

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

In the Matter of the Accusation and Petition to
Revoke Probationary Licenses Against:

**RONALD G. WEST,
a.k.a. RONALD GEORGE WEST**

Respondent:

Case No. 2011-39

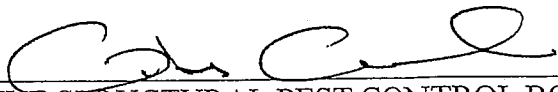
OAH No. 2011040101

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Structural Pest Control Board, Department of Pesticide Regulation, as its Decision in this matter.

The Decision shall become effective on May 25, 2012.

IT IS SO ORDERED April 25, 2012.



FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION

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

In the Matter of the Accusation and Petition to
Revoke Probationary Licenses Against:

RONALD G. WEST,
a.k.a. RONALD GEORGE WEST
Applicator's License No. RA 49670
Field Representative's License No. FR 44667,

Respondent.

Case No.: 2011-39

OAH No.: 2011040101

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on February 7, 2012.

Heather Hua, Deputy Attorney General, represented the complainant.

Respondent appeared in person and was represented by Joshua E. Kim, Attorney at Law.

Oral and documentary evidence and evidence by way of stipulation and official notice was received and the matter then argued and thereafter submitted.

The Administrative Law Judge now finds, concludes, and orders as follows:

FACTUAL FINDINGS

Parties

1. Kelli Okuma, Complainant herein, brought the Accusation and Petition to Revoke Probationary Licenses in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board (Board), Department of Pesticide Regulation.

2. On February 11, 2009, the Board issued Probationary Applicator's License Number RA 49670 (applicator's license) in Branches 2 (general pest) and 3 (termite) to Ronald G. West, a.k.a. Ronald George West, Respondent herein, a former employee of Orkin Exterminating Company, Inc. (Orkin). On August 18, 2009, Respondent's applicator's license was downgraded to Branch 3 only due to the issuance of his Branch 2 field representative's license, as set forth in Finding 3. Respondent's applicator's license will expire on February 11, 2012, unless renewed.

3. On August 18, 2009, the Board issued Probationary Field Representative's License Number FR 44667 (field representative's license) in Branch 2 to Respondent, employee of Orkin. Respondent's field representative's license will expire on February 11, 2012, unless renewed.

Procedure

4. On February 11, 2009, pursuant to the Stipulation for a Probationary License and Order (hereinafter Contract) in the administrative proceeding titled In the Matter of the Application of: Ronald George West, etc., the Board granted Respondent's application for a structural pest control applicator's license. The Board ordered that Respondent be issued a probationary applicator's license effective February 11, 2009, and that the license be placed on probation for three years on terms and conditions.

5. Condition 8 of the Contract states that should Respondent apply for a field representative's license and pass the examination, the Board shall issue Respondent a field representative's license, which shall immediately be placed on probation for the same duration and under the same terms and conditions as set forth in the Contract. The field representative license issued as set forth in Finding 3.

6. Administrative proceedings before the Department are conducted in conformity with the provisions of the California Administrative Procedure Act, chapter 5, commencing with Government Code section 11500 *et seq.*

7. All pre-hearing requirements have been met by the Complainant. Jurisdiction for this proceeding does exist.

Findings Re: Accusation

8. On March 10, 2010, a Probation Monitor, Gregory K. Adams (Monitor) of the Board performed a quarterly probation inspection at Orkin's branch office located in Rancho Dominguez, California. The Monitor learned, as fact, that Respondent had not been at the Rancho Dominguez branch office for some time and had been transferred to the San Dimas office, that Respondent never "worked out" as an employee; and that Respondent had not been employed with Orkin since before January 2010. Subsequently, and with good cause

the Monitor searched the Board's records and found, as fact, that Respondent had not filed a change of address or employment with the Board and that Respondent had not caused Orkin to report to the Board in writing that Orkin had read the Order.

9. On May 20, 2010, the Monitor performed a quarterly probation inspection at Orkin's corporate office and, found, as fact, that Respondent was terminated from his employment on December 14, 2009 because of unsatisfactory performance.

