

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

In the Matter of the Statement of Issues
Against:

Case No. 2011-6

NAPOLEON DOWTHARD, JR.

OAH No. 2010100166

Respondent.

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 24, 2011.

IT IS SO ORDERED January 25, 2011.



FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION

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STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

NAPOLEON DOWTHARD, JR.,
Oakland, California,

Respondent.

Case No. 2011-6

OAH No. 2010100166

PROPOSED DECISION

Administrative Law Judge Karen E. Reichmann, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on December 20, 2010.

Carol Romeo, Deputy Attorney General, represented complainant Kelli Okuma, Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation, State of California.

Respondent Napoleon Dowthard, Jr., appeared and represented himself.

This matter was submitted for decision on December 20, 2010.

FACTUAL FINDINGS

1. On February 16, 2010, respondent Napoleon Dowthard, Jr., submitted an application for an applicator license to the Structural Pest Control Board, Department of Pesticide Regulation (Board). The Board denied the application on May 10, 2010.

2. On April 29, 1994, respondent was convicted in San Mateo County Superior Court of a misdemeanor violation of Penal Code section 242 (battery). Respondent was sentenced to two years probation, on terms and conditions which included serving 60 days in county jail and participating in spousal battery counseling. Respondent was permitted to serve the jail time in a residential treatment program over a six-month period.

The facts and circumstances of this offense were not established at the hearing.

3. On April 22, 1997, respondent was convicted in San Mateo County Superior Court of a felony violation of Penal Code section 666 (petty theft with prior jail).

Respondent was sentenced to three years in state prison. Imposition of sentence was suspended and respondent was placed on probation for three years, on terms and conditions that included serving one year in county jail.

The facts and circumstances of this offense were not established at the hearing. Respondent was charged with shoplifting from a JCPenney store.

4. On May 25, 1999, respondent was convicted in San Mateo County Superior Court of a felony violation of Penal Code section 666 (petty theft with prior jail). Respondent was sentenced to 32 months in state prison.

The facts and circumstances of this offense were not established at the hearing. Respondent was charged with shoplifting from a Lucky's store.

5. On July 29, 2002, respondent was convicted in Santa Clara Superior Court of a misdemeanor violation of Health and Safety Code section 11364 (possession of controlled substance paraphernalia), a felony violation of Penal Code section 245, subdivision (c) (assault on a police officer with a deadly weapon), a felony violation of Vehicle Code section 2800.2, subdivision (a) (reckless driving while fleeing from a peace officer), and a misdemeanor violation of Vehicle Code section 20002, subdivision (a) (hit and run: property damage). For these four offenses, respondent was sentenced to six years in state prison. Respondent was released on parole in May 2007. Respondent completed parole on May 16, 2010.

On October 25, 2001, respondent was selling drugs. He realized that he was observed by a police officer. He did not want to be caught because he was on parole. He tried to flee in his car. He intentionally drove his vehicle into the officer's vehicle while attempting to flee. After colliding with the police car, he continued his attempt to evade arrest.

6. Respondent expressed remorse for his criminal history. He is "sorrowful" about his past. He stated that he is "no longer that person." He is "older and wiser" and now "values and appreciates life." He served his most recent sentence in a CDF fire camp facility. At the facility he started his rehabilitation. He realized that he was missing out on life. While still incarcerated, he attended church and participated in Alcoholics Anonymous and Narcotics Anonymous. Respondent testified that he no longer uses any drugs or alcohol.

7. In preparation for his release, respondent attended a prison release program to help him learn how to integrate into society. When he was released from custody, respondent worked for about one year in a restaurant and for another year as an apprentice carpenter. Since November 2009, respondent has been working for pesticide company Pestec as an installer. Respondent testified that he feels good about helping others in his job. He finds the work interesting and he would love to advance in this profession.

8. Respondent testified that he is committed to his church and serves as a deacon. Respondent has volunteered to return to the CDF fire camp facility through a prison ministry program. He wants to give back to the inmates and serve as a role model.

