

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

In the Matter of the Statement of Issues
Against:

ANGEL SUAREZ,

Respondent.

Case No. 2009-28

OAH No. 2008110538

DECISION

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

This Decision shall become effective on May 20, 2009.

IT IS SO ORDERED April 20, 2009.

Clifford J. Ripley

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PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter in Salinas, California, on January 8, 2009.

Carol Romeo, Deputy Attorney General, represented Complainant Kelli Okuma.

Respondent Angel Suarez represented himself.

The record closed on January 8, 2009.

FACTUAL FINDINGS

1. Complainant Kelli Okuma filed the Statement of Issues in her official capacity as Registrar of the Structural Pest Control Board (Board), Department of Consumer Affairs.

2. On August 28, 2007, the Board received an application from Angel Suarez (Respondent) for an Applicator License. The Board denied the application on April 30, 2008, and Respondent appealed. This hearing followed.

Criminal Convictions

3. On June 8, 2006, in the Monterey County Superior Court, Respondent was convicted by his plea of no contest of two felonies. The first conviction was of a violation of Health and Safety Code section 11360, subdivision (a), transportation or sale of marijuana. Respondent also admitted violating Penal Code section 12022, subdivision (a)(i), a firearm enhancement penalty, in connection with this conviction. The firearm was a 9-millimeter semi-automatic weapon.

The second conviction was of a violation of Health and Safety Code section 11351, possession of a controlled substance for sale. The controlled substances were cocaine and methamphetamine. Respondent also admitted violating Penal Code section 12022.1, an enhancement penalty, by committing a felony while released on bail.

4. The first conviction was based upon Respondent's conduct on November 15, 2005. On that date, a police officer stopped the car that Respondent was driving and noticed a very strong odor of "green" marijuana. In a door panel of the car, an officer discovered 58.9 grams of marijuana and a loaded handgun. There was also \$340 in cash located in the driver's seat. The handgun had been reported stolen in 2004.

5. The second conviction followed the execution of a search warrant on March 8, 2006, at the home where Respondent was residing. Officers found, among other things, cocaine, methamphetamine, a digital scale with powdery residue, cash, two handguns, and a variety of ammunition.

Respondent lived in the home with his girlfriend, their two young children, and his girlfriend's father, who was an investigator with the Monterey County District Attorney's Office. Respondent asserts that the guns were not found in his room and that they belonged to his girlfriend's father. The conviction, which did not involve any weapons charges, as well as the information in the police report, corroborates Respondent's statements.

6. On August 30, 2006, Respondent was sentenced in both matters. In the first, Respondent was placed on formal probation for three years pursuant to conditions that included one year in county jail, payment of fines and fees, and registration as a narcotics offender. The second sentence was similar, except that no additional jail time was ordered.

7. On October 18, 2008, Respondent was in a car driven by a friend when a sheriff's deputy initiated a traffic stop. The deputy checked their identification and learned that both were on probation under terms that did not allow them to be in the presence of other probationers. Respondent was arrested for violating probation but was not formally charged.

8. Respondent served about nine months in jail and was released. He is on probation in both cases until August 30, 2009. Respondent represents that he is now in full compliance and reports as required to his probation officer.

9. Respondent readily admits his criminal history and sincerely regrets that history. He was unable to find a job and sold drugs to support his family. Respondent was impressed by his time in jail, where he did a lot of thinking. When he was released, he returned to school and obtained his GED. Respondent was then hired by Casner

Exterminating. He passed the examination, but was let go when his application for an Applicator License was denied. Respondent then was employed for one month on a temporary basis at Castroville Custom Service.

10. Respondent, now 24 years old, is currently unemployed. He lives with his girlfriend, who is employed, and their two children. He takes care of the house and the children. It has been difficult to find a job and Respondent would like to return to work in the pest control business. He asserts that he has learned from his mistakes, does not do drugs, and is honest.

11. Wayne Bellville is the Department Manager for Casner Exterminating. He hired and trained Respondent. Bellville testified that Respondent was "a rare find" as an employee, in part because he was willing to do any work that he was asked to do. When Respondent was working as a trainee, customers would call the office to express their appreciation of Respondent. This, in Bellville's experience, is unusual, and he is very supportive of Respondent's application.