Findings Re: Petition to Revoke Probation

10. At all times after the effective date of Respondent's Contract probation, Condition 1 stated:

Compliance with all provisions of the Business and Professions Code, Division 3, Chapter 14, Structural Pest Control Operators, and California Code of Regulations, title 16, Professional Vocational Regulations, Division 19. Applicant shall obey all laws and rules relating to the practice of structural pest control.

11. Respondent failed to comply with Contract Condition 1 by his acts and omissions set forth in Findings 8 and 9.

12. At all times after the date of Respondent's Contract probation, Condition 3 stated:

3. Quarterly reports. Applicant shall file quarterly reports with the Board during the period of probation.

13. Respondent failed to submit to the Board his quarterly reports due on August 11, 2009, November 11, 2009, February 11, 2010, May 11, 2010, August 11, 2010, November 11, 2010 and February 11, 2011.

14. At all times after the effective date of Respondent's Contract probation, Condition 5 stated:

4. Notice to Employers. Applicant shall notify all present and prospective employers of the terms, conditions and restrictions imposed on Applicant by said Order. Within 30 days of the effective date of this Order, and within 15 days of Applicant undertaking new employment, Applicant shall cause his employer to report to the Board in writing acknowledging the employer has read the Order in this matter.

15. Respondent failed to cause his then employer Orkin to submit to the Board written documentation indicating that the company had read the Order.

16. At all times after the effective date of Respondent's Contract probation, Contract Condition 7 stated:

7. Violation of Probation. Should Applicant violate probation in any respect, the Board, after giving Applicant notice and an opportunity to be heard, may revoke the probationary license through an administrative hearing process.

17. Respondent's acts and omissions set forth in Findings 11, 13 and 15 separately and in combination constitute breaches of the Contract and violation of his probation.

Supplemental Findings

18. The Stipulation for a Probationary License, that is the Contract, contains the following at page 1:

Ronald George West, applicant for a structural pest control applicator license (hereafter Applicant or Respondent), and Kelli Okuma, Executive Officer, Structural Pest Control Board (Board), hereby stipulate as follows:

1. This applicant is not presently licensed as a structural pest control applicator, field representative or an operator with the Board in the State of California.
2. On September 24, 2008, the applicant successfully passed the applicator license examination. Question number 11 on the application for examination and license asked: "*Have you ever been convicted of a felony or of a misdemeanor other than minor traffic infractions?*" The applicant checked the box marked "yes" next to Question number 11, and wrote "petty theft" next to the line regarding "*If YES, explain.*" The applicant signed the application on August 27, 2008, attesting that he had read and understood the complete application and declared that all of the information contained in his application

was true and accurate. He understood that falsifying information on the application may result in the denial of his application or the revocation of his license.

3. The applicant was convicted January 9, 1997, In the Superior Court of Southeast District Judicial District, County of Los Angeles, State of California, of the following felonies: Count 1: 459 PC-Burglary, Count 2: PC-Burglary and Count 3: 487(A) PC Grand Theft: property over \$400. Defendant was placed on formal probation for a period of four (4) years under the following terms and conditions in part: serve 193 days in Los Angeles County Jail and obey all laws and further orders of the court. Probation was not completed and a bench warrant was issued on May 26, 1999. Probation was reinstated on March 12, 2008, to expire on December 5, 2009.

19. Page 2 of the Contract contains the Order and Conditions of Probation and page 3 – the last page – contains the following Acceptance by Respondent.

ACCEPTANCE

I have carefully read the Order. I understand the Order and the effect it will have on my Applicator's license. I enter into this Order voluntarily, knowingly, and intelligently, and agree to be bound by the Order of the Board.

20. Despite the false information (Finding 18) given to the Board during the application process, the Board – in its discretion – granted to Respondent probationary licenses. In exchange for that act of discretion Respondent agree to be bound by the Order (Finding 19). Despite that promise Respondent repeatedly violated the terms and conditions of the Contract.

Costs

21. Pursuant to Business and Professions Code section 125.3¹ the Complainant certified costs of investigation and enforcement of the case in the sum of \$4,287.00. The costs are reasonable.