9. Darrell Azlin testified on respondent's behalf. Azlin works for Pestec and is respondent's supervisor. He hired respondent in November 2009. Respondent revealed his criminal history when applying for the position. Azlin testified that respondent is a "model employee" and a "very hard worker." Respondent "does everything he is told and more." Azlin wishes he had more employees like respondent. Azlin would like to promote respondent if respondent becomes licensed. Azlin believes that "respondent's past is past."

10. Respondent's wife, Katrina Dowthard, testified on respondent's behalf. She has known respondent since 2001. She married respondent in May 2007, when he was released from prison. She stated that she and respondent try to live as "model citizens." Mrs. Dowthard is currently employed at Alta Bates Medical Center after working at Eden Medical center for 20 years. The couple own a home in Oakland. They live with Mrs. Dowthard's two adult daughters. The couple regularly attend Lily of the Valley Christian Center. Mrs. Dowthard described her husband as a good provider who works hard, goes to church, and lives a stable life.

11. Respondent's sister, Sonya Dowthard, also testified at the hearing. She is a business owner. She attends Lily of the Valley Christian Center. Ms. Dowthard testified that respondent is active in the church. She described respondent as having demonstrated "great leadership skills" in his volunteer activities at the church.

12. Christopher Arnold Paredes, Jr., testified on respondent's behalf. Paredes met respondent when they were both incarcerated at the CDF fire camp facility. Paredes was released from custody five and one-half years ago. He and respondent attended church and bible study together while they were incarcerated. The two men were both motivated to turn their lives around. Paredes testified that respondent was one of the most trusted inmates at the facility and that respondent "made a change" while incarcerated. Paredes describes respondent as "honest and trustworthy" and as "one of the best men" Paredes has known.

13. In a letter dated May 12, 2010, four days before respondent's parole ended, respondent's former parole agent W. Terrell wrote that respondent was "in good standing" and "has maintained a positive attitude . . . has maintained employment" and "has no parole violations."

14. Respondent successfully sought a criminal history waiver from the United States Transportation Security Administration and on May 12, 2010, was granted authorization to seek employment with TSA.

15. Randy Higgins of the San Francisco Department of Public Health wrote a letter on behalf of respondent on April 23, 2010. Higgins became acquainted with respondent when his department hired Pestec. Higgins describes respondent as "confident,"

“creative,” and possessing “the rare skill of being able to communicate his ideas and their associated benefits effectively.” Higgins writes that the department has seen “an increase in productivity as well as improved morale” as a result of respondent’s efforts.

16. In an April 2006 letter, Bryan Johnson, Camp Commander of the Valley View Conservation Camp, writes that respondent had been “a great asset” to the camp while serving his sentence. Johnson writes that respondent “assisted in Alcohol Anonymous/Narcotics Anonymous meetings as well as . . . on-site classes . . . designed to prepare inmates for release back into society.” Johnson adds that respondent “has independently lead the Christian group . . . and has been a leader by example.” Johnson writes that respondent voluntarily participated in these programs and spent “many of his own hours in an effort to help others succeed.”

17. Luis Agurto, Jr., wrote a letter on behalf of respondent’s application for an applicator’s license. Agurto is the president of Pestec. Agurto writes that respondent “has demonstrated an exemplary aptitude for safe working practices, customer service, and attentiveness to detail.” Agurto adds that he is aware of respondent’s assault conviction, and has seen “no evidence of his acting in aggression or in anger with his co-workers, our customers or the public.” Agurto commends respondent’s “work ethic, resourcefulness, and good attitude” and states that he has “high expectations for his long-term employment and success.”

