

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

In the Matter of the Accusation Against)	
)	Case No. 2011-21
JIM KACEY LEE)	
2621 West Olympic Blvd.,)	OAH No. 2011020962
Suite 200)	
Los Angeles, CA 90006)	
)	
Registered Applicator License)	
No. RA 49735)	
)	
Respondent.)	
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DECISION AFTER NON-ADOPTION

N. Gregory Taylor, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in Los Angeles, California on August 22, 2011.

Deputy Attorney General Nancy A. Kaiser, appeared on behalf of complainant, Kelli Okuma, Registrar/Executive Officer, Structural Pest Control Board (Board), Department of Pesticide Regulation, State of California.

Respondent Jim Kacey Lee appeared and represented himself.

The Proposed Decision of the Administrative Law Judge was submitted to the Board, and after due consideration in closed session on October 5, 2011, the Board declined to adopt the Proposed Decision. Pursuant to Government Code Section 11517, the Board makes the following decision and order:

INITIAL FACTUAL FINDINGS

1. Complainant filed the Accusation in this proceeding in her official capacity.
2. On or about March 18, 2009, the Structural Pest Control Board (Board) issued Registered Applicator License Number RA 49735, in Branches 2 and 3, to Jim Kacey Lee (Respondent). The registered applicator license was in full force and effect at all times relevant to the charges brought herein and will expire on March 18, 2012, unless renewed.

STATUTORY PROVISIONS

1. This Accusation is brought by Complainant under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

2. Business and Professions Code section 8620 provided, in pertinent part, that the Board may suspend or revoke a license when it finds that the holder, while a licensee or applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil penalty.

3. Code section 8625 states:

The lapsing or suspension of a license or company registration by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license or company registration shall not deprive the Board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such licensee or company, or to render a decision suspending or revoking such license or registration.

4. Code section 8649 states:

Conviction of a crime substantially related to the qualifications, functions, and duties of a structural pest control operator, field representative, applicator, or registered company is a ground for disciplinary action. The certified record of conviction shall be conclusive evidence thereof.

FACTUAL FINDINGS

1. On April 6, 2010, in the California Superior court, County of Los Angeles (case no. SR01140), Respondent, upon his nolo contendere plea, was convicted of violating Penal Code section 484(a), shoplifting, a misdemeanor. The court placed Respondent on summary probation for a period of 24 months upon certain terms and conditions including paying a fine and fees of \$891.00 or in lieu of the fine serving 5 days in the county jail or working 5 days at CalTrans. Respondent paid the fine and fees. He remains on probation until 2012.

2. The facts and circumstances leading to Respondent's conviction are as follows: Respondent and his wife are separated. They have a 16 year old daughter. The daughter asked her father to get her a portable electronic video recorder. Respondent was short on funds. He went to Costco and stole the item having a value of \$219.98. He was detained by security personnel as he was leaving the store. The recorder was returned to the store.

3. Respondent submitted a letter concerning his conviction. He states, in part:

"On March 16, 2010, I made a big mistake of shoplifting at Costco. There are no excuses. I am extremely remorseful of my behavior. Since my conviction, I worked harder and focused more on to better my self towards society.

I have complied with all the conditions given by the court (paid fines, stay away from Costco, and avoid any other crimes). This was my first and only crime. Please apply leniency toward disciplinary action. I have truly learned my lesson."

4. Respondent has no other criminal convictions.
5. Respondent has completed two years of college with a major in economics.
6. For the past three years, Respondent has been employed by a termite and pest control company as an applicator. Prior to this, Respondent was a vice president of a textile company. As a result of reorganization, Respondent lost his former job. His current salary is much less than he earned previously.
7. Respondent's current employer is aware of Respondent's criminal conviction. Although very disappointed in Respondent for his conviction, the employer submitted a letter of reference on Respondent's behalf. He stated, in part:

"Jim is organized, efficient, extremely competent, and has an excellent rapport with people of all ages. His communications skills, both written and verbal, are excellent.

"In summary, I highly recommend Jim for any position or endeavor that he may seek to pursue. He will be a valuable asset for any organization.

"Ever since his conviction, Jim has become more mature and wiser. He is remorseful for his action. Please give him another opportunity so he can engage in becoming a Licensed Termite Inspector."
8. Respondent formerly had a Notary Public Commission. He surrendered the commission due to his criminal conviction.

COST RECOVERY

1. Business and Professions Code section 125.3 states, in pertinent part, that a Board may request the administrative law judge to direct a licentiate found to have committed a violation or violation of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.
2. The Board submitted a Cost Bill in the amount of \$2,732.50 for its costs of investigation and enforcement of this case.
3. The Administrative Law Judge may review and determine the reasonable amount to be assessed. *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.
4. Respondent does not have the ability to pay the full amount of the cost bill due to his financial situation.
5. The reasonable cost of investigation and enforcement of this case is \$1,000.00.

LEGAL CONCLUSIONS

1. Complainant placed in evidence in this proceeding (Exhibit 5) the agency's manual of Disciplinary Guidelines and Model Disciplinary Orders adopted by the Board. At page 8 of the Manual this is a listing of Factors to be considered in determining the appropriate disposition of the case. The list of factors is as follows. Within the bracketed responses below each factor response are set forth.

