

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

In the Matter of the Accusation Against:

JEFFREY L. SAGE

Magalia, California

Applicator License No. RA 42351, Br. 2 & 3

Respondent.

Case No: 2014-40

OAH No: 2014030472

DECISION AFTER RECONSIDERATION

This matter was heard before Administrative Law Judge (“ALJ”) Danette C. Brown, Office of Administrative Hearings, on November 3, 2014, in Sacramento, California.

Kristina T. Jansen, Deputy Attorney General, represented Susan Saylor, Registrar and Executive Officer (Complainant), Structural Pest Control Board (Board), Department of Consumer Affairs, State of California. Jeffrey L. Sage (Respondent) was present and represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on November 3, 2014. The ALJ found that Respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a structural pest control applicator and was subject to discipline. Pursuant to Business and Professions Code section 8620, the ALJ issued a proposed decision revoking Respondent’s Applicator license. The Board adopted the proposed decision on January 14, 2015.

On February 19, 2015, the Respondent filed a Petition for Reconsideration as to the adopted level of discipline and the petition was granted. The Board reconsidered the decision on July 22, 2015 in Ontario, California in closed session. Complainant and Respondent both submitted their arguments in writing and did not appear. After having received and considered arguments from both parties, the Board moves and enters this decision.

FACTUAL FINDINGS

1. Complainant made and filed the Accusation in her official capacity.
2. On June 17, 2004, the Board issued Applicator License No. RA 42351, in Branches 2 and 3 to respondent. The license will expire on June 30, 2016, unless renewed or revoked.

3. Complainant contends that disciplinary action should be taken against respondent's Applicator License as a result of his conviction for a criminal offense that is substantially related to the qualifications, functions and duties of a licensee. The facts and circumstances of his offense are described below.

Contracting Without a License Conviction

1. On October 21, 2013, in the Superior Court of California, County of Butte, Case No. SCR90525, respondent was convicted, upon a plea of nolo contendere, of violating Business and Professions Code section 7028, subdivision (a) (contracting without a license), a misdemeanor. Imposition of sentence was suspended, and respondent was placed on one year of probation. Respondent was ordered to pay court fees and fines totaling \$892.50.

2. The facts and circumstances underlying this conviction were that on August 29, 2012, the Contractors' State License Board's Statewide Investigative Fraud Team conducted an undercover sting operation at a single-family residence in Paradise, California (residence). The operation targeted suspected unlicensed contractors and suspended licensed contractors. On August 28, 2012, Board investigators posing as property owners made phone calls to suspects. They told the suspects they were interested in improvement work at the residence. Investigators scheduled appointments for suspects to appear at the sting location to review requested work and provide estimates for the cost to perform the work. On August 29, 2012, investigators met suspects at the sting location, and discussed the work and estimates. Suspects that were unlicensed were cited by investigators.

On August 28, 2012, a board investigator called respondent from a phone number listed on a flyer advertisement for Jeff's Home and Yard Service. The flyer did not contain a contractor's license number, and did not include the statement "not a licensed contractor," as required by the contractor's state licensing laws. The investigator spoke with respondent about being interested in a bid to install sod and a new sprinkler system at the residence. Respondent agreed to appear at the residence the following day to provide a bid.

The following day, respondent went to the residence and provided the investigator with his business card for "Top Notch Landscaping." The business card did not have the statement, "Not State Licensed." Respondent gave the investigator a verbal estimate of \$1,000 for labor and \$1,000 for materials. Respondent stated, "I totally want this job." The investigator asked who he should write the check to. Respondent stated, "Jeff Sage, I am the owner." Respondent was then led inside the residence and informed of the undercover sting operation. Respondent was cited for violation of Business and Professions Code sections 7028 (acting the capacity of a contractor without a license) and 7027.1 (advertising by unlicensed person), and released.

Respondent's Testimony

3. Respondent acknowledged that he was caught contracting without a license as part of the sting operation. He admitted that he offered to do landscaping work without a contractor's license. He still owes the court \$142.50 in court fees and fines. The remaining balance will be paid off on December 21, 2014.

4. The ALJ found that Respondent knew that he needed a contractor's license to do landscaping work and testified as such at the hearing. However, the Respondent and Complainant maintain the contrary in their respective written argument. Both Respondent and Complainant wrote in their written argument that Respondent did not testify that he knew of the legal licensure requirement for jobs over \$500. Rather, Respondent stated he was unaware of the legal requirement and would not have attempted to perform unlicensed work had he been aware of the need for licensure.

