

FILED

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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 **ABRAHAM NATHAN RUIZ**
14 **Applicator License Applicant**
15 **Respondent.**

Case No. 2013-23
STATEMENT OF ISSUES

16
17 Complainant alleges:

18 **PARTIES**

- 19 1. Susan Saylor (Complainant) brings this Statement of Issues solely in her official
20 capacity as the Interim Registrar/Executive Officer of the Structural Pest Control Board,
21 Department of Pesticide Regulation.
22 2. On or about April 27, 2012, the Structural Pest Control Board, Department of
23 Pesticide Regulation received an application for an Applicator License from Abraham Nathan
24 Ruiz (Respondent). On or about April 26, 2012, Abraham Nathan Ruiz certified under penalty of
25 perjury to the truthfulness of all statements, answers, and representations in the application. The
26 Board denied the application on July 18, 2012.

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JURISDICTION

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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 (Code) unless otherwise indicated.

5 4. Section 22 of the Code provides, in pertinent part, that "Board" as used in any
6 provisions of this Code, refers to the board in which the administration of the provision is vested,
7 and unless otherwise expressly provided, shall include "bureau," "commission," "committee,"
8 "department," "division," "examining committee," "program," and "agency."

9 5. Section 8623 of the Code states:

10 (a) Notwithstanding Section 8620 or any other provision of law, the board may
11 revoke, suspend, or deny at any time a license under this chapter on any of the
12 grounds for disciplinary action provided in this chapter. The proceedings under this
13 section shall be conducted in accordance with Chapter 5 (commencing with Section
11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall
14 have all the powers granted therein.

15 (b) The board may deny a license to an applicant on any of the grounds
16 specified in Section 480.

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STATUTORY PROVISIONS

18 6. Section 475 of the Code states:

19 (a) Notwithstanding any other provisions of this code, the provisions of this
20 division shall govern the denial of licenses on the grounds of:

21 (1) Knowingly making a false statement of material fact, or knowingly
22 omitting to state a material fact, in an application for a license.

23 (2) Conviction of a crime.

24 (3) Commission of any act involving dishonesty, fraud or deceit with the
25 intent to substantially benefit himself or another, or substantially injure another.

26 (4) Commission of any act which, if done by a licentiate of the business or
27 profession in question, would be grounds for suspension or revocation of license.

28 (b) Notwithstanding any other provisions of this code, the provisions of this
division shall govern the suspension and revocation of licenses on grounds specified
in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a
lack of good moral character or any similar ground relating to an applicant's
character, reputation, personality, or habits.

1 7. Section 480 of the Code states:

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

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

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

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

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

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

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

28 8. Section 482 of the Code states:

 Each board under the provisions of this code shall develop criteria to evaluate
the rehabilitation of a person when:

 (a) Considering the denial of a license by the board under Section 480; or

 (b) Considering suspension or revocation of a license under Section 490.

 Each board shall take into account all competent evidence of rehabilitation
furnished by the applicant or licensee.

 9. Section 493 of the Code states:

 Notwithstanding any other provision of law, in a proceeding conducted by a
board within the department pursuant to law to deny an application for a license or to
suspend or revoke a license or otherwise take disciplinary action against a person who
holds a license, upon the ground that the applicant or the licensee has been convicted
of a crime substantially related to the qualifications, functions, and duties of the

1 licensee in question, the record of conviction of the crime shall be conclusive
2 evidence of the fact that the conviction occurred, but only of that fact, and the board
3 may inquire into the circumstances surrounding the commission of the crime in order
4 to fix the degree of discipline or to determine if the conviction is substantially related
5 to the qualifications, functions, and duties of the licensee in question.

6 As used in this section, "license" includes "certificate," "permit," "authority,"
7 and "registration."

8 10. Section 8649 of the Code states:

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

13 11. Section 8655 of the Code states:

14 A plea or verdict of guilty or a conviction following a plea of nolo contendere
15 made to a charge substantially related to the qualifications, functions, and duties of a
16 structural pest control operator, field representative, applicator, or registered company
17 is deemed to be a conviction within the meaning of this article or Section 8568 of this
18 chapter. The board may order the license or registration suspended or revoked, or
19 may decline to issue a license, when the time for appeal has elapsed, or the judgment
20 of conviction has been affirmed on appeal or when an order granting probation is
21 made suspending the imposition of sentence, irrespective of a subsequent order under
22 the provisions of Section 1203.4 of the Penal Code allowing the individual or
23 registered company to withdraw a plea of guilty and to enter a plea of not guilty, or
24 setting aside the verdict of guilty, or dismissing the accusation, information or
25 indictment.