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a)(1), provides that an application for an applicator license is subject to denial if the applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of the profession for which the application is made. Respondent’s convictions for battery, petty theft, possession of controlled substance paraphernalia, assault on a police officer with a deadly weapon, reckless driving while fleeing arrest, and hit and run are substantially related to the qualifications, functions, or duties of an applicator because they evidence potential unfitness to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare. (Cal. Code Regs., tit. 16, § 1937.1.) Because of the matters set forth in Findings 2-5, cause exists pursuant to Business and Professions Code section 480, subdivision (a)(1), to deny respondent’s application.

2. Business and Professions Code section 480, subdivision (a)(3), provides that an application for an applicator license is subject to denial when an applicant has committed acts that if done by a licentiate would be cause for disciplinary action. Commission of a crime substantially related to the qualifications, functions, or duties of an applicator constitutes grounds for disciplinary action of a licentiate pursuant to Business and Professions Code section 8649. Accordingly, because of the matters set forth in Findings 2-5, cause exists pursuant to Business and Professions code section 480, subdivision (a)(3), to deny respondent’s application.

3. California Code of Regulations, title 16, section 1937.2, establishes criteria to be used in evaluating the rehabilitation of an applicant who has committed a criminal offense. Respondent's criminal history is very serious, including a battery conviction and a conviction for assault with a deadly weapon arising from respondent's attempt to evade arrest. Respondent's most recent offense occurred nine years ago. Respondent has been free from custody for four and one-half years and has not re-offended during this time. He complied with all terms of parole. His parole, however, was only completed this past May. Respondent provided significant evidence of rehabilitation. He is active in his church and in the prison ministry. He has strong support from his family and his employer. Given respondent's substantial evidence of rehabilitation, it would not be against the public interest to grant respondent a probationary applicator license, even in light of his extensive criminal history.

ORDER

The application of respondent Napoleon Dowthard, Jr., for an applicator license is denied. However, the denial is stayed for a period of three years, during which time respondent is granted a probationary applicator license subject to the following limitations, conditions, and restrictions:

1. Obey All Laws: Respondent shall obey all laws and rules relating to the practice of structural pest control.
2. Quarterly Reports: Respondent shall file quarterly reports with the Board during the period of probation.
3. Tolling of Probation: 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.
4. Notice to Employers: Respondent shall notify all present and prospective employers of the decision in case No. 2011-6 and the terms, conditions and restrictions imposed on respondent by said decision.

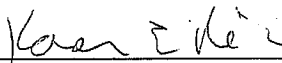
Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking new employment, respondent shall cause his employer to report to the Board in writing acknowledging the employer has read the decision in case No. 2011-6.

5. Violation of Probation: 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.

6. License Issued During Probation: Any license or registration issued to respondent by the Board during the period of probation shall be issued as a probationary license or registration and is subject to all the terms and conditions set forth herein. Respondent must comply with terms and conditions herein and demonstrate no cause for disciplinary action or denial of an application.

DATED: Jan 13, 2011



KAREN E. REICHMANN
Administrative Law Judge
Office of Administrative Hearings

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FILED

Date 8/3/10 By *Kelli Okuma*

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

11 In the Matter of the Statement of Issues
12 Against:
13 **NAPOLEON DOWTHARD, JR.**
14 **920 Myrtle Street**
Oakland, California 94607
15 Respondent.

Case No. 2011-6

STATEMENT OF ISSUES

17 Complainant alleges:

18 PARTIES

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

22 2. On or about February 16, 2010, the Structural Pest Control Board, Department of
23 Pesticide Regulation received an application for an Applicator License from Napoleon Dowthard,
24 Jr. (Respondent). On or about February 10, 2010, Respondent certified under penalty of perjury
25 to the truthfulness of all statements, answers, and representations in the application. The Board
26 denied the application on May 10, 2010.

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28 ///

1 "(c) A board may deny a license regulated by this code on the ground that the applicant
2 knowingly made a false statement of fact required to be revealed in the application for the
3 license."