5. Respondent began working at Clark Pest Control in April 2014. Respondent has held an applicator's license for over nine years, but has not worked continuously in the pest control industry. Respondent previously worked for Hunters Pest Control for six years.

6. Respondent and his wife have three daughters and one grandchild living in their household. They own their own home, and want to pay off their credit cards. Respondent wants to pay costs in this matter. (Finding 16.) He would appreciate the opportunity to pay by means of a payment plan.

7. Respondent submitted five character references, which were received in evidence and considered to the extent permitted by Government Code section 11513, subdivision (d).¹ Richard Keene, Branch Manager of Clark Pest Control, wrote of his knowledge of the disciplinary action against respondent. Mr. Keene described respondent as a person of good character, who is honest, caring, and hard-working. Mr. Keene has no regrets over hiring respondent. He has no doubt in respondent's ability to represent Clark Pest Control in a safe, responsible and legal manner.

Rachel Yost, Office Supervisor for Clark Pest Control, wrote that respondent is kind, respectful and hard-working. Respondent shows a willingness to work with anyone, and is dedicated to doing a good job. Ms. Yost feels respondent would be a quality member of any team.

Daniel Arauza is respondent's coworker at Clark Pest Control. He has worked with respondent for over six months. Throughout his work with respondent, Mr. Arauza has observed respondent to follow all company policies, safety procedures, chemical usage labels and directions, and laws pertaining to pest control application. Mr. Arauza has been a general contractor for 17 years and has encountered many individuals who have violated the Structural Pest Control Board's laws. Respondent told Mr. Arauza about the Board's action. In working with and training respondent, Mr. Arauza is confident that

¹ Government Code section 11513, subdivision (d), provides, in pertinent part, that "hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions."

respondent understands the importance of adhering to the policies of the company and the laws governing pest control. Mr. Arauza is convinced that respondent will not make a similar mistake ever again in violating the laws of the Structural Pest Control Board.

Daniel J. Finley, Staff Sergeant, United States Army, is a relative of respondent, and has known respondent for 12 years, when respondent "became a member of our family." He has known respondent to be the primary provider for his family. Sergeant Finley wrote that respondent's crime was an isolated, unintentional incident that was an error in judgment. Respondent suffered greatly for the incident, learned his lesson, and will not allow himself to be put in the same position again. At the time of the incident, respondent was self-employed and had to make his own judgment calls on what were appropriate business practices. Respondent is no longer in this position. Respondent now works at Clark Pest Control, which will allow him to provide for his family.

Houston Hughes, Pest Technician, wrote that respondent is a hard-worker and is reliable. He further wrote that respondent knows his limits when it comes to what he is allowed to do under his license.

Discussion

8. The Board has developed criteria for evaluating whether a licensee has been rehabilitated since committing the act(s) or suffering the conviction(s) constituting grounds for disciplinary action. (Cal. Code Regs., tit. 16, § 1937.2.) The criteria relevant here are:

(1) the nature and severity of the act(s) or offense(s); (2) total criminal record; (3) the time that has elapsed since commission of the act(s) or offense(s); (4) whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee; (5) evidence of expungement proceedings pursuant to Penal Code section 1203.4; and (6) evidence of rehabilitation submitted by the licensee. (Cal. Code of Regs., tit. 16, § 1937.2, subd. (b)(1)- (b)(6).)

9. Respondent's offense occurred almost three year ago. He acknowledged wrongdoing, thereby taking an essential step towards rehabilitation. (See, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940 ["Fully acknowledging the wrongfulness of his actions is an essential step towards rehabilitation."].)

10. Respondent had no prior criminal record before the criminal conviction at issue. He completed his criminal probation in October 2014.

11. Respondent's conduct and conviction are significant. He held himself out as a licensed contractor to the public and bid on a substantial landscaping job that was the subject of the sting operation. He advertised his landscaping business without the required language that he was not a licensed contractor on his advertising flyers and his business card. While the ALJ believed that

Respondent knew of the licensing requirement, the evidence suggests otherwise. Both the Respondent and Complainant maintain in their written arguments that Respondent testified about his ignorance of the need to be licensed. As such, it appears that Respondent was ignorant of the legal requirement of obtaining a license prior to bidding and performing contracting projects over \$500. Further, Respondent seems to have learned from this matter, as there is no presented evidence showing any attempts on his part to obtain or to perform contracting projects over \$500 since the incident in question.

