

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

In the Matter of the Statement of Issues
Against:

JARDIEL PARAS GONZALES,

Respondent.

CASE No. 2011-28

OAH No. 2011020654

DECISION

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

This Decision shall become effective January 8, 2012.

IT IS SO ORDERED.

Date: December 9, 2011



President
Structural Pest Control Board

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DEPARTMENT OF PESTICIDE REGULATIONS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

JARDIEL PARAS GONZALES,

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PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge, Office of Administrative Hearings, in San Diego, California on October 12, 2011.

Deputy Attorney General William A. Buess represented complainant.

Jardiel P. Gonzales (respondent) represented himself.

Oral and documentary evidence was presented and the matter was submitted on October 12, 2011.

FACTUAL FINDINGS

1. The Statement of Issues was filed by Kelli Okuma (complainant) while acting in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of Pesticide Regulation, State of California (the department).

2. On March 15, 2010, respondent filed an application with the department for an Applicator license. On August 9, 2010, the department denied respondent's application based upon respondent's history of criminal convictions. Respondent appealed the denial and the instant hearing ensued.

3. On July 3, 1997, respondent was convicted in San Bernardino Superior Court, Case number FCH 02347, after a nolo contendere plea, of one count of

violating California Vehicle Code section 664/10851, subdivision (a) (attempted unlawful driving or taking of a motor vehicle), a felony crime substantially related to the qualifications, functions and duties of a licentiate.¹

4. On November 17, 1997, respondent was convicted in the San Bernardino Superior Court, Case number FWV 14016, after pleading guilty, of one count of violating California Health and Safety Code section 11377 (possession of methamphetamine), a felony crime (possession of a controlled substance on prison grounds) which, pursuant to California Code of Regulations, title 16, section 1937.1, is substantially related to the qualifications, functions and duties of a licentiate.

5. On April 11, 2001, respondent was convicted in the Riverside Superior Court, Case number RIF 092172, after pleading guilty, of one count of violating California Penal Code section 273.5, subdivision (a) (infliction of corporal injury on cohabitant), a felony crime which, pursuant to California Code of Regulations, title 16, section 1937.1, is substantially related to the qualifications, functions and duties of a licentiate.

6. On July 26, 2006, respondent was convicted in the Superior Court, County of Los Angeles, Case number KA 075841, after pleading nolo contendere, of one count of violating California Health and Safety Code section 11377, subdivision (a) (possession of a narcotic/controlled substance), a felony crime, and one count of violating California Health and Safety Code section 11364, subdivision (a) (possession of drug paraphernalia), a misdemeanor crime. Both convictions are for crimes which, pursuant to California Code of Regulations, title 16, section 1937.1, are substantially related to the qualifications, functions and duties of a licentiate.

7. On February 13, 2006, respondent was arrested and charged with violating California Penal Code section 148.9 (false identification to a peace officer) and for violating California Health and Safety Code section 11550, subdivision (a) (under the influence of a controlled substance). Although the statement of issues

¹ California Code of Regulations, title 16, section 1937.1 states, in pertinent part: “. . . a crime or act shall be considered to be substantially related to the qualifications, functions, or duties of a licensee or registered company under chapter 14 of Division 3 of the code if to a substantial degree it evidences present or potential unfitness of such licensee or registered company to perform the functions authorized by the license or company registration in a manner consistent with the public health, safety, and welfare.”

alleges that “there is no final disposition of this criminal matter,”² the evidence established that the matter has been resolved.

8. Respondent has a lengthy history of criminal conduct. Respondent testified that until January 22, 2007, he was addicted to methamphetamine and his need for money to obtain methamphetamine and other drugs led to his criminal/antisocial conduct/acts. According to respondent he has been “in and out and in and out” of prison. Not only did he suffer the criminal convictions set forth in Findings 3, 4, 5, and 6, and the arrest set forth in Finding 7, he was also found to have violated probation on several separate occasions.

9. It became evident during the hearing that respondent had been associating with an unsavory group of “friends” up until 2007. Respondent and his friends engaged in drug use, drug abuse, and drug seeking criminal conduct, including theft and violence, which accompany the drug culture. Respondent testified that he has been clean and sober since January 22, 2007, two years ago he married his current wife, he has children to care for, and he no longer associates with his former, Pre-2007, miscreant “friends.” In other words, respondent is a different person now than the person reflected in the court documents pertaining to his criminal past. Respondent testified that he is now 33 years old and is intent on turning his past life around and on becoming a productive member of society. The following factual findings are focused on respondent’s metamorphosis.