26 REGULATORY PROVISIONS

27 12. California Code of Regulations, title 16, section 1937.1 states:

28 For the purposes of denial, suspension or revocation of a license or company
registration pursuant to Division 1.5 (commencing with Section 475) of the code, 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,
or welfare. Such crimes or acts shall include, but not be limited to, the following:

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

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

(1) Fiscal dishonesty

(2) Fraud

1 (3) Theft

2 (4) Violations relating to the misuse of pesticides.

3 13. California Code of Regulations, title 16, section 1937.2 states:

4 (a) When considering the denial of a structural pest control license or company
5 registration under Section 480 of the Business and Professions Code, the board, in
6 evaluating the rehabilitation of the applicant and his or her or its present eligibility for
7 a license or company registration will consider the following criteria:

8 (1) The nature and severity of the act(s) or crime(s) under consideration as
9 grounds for denial.

10 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)
11 under consideration as grounds for denial which also could be considered as grounds
12 for denial under Section 480 of the Business and Professions Code.

13 (3) The time that has elapsed since commission of the act(s) or crime(s)
14 referred to in subdivision (1) or (2).

15 (4) The extent to which the applicant has complied with any terms of parole,
16 probation, restitution, or any other sanctions lawfully imposed against the applicant.

17 (5) Evidence, if any, of rehabilitation submitted by the applicant.

18 **FIRST CAUSE FOR DENIAL OF APPLICATION**

19 **(November 16, 2000 Criminal Conviction for Petty Theft on September 3, 2000)**

20 14. Respondent's application is subject to denial under sections 480, subdivisions
21 (a)(1) and (a)(3)(A), and 8655 of the Code in that he was convicted of a crime that is substantially
22 related to the qualifications, duties, and functions of a licensed applicator. Said conviction would
23 be a ground for discipline under section 8649 of the Code. The circumstances are as follows:

24 a. On or about November 16, 2000, in a criminal proceeding entitled *People*
25 *of the State of California v. Abraham Nathan Ruiz*, in San Diego County Superior Court, case
26 number C207816B, Respondent was convicted on his plea of no contest to violating Penal Code
27 section 488, petty theft, a misdemeanor.

28 b. As a result of the conviction, on or about November 16, 2000, Respondent
was granted three years formal probation, and ordered to serve three days in jail, with credit for
three days. Respondent was further ordered to pay fines, fees, and restitution, and comply with
probation terms.

1 c. The facts that led to the conviction are that on or about September 3, 2000,
2 Respondent committed petty theft at a La Mesa shopping mall. Respondent stated in his plea
3 agreement "(I) took the items from a store with no intention of paying [illegible]."

4 **SECOND CAUSE FOR DENIAL OF APPLICATION**

5 **(April 16, 2001 Criminal Conviction for 2nd Degree Burglary on January 23, 2001)**

6 15. Respondent's application is subject to denial under sections 480, subdivisions
7 (a)(1) and (a)(3)(A), and 8655 of the Code in that he was convicted of a crime that is substantially
8 related to the qualifications, duties, and functions of a licensed applicator. Said convictions
9 would be a ground for discipline under section 8649 of the Code. The circumstances are as
10 follows:

11 a. On or about April 16, 2001, in a criminal proceeding entitled *People of the*
12 *State of California v. Abraham Ruiz*, in San Diego County Superior Court, case number
13 SCD157748, Respondent was convicted on his plea of guilty to violating Penal Code section 459,
14 commercial burglary, a felony. As a condition of the plea agreement, Respondent admitted that
15 he had been convicted as a juvenile of violating Penal Code section 211, robbery, on June 29,
16 2000, in San Diego County Superior court case number M0190145. Said conviction was a strike
17 prior within the meaning of Penal Code section 667, subdivision (b)(1). The court dismissed
18 additional counts of burglary (Pen. Code, § 459), passing fraudulent checks (Pen. Code, § 476),
19 and possession of fraudulent checks (Pen. Code, § 475(c)), pursuant to the plea agreement.

20 b. As a result of the conviction, on or about May 14, 2001, Respondent was
21 sentenced to 365 days in jail, with credit for 112 days, and granted three years formal probation.
22 Respondent was further ordered to pay fees, fines, and restitution, and attend an Anti-Theft Class.
23 The court struck the strike prior admission. As a result of the convictions in paragraphs 16 and
24 17, below, Respondent's probation in this matter was revoked and he was sentenced to the mid-
25 term of two years in state prison, to be served concurrent with the sentences imposed below.

26 c. The facts that led to the conviction, as stated in Respondent's plea
27 agreement are: "I entered a bank with the intent to cash a fraudulent check. I was convicted of a
28 PC211 as a juvenile."