12. The ALJ found that the character reference letters provided by Respondent do not address his conduct prior, during and after the criminal act, and as such, she gave it little weight. Yet, the letter of Daniel Finley specifically states that Respondent's violation was an unintentional error and that he has learned his lesson and will not allow himself to be put in the same position again. This addresses directly the post-conviction mindset and rehabilitation of Respondent. Further, the letter from Mr. Arauza directly speaks to Respondent's present respect for laws and regulations. Last but not least, Mr. Hughes describes how Respondent has learned to pay great care as to what he is allowed to do and not do. Thus, the above letters do address Respondent's current state of mind and should not be set aside in terms of evidence of Respondent's rehabilitation.

13. Given that the Respondent had no prior criminal record before the convictions in question, has accepted culpability, acted out of ignorance of the law, completed his criminal probation, and significant time has elapsed since the commission of the act, Respondent has met the criteria of rehabilitation listed above.

Costs

14. Pursuant to Business and Professions Code section 125.3, complainant submitted a Certification of Costs of Prosecution and a Declaration of the Deputy Attorney General, which requests costs in the total amount of \$1,592.50. This includes costs for prosecutorial services provided by the Attorney General's Office, which includes 7.25 hours of attorney time billed at \$170 an hour, and 3 hours of paralegal time billed at \$120 an hour. The work performed by the Deputy Attorney General included pleading preparation, case management, client communication and trial preparation. The work performed by the paralegal included pleading preparation and case management. The amount sought by way of cost recovery is reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code section 8620 provides, in part, that after a hearing, the board may temporarily suspend or permanently revoke a license issued under this chapter if the holder, while a licensee or applicant, is guilty of or commits any one or more of the acts or omissions constituting grounds for disciplinary action. In addition to its authority to suspend or revoke a license, the board may assess a civil penalty.

2. Business and Professions Code section 8649 states in pertinent part:

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

3. Business and Professions Code section 8654 provides:

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

4. Business and Professions Code section 8655 provides:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, and duties of a structural pest control operator, field representative, applicator, or registered company is deemed to be a conviction within the meaning of this article or Section 8568 of this chapter. The board may order the license or registration suspended or revoked, or may decline to issue a license, 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 allowing the individual or registered company to withdraw a plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

5. California Code of Regulations, title 16, section 1937.1 provides:

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
 - (3) Theft
 - (4) Violations relating to the misuse of pesticides.

Substantial Relationship

6. Respondent's conviction of contracting without a license evidences his present or potential unfitness to perform the functions authorized by the license in a manner consistent with the public health, safety, and welfare. Consequently, respondent's conviction is substantially related to the qualifications, functions and duties of a pest control applicator.

Cause for Discipline

7. Cause exists for disciplinary action against respondent's license under Business and Professions Code section 8649, by reason of the matters set forth in Finding 4. Respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a structural pest control applicator.

Petition for Reconsideration

8. After reviewing the parties' arguments for reconsideration regarding the issue of the level of discipline, the Board finds that the previously ordered discipline is not appropriate in light of the facts and circumstances. Respondent does not have a prior criminal record, has completed his criminal probation and acknowledged that his act was wrong. In addition, Respondent testified that he is no longer seeking landscaping work, and that he will do more research before engaging in business endeavors that he may not be familiar with. Further, it appears that the proposed decision contained a factual discrepancy, where the ALJ stated that Respondent testified that he was aware of the requirement of a license for contracting projects over the amount of \$500. Both Respondent and Complainant state that Respondent did not testify as such, but rather that he was unaware of the legal requirement. Thus, it appears that Respondent's act was committed as a result of ignorance rather than deliberate violation of the law. Last but not least, Complainant believes that Respondent does not pose a danger to the public as a licensed pest control applicator if appropriately monitored. As such, the Board does not believe that revocation of the Respondent's license is reasonable or conducive to the protection of the public. Public protection may be best served if Respondent's license is put on a probationary status instead and the Board retains jurisdiction over him.