¹ Business and Professions Code section 125.3 provides that in any order issued in resolution of a disciplinary proceeding before a Bureau within the Department of Consumer Affairs where a licentiate is found to have committed a violation or violations of the licensing act, the Bureau may request the

LEGAL CONCLUSIONS

Accusation – Violations

1. Respondent is subject to disciplinary action pursuant to Business and Professions Code (Code) section 8641 in that Respondent failed to comply with Code section 8567 by reason of Findings 8 and 9. In particular Respondent violated said Code sections in that Respondent failed to notify the Registrar in writing that he was no longer employed by Orkin and failed to provide the Registrar with the name and address of the registered company by which he is currently employed, if any.

2. Respondent is subject to disciplinary action pursuant to Code section 8641 in that Respondent failed to comply with California Code of Regulation, title 16, section 1911 by reason of Findings 8 and 9. In particular Respondent violated said sections in that Respondent failed to provide the Board with the address of the registered company by which he is employed or his residence address if he is not so employed, and failed to file with the Board his address for mailing purposes.

Petition – Violations

3. Respondent's probation is subject to revocation because he failed to comply with probation Condition No. 1 by reason of Finding 11.

4. Respondent's probation is subject to revocation because he failed to comply with probation condition No. 3 by reason of Finding 13.

5. Respondent's probation is subject to revocation because he failed to comply with probation Condition No. 5 by reason of Finding 15.

6. Respondent's probation is subject to revocation because he failed to comply with probation Condition No. 7 by reason of Finding 17.

7. Cause exist to revoke Respondent's Probationary Applicator's License Number RA 49670 and Probationary Field Representative's License Number FR 44667 in that he has violated the terms and conditions of the Contract as set forth in Legal Conclusions 3 through 6, separately and in combination.

administrative law judge to order the licensee to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

Costs

8. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost regulation similar to Code section 125.3. In so doing, however, the Court directed the Administrative Law Judge and the agency to evaluate several factors to ensure that the cost provision did not deter individuals from exercising their right to a hearing. Thus, the Board must not assess the full costs where it would unfairly penalize the respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the Board must consider a Respondent's subjective good faith belief in the merits of his or her position and whether the Respondent has raised a colorable challenge; the Board must consider a Respondent's ability to pay; and the Board may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct. (*Zuckerman v. State Board of Chiropractic Examiners, supra* at p. 45).

9. All charges of the Pleading have been sustained. Respondent raised no colorable challenge to the charges. Respondent presented no evidence of financial hardship or inability to pay costs. The investigation was proportionate to the misconduct.

10. Cause exists for an Order of Costs in the amount of \$4,287.00 by reason of Finding 21 combined with Legal Conclusions 8 and 9.

Disposition

11. The object of a license application proceeding is to protect the public², the licensed profession, maintain integrity, high standards, and preserve public confidence in licensees of the Board. The purpose of proceedings of this type is not to punish the Respondent. In particular, the statutes relating to Board licensees are designed to protect the public from any potential risk of harm.

12. Respondent's conduct set forth in the Findings, that is the sustained and continued violations of Conditions of Probation, demonstrate that Respondent represents a risk to the public; to consumers and to any prospective employer. Accordingly, the Order which follows is consistent with the public interest.

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² *Camacho v. Youde* (1975) 95 Cal. App. 3d, 165; *Clerical v. Department of Motor Vehicles* (1990) 224 Cal. App. 3rd 1016, 1030-1031; *Fahmy v. Medical Board of California* (1995) 38 Cal. App. 4th 810, 816.

ORDER

Re: Petition

The probation that was granted by the Board to Respondent is revoked. The disciplinary orders that were stayed are hereby imposed. Accordingly, Probationary Application License RA 49670 and Probationary Field Representative's License FR 44667 issued to Respondent are hereby revoked.

Re: Accusation

1. Probationary Applicator's License Number RA 49670, issued to Ronald G. West, a.k.a. Ronald George West is hereby revoked.

2. Probationary Field Representative's License Number FR 44667, issued to Ronald G. West, a.k.a. Ronald George West is hereby revoked.

Re: Costs

Respondent shall pay costs in the sum of \$4,287.00 to the Board at its Sacramento address within sixty (60) days of the effective date of this Decision.

Dated: March 8, 2012


RICHARD J. LOPEZ

Administrative Law Judge

Office of Administrative Hearings

RJL:ref