,715 in restitution to Lewallen.

In the stipulated settlement, respondents admitted to the truth of all factual allegations of the accusation. In particular, respondents admitted 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, respondents 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.

4. On February 7, 2012, the board issued Citation No. CF 12-89 to respondent company. The citation alleged violations of Business and Professions Code section 8516, subdivision (b) (failing to file wood destroying organisms activities (inspections and/or completions)) and section 8612 (failing to prominently display the license of the qualifying manager). Respondent company was ordered to pay a fine of \$2,550. As an order of abatement, respondent company was ordered to file with the board all remaining unreported wood destroying organisms' activities (inspections and/or completions). This citation is now final.

Accusation (one cause for discipline alleged)

5. In March 2001, Lewallan brought an action against respondents in Small Claims Court. She was awarded a judgment on her claim against respondents in the amount of \$7,500 plus costs in September 2011.

6. On October 26, 2011, respondents filed a small claims action in Alameda County against Lewallan. Respondents sought \$7,500 in damages, alleging that the money was owed for the following conduct by Lewallan from February 26, 2007, through September 2, 2011. Respondent alleged Lewallen owed them money for:

Breach of contract, causing us to suspending of State Lic. & subsequently leading to lost of wages and hardship. Lost City of Oakland bidding, contract to that effect of (\$80,000).

On an attached sheet, respondents further explained why Lewallen owed them money:

1) Breach of contract and betrayal causing our company Lic. to be suspended (25 years in business and never was suspended); and 2) subsequently causing us to lose out of several business engagements and contracts amount to about or more than \$80,000.00 (within the 60-day suspension of lic.) this also includes losing out of City of Oakland bidding contract for Termite Companies; we were subsequently take of due to lic. Suspension; and (3) Re-breach of contract again; whereby willfully blocking, lying and fraudulently not allowing us to correct work that the Pest Control Board had requested us to fix and thereafter causing the Board to punish us with iron hands by claiming to the Board we did not comply; her whole action was falses, staged; an extortion and unfounded, she had 30 days for all the work alleged to be fixed/repared but she chose not to (by not giving us access to do the work) she cannot cut her cake and eat it too. In court she lied under oath. The truth needs to be exposed.

7. Respondents' small claims action was dismissed with prejudice on September 15, 2012.

8. The evidence establishes that respondent company did not have general liability insurance for the policy period of June 20, 2006 through June 20, 2007, which is required by Business and Professions Code section 8690. As a result of the failure to maintain liability insurance, the company registration certificate and the operator license were suspended pursuant to Business and Professions Code section 8695.

9. Pursuant to Business and Professions Code section 8554, licensees are prohibited from bringing or maintaining a civil action for the collection of compensation for the performance of any act or contract without being duly licensed at all times during the performance of the act or contract. Complainant alleges that respondents violated this provision by bringing the small claims action against Lewallen.

Complainant views respondents' small claims action as an attempt to recover for work done on a contract during which time the company registration and the operator license were suspended. It is true that during a portion of the time period alleged in the small claims action, the company registration certificate and the operator license were suspended. (Factual Finding 8.) What is not so clear, however, is that respondents were attempting to sue Lewallen on the contract that was in effect during the period of suspension.

Respondents' small claims complaint is at best muddled. But, what may fairly be said is that its gravamen concerns injuries respondents believe they suffered as a result of Lewallen's conduct in filing the consumer complaint with the board and in bringing her small claims court action against them. It does not appear that respondents were seeking to recover damages for breach of the contract in existence when they were unlicensed. Complainant therefore has not demonstrated by competent evidence that respondents violated Business and Professions Code section 8554 in bringing the small claims court action against Lewallen.

Petition to revoke probation (three causes alleged)

10. Condition 1 of respondents' probation to the board required them "obey all laws and rules relating to the practice of structural pest control.

Complainant alleges that respondents violated Condition 1 of their probation by violating Business and Professions Code section 8554 by bringing a court action against Lewallen seeking to obtain compensation on a contract executed while the company registration certificate and operator's license were suspended. As set forth in Finding 9, it has not been established that respondents' small claims action amounted to a violation of Business and Professions Code section 8554. It therefore has not been shown that respondents have failed to obey all laws relating to the practice of structural pest control during probation.

11. Condition 10 of respondents' probation required payment of a \$50 inspection fee within 30 days of the effective date of the decision. Condition 10 provides:

Respondents shall pay to the registrar, or designee, an inspection fee of \$50 within thirty (30) days from the effective date of this decision.

Respondents did not pay the \$50 inspection fee within 30 days of the effective date of the decision. Respondents have not, in fact, ever paid the \$50 inspection fee. By their conduct, respondents have violated Condition 10 of their probation to the board.

12. Condition 12 of respondents' probation of the board required them to reimburse Lewallen in the amount of \$14,715. Condition 12 provides:

Respondents agree to pay the sum of \$14,715.00 to Linda R. Lewallen as restitution in this matter within eighteen (18) months of the effective date of the decision. Respondents agree to pay an initial payment of \$817.50 within thirty (30) days of the effective date of the Decision and Order. Respondents agree to make monthly payments of \$817.50 on the 15th of each month thereafter for 18 months or until \$14,715.00 is paid in full. Respondents shall directly submit this initial payment and all subsequent monthly payments to Linda R. Lewallen. Respondents shall submit proof of each payment to the Registrar. Respondents shall submit proof to the Registrar that the total restitution amount of \$14,715.00 has been made to Linda R. Lewallen within eighteen (18) months of the effective date of the decision.