Costs

9. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated the licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

As set forth in Finding 16, complainant is seeking \$1,592.50 in costs, an amount that is reasonable and consistent with the work necessary to investigate and present this case for hearing. Given respondent's testimony that he wants to pay costs in this matter, respondent should be permitted to pay them according to a reasonable payment plan approved by the Board or its designee.

ORDER

1. Respondent's license is revoked. The revocation is stayed three years, and Respondent is placed on probation for three (3) years on the following conditions:
 - a. Respondent shall obey all laws and rules pertaining to the practice of structural pest control.
 - b. Respondent shall file quarterly reports with the Board during the

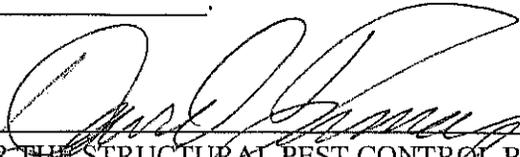
period of probation.

- c. Respondent shall notify all prospective and present employers of the decision in case No 2014-40 and the terms and restrictions imposed by said decision. Within 30 days of this decision, and within 15 days of undertaking new employment, respondent shall cause his employer to acknowledge in writing acknowledging the employer has read the terms of the decision in case No 2014-40.
- d. Should Respondent leave California to reside in another state, he must notify the Board of the date of his departure and of his return. Periods of practice or residence outside of California shall not apply towards the reduction of the probationary period.
- e. Respondent is prohibited from serving as an officer, director, associate, partner, qualifying manager or branch office manager of any registered company during the period that discipline is imposed on Applicator License No. RA 42351, Br. 2 &3.
- f. 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.
- g. Upon successful completion of probation, Respondent's license will be fully restored.

2. Respondent Jeffrey L. Sage shall pay the Structural Pest Control Board \$1,592.50 as the reasonable costs of investigation and prosecution of this case by means of a payment plan as approved by the Board or its designee.

This Decision shall become effective on October 29, 2015.

IT IS SO ORDERED September 29, 2015.



FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

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

In the Matter of the Accusation Against:

JEFFREY L. SAGE;
Applicator License No. RA 42351,

Respondent.

Case No.: 2014-40

OAH No.: 2014030472

**ORDER FIXING DATE FOR SUBMISSION OF WRITTEN ARGUMENTS
REGARDING PETITION FOR RECONSIDERATION**

Pursuant to section 11521(b) of the Government Code, the Structural Pest Control Board (Board) is requesting for the parties to submit written arguments, if any, for the reconsideration hearing of July 22, 2015. Your written arguments must be submitted to the Board no later than May 9, 2015. Arguments must be limited to the facts presented in the record and to the issue of the level of discipline in the proposed decision. No new evidence may be submitted.

IT IS SO ORDERED this April 9, 2015.



SUSAN SAYLOR

Registrar/Executive Officer

STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

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

In the Matter of the Accusation Against:

JEFFREY L. SAGE;
Applicator License No. RA 42351,

Respondent.

Case No. 2014-40

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ORDER GRANTING PETITION FOR RECONSIDERATION AND STAY

Good cause appearing therefore, the Petition for Reconsideration of **JEFFREY L. SAGE**,
Applicator License No. RA 42351 and stay of the discipline imposed in the Decision, effective
March 2, 2015, is granted.

IT IS SO ORDERED this 25th day of February 2015.


SUSAN SAYLOR, Registrar/Executive Officer
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
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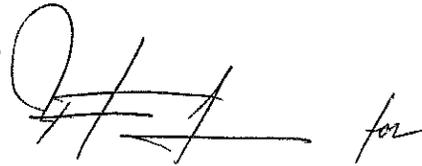
Case No. 2014-40

OAH No. 2014030472

**ORDER GRANTING 10 DAY STAY TO CONSIDER PETITION FOR
RECONSIDERATION**

Pursuant to Section 11521 of the Government Code, the Decision adopted by the Structural Pest Control Board in the above-entitled matter to become effective on February 20, 2015 is hereby stayed for ten (10) days until March 2, 2015, in order to permit the Board to decide whether to order reconsideration.

IT IS SO ORDERED this 20th day of February 2015.



SUSAN SAYLOR, Registrar/Executive Officer
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

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

In the Matter of the Accusation Against:

JEFFREY L. SAGE,

Applicator License No. RA 42351

Respondent.

