

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

In the Matter of the Statement of Issues
Against:

RYAN MICHAEL BARGER,

Respondent.

Case No. 2014-25

OAH No. 2013110225

DECISION

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

The Decision shall become effective on August 16, 2014.

IT IS SO ORDERED July 17, 2014.



FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

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PROPOSED DECISION

Administrative Law Judge Angela Villegas, State of California, Office of Administrative Hearings, heard this matter on May 15, 2014, in Los Angeles, California.

William D. Gardner, Deputy Attorney General, represented Complainant.

Respondent was present and represented himself.

Evidence was received, and the matter was submitted for decision on May 15, 2014.

REDACTION OF PERSONAL IDENTIFYING INFORMATION

During the hearing, it was discovered that Exhibit 3 contained unredacted personal identifying numbers of Respondent. These references were redacted from the Office of Administrative Hearings' file.

FACTUAL FINDINGS

1. Complainant Susan Saylor, Registrar/Executive Officer of the Structural Pest Control Board (Board), Department of Consumer Affairs, filed the Statement of Issues in her official capacity.
2. On April 24, 2012, Respondent applied (Application) to the Board for a license to act as an applicator. On May 3, 2013, the Bureau denied the Application and notified Respondent of his right to a hearing. On May 10, 2013, Respondent requested a hearing. This proceeding followed.

3. Between May 1997 and February 2010, Respondent sustained four misdemeanor convictions, as follows.

(a) On May 16, 1997, in the Superior Court of California, County of Kern,¹ case number LF003761A, Respondent was convicted on his nolo contendere plea of violating Penal Code section 496, subdivision (a) (knowing receipt of stolen property). (Conviction 1.)² The court placed Respondent on three years' court probation, with conditions including 12 days in county jail and payment of fines and fees. Respondent successfully completed his probation. Conviction 1 stemmed from Respondent's storage in his residence of items, including a police scanner, that had been stolen by a friend of his.

(b) On November 24, 1997, in case number BM551764A, Respondent was convicted on his nolo contendere plea of violating Penal Code section 496, subdivision (a) (knowing receipt of stolen property) (two counts). (Collectively, Conviction 2.) The court placed Respondent on three years' court probation and ordered him to serve 90 days in county jail. Respondent successfully completed his probation. Conviction 2 arose from Respondent's purchase of a stolen "three-wheeler" (Respondent's description) dirt bike. The evidence did not disclose the basis for the second count.

(c) On April 3, 2008, in case number BM727713A, Respondent was convicted on his nolo contendere plea of violating Vehicle Code section 23103.5, subdivision (a) (reckless driving involving consumption of alcohol). (Conviction 3.) The court placed Respondent on three years' court probation, and required him to serve two days in county jail, attend a three-month alcohol education program, attend a victim impact panel, and pay fines and fees. Respondent successfully completed his probation in connection with Conviction 3. Conviction 3 occurred because Respondent drove immediately after consuming a beer. Officers pulled him over "because of [his] license plate" (Exhibit 2), and suspected him of being under the influence of alcohol, which, to some degree, he was. The evidence did not disclose Respondent's exact blood alcohol concentration.

(d) On February 22, 2010, in case number BM764918A, Respondent was convicted on his nolo contendere plea of violating Penal Code sections 460, subdivision (b) (second-degree burglary)³ (two counts), and 488 (petty theft). (Collectively, Conviction 4.)

¹ All of Respondent's convictions were entered in the Superior Court of California County of Kern. Further references will cite case numbers only.

² The Statement of Issues (para. 7(d)) alleges the date of Conviction 1 as May 15, 1997, but court records (Exhibit 7) reveal the actual date to have been May 16, 1997.

³ The Statement of Issues (para. 7(a)) describes a violation of Penal Code section 460, subdivision (b), as "receiving known stolen property[.]" In actuality, Penal Code section 460, subdivision (b), defines second-degree burglary, and the evidence at the hearing established that Respondent's conviction under Penal Code section 460, subdivision (b), was indeed for burglary.