10. Respondent’s road to recovery began after his release from Chino State Prison in 2006. Respondent was found in possession of drugs while on parole. As a consequence of this parole violation respondent elected to enter the inpatient drug and alcohol treatment program at Chabad Residential Treatment Center on January 22, 2007, (his sobriety date). Respondent completed the six month inpatient treatment program on July 21, 2007, and transitioned to the treatment center’s Sober Living facility, located next door to the Chabad Treatment Center. One of Chabad’s licensed therapists wrote a July 22, 2010, letter in support of respondent’s desire to become licensed as a pest control applicator. In the letter, the therapist stated, in pertinent part:

“This letter is written to inform you that [respondent] entered treatment at Chabad Residential Treatment

² Complainant is correct that in the documents and during the pleading stages of these proceedings there was, and is, no record of disposition; however, respondent testified credibly during the instant hearing that the matter has been resolved. It was consolidated with respondent’s other criminal matters and respondent was committed to state prison for a period of three years. This testimony was corroborated by the fact that respondent presented undisputed evidence (his parole discharge card) that, on November 7, 2010, respondent was “discharged from the jurisdiction of the California Department of Corrections and Rehabilitation on all existing felony commitments as of this date.” (Exh. 44)

Center on January 22nd, 2007 and successfully completed our 6 month inpatient Program on July 21st, 2007. He was a good client i.e. (followed all rules & regulations, tested clean on all weekly Urinalysis tests, and was an active participant in weekly Individual & daily Group Therapy sessions as well as for daily Recovery Groups). [Respondent] appeared motivated and invested in his recovery and in the 12 Step program when he completed treatment.

* * *

“Chabad Residential Treatment Center’s program is a three-month to six-month residential program for male substance abusers. It is a highly structured program with twenty-four hour supervision. The program is based on individual and group psychotherapy with emphasis on Twelve-Step recovery meetings and workshops.” (Exh. 39)

11. Respondent no longer associates with his former associates. He married his wife two years ago and she has been a stabilizing force in his life. His wife testified during the hearing. She testified that her history is vastly different from that of respondent; she came from “completely different roots, no drugs or alcohol.” Respondent’s wife is a self-described “church girl” and respondent has “changed a lot since we’ve met. He knows what he wants now.” Until they were married respondent did not know what “an actual home was.” Now he does. According to his wife, respondent has had a rough life but “he’s matured a lot and he’s getting there.” Respondent no longer uses drugs and his wife would be devastated if respondent relapsed. A relapse would “break my heart and I don’t see him going back.” When asked by the court why she believed respondent has been rehabilitated, his wife answered, “gut feeling, instinct. When you know you know and you then just trust a person.”

12. Respondent is 33 years old and has matured to the point where likelihood of recidivism is unlikely. He is committed to his marriage and his children and he is ready to move on with his life in a positive, productive direction. Respondent continues to visit the Chabad Treatment Center (in fact he was there two weeks prior to the instant hearing), he participates in regular Alcoholic Anonymous (AA) and Narcotics Anonymous (NA) meetings, he attends church on a regular basis, respondent and his wife attend “communication counseling” sessions, respondent has, as a past condition of probation, completed a court ordered anger management program, and his support system consists of his wife and children, his church, and his brothers. Respondent recognizes the need to associate with stable, law abiding people. As respondent phrased it, “you are who you hang around with, I just stay with

my family.” Respondent talked with his former parole agent a couple weeks prior to the instant hearing and the agent wanted to know if respondent needed any other paperwork to help in his quest for a license. Respondent is “confident” in himself now. Respondent testified that “The first thing that comes to my mind is my family and bettering my life, I’m just trying to move forward.”

13. Respondent’s demeanor during the hearing reflected the sincerity of his testimony that he has been rehabilitated. His actions outside the hearing also reflect respondent’s new, law-abiding attitude. The Sunday before the instant hearing respondent caught two men breaking into an upstairs apartment in the apartment complex where respondent and his family live. Respondent apprehended the suspects and detained them until the police arrived.

14. Respondent currently works on an “on call” basis doing handyman/construction work for LA Bugs. He last performed carpentry work for LA Bugs a few weeks prior to the instant hearing. LA Bugs is a small registered pest control business. The owner and operator of LA Bugs knows about respondent’s criminal history and he is willing to hire respondent as an applicator if, and when, he is licensed to work in that capacity. LA Bugs sends crews of two or three applicators to perform each job, so respondent would not be alone on any job site.

15. Respondent scored an 83 on the test necessary for becoming an applicator.

LEGAL CONCLUSIONS

1. Cause for denial of respondent’s application exists pursuant to California Business and Professions Code section 480, subdivision (a)(1), because, as set forth in Findings 3, 4, 5, and 6, respondent was convicted of felony crimes which are substantially related to the qualifications, functions and duties of a licentiate pursuant to California Code of Regulations, title 16, section 1937.1.