Case No. 2014-40

OAH No. 2014030472

ORDER OF DECISION

DECISION

The Proposed Decision of Danette C. Brown, Administrative Law Judge, dated December 10, 2014, in Sacramento, is attached hereto. Said decision is hereby amended, pursuant to Government Code section 11517(c)(2)(c) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. On page 2, paragraph number 4, "7022, subdivision (a)" is stricken and replaced with "7028, subdivision (a)".
2. On page 7, paragraph number 8, "pest control operator" is stricken and replaced with "pest control applicator".

The Proposed Decision as amended is hereby accepted and adopted as the Decision and Order by the Structural Pest Control Board, Department of Consumer Affairs, State of California.

This Decision shall become effective on February 20, 2015.

IT IS SO ORDERED January 21, 2015



FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

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

In the Matter of the Accusation Against:

JEFFREY L. SAGE
Magalia, California

Applicator License No. RA 42351,
Br. 2 & 3

Respondent.

Case No. 2014-40

OAH No. 2014030472

PROPOSED DECISION

This matter was heard before Administrative Law Judge Danette C. Brown, Office of Administrative Hearings, on November 3, 2014, in Sacramento, California.

Kristina T. Jansen, Deputy Attorney General, represented Susan Saylor, Registrar and Executive Officer (complainant), Structural Pest Control Board (Board), Department of Consumer Affairs, State of California.

Jeffrey L. Sage (respondent) was present and represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on November 3, 2014.

FACTUAL FINDINGS

1. Complainant made and filed the Accusation in her official capacity.
2. On June 17, 2004, the Board issued Applicator License No. RA 42351, in Branches 2 and 3 to respondent. The license will expire on June 17, 2016, unless renewed or revoked.
3. Complainant contends that disciplinary action should be taken against respondent's Applicator License as a result of his conviction for a criminal offense that is

substantially related to the qualifications, functions and duties of a licensee. The facts and circumstances of his offense are described below.

Contracting Without a License Conviction

4. On October 21, 2013, in the Superior Court of California, County of Butte, Case No. SCR90525, respondent was convicted, upon a plea of nolo contendere, of violating Business and Professions Code section 7022, subdivision (a) (contracting without a license), a misdemeanor. Imposition of sentence was suspended, and respondent was placed on one year of probation. Respondent was ordered to pay court fees and fines totaling \$892.50.

5. The facts and circumstances underlying this conviction were that on August 29, 2012, the Contractors' State License Board's Statewide Investigative Fraud Team conducted an undercover sting operation at a single-family residence in Paradise, California (residence). The operation targeted suspected unlicensed contractors and suspended licensed contractors. On August 28, 2012, Board investigators posing as property owners made phone calls to suspects. They told the suspects they were interested in improvement work at the residence. Investigators scheduled appointments for suspects to appear at the sting location to review requested work and provide estimates for the cost to perform the work. On August 29, 2012, investigators met suspects at the sting location, and discussed the work and estimates. Suspects that were unlicensed were cited by investigators.

On August 28, 2012, a board investigator called respondent from a phone number listed on a flyer advertisement for Jeff's Home and Yard Service. The flyer did not contain a contractor's license number, and did not include the statement "not a licensed contractor," as required by the contractor's state licensing laws. The investigator spoke with respondent about being interested in a bid to install sod and a new sprinkler system at the residence. Respondent agreed to appear at the residence the following day to provide a bid.

The following day, respondent went to the residence and provided the investigator with his business card for "Top Notch Landscaping." The business card did not have the statement, "Not State Licensed." Respondent gave the investigator a verbal estimate of \$1,000 for labor and \$1,000 for materials. Respondent stated, "I totally want this job." The investigator asked who he should write the check to. Respondent stated, "Jeff Sage, I am the owner." Respondent was then led inside the residence and informed of the undercover sting operation. Respondent was cited for violation of Business and Professions Code sections 7028 (acting the capacity of a contractor without a license) and 7027.1 (advertising by unlicensed person), and released.

Respondent's Testimony

6. Respondent acknowledged that he was caught contracting without a license as part of the sting operation. He admitted that he offered to do landscaping work without a contractor's license. He still owes the court \$142.50 in court fees and fines. The remaining balance will be paid off on December 21, 2014.

