

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

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

JORGE CABRAL

Respondent:

Case No. 2011-41

OAH No. 2011041033

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 February 17, 2012.

IT IS SO ORDERED January 18, 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 Probation of:

JORGE CABRAL,

Applicator's License No. Ra 49912,
BR 2, BR 3,

Respondent.

Agency Case No. 2011-41

OAH Case No. 2011041033

DECISION

Daniel Juárez, Administrative Law Judge (ALJ) Office of Administrative Hearings heard this matter on November 23, 2011, in Los Angeles, California.

Michael A. Cacciotti, Deputy Attorney General, represented Kelli Okuma, Registrar/Executive Officer of the Structural Pest Control Board (Complainant).

Jorge Cabral (Respondent) represented himself.

The parties submitted the matter for decision on November 23, 2011.

STATEMENT OF THE CASE

Complainant seeks the revocation of Respondent's applicator's license in Branches 2 and 3 for suffering a criminal conviction in 2010.

Respondent concedes the conviction; he asks the Structural Pest Control Board (SPCB) to allow him to retain licensure.

FACTUAL FINDINGS

1. Complainant filed the Accusation and Petition to Revoke Probation on March 10, 2011. Respondent filed a Notice of Defense on April 22, 2011.
2. The Board issued a probationary applicator's license number RA 49912 (Branches 2 and 3) to Respondent on May 20, 2009. The reason for a probationary license

and the terms of probation are set forth in Factual Finding 3. The probationary license expires on May 20, 2012, unless renewed.

3(a). On February 3, 2009, Respondent represented himself in an administrative hearing before the SPCB (*In the Matter of the Statement of Issues Against Jorge Cabral*, SPCB case no. 2008-8, OAH case no. 2008100794.) That matter ensued after Respondent applied to the SPCB for an applicator's license (in March 2007) and the SPCB became aware of his criminal convictions.

3(b). The SPCB found the following convictions: August 11, 2000, a violation of Health and Safety Code section 11364 (possession of a smoking device), a misdemeanor; April 5, 2001 and April 29, 2004, violations (one on each date) of Health and Safety Code section 11377, subdivision (a) (possession of a controlled substance), both misdemeanors; April 23, 2002, a violation of Health and Safety Code section 11550, subdivision (a) (being under the influence of a controlled substance), a misdemeanor; April 25, 2003 and April 2, 2004, violations (one on each date) of Vehicle Code section 14601.1, subdivision (a) (driving when privilege suspended or revoked), both misdemeanors; April 18, 2004, a violation of Penal Code section 415 (disturbing the peace), an infraction; April 1, 2005, a violation of Penal Code section 484, subdivision (a) (petty theft), a misdemeanor; and September 21, 2005, a violation of Penal Code section 422 and Penal Code section 666 (petty theft with priors), both felonies.

3(c). The SPCB denied Respondent's application for an unrestricted applicator's license, but stayed the denial and issued him a probationary applicator's license for three years with various terms and conditions. The terms and conditions included a requirement that he obey all laws and rules relating to the practice of structural pest control (Order 2). His probation also provided that any violation of probation would allow the SPCB to revoke the probationary license after giving him notice and an opportunity to be heard (Order 8).

3(d). The Decision became effective May 20, 2009.

4. On March 11, 2010, pursuant to a nolo contendere plea, the Los Angeles County Superior Court, in case number BA366393, convicted Respondent of violating Penal Code section 666 (petty theft with priors), a felony. The court suspended the imposition of sentence and placed Respondent on three years formal probation.

5. The terms and conditions of probation included, among others, registering as a convicted narcotics offender, enrolling in a one-year residential drug treatment program, obeying all laws and orders of the court, not owning, using, or possessing dangerous or deadly weapons, and paying \$630 in fines and fees.

6. The facts and circumstances underlying the conviction are that on January 3, 2010, Respondent stole electronic equipment (cables) from a Sears retail store in Montebello, California.

7. On September 7, 2010, Respondent violated probation and the court ordered, among other things, that Respondent serve 48 days in the county jail, with credit for 24 days actual custody and 24 days good time/work time. The evidence did not establish the nature of the violation.

8. On August 24, 2011, the sentencing court ordered Respondent to appear on September 22, 2011, for a probation violation hearing. The evidence did not establish the outcome of that hearing.

9. Respondent chose not to testify on his own behalf. However, in accordance with Government Code section 11513, subdivision (b), Complainant's counsel cross-examined Respondent. Respondent is 41 years old. He asserted that he found the one-year residential drug treatment program ordered by the sentencing court helpful. He learned to work with others, how to resolve problems without violence, and how to interact with people. He is currently attending a 12-step rehabilitation program two times per week. He recognizes that his crimes have largely been the result of his drug and alcohol abuse. He last used drugs in 2010 when he was arrested for his theft at Sears. He explained that he stole from Sears because he was intoxicated and used poor judgment. He is not currently employed. His criminal history has impeded his ability to find a job. He receives public assistance (approximately \$212 per month) and lives with his parents. He is trying to get his life in order. He took responsibility for his crimes; he understands why the SPCB seeks to revoke his applicator's license. He asserted that he would not steal again and asked the SPCB to allow him to retain his license. Respondent provided no evidence of his character, honesty, or integrity.

10. Complainant incurred \$3,137.50 in investigation and prosecution costs. Those costs were reasonable. Complainant's counsel submitted a declaration stating it was his good faith estimate that, up to the date of hearing, the Office of the Attorney General would incur and bill to the SPCB an additional five hours of time (\$850) to prepare for the prosecution of this matter. He provided no evidence that actual costs for this additional time were unavailable and provided no evidence establishing the actual additional hours expended.

LEGAL CONCLUSIONS

1. Business and Professions Code section 8620 provides that the SPCB may temporarily suspend or permanently revoke a license if the licensee commits any act or omission constituting grounds for disciplinary action.

2. Business and Professions Code section 8649 provides that the conviction of a crime that is substantially related to the qualifications, functions, and duties of a SPCB licensee is grounds for disciplinary action.

3. Business and Professions Code section 8655 provides in part that a conviction following a nolo contendere plea is deemed a conviction.

4. California Code of Regulations, title 16, section 1937.1, provides that a crime or act is substantially related to a licensee's qualifications, functions, or duties if to a substantial degree, it evidences present or potential unfitness to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare. The regulation provides that substantially related crimes include any that violate the provisions of Chapter 14 of Division 3 of the Business and Professions Code. Those provisions include Business and Professions Code section 8649.

5. A licensed applicator must be trusted to enter into the homes of individuals and families. Respondent's felony theft crime evidences a present and potential unfitness to perform an applicator's licensed duties in a manner consistent with the public safety and welfare. Therefore, the crime at issue is substantially related to a licensed applicator's qualifications, functions, and duties.

6. Respondent's conviction violates Business and Professions Code section 8649.

7. Cause exists to discipline Respondent's applicator license, for his felony conviction in 2010, pursuant to Business and Professions Code sections 8649 and 8620, as set forth in Factual Findings 1-9, and Legal Conclusions 1-6.

8. Respondent's conviction constitutes a violation of Order 2 of the 2010 probation imposed by the SPCB.

9. Cause exists to lift the Board's stay and revoke Respondent's probationary applicator license, pursuant to Order 8 of the 2010 probation imposed by the SPCB, as set forth in Factual Findings 1-9, and Legal Conclusions 1-8.

10. California Code of Regulations, title 16, section 1937.2 states in pertinent part:

(b) When considering the suspension or revocation of a structural pest control license or company registration on the grounds that the licensee or registered company has been convicted of a crime, the board, in evaluating the rehabilitation of such person or company and his or her or its present eligibility for a license or company registration will consider the following:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee or registered company has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee or registered company.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any of rehabilitation submitted by the licensee or registered company.

11. Evidence of Respondent's rehabilitation was lacking. As a felony that by its definition includes a history of similar prior crimes, Petitioner's crime is severe in nature. (Cal. Code Regs., tit. 16, § 1937.2, subs. (b)(1) and (b)(2).) The crime is recent. (Cal. Code Regs., tit. 16, § 1937.2, subd. (b)(3).) Respondent is currently on probation. Therefore, evidence of his good behavior while on criminal probation is of limited value. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Respondent took responsibility for his criminal activity and he is taking action to stay sober and pursue a lawful life. (Cal. Code Regs., tit. 16, § 1937.2, subd. (b)(6).) However, Respondent failed to provide evidence of rehabilitation sufficient to overcome the significant concerns raised by his crime. The public's safety cannot be assured if Respondent were to remain licensed. It is therefore appropriate to revoke Respondent's license in order to ensure the public's safety.

12. Business and Professions Code section 125.3 provides in part that when the licensee is found "to have committed a violation or violations of the licensing act," upon request, the ALJ may order the licensee to "pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

13. The additional hours Complainant's counsel estimated he would expend in preparing for hearing were not allowed, in part, because there was no evidence that actual costs for this additional time were unavailable and no evidence establishing the actual additional hours expended. The costs incurred by Complainant for this matter's investigation and enforcement (\$3,137.50) were reasonable. However, taking into consideration that Respondent is unemployed and receives minimal public assistance, and the Order below, it is appropriate to deny Complainant's costs. (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.App.4th 32, 45.)

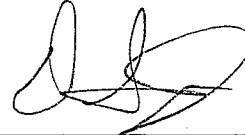
14. Cause exists to deny Complainant's costs, pursuant to Business and Professions Code section 125.3, as set forth in Factual Findings 1-10, and Legal Conclusions 12 and 13.

ORDER

Probationary applicator's license number RA 49912 (Branches 2 and 3) issued to Respondent Jorge Cabral is revoked.

Respondent Jorge Cabral is prohibited from serving as an officer, director, associate, partner, qualifying manager, or branch office manager of any registered company.

Dated: December 23, 2011



DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings

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FILED

Date 3/10/11 By *Kelli Okuma*

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

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

Case No. 2011-41

12 **JORGE CABRAL**
3825 E. 57th Street
13 Maywood, CA 90270
Applicator's License Number
14 RA 49912, BR 2, BR 3

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Kelli Okuma ("Complainant") brings this Accusation and Petition to Revoke
20 Probation solely in her official capacity as the Registrar/Executive Officer of the Structural Pest
21 Control Board, Department of Pesticide Regulation.

22 **Applicator License**

23 2. On or about May 20, 2009, the Structural Pest Control Board issued Applicator's
24 License Number RA 49912 in Branches 2 and 3 to Jorge Cabral ("Respondent"). The
25 applicator's license was in full force and effect at all times relevant to the charges brought herein
26 and will expire on May 20, 2012, unless renewed.

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1 Montebello, California. Respondent concealed the items in his front jean pocket and under his
2 waistband. Respondent then attempted to leave the store without paying for the items and was
3 subsequently arrested.

4 **PETITION**

5 11. Grounds exist for revoking the probation and reimposing the order of revocation of
6 Respondent's Applicator's License Number RA 49912. Condition 8 of the Decision states:

7 Should respondent violate probation in any respect, the Board, after
8 giving respondent notice and an opportunity to be heard, may revoke respondent's
9 probationary license. 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.

10 12. Respondent has violated the Probation Program, as more particularly set forth in
11 the following paragraphs:

12 **CAUSE TO REVOKE PROBATION**

13 **(Failure to Obey all Laws)**

14 13. At all times after the effective date of Respondent's probation, Condition 2, stated:

15 Respondent shall obey all laws and rules relating to the practice of
16 structural pest control.

17 14. Respondent's probation is subject to revocation because he failed to comply with
18 Probation Condition 2, referenced above. The facts and circumstances regarding this violation
19 are that on or about January 3, 2010, Respondent failed to obey all laws, evidenced by his arrest
20 and subsequent conviction, as more particularly set forth in paragraph 10, above.

21 **OTHER MATTERS**

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

27 16. Pursuant to Code section 8654, if discipline is imposed on Applicator's License
28 Number RA 49912, issued to Respondent, then Jorge Cabral, shall be prohibited from serving as

1 an officer, director, associate, partner or responsible managing employee of a licensee, and any
2 licensee which employs, elects, or associates him shall be subject to disciplinary action.

3 PRAYER

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


6 1. Revoking the probation that was granted by the Structural Pest Control Board in Case
7 No. 2009-8 and imposing the disciplinary order that was stayed thereby revoking Applicator's
8 License Number RA 49912, issued to Jorge Cabral;

9 2. Prohibiting Jorge Cabral from serving as an officer, director, associate, partner,
10 qualifying manager or responsible managing employee of any registered company during the
11 period that discipline is imposed on Applicator's License Number RA 49912, issued to Jorge
12 Cabral;

13 3. Ordering Jorge Cabral to pay the Structural Pest Control Board the reasonable costs
14 of the investigation and enforcement of this case, pursuant to Business and Professions Code
15 section 125.3; and,

16 4. Taking such other and further action as deemed necessary and proper.
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19 DATED: 3/10/11


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

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