The court placed Respondent on three years' court probation and required him to serve 20 days in county jail and pay fines and fees. Respondent successfully completed his probation in connection with Conviction 4. Conviction 4 stemmed from a January 5, 2010 shoplifting incident, in which Respondent went into a Target store and stole a camera, and an earlier incident in which he entered the same store and stole a Garmin GPS navigation device. In describing the basis for Conviction 4 at the hearing and in written communications with the Board (Exhibit 2), Respondent noted only the camera and omitted mention of the GPS unit. The evidence did not disclose whether Respondent intentionally understated his conduct, but his demeanor appeared sincere and unguarded, and did not suggest any intent to conceal. On the contrary, Respondent appeared embarrassed by his criminal behavior. Respondent acknowledged that he had stolen the merchandise with the intent of reselling it.

4. Respondent's Application disclosed the existence of "a felony or misdemeanor other than minor traffic infractions" (Exhibit 2) in response to question 11, but Respondent initially provided details only about Conviction 4 (*id.*), and in that initial disclosure, he again mentioned only the camera, not the GPS unit. It was not until April 29, 2013—almost a year after Respondent submitted his Application—that he provided a statement describing all four convictions. (*Id.*)

5. Respondent, now 39 years old, explained that his criminal behavior stemmed from a longstanding methamphetamine addiction, which he feels he has now overcome. He has not used methamphetamine since 2010, after the Target shoplifting incidents, and has had no trouble with the law since then. Respondent understands his criminal behavior was wrong, and he regrets the behavior and the drug use that led to it. He is no longer on probation for any offense and owes no money in connection with any of his convictions.

6. Respondent and his employer, who is also a friend of Respondent's family and a co-parishioner in his church, both testified credibly as to Respondent's progress in turning his life around, and his present reliability and trustworthiness. On the other hand, Respondent acknowledged that he has been able to stop using methamphetamine in the past, only to be drawn back to it. He feels confident that will not happen again, however, because he has been through an intensive rehabilitation program, continues to participate in Alcoholics Anonymous and Narcotics Anonymous, and also participated in a recovery program his church used to offer. Respondent has recently married a woman whom he also credits for helping to keep him on the right path, and the couple is currently expecting a baby. Respondent regularly attends The Rock Church, where his father is Senior Pastor, and Respondent's father submitted a letter vouching for Respondent's character and personal growth in recent years. Respondent's employer also offered enthusiastic support for Respondent, not only in the form of testimony, but also in a letter pronouncing his "absolute confidence" in Respondent, and stating, "To risk my reputation and liability is not even a concern to me, especially due to the length of time [Respondent] has been removed from his

past behavior.” (Exhibit A.) If Respondent were to become a licensed applicator, he would continue working for this employer, but his job duties would involve licensed activity, which they currently do not.

LEGAL CONCLUSIONS

1. Cause exists to deny Respondent’s Application on grounds of his criminal convictions. (Factual Finding 3.) (Bus. & Prof. Code §§ 480, subd. (a)(1); 8568, subd. (a).) Respondent’s convictions, individually and taken together, are substantially related to the qualifications, functions, and duties of a licensed applicator because, individually and taken together, they “evidence[] present or potential unfitness of such licensee . . . to perform the functions authorized by the license . . . in a manner consistent with the public health, safety, or welfare.” (Cal.Code Regs., tit. 16 (Regulation), § 1937.1.)

2. Further cause exists to deny Respondent’s Application on grounds of his dishonest acts: namely, Convictions 1 (for receiving stolen property), 2 (same), and 4 (for burglary and theft). (Factual Finding 3.) (Bus. & Prof. Code §§ 480, subd. (a)(2); 8568, subd. (a).)

3. Despite Respondent’s lengthy history of criminal behavior (Factual Finding 3) (Regulation §§ 1937.2, subd. (a)(1), and 1937.11 (incorporating “A Manual of Disciplinary Guidelines and Model Disciplinary Orders’ [Rev. 2010]” (Guidelines)); Guidelines at p. 8, (4), (7), and (10)), his progress toward rehabilitation, while not sufficient to warrant unfettered licensure as an applicator, is sufficient to merit probationary licensure.

(a) Respondent’s criminal history is aggravated to a degree by the fact that much of it involved dishonest behavior and was undertaken to benefit Respondent economically: i.e., to support his drug habit. (Factual Findings 3, 5, and 6.) (Regulation § 1937.2, subd. (a)(1); Guideline at p. 8, (1), (8), and (9).) Also in aggravation were Respondent’s less-than-complete initial disclosure of his convictions, and his inaccurate recounting of the conduct leading to Conviction 4. (Factual Findings 3 and 4). (Regulation § 1937.2, subd. (a)(2).) Likewise, although Convictions 1 and 2 are relatively remote in time, having occurred 17 years ago, Convictions 3 and 4 are much more recent, having occurred, respectively, six and four years ago (Factual Finding 3) (Regulation § 1937.2, subd. (a)(3)), bespeaking a very long period of irresponsibility and troubled behavior. (Factual Findings 3, 5, and 6.)