7. Respondent knew that he needed a contractor's license to do landscaping work. Despite this requirement, respondent and his wife came up with the name "Top Notch Landscaping" and decided to go into the landscaping business.

8. Respondent began working at Clark Pest Control in April 2014. Respondent has held an applicator's license for over nine years, but has not worked continuously in the pest control industry. Respondent previously worked for Hunter Pest Control for six years.

9. Respondent and his wife have three daughters and one grandchild living in their household. They own their own home, and want to pay off their credit cards. Respondent wants to pay costs in this matter. (Finding 16.) He would appreciate the opportunity to pay by means of a payment plan.

10. Respondent submitted five character references, which were received in evidence and considered to the extent permitted by Government Code section 11513, subdivision (d).¹ Richard Keene, Branch Manager of Clark Pest Control, wrote of his knowledge of the disciplinary action against respondent. Mr. Keene described respondent as a person of good character, who is honest, caring, and hard-working. Mr. Keene has no regrets over hiring respondent. He has no doubt in respondent's ability to represent Clark Pest Control in a safe, responsible and legal manner.

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Daniel Arauza is respondent's coworker at Clark Pest Control. He has worked with respondent for over six months. Throughout his work with respondent, Mr. Arauza has observed respondent to follow all company policies, safety procedures, chemical usage labels and directions, and laws pertaining to pest control application. Mr. Arauza has been a general contractor for 17 years and has encountered many individuals who have violated the Structural Pest Control Board's laws. Respondent told Mr. Arauza about the Board's action. In working with and training respondent, Mr. Arauza is confident that respondent understands the importance of adhering to the policies of the company and the laws governing pest control. Mr. Arauza is convinced that respondent will not make a similar mistake ever again in violating the laws of the Structural Pest Control Board.

Daniel J. Finley, Staff Sergeant, United States Army, is a relative of respondent, and has known respondent for 12 years, when respondent "became a member of our family." He has known respondent to be the primary provider for his family. Sergeant Finley wrote that

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respondent's crime was an isolated, unintentional incident that was an error in judgment. Respondent suffered greatly for the incident, learned his lesson, and will not allow himself to be put in the same position again. At the time of the incident, respondent was self-employed and had to make his own judgment calls on what were appropriate business practices. Respondent is no longer in this position. Respondent now works at Clark Pest Control, which will allow him to provide for his family.

Houston Hughes, Pest Technician, wrote that respondent is a hard-worker and is reliable. He further wrote that respondent knows his limits when it comes to what he is allowed to do under his license.

11. While the letters speak highly of respondent as a responsible, hard-working pest control applicator, the authors did not provide any insight into respondent's conviction, or what he has done by way of rehabilitation. (See, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940 ["If the character witnesses were not aware of the extent and seriousness of the petitioner's criminal activities, their evaluations of his character carry less weight."].) Because the letters do not discuss respondent's conduct prior to, during and after his criminal activity, they are of limited value in assessing rehabilitation. Moreover, respondent's skills as a pest control applicator are not at issue in this matter. Therefore, the letters are given little weight.

Discussion

12. The Board has developed criteria for evaluating whether a licensee has been rehabilitated since committing the act(s) or suffering the conviction(s) constituting grounds for disciplinary action. (Cal. Code Regs., tit. 16, § 1937.2.) The criteria relevant here are: (1) the nature and severity of the act(s) or offense(s); (2) total criminal record; (3) the time that has elapsed since commission of the act(s) or offense(s); (4) whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee; (5) evidence of expungement proceedings pursuant to Penal Code section 1203.4; and (6) evidence of rehabilitation submitted by the licensee. (Cal. Code of Regs., tit. 16, § 1937.2, subd. (b)(1) - (b)(6).)

13. Respondent's offense occurred just over one year ago. His criminal probation ended in October 2014. He acknowledged wrongdoing, thereby taking an essential step towards rehabilitation. (See, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940 ["Fully acknowledging the wrongfulness of his actions is an essential step towards rehabilitation."].)

14. Although respondent has no criminal record, his offense bears some significance. He held himself out as a licensed contractor to the public and bid on a substantial landscaping job that was the subject of the sting operation. He advertised his landscaping business without the required language that he was not a licensed contractor on his advertising flyers and his business card. He knew he needed a contractor's license, but bid on the sting operation project anyway.

