

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

In the Matter of the Petition for
Reinstatement of:

SEAN NEUFELD
Magalia, California

Petitioner.

OAH No. 2014090340

DECISION

This matter was heard on October 16, 2014, in Sacramento, California, before a quorum of the Structural Pest Control Board comprised of Dave Tamayo, President, Curtis Good, Vice President, Clifford Utley, and Mike Duran. Administrative Law Judge Dian M. Vorters, State of California, Office of Administrative Hearings, presided.

Langston Edwards, Deputy Attorney General, represented the Office of the Attorney General.

Sean Neufeld (petitioner) was present and represented himself.

The matter was submitted on October 16, 2014.

FACTUAL FINDINGS

Procedural History

1. On March 22, 2006, the Board issued Applicator License number RA 45317 (Branches two and three)¹ to petitioner as an employee of Hunters Pest Control. Petitioner left this employment in 2008, and this license was canceled on March 22, 2009.

¹ Licenses issued to operators, field representatives, or applicators shall be limited to the branch or branches of pest control for which the applicant has qualified by application and examination. The practice of pest control is classified into the following three branches: Fumigation (Branch 1), General Pest Control (Branch 2), and Termite (Branch 3). (Bus. & Prof. Code, § 8560, subd. (a).)

2. On February 4, 2010, the Board issued Applicator License number RA 50644 (Branches two and three) to petitioner as an employee of Eagle Shield Pest Control. This license expired on February 4, 2013, and was not renewed.

3. On August 29, 2012, the Board filed Amended Accusation number 2011-72(f), seeking to discipline petitioner's Applicator License number RA 50644. The First Amended Accusation charged petitioner with engaging in pest control work in a branch other than that for which he was licensed. (Bus. & Prof. Code, § 8651.)²

4. Despite proper service on his address of record, petitioner failed to timely return a Notice of Defense. Consequently, the Board found the allegations in the First Amended Accusation true by clear and convincing evidence and issued a Default Decision revoking petitioner's Applicator License effective August 21, 2013. The Board also imposed costs of investigation and enforcement in the amount of \$862.50. (Bus. & Prof. Code, § 125.3.)

Petition for Reinstatement

5. Petitioner filed the instant Petition for Reinstatement of Applicator License number RA 50644, on August 7, 2014. At hearing, he explained the facts and circumstances that he believes resulted in discipline of his Applicator License and his rehