

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

In the Matter of the Petition for Reinstatement of:

ANTHONY OLIVA,

Petitioner.

Case No. 2008-63

OAH No. 2017060630

DECISION

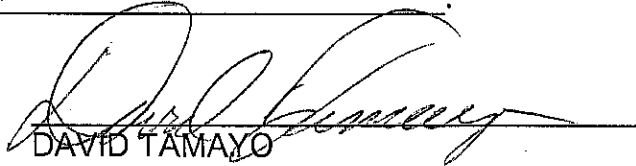
The Proposed Decision of Howard W. Cohen, Administrative Law Judge, in Claremont, California, is attached hereto. Said decision is hereby amended, pursuant to Government Code section 11517(c)(2)(c) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. On page 1, paragraph number 3, "243, subdivision (b)" is stricken and replaced with "243 subdivision (d)".
2. On page 4, term number 7, "work as a field representative" is stricken and replaced with "work as an 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.

The Decision shall become effective on September 22, 2017

IT IS SO ORDERED August 23, 2017


DAVID TAMAYO
President
Structural Pest Control Board
Department of Consumer Affairs

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In the Matter of the Petition for Reinstatement
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OAH No. 2017060630

ANTHONY OLIVA,

Petitioner.

DECISION

A quorum of the Structural Pest Control Board (Board) heard this matter on July 11, 2017, in Claremont, California. Administrative Law Judge Howard W. Cohen of the Office of Administrative Hearings presided.

Tim McDonough, Deputy Attorney General, represented the Attorney General under Government Code section 11522. Petitioner Anthony Oliva appeared on his own behalf.

Evidence was received, the record was closed, and the matter was submitted for decision on July 11, 2017, following which the Board met in executive session and decided the matter on the day of hearing.

FACTUAL FINDINGS

1. The Board issued Applicator's license number RA 46757, Branches 2 and 3, to petitioner on December 20, 2006. On December 20, 2009, the license expired and was not renewed. On January 15, 2010, the Board revoked the license in an order rendered in administrative case number 2008-63. (See Factual Finding 3.)

2. On November 6, 2016, petitioner filed a Petition for Reinstatement of License with the Board.

3. On December 16, 2009, the Board issued a Default Decision and Order, effective January 15, 2010(Order) in case number 2008-63. In the Accusation filed in that case, the Board alleged a single cause for discipline based on petitioner's August 28, 2007, conviction for violating Penal Code sections 243, subdivision (b) (battery inflicting serious bodily injury), and

136.1, subdivision (b)(1) (dissuading victim of or witness to a crime from reporting the crime), both felonies. The court placed petitioner on formal probation for three years and ordered him to serve 365 days in jail and pay \$1,670 in fines and fees. The facts and circumstances underlying the conviction are that on May 13, 2007, respondent physically attacked a man while warning him not to defend himself or report the crime because petitioner was a gang member and would retaliate. The Order revoked petitioner's license.¹

4. After the Accusation in case number 2008-63 was filed, on November 6, 2008, in *People v. Oliva* (Super. Ct. San Diego County, 2008, No. CN252455), petitioner pled guilty to and was convicted of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol), a misdemeanor. The court denied probation and sentenced petitioner to serve 90 days in county jail, with credit for 12 days served.

5. After his license was revoked, on November 15, 2012, in *People v. Oliva* (Super. Ct. San Bernardino County, 2012, No. TBA1200626), petitioner pled guilty to and was convicted of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol), a misdemeanor. The court withheld pronouncement of judgment and granted petitioner his release for 36 months conditioned on, among other things, his paying fines and fees in the amount of \$1,891, payable at a rate of \$75 per month, serving 45 days in county jail, and successfully completing a multiple offender program.