15. Given the nature of his criminal offense, which is substantially related to the qualifications, functions and duties of a licensee, respondent bears a heavy burden in demonstrating rehabilitation. The amount of evidence required to establish rehabilitation varies according to the seriousness of the conduct at issue. (*In re Menna* (1955) 11 Cal.4th 975, 987.) Rehabilitative efforts require more than simply complying with criminal probation. (See, *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [little weight is given to person's good behavior while on probation or compliance with terms of probation because such conduct is expected].) Respondent's testimony and the above matters have been considered in determining that additional time is needed before the Board can be assured that respondent's rehabilitation is complete and that he is safe to work as a licensed pest control operator. It would therefore be contrary to the public health, safety and welfare to allow respondent to continue working as a licensed pest control operator at this time, even on a probationary basis.

Costs

16. Pursuant to Business and Professions Code section 125.3, complainant submitted a Certification of Costs of Prosecution and a Declaration of the Deputy Attorney General, which requests costs in the total amount of \$1,592.50. This includes costs for prosecutorial services provided by the Attorney General's Office, which includes 7.25 hours of attorney time billed at \$170 an hour, and 3 hours of paralegal time billed at \$120 an hour. The work performed by the Deputy Attorney General included pleading preparation, case management, client communication and trial preparation. The work performed by the paralegal included pleading preparation and case management. The amount sought by way of cost recovery is reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code section 8620 provides, in part, that after a hearing, the board may temporarily suspend or permanently revoke a license issued under this chapter if the holder, while a licensee or applicant, is guilty of or commits any one or more of the acts or omissions constituting grounds for disciplinary action. In addition to its authority to suspend or revoke a license, the board may assess a civil penalty.

2. Business and Professions Code section 8649 states in pertinent part:

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

3. Business and Professions Code section 8654 provides:

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

4. Business and Professions Code section 8655 provides:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, and duties of a structural pest control operator, field representative, applicator, or registered company is deemed to be a conviction within the meaning of this article or Section 8568 of this chapter. The board may order the license or registration suspended or revoked, or may decline to issue a license, 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 allowing the individual or registered company to withdraw a plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

5. California Code of Regulations, title 16, section 1937.1 provides:

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

(3) Theft

(4) Violations relating to the misuse of pesticides.

Substantial Relationship

6. Respondent's conviction of contracting without a license evidences his present or potential unfitness to perform the functions authorized by the license in a manner consistent with the public health, safety, and welfare. Consequently, respondent's conviction is substantially related to the qualifications, functions and duties of a pest control applicator.

Cause for Discipline

7. Cause exists for disciplinary action against respondent's license under Business and Professions Code section 8649, by reason of the matters set forth in Finding 4. Respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a structural pest control applicator.

Rehabilitation

8. The matters set forth in Findings 4 through 15 have been considered. Respondent acknowledged wrongdoing and presented some evidence of rehabilitation. Additional time is needed before the Board can be assured that respondent's rehabilitation is complete and that he is safe to work as a licensed pest control operator. Accordingly, when

all the evidence presented in this case is weighed and balanced, protection of the public can be achieved only through revocation of respondent's license.

Costs

9. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated the licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

As set forth in Finding 16, complainant is seeking \$1,592.50 in costs, an amount that is reasonable and consistent with the work necessary to investigate and present this case for hearing. Given respondent's testimony that he wants to pay costs in this matter, respondent should be permitted to pay them according to a reasonable payment plan approved by the Board or its designee.

ORDER

1. Applicator's License Number RA 42351, Br. 2 & 3, issued to respondent Jeffrey L. Sage is REVOKED, by reason of Legal Conclusion 7.²

2. Respondent Jeffrey L. Sage is prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee of a registered company, and the employment, election or association of such person by a registered company is a ground for disciplinary action.

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² Complainant's Prayer No. 2 requests that any other license issued to respondent be revoked or suspended. However, complainant does not cite the legal authority to do so. Therefore, Prayer No. 2 is not addressed in the Order.

3. Respondent Jeffrey L. Sage shall pay the Structural Pest Control Board \$1,592.50 as the reasonable costs of investigation and prosecution of this case by means of a payment plan as approved by the Board or its designee.

DATED: December 10, 2014



DANETTE C. BROWN
Administrative Law Judge
Office of Administrative Hearings