(b) Notwithstanding these factors in aggravation and despite Respondent’s history of instability, he managed to complete all of his criminal probation without violation, and he has not re-offended since Conviction 4. (Factual Findings 3, 5, and 6.) (Regulation § 1937.2, subd. (a)(4); Guidelines at p. 8, (6) and (11).) Moreover, Respondent convincingly showed continuing progress in his personal growth. (Factual Findings 5 and 6.) (Regulation § 1937.2, subd. (a)(5).) He appeared sincere in his contrition and genuinely committed to leaving behind his old life of crime and drug abuse. (Factual Findings 3, 5, and 6.)

(Regulation § 1937.2, subd. (a)(5).) He continues to participate in substance-abuse recovery in the form of Alcoholics Anonymous and Narcotics Anonymous, and has developed personal relationships that foster his recovery and demand that he conduct himself responsibly. (Factual Findings 5 and 6.) (Regulation § 1937.2, subd. (a)(5); Guidelines at p. 8, (5).) Moreover, Respondent showed that he has earned the trust of others, particularly his employer, through the efforts he has made to improve himself. (Factual Finding 6.) In short, although Respondent's history of criminality and dishonesty are of serious concern, he showed sufficient progress in moving away from that history to merit the opportunity to prove himself through a period of probationary licensure.

ORDER

Respondent's application for a license to act as an applicator is denied. Provided, however, Respondent shall be issued a probationary license for a period of three years, on the following terms and conditions.

1. Obey All Laws. Respondent shall obey all laws, and all 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, he 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. 2014-25 and the terms, conditions, and restrictions imposed on him by the 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. 2014-25.

5. Completion of Probation. Upon successful completion of probation, Respondent shall be granted an unrestricted, non-probationary license.

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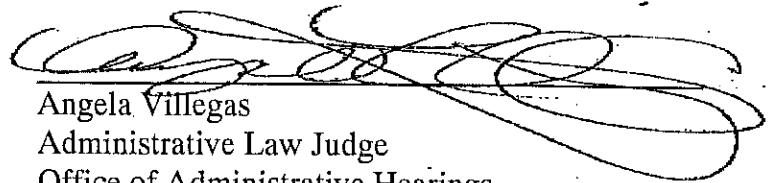
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6. Violation of Probation. Should Respondent violate any of these probation terms, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to 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.

Dated: May 20, 2014



Angela Villegas
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 WILLIAM D. GARDNER
Deputy Attorney General
4 State Bar No. 244817
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2114
6 Facsimile: (213) 897-2804

FILED

Date 10/9/13 BY *[Signature]*
[Signature]

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
12 Against:
13 **RYAN MICHAEL BARGER**
14 Respondent.

Case No. 2014-25

STATEMENT OF ISSUES

15
16 Complainant alleges:

17 **PARTIES**

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

21 2. On or about May 3, 2012, the Structural Pest Control Board (Board) received an
22 application for an applicator's license from Ryan Michael Barger (Respondent). On or about
23 April 24, 2012, Ryan Michael Barger certified under penalty of perjury to the truthfulness of all
24 statements, answers, and representations in the application. The Board denied the application on
25 May 3, 2013.

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JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 480, subdivision (a) states, in pertinent part:

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

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

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

.....

5. Section 8654 states:

"Any individual who has been denied a license for any of the reasons specified in Section 8568, or who has had his or her license revoked, or whose license is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a member, officer, director, associate, qualifying manager, or responsible managing employee of any partnership, corporation, firm, or association whose application for a company registration has been denied for any of the reasons specified in Section 8568, or whose company registration has been revoked as a result of disciplinary action, or whose company registration is under suspension, and while acting as such member, officer, director, associate, qualifying manager, or responsible managing employee had knowledge of or participated in any of the prohibited acts for which the license or registration was denied, suspended or revoked, shall be prohibited from

1 serving as an officer, director, associate, partner, qualifying manager, or responsible managing
2 employee of a registered company, and the employment, election or association of such person by
3 a registered company is a ground for disciplinary action."