Respondents did not send the initial payment to Lewallen by the due date of July 2, 2012. Thereafter, by letter to respondents dated July 12, 2012, the board modified Condition 12, by requiring restitution payments to be made directly to board rather than to Lewallen. To date, respondents have not made any restitution payments to the board. By their conduct, respondents have violated Condition 12 of their probation.

Respondents' evidence

13. Respondent operator has been in the pest control business since 1988. He testified that he has been in the business without incident.

14. Respondent operator attempted to pay the \$50 inspection fee by check dated January 15, 2012. A check written on a respondent company bank account was returned for insufficient funds. Respondent operator never verified whether the check went through, learning only for the first time at hearing that the check had bounced. He stated that the check was written on an account belonging to his wife.¹

¹ The check listed a business address for respondent company in Berkeley. Board records reflect that respondent company has never provided it with a Berkeley address of record.

15. Respondent operator has not made restitution to Lewallen in any amount. Respondent operator states that he wants to make restitution, but does not have the financial ability. His wife has a medical condition, he has four minor children to support, and the family has no medical insurance. There have been family issues in his country of origin, which have required him to travel home on two occasions. (Family members paid for the cost of his travel.) In addition, the board's discipline has cost him business.

Respondent operator did not anticipate that being on probation to the board would affect his business, and for that reason he believed he could afford the monthly restitution payment he agreed to in the stipulated settlement. On the other hand, respondent operator testified that his business has been hurt since the day the accusation was initially issued in 2008 and posted on the board's website. In addition, he feels that he should not have accepted the advice of his attorney to accept the terms of the settlement. He also states that he was "railroaded" into accepting the terms of the stipulated settlement.

Respondent operator feels that he was betrayed by Lewallen, and that her conduct has destroyed him. He attempted to help her based on the request of a friend, and then she turned around and blew the whistle on him to the board. The whole matter has ended up costing him his home, his business and his financial stability. He is terribly hurt by the whole matter.

Costs

16. Complainant has incurred legal fees of \$8,710 in the prosecution of this matter. These costs reflect charges from the Department of Justice from March 19, 2012, through August 20, 2012, for 50 hours of deputy attorney general time, and 1.75 hours of paralegal time. The tasks undertaken, the amount of time spent per task, and the hourly rate charged, are set forth in an itemized billing statement.

17. In addition, the Deputy Attorney General who was assigned the case on August 9, 2012, estimated on September 25, 2012, that she would incur and would bill complainant an additional \$680, representing four additional hours of "further preparation of the case up to the commencement of the hearing." There is no itemization of the tasks to be undertaken, or the time to be spent on tasks, associated with this estimate.

LEGAL CONCLUSIONS

1. The suspension or expiration of a license or company registration certificate does not deprive the board of jurisdiction to investigate or proceed with disciplinary action against the license or company registration certificate. (Bus. & Prof. Code, §§ 118, subd. (b), & 8625.)

Accusation

2. By reason of the matters set forth in Finding 9, complainant failed to demonstrate that respondents have violated Business and Professions Code section 8554. Cause for license discipline has not been established.

3. Because complainant has alleged only one cause for license discipline, the accusation will be dismissed.

Petition to Revoke Probation

4. By reason of the matters set forth in Findings 11 and 12, it was established that respondents violated Condition 10 and 12 of their probation to the board. Each of these violations provides separate cause to revoke respondents' probation.

5. By reason of the matters set forth in Finding 10, it was not established that respondents violated Condition 1 of their probation to the board as alleged.

Costs

6. Business and Professions Code section 125.3, subdivision (a), provides that a licensee found to have committed a violation of the licensing act may be ordered to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. As set forth in Legal Conclusion 3, it was not established that respondents violated the licensing act in this matter. This is no cause to order respondents to pay costs pursuant to Business and Professions Code section 125.3.

Disciplinary Consideration

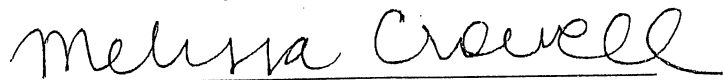
7. Pursuant to a stipulated decision in which respondents admitted making numerous and serious violations in connection with their licensed activities, respondents were placed on probation to the board. Respondents' performance on probation demonstrates very little effort at compliance. In addition, as set forth in Finding 4, respondent company has been cited for additional violations during the period of probation. Many excuses for noncompliance have been offered, including blaming Lewallen and being "railroaded" into the stipulated agreement. What remains is the absence of any real effort at being cooperative probationers to the board. Instead of working with the board to pay some amount of restitution to Lewallen, respondents have put their efforts toward fighting Lewallen in small claims court. On the evidence presented, there is little which would instill confidence that performance on probation would improve in the future. For these reasons, it is not in the public interest for respondents to remain on probation to the board.

ORDER

1. The accusation is dismissed. No costs pursuant to Business and Professions Code section 125.3 are awarded.

2. The petition to revoke probation is granted, and probation is revoked. The stays of the revocation imposed in Case No. 2010-57 are lifted, and the orders of revocation of Company Registration Certificate No. PR 1450 issued to DonPedro Termite Control Co., and Operator License No. OPR 8197 issued to respondent George Don Pedro are imposed.

DATED: October 24, 2012



MELISSA G. CROWELL

Administrative Law Judge

Office of Administrative Hearings