2. Cause for denial of respondent’s application exists pursuant to California Business and Professions Code section 480, subdivision (a)(3), and 8649, because respondent’s convictions were for acts which, if committed by a licensee, would be grounds for suspension or revocation of a license.

3. Cause exists to prohibit respondent from serving as an officer, director, associate, partner, qualifying manger, or responsible managing employee of a registered company, and the employment, election or association of such person by a registered company based on respondent’s criminal background and history.

4. Respondent has been clean and sober since January 22, 2007, for almost five years, and has no record of criminal convictions since his sobriety date.

Respondent and his wife testified that respondent is a different person than the person reflected in the criminal conviction court documents. Respondent has disassociated with his former friends, he has gotten married to a stable, well-grounded woman who is a cornerstone to respondent's recovery, and he has changed his life around. Respondent's application for licensure stands or falls on whether enough evidence of rehabilitation was presented to lead to the conclusion that respondent's licensure would not be adverse to the public health, welfare, or safety. It is a judgment call. As the California Supreme Court noted in *Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058, rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration.

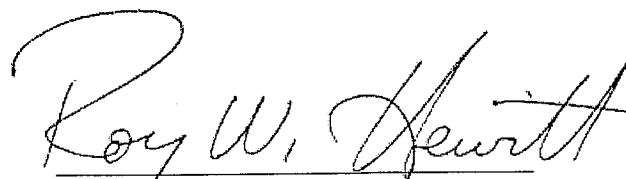
Respondent's demeanor during the hearing and the quality of his testimony, and that of his wife, provided clear and convincing evidence that respondent is rehabilitated to the point where issuance of an applicator license would not be adverse to the public health, safety or welfare.

ORDER

1. The department's denial of respondent's application for an applicator license is reversed. Respondent's application is accepted and, provided he meets all licensure requirements, he shall be issued an applicator license.

2. The department's request for an order prohibiting respondent from serving as an officer, director, associate, partner, qualifying manger, or responsible managing employee of a registered company, and the employment, election or association of such person by a registered company is denied.

Dated: October 27, 2011.



ROY W. HEWITT

Administrative Law Judge

Office of Administrative Hearings

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FILED

Date 1/12/11 By Kelli Okuma

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

11 In the Matter of the Statement of Issues
12 Against:
13 **JARDIEL PARAS GONZALES, AKA**
14 **JARDIEL P. GONZALES, AKA**
JARDIEL GONZALES
15 1631 West Pampas Lane, #21
Anaheim, CA 92802
16 Respondent.

Case No. 2011-28

STATEMENT OF ISSUES

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about March 15, 2010, the Structural Pest Control Board, Department of
24 Pesticide Regulation received an application for an Applicator from Jardiel Gonzales
25 (Respondent). On or about March 2, 2010, Jardiel Gonzales certified under penalty of perjury to
26 the truthfulness of all statements, answers, and representations in the application. The Board
27 denied the application on August 9, 2010.

28 ///

JURISDICTION

1
2 3. This Statement of Issues is brought before the Structural Pest Control Board (Board),
3 Department of Pesticide Regulation, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 480 of the Code states:

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

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

14 "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
15 benefit himself or herself or another, or substantially injure another.

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

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

21 "(b) Notwithstanding any other provision of this code, no person shall be denied a license
22 solely on the basis that he or she has been convicted of a felony if he or she has obtained a
23 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
24 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
25 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
26 the rehabilitation of a person when considering the denial of a license under subdivision (a) of
27 Section 482."

28 5. Section 8568 of the Code states:

1 "After a hearing the board may deny a license or a company registration unless the
2 applicant makes a showing satisfactory to the board that the applicant, if an individual, has not, or
3 if the applicant is a company applying for a company registration, that its manager and each of its
4 officers, directors, employees, members and partners have not:

5 "(a) Committed any act or crime constituting grounds for denial of licensure under Section
6 480.

7 6. Section 8649 of the Code states:

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

11 7. Section 8654 of the Code states:

12 "Any individual who has been denied a license of any of the reasons specified in Section
13 8568, or who has had his or her license revoked, or whose license is under suspension, or who has
14 failed to renew his or her license while it was under suspension, or who has been a member,
15 officer, director, associate, qualifying manager, or responsible managing employee of any
16 partnership, corporation, firm, or association whose application for a company registration has
17 been denied for any of the reasons specified in Section 8568, or whose company registration has
18 been revoked as a result of disciplinary action, or whose company registration is under
19 suspension, and while acting as such member, officer, director, associate, qualifying manager, or
20 responsible managing employee had knowledge of or participated in any of the prohibited acts for
21 which the license or registration was denied, suspended or revoked, shall be prohibited from
22 serving as an officer, director, associate, partner, qualifying manager, or responsible managing
23 employee of a registered company, and the employment, election or association of such person by
24 a registered company is a ground for disciplinary action."