6. Petitioner took responsibility and expressed regret for his past actions. In compliance with his criminal probation, he successfully completed an anger management course. The conviction on which his license revocation was based occurred ten years ago. Since then, petitioner has ceased all gang affiliation, divorced and remarried, took a one-year parenting course and therapy, and obtained custody of his 17-year-old daughter. He appears to have turned his life around and established a stable family life. He acknowledges that his two convictions for driving under the influence of alcohol pose a safety concern, but he denies he has an alcohol problem. There is no evidence of any problematic behavior since his last drunk driving conviction in 2012.

7. In 2015, petitioner obtained what he describes as the equivalent of a field representative license in Nevada. He disclosed to the Nevada licensing board his California license discipline and his criminal convictions. Petitioner works for Rollins Home Team Pest Defense; he is successful at his job and has had no licensing violations in Nevada. He is seeking licensure in California in order to become a multi-state technician and help out other branches of his employer in the western region. Petitioner has kept up with developments in the industry.

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¹ The Board had previously issued a default decision in the matter, but vacated it at petitioner's request. Petitioner testified at this hearing that he defaulted twice because he was incarcerated.

LEGAL CONCLUSIONS

1. Petitioner has the burden of demonstrating that he has the necessary and current qualifications and skills to safely engage in the practice of structural pest control within the scope of current law and accepted standards of practice. (Gov. Code, § 11522.) If petitioner's license is reinstated, the Board may require him to pay costs associated with its investigation and enforcement of the prior disciplinary matter. (Bus. & Prof. Code, § 125.3.)

2. All evidence in support of the Petition for Reinstatement of License has been considered. Cause exists under Government Code section 11522 to grant the petition. Because of the seriousness of the actions underlying the revocation, and because petitioner did not produce documentation in support of his petition sufficient to warrant otherwise, the Board will issue a probationary license with appropriate conditions. The Order that follows, including probationary terms and conditions, is sufficient for the protection of the public.

ORDER

Petitioner Anthony Oliva's Petition for Reinstatement is granted. Applicator's license number RA 46757, Branches 2 and 3, shall be issued to petitioner. The license shall immediately be revoked, however, the order of revocation shall be stayed, and petitioner's license shall be placed on probation for three years on the following terms and conditions:

1. Obey All Laws

Petitioner shall obey all laws and rules relating to the practice of structural pest control.

2. Quarterly Reports

Petitioner shall file quarterly reports with the Board during the period of probation.

3. Tolling of Probation

Should petitioner 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 may apply to reduction of the probationary period, at the Board's discretion.

4. Notice to Employers

Petitioner shall notify all present and prospective employers of the decision in this case and the terms, conditions and restrictions imposed by this decision. Within 30 days of the effective date of this decision, and within 15 days of undertaking new employment, petitioner shall cause his employer to report to the Board in writing acknowledging the employer has read the decision in this matter.

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5. Service as Officer or Director

Petitioner is prohibited from serving as an officer, director, associate, partner, qualifying manager, or branch office manager of any registered company during the period of probation.

6. Ownership

Petitioner shall not have any legal or beneficial interest in any company currently or hereinafter registered by the Board.

7. Take and Pass Licensure Examination

Before he can work as a field representative under Applicator license number RA 46757, Branches 2 and 3, petitioner shall take and pass the Applicator's examination currently required of new applicants for an Applicator's license. The examination shall be taken on regularly scheduled dates. Petitioner shall pay the established examination fee.

8. Violation of Probation

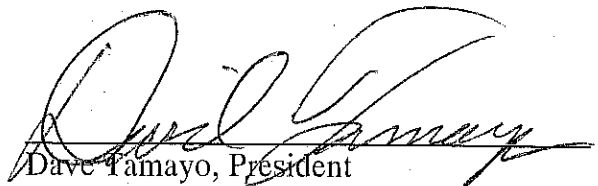
Should petitioner violate probation in any respect, the Board, after giving petitioner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against petitioner during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

9. Completion of Probation

Upon successful completion of probation, petitioner's license will be fully restored.

This Decision shall be effective September 22, 2017.

DATED: August 23, 2017


Dave Tamayo, President
Structural Pest Control Board
State of California