1 THIRD CAUSE FOR DENIAL OF APPLICATION

2 (March 30, 2004 Criminal Conviction for Assault With a Deadly Weapon on March 13, 2004)

3 16. Respondent's application is subject to denial under sections 480, subdivisions
4 (a)(1) and (a)(3)(A), and 8655 of the Code in that he was convicted of a crime that is substantially
5 related to the qualifications, duties, and functions of a licensed applicator. Said convictions
6 would be a ground for discipline under section 8649 of the Code. The circumstances are as
7 follows:

8 a. On or about March 30, 2004, in a criminal proceeding entitled *People of*
9 *the State of California v. Abraham Nathan Ruiz*, in San Diego County Superior Court, case
10 number CD181294, Respondent was convicted on his plea of guilty to violating Penal Code
11 section 245, subdivision (a)(1), assault with a deadly weapon with force likely to produce great
12 bodily injury, a felony. Respondent admitted the special allegations that (1) he personally used a
13 deadly weapon, to wit, a knife, in the commission of the offense, within the meaning of Penal
14 Code section 1192.7, subdivision (c)(23); and (2) at the time the felony offense was committed,
15 he was released on bail pending final judgment on an earlier felony offense, within the meaning
16 of Penal Code section 12022.1, subdivision (b). Respondent admitted that he had been convicted
17 as a juvenile of violating Penal Code section 211, robbery, on June 29, 2000, in San Diego
18 County Superior court case number M0190145. Said conviction was a strike prior within the
19 meaning of Penal Code section 667, subdivision (b)(1).

20 b. As a result of the conviction, on or about June 7, 2004, the court struck the
21 strike prior admission. Respondent was sentenced to the low term of two years in state prison,
22 with credit for 128 days, to be served consecutively to the sentenced imposed in case number
23 SCD178206 (paragraph 17, below), for a total of four years.

24 c. The facts that led to the conviction, as stated in Respondent's plea
25 agreement: "I assaulted another w/a deadly weapon and means of force likely to produce great
26 bodily injury."

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FOURTH CAUSE FOR DENIAL OF APPLICATION

(April 22, 2004 Criminal Convictions for Residential Burglary on October 6, 2003)

17. Respondent's application is subject to denial under sections 480, subdivisions (a)(1) and (a)(3)(A), and 8655 of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a licensed applicator. Said convictions would be a ground for discipline under section 8649 of the Code. The circumstances are as follows:

a. On or about April 22, 2004, in a criminal proceeding entitled *People of the State of California v. Abraham Ruiz, et al.*, in San Diego County Superior Court, case number CD178206, Respondent was convicted on his plea of guilty to two counts of violating Penal Code section 459, residential burglary, a felony. The counts were enhanced in that the acts were burglaries of an inhabited dwelling, within the meaning of Penal Code section 460. As a condition of the plea agreement, Respondent admitted that he had been convicted as a juvenile of violating Penal Code section 211, robbery, on June 29, 2000, in San Diego County Superior court case number M0190145. Said conviction was a strike prior within the meaning of Penal Code section 667, subdivision (b)(1).

b. As a result of the conviction, on or about June 7, 2004, Respondent was sentenced to the low term of two years in state prison, with credit for 159 days, to be served consecutively to the sentenced imposed in case number SCD181294 (paragraph 16, above), for a total of four years. The court struck the strike prior admission.

c. The facts that led to the conviction, as stated in Respondent's plea agreement: "On October 6, 2003 I aided and participated in two residential burglaries by acting as the lookout while others entered two separate houses with the intent to steal. The two houses were residential houses pursuant to Penal Code section 460/inhabited dwelling."

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1 FIFTH CAUSE FOR DENIAL OF APPLICATION

2 (Acts Involving Dishonesty, Fraud or Deceit)

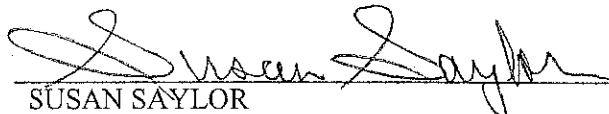
3 18. Respondent's application is subject to denial under section 480, subdivision (a)(2)
4 of the Code in that he committed acts involving dishonesty, fraud, or deceit with the intent to
5 substantially benefit himself as follows: (1) petty theft on September 3, 2000; (2) second degree
6 commercial burglary on January 3, 2001; and (3) two residential burglaries on October 6, 2003.

7 **PRAYER**

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

- 10 1. Denying the application of Abraham Nathan Ruiz for an Applicator License;
11 2. Taking such other and further action as deemed necessary and proper.

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14 DATED: 11/8/12



SUSAN SAYLOR
Interim Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant

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