25 REGULATORY PROVISION

26 8. California Code of Regulations, Title 16, section 1937.1 states:

27 "For the purposes of denial, suspension or revocation of a license or company registration
28 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be

1 considered to be substantially related to the qualifications, functions or duties of a licensee or
2 registered company under chapter 14 of Division 3 of the code if to a substantial degree it
3 evidences present or potential unfitness of such licensee or registered company to perform the
4 functions authorized by the license or company registration in a manner consistent with the public
5 health, safety, or welfare. Such crimes or acts shall include, but not be limited to, the following:

6 (a) Any violation of the provisions of Chapter 14 of Division 3 of the code.

7 (b) Commission of any of the following in connection with the practice of structural pest
8 control:

9 (1) Fiscal dishonesty

10 (2) Fraud

11 (3) Theft

12 (4) Violations relating to the misuse of pesticides.”

13 **FIRST CAUSE FOR DENIAL OF APPLICATION**

14 (Four Substantially Related Criminal Convictions)

15 9. Respondent's application is subject to denial under sections 8568(a), 8649, 480(a)(1)
16 and California Code of Regulations Title 16, section 1937.1, in that Respondent was convicted of
17 the following crimes:

18 a. On or about July 3, 1997, in a criminal proceeding entitled *People of the State of*
19 *California v. Jardiel Gonzales, et al*, in San Bernardino Superior Court, Case Number FCH
20 02347, Respondent pleaded guilty, and on or about July 31, 1997, judgment was entered against
21 Respondent for violation of California Vehicle Code Sections 664/10851(a), taking a vehicle
22 without the owner's consent/vehicle theft.

23 b. On or about November 17, 1997, in a criminal proceeding entitled *People of the State*
24 *of California v. Jardiel P. Gonzales* in San Bernardino Superior Court, Case Number FWV 14016
25 entered a guilty plea and was convicted and sentenced on January 20, 1998, to violation of
26 Section 11377(a) of the Health and Safety Code, possession of a controlled substance.

27

28

1 c. On or about April 11, 2001, in a criminal proceeding entitled *People of the State of*
2 *California v. Jardies Paras Gonzales* in Riverside Superior Court, Case Number RIF 092172,
3 Respondent was convicted on a plea of guilty to one felony count of violation of Penal Code
4 section 273.5(a): Infliction of corporal injury on cohabitant.

5 d. On or about July 26, 2006, in a criminal proceeding entitled *People of the State of*
6 *California v. Jardiel Gonzales* in Los Angeles Superior Court, Case Number KA 075841,
7 Respondent was convicted by plea of nolo contendere in Health and Safety Code section 11377,
8 subdivision (a): Possession of a controlled substance and Health and Safety Code section 11364,
9 subdivision (a): Possession of drug paraphernalia.

10 SECOND CAUSE FOR DENIAL OF APPLICATION

11 (Acts Which if Done by a Licentiate Constitute Cause for Discipline)

12 10. Respondent's application is subject to denial pursuant to Code Sections 8568(a),
13 8649, 480(a)(3) and California Code of Regulations Title 16, section 1937.1, in that Respondent
14 committed acts which if done by a licentiate constitute cause for discipline as more fully set forth
15 in paragraph 9 and incorporated herein by reference.

16 DISCIPLINARY CONSIDERATIONS

17 11. Respondent's application is subject to denial pursuant to Code Sections 8568(a),
18 480(a)(2), (a)(3)(A) and (a)(3)(B), 8649 and California Code of Regulations Title 16, section
19 1937.1, in that Respondent committed acts which if done by a licentiate constitute cause for
20 discipline:

21 a. On or about February 13, 2006, Respondent was arrested and charged for violation of
22 Penal Code section 148.9, false identification of himself to a law enforcement officer, and
23 violation of Health and Safety Code section 11550(a) being under the influence of a controlled
24 substance in the matter *People of the State of California v. Jardies Paras Gonzales*, Riverside
25 Superior Court case number BAM 027904. There is no final disposition of this criminal matter.

26 12. Pursuant to Code Section 8654, if Respondent's application is denied, then
27 Respondent shall also be prohibited from serving as an officer, director, associate, partner,
28 qualifying manager or responsible managing employee of a registered company, and the

1 employment, election or association of Respondent by a registered company is a ground for
2 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. Denying the application of Respondent Jardiel Gonzales, also known as Jardiel P.
7 Gonzales and Jardiel Gonzales for an Applicator license;
8 2. Prohibiting Respondent Jardiel Gonzales, also known as Jardiel P. Gonzales and
9 Jardiel Gonzales from serving as an officer, director, associate, partner, qualifying manager or
10 responsible managing employee of any licensee; and
11 3. Taking such other and further action as deemed necessary and proper.

12 DATED: 1/12/11

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

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