12. Respondent submitted three reference letters. On January 5, 2009, Michelle Gutierrez wrote that she has known Respondent about six years. She describes him as quiet, respectful, reliable and a hard worker. On January 6, 2009, Wendy McAndres, GM, Casner Exterminating, Inc., wrote that Respondent is "on time, organized and outgoing" and that he has the qualities that "a great pest control technician needs to have." On January 5, 2009, Maria Navarro and Silvia Fernandez wrote that they met Respondent when he worked at Casner and that the customers he served were every pleased with him. He was respectful and responsible.

13. Respondent's demeanor and manner while testifying was consistent with one who is telling the truth. He appeared sincere and trustworthy, and his assertions concerning rehabilitation were persuasive.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivisions (a)(1) and (a)(3), and section 8568 together provide that an application for a Pest Control Applicator License may be denied where the applicant has been convicted of a crime substantially related to the qualifications, functions or duties of the licensed activity. The criteria for determining whether a conviction is substantially related to the qualifications, functions or duties of a pest control applicator are set forth in California Code of Regulations, title 16, section 1937.1, wherein it states that a conviction is substantially related 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.

There is a substantial relationship between the crimes of felony transportation or sale of marijuana and possession of controlled substances for sale, and the work

performed by the holder of an Applicator License. Dealing in illegal drugs is a dangerous activity that evidences a disregard for the law and for the public health, safety, and welfare. Holders of such licenses often have unsupervised access to customer's homes and businesses when providing pest control services and it is essential that they be law-abiding and trustworthy. Cause therefore exists to deny Respondent's application by reason of the matters set forth in Findings 3 through 6.

2. Once grounds for denial are proven, the burden shifts to the applicant to demonstrate that he is sufficiently rehabilitated to warrant licensure. California Code of Regulations, title 16, section 1937.2, subdivision (a), sets forth the criteria for determining whether an applicant has demonstrated sufficient rehabilitation:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Business and Professions Code section 480.
- ~~(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).~~
- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

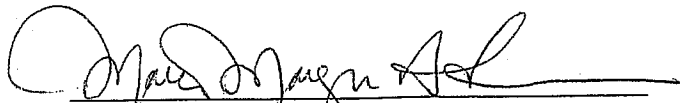
3. It is concluded that Respondent has demonstrated sufficient efforts toward rehabilitation to warrant a probationary license. The crimes of which he was convicted are very serious, but the convictions occurred when he was quite young and over a short time period. Respondent spent nine months in jail and this made a large impression upon him. He has since obtained his GED and experienced a successful period of employment with Casner Exterminating and that company supports his licensure. He stumbled by being in the presence of another probationer, but is now in compliance with his criminal probation. Respondent is motivated by his desire to support his family and appeared sincere and trustworthy in his testimony. The public interest would therefore be protected by the issuance of a probationary license with appropriate terms and conditions.

ORDER

The application of Respondent Angel Suarez for an Applicator License is denied; however, a probationary license shall issue for a period of five years, pursuant to the following terms and conditions:

1. Respondent shall obey all laws of the United States; the State of California; all laws, rules and regulations relating to the practice of structural pest control; and the terms and conditions of probation in Monterey County Superior Court case numbers SS053213A and SS061045A.
2. Respondent shall file quarterly reports to the Board, as required by the Board, during the probation period.
3. Should Respondent leave California to reside, Respondent shall notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not reduce the probationary period.
4. Respondent shall provide all present and prospective employers a copy of the decision in this matter. Within 30 days of the effective date of the decision, and within 15 days of undertaking new employment, Respondent shall cause his employer to report to the Board in writing that his employer has read the decision.
5. Respondent is prohibited from serving as an officer, director, and associate, partner, qualifying manager or branch office manager of any registered company during the probation period.
6. Respondent shall not have any legal or beneficial interest in a company currently or hereinafter registered by the Board during the probation period.
7. Should Respondent violate probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and impose the stayed order denying licensure. If a petition to revoke probation is filed against Respondent, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until a final decision is issued.
8. Upon successful completion of probation, Respondent shall be granted an unrestricted Applicator License.

DATED: January 13, 2009


MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

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FILED

Date 11/5/08 By Kelli Okuma

7 Attorneys for Complainant

8 **BEFORE THE**
9 **STRUCTURAL PEST CONTROL BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues Against:

Case No. 2009-28

12 ANGEL SUAREZ, A.K.A.
13 ANGEL SUAREZ MARTINEZ
14 746 Alvarado Drive
Salinas, California 93907

STATEMENT OF ISSUES

Respondent.

16 Complainant alleges:

17 PARTIES

18 1. Kelli Okuma (Complainant) brings this Statement of Issues solely in her
19 official capacity as the Registrar/Executive Officer of the Structural Pest Control Board,
20 Department of Consumer Affairs.