4 **REGULATORY PROVISION**

5 6. California Code of Regulations, title 16, section 1937.1 states, in pertinent part:

6 "For the purposes of denial, suspension or revocation of a license or company registration
7 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be
8 considered to be substantially related to the qualifications, functions or duties of a licensee or
9 registered company under Chapter 14 of Division 3 of the code if to a substantial degree it
10 evidences present or potential unfitness of such licensee or registered company to perform the
11 functions authorized by the license or company registration in a manner consistent with the public
12 health, safety, or welfare."

13 **FIRST CAUSE FOR DENIAL**

14 **(Substantially-Related Criminal Conviction)**

15 7. Respondent's application is subject to denial under section 8568, in conjunction with
16 section 480, subdivision (a)(1), and California Code of Regulations, title 16, section 1937.1, in
17 that Respondent was convicted of a crime that to a substantial degree evidences a present or
18 potential unfitness for Respondent to perform the functions authorized by a licensed applicator in
19 a manner consistent with the public health, safety or welfare, as follows:

20 a. On or about February 22, 2010, in the criminal proceeding entitled *The People of the*
21 *State of California v. Ryan Michael Barger* (Super. Ct. Kern County, 2010, No. BM764918A)
22 Respondent entered pleas of nolo contendere and was convicted of two misdemeanor counts of
23 violating Penal Code section 460, subdivision (b) [receiving known stolen property] and one
24 misdemeanor count of Penal Code section 488 [petty theft]. Respondent was sentenced to 20
25 days in Kern County Jail and placed on probation for a period of three (3) years.

26 b. On or about April 3, 2008, in the criminal proceeding entitled *The People of the State*
27 *of California v. Ryan Michael Barger* (Super. Ct. Kern County, 2008, No. BM727713A)
28 Respondent entered a plea of nolo contendere and was convicted of one misdemeanor count of

1 violating Vehicle Code Section 23103.5 [wet reckless driving]. Respondent was sentenced to 2
2 days in Kern County Jail and placed on probation for a period of three (3) years.

3 c. On or about November 24, 1997, in the criminal proceeding entitled *The People of*
4 *the State of California v. Ryan Michael Barger* (Super. Ct. Kern County, 1997, No. BM551764A)
5 Respondent entered pleas of nolo contendere and was convicted of two misdemeanor counts of
6 violating Penal Code section 496, subdivision (a) [receiving known stolen property]. Respondent
7 was sentenced to 90 days in Kern County Jail and placed on probation for a period of three (3)
8 years.

9 d. On or about May 15, 1997, in the criminal proceeding entitled *The People of the State*
10 *of California v. Ryan Michael Barger* (Super. Ct. Kern County, 1997, No. LF003761)
11 Respondent entered a plea of nolo contendere and was convicted of one misdemeanor count of
12 violating Penal Code section 496, subdivision (a) [receiving known stolen property]. Respondent
13 was sentenced to 12 days in Kern County Jail and placed on probation for a period of three (3)
14 years.

15 SECOND CAUSE FOR DENIAL OF APPLICATION

16 (Acts Involving Dishonesty, Fraud or Deceit)

17 8. Respondent's application is subject to denial under section 8568, in conjunction with
18 section 480, subdivision (a)(2), in that Respondent committed acts involving dishonesty, fraud, or
19 deceit with the intent to substantially benefit himself, or substantially injure another.

20 Complainant refers to, and by this reference incorporates, the allegations set forth above in
21 paragraph 7, subparagraphs (a), (c) and (d), inclusive, as though set forth fully herein.

22 OTHER MATTERS

23 9. Pursuant to section 8654, if Respondent's Application for an applicator's license is
24 denied, Respondent shall be prohibited from serving as an officer, director, associate, partner,
25 qualifying manager, or responsible managing employee for any registered company, and any
26 registered company which employees, elects, or associates Respondent shall be subject to
27 disciplinary action.

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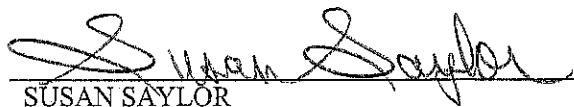
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PRAYER

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

1. Denying the application of Ryan Michael Barger for an Applicator License; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 10/9/13



SUSAN SAYLOR
Registrar/Executive Officer
Structural Pest Control Board
Department of Consumer Affairs
State of California
Complainant

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