1. Actual or potential harm to the public.
[Public is harmed by theft.]
2. Actual or potential harm to any consumer.
[Consumers are harmed by shoplifting.]
3. Prior disciplinary record.
[Respondent has a clean prior disciplinary record.]
4. Number and/or variety of current violations.
[Single act of theft.]
5. Mitigation evidence.
[Too early to evaluate.] Respondent is still on probation.]
6. In case of a criminal conviction, compliance with the terms of sentence.
[To date, Respondent is in compliance with the terms of his sentence but is still on probation.]
7. Overall Criminal Records.
[This is Respondent's only criminal conviction.]
8. Whether the conduct was knowing, willful, reckless or inadvertent.
[Respondent's conduct was knowing and willful.]
9. The financial benefit to Respondent.
[Satisfying daughter's request for a video recorder.]
10. Evidence that the unlawful act was part of a pattern of practice.
[Not Applicable.]
11. Currently on probation.
[Yes, currently on probation.]

Applying the foregoing criteria in this case, disciplinary action is appropriate.

Respondent's theft of a video recorder is substantially related to the qualifications, functions and duties of a licensed applicator in that it involved doing an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator.

Pursuant to the provisions of Business and Professions Code section 8620 and 8649, cause exists to suspend or revoke Respondent's registered applicator license by virtue of his criminal conviction as more fully described in Factual Findings 1 through 3. However, cause exists to mitigate the penalty imposed by the Administrative Law Judge according to Factual Findings 4 through 8.

ORDER

Registered Applicator License Number RA 49735 issued to Respondent Jim Kacey Lee is revoked; however revocation is stayed and Respondent is placed upon probation for a period of three (3) years from the effective date of this Decision; subject to compliance with the following terms and conditions:

1. Respondent shall pay the amount of \$1,000, as the reasonable cost of investigation and enforcement of this case. The costs may be paid in monthly installment payments and is to be paid in full within one year of the effective date of the decision.

2. Respondent shall obey all laws, rules and regulations relating to the practice of structural pest control.

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

4. Should Respondent leave California to reside outside this state, Respondent 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.

5. Respondent shall notify all present and prospective employers of the decision in this case, including terms, conditions and restriction imposed on Respondent by this Decision.

Within 30 days of the effective date of this Decision, and within 15 days of Respondent undertaking new employment, Respondent shall cause his employer to report to the Board in writing acknowledging the employer has read the Decision in Case No. 2011-21.

6. Should Respondent violate probation in any respect, the Board, after giving Respondent 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 Respondent 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.

7. Upon successful completion of probation, Respondent's license shall be fully restored.

This decision shall become effective on November 27, 2011.

IT IS SO ORDERED this 28th day of October, 2011.


CURTIS GOOD, PRESIDENT
STRUCTURAL PEST CONTROL BOARD

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7 *Attorneys for Complainant*

FILED

Date 12/21/10 By *Kelli Okuma*

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

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13 In the Matter of the Accusation Against:

Case No. 2011-21

14 **JIM KACEY LEE**
2621 West Olympic Blvd., Suite 200
15 Los Angeles, CA 90006

ACCUSATION

16 **Registered Applicator License No. RA 49735**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Kelli Okuma ("Complainant") brings this Accusation solely in her official capacity as
22 the Registrar/Executive Officer of the Structural Pest Control Board ("Board"), Department of
23 Pesticide Regulation.

24 **Registered Applicator License**

25 2. On or about March 18, 2009, the Structural Pest Control Board issued Registered
26 Applicator License Number RA 49735 in Branches 2 and 3, to Jim Kacey Lee ("Respondent").
27 The registered applicator license was in full force and effect at all times relevant to the charges
28 brought herein and will expire on March 18, 2012, unless renewed.

1 following his plea of nolo contendere to a violation of Penal Code section 484, subdivision (a)
2 (shoplifting), a misdemeanor. The circumstances of the crime are that on March 16, 2010,
3 Respondent took electronic items, valued at \$219.98 from Costco without paying for those items.
4 Such conduct is substantially related to the qualifications, functions, and duties of a licensed
5 applicator. Respondent was sentenced to two years probation, fined, and ordered to stay away
6 from Costco stores.

7 **OTHER MATTERS**

8 9. Code section 8620 provides, in pertinent part, that a respondent may request that a
9 civil penalty of not more than \$5,000 be assessed in lieu of an actual suspension of 1 to 19 days,
10 or not more than \$10,000 for an actual suspension of 20 to 45 days. Such request must be made
11 at the time of the hearing and must be noted in the proposed decision. The proposed decision
12 shall not provide that a civil penalty shall be imposed in lieu of a suspension.

13 9. Pursuant to Code section 8654, if discipline is imposed on Registered Applicator's
14 License Number RA 49735, issued to Respondent, then Jim Kacey Lee, shall be prohibited from
15 serving as an officer, director, associate, partner or responsible managing employee of a licensee,
16 and any licensee which employs, elects, or associates him shall be subject to disciplinary action.

17 **PRAYER**

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
19 and that following the hearing, the Structural Pest Control Board issue a decision:

- 20 1. Revoking or suspending Registered Applicator License Number RA 49735, issued to
21 Jim Kacey Lee;
- 22 2. Ordering Jim Kacey Lee to pay the Structural Pest Control Board the reasonable costs
23 of the investigation and enforcement of this case, pursuant to Business and Professions Code
24 section 125.3; and,

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3. Taking such other and further action as deemed necessary and proper.

DATED:

12/21/10

Kelli Okuma

KELLI OKUMA
Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

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