21 2. On or about August 28, 2007, the Structural Pest Control Board,
22 Department of Consumer Affairs received an application for an Applicator License from Angel
23 Suarez, also known as Angel Suarez Martinez (Respondent). On or about August 21, 2007,
24 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and
25 representations in the application. The Board denied the application on April 30, 2008.

26 JURISDICTION

27 3. This Statement of Issues is brought before the Structural Pest Control
28 Board (Board), Department of Consumer Affairs, under the authority of the following laws. All

1 section references are to the Business and Professions Code unless otherwise indicated.

2 STATUTORY PROVISIONS

3 4. Section 8568 of the Code provides, in pertinent part, that the Board may
4 deny a license or registration if the applicant has committed any act or crime constituting grounds
5 for denial of licensure under section 480 of the Code.

6 5. Section 480 of the Code states, in pertinent part:

7 "(a) A board may deny a license regulated by this code on the grounds that the
8 applicant has one of the following:

9 "(1) Been convicted of a crime. A conviction within the meaning of this section
10 means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action
11 which a board is permitted to take following the establishment of a conviction may be taken
12 when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal,
13 or when an order granting probation is made suspending the imposition of sentence, irrespective
14 of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

15 "...

16 "(3) Done any act which if done by a licentiate of the business or profession in
17 question, would be grounds for suspension or revocation of license.

18 "The board may deny a license pursuant to this subdivision only if the crime or act
19 is substantially related to the qualifications, functions or duties of the business or profession for
20 which application is made.

21 6. Section 8649 of the Code states:

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

26 DRUGS

27 7. "Cocaine" is a Schedule II controlled substance as listed under section
28 11055(b)(6) of the Health and Safety Code and a dangerous drug pursuant to Business and

1 Professions Code section 4022.

2 8. "Methamphetamine" is a Schedule II controlled substance as designated by
3 Health and Safety Code section 11055(d)(2) and a dangerous drug pursuant to Business and
4 Professions Code section 4022. It is a highly addictive recreational drug.

5 9. "Marijuana" is a Schedule I controlled substance as designated by Health
6 and Safety Code section 11054(d)(13).

7 FIRST CAUSE FOR DENIAL OF APPLICATION

8 (Substantially Related Criminal Conviction)

9 10. Respondent's application is subject to denial under Sections 480(a)(1) and
10 8568 (committing crime constituting grounds for denial of licensure under section 480) of the
11 Code in that he was convicted of a crime substantially related to the qualifications, functions or
12 duties of an applicator, in that on or about June 8, 2006, in the Superior Court of California,
13 County of Monterey, Case No. SS053213A, entitled *The People of the State of California vs.*
14 *Angel Suarez*, Respondent pled no contest and was convicted of violating Section 11360(a) of the
15 Health and Safety Code (transportation/sale of Marijuana), a felony, and admitted an enhancement
16 pursuant to Section 12022(a)(i) (armed with a firearm, to wit: .9 mm semi-automatic weapon).
17 On or about August 30, 2006, pursuant to said conviction, the imposition of sentence was
18 suspended and Respondent was granted probation for a period of three (3) years upon terms and
19 conditions, which included, but were not limited to, serving 365 days in jail. The factual
20 circumstances of said conviction are as follows:

21 a. On or about November 15, 2005, in Salinas, California, Respondent had
22 58.9 grams of marijuana and a Smith & Wesson, 9 mm handgun, loaded with 13 rounds, stashed
23 in the door panel of the vehicle he was using. Respondent also had \$340.00 in the driver's seat of
24 the vehicle. The Smith & Wesson handgun had been reported stolen to the Monterey County
25 Sheriff's Office in March 2004.

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1 two loaded magazines, a loaded North American Arms .22 magnum derringer, 41 rounds of
2 Winchester 9 mm ammunition, 11 rounds of .25 auto ammunition, and approximately 90 rounds
3 of Remington .22 ammunition.

4 PRAYER

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

- 7 1. Denying the application of Angel Suarez, also known as Angel Suarez
8 Martinez, for an Applicator License; and
9 2. Taking such other and further action as deemed necessary and proper.

10
11 DATED: 11/5/08

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13 
14 KELLI OKUMA
15 Registrar/Executive Officer
16 Structural Pest Control Board
17 Department of Consumer Affairs
18 State of California
19 Complainant

20 03591110SF2008402126
21 CSR: 10/29/08

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