4 6. Section 8649 of the Code states:

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

8 FIRST CAUSE FOR DENIAL OF APPLICATION
9 (Substantially Related Convictions)
10 (Bus. & Prof. Code § 480(a)(1))

11 7. Respondent's application for licensure as an applicator is subject to denial
12 under Code section 480(a)(1) in that he was convicted of crimes substantially related to the
13 qualifications, functions, or duties of an applicator. The circumstances are as follows:

14 a. On or about April 29, 1994, in the Superior Court of California, San Mateo
15 County, Case No. NM236159A, entitled *The People of the State of California v. Napoleon*
16 *Dowthard, Jr.*, Respondent was convicted by his plea of nolo contendere of violating Penal Code
17 section 242 (battery), a misdemeanor. Respondent was placed on court probation for two years,
18 upon terms and conditions, which included, but were not limited to: serving 60 days in county
19 jail that could be served in a residential treatment program; entering and completing at least 96
20 hours of domestic violence counseling; and having no contact with the victim D. G., except for
21 purposes of child visitation. The factual circumstances surrounding the conviction are that on or
22 about May 25, 1993, Respondent physically battered his ex-spouse D. G. On or about June 4,
23 1994, Respondent violated his probation by failing to surrender to serve time in county jail at the
24 designated time. On or about September 5, 1996, Respondent admitted to violating probation and
25 his probation was revoked. His probation was reinstated on the same terms and conditions as the
26 previous probation, except that he was placed on supervised probation rather than court probation.

27 b. On or about April 22, 1997, in Superior Court of California, San Mateo County,
28 Case No. SC040268A, entitled *The People of the State of California v. Napoleon Dowthard*,
Respondent was convicted by his plea of nolo contendere of violating Penal Code section 666

1 (petty theft w/ prior jail: specific offenses), a felony. Respondent's prior convictions were as
2 follows: (1) On or about July 13, 1990, in the Municipal Court of California, San Mateo County,
3 Case No. NM1988889, Respondent was convicted of violating Penal Code section 666; (2) on or
4 about July 13, 1990, in the Municipal Court of California, San Mateo County, Case No.
5 NM198394, Respondent was convicted of violating Penal Code section 666; and (3) on or about
6 January 7, 1985, in the Superior Court of California, San Mateo County, Case No. SC13994,
7 Respondent was convicted of violating Penal Code section 211 (robbery). Respondent was
8 admitted to supervised probation for three years upon terms and conditions, which included, but
9 were not limited to serving one year in county jail. On or about May 13, 1999, Respondent was
10 found to have violated his probation and was sentenced to be incarcerated in State Prison for three
11 years.

12 c. On or about May 13, 1999, in Superior Court of California, San Mateo County,
13 Case No. SC044790A, entitled *The People of the State of California v. Napoleon Dowthard, Jr.*,
14 Respondent was convicted by his plea of nolo contendere of violating Penal Code section 666
15 (petty theft w/ prior jail: specific offenses), a felony. Respondent's prior convictions included
16 those described in paragraph 7b above, and that on or about April 22, 1997, in the Superior Court
17 of California, San Mateo County, Case No. SC40268, Respondent was convicted of violating
18 Penal Code section 666. On or about May 13, 1999, Respondent was sentenced to be
19 incarcerated in State Prison for 32 months, to be served concurrently with Case No. SC40268(A).

20 d. On or about July 29, 2002, in the Superior Court of California, County of Santa
21 Clara, Case No. BB155207, entitled *The People of the State of California v. Napoleon Dowthard,*
22 *Jr.*, Respondent was convicted by his plea of violating Health and Safety Code section 11364
23 (possession of controlled substance paraphernalia), a misdemeanor, Penal Code section 245(c)
24 (assault on peace officer with deadly weapon or by means likely to cause great bodily injured),
25 and Vehicle Code sections 2800.2(a) (reckless driving in commission of fleeing and attempting to
26 elude a peace officer in violation of Vehicle Code section 2800.1), both felonies, and Vehicle
27 Code section 20002(a) (hit and run: property damage), a misdemeanor. Respondent was
28 sentenced to be incarcerated in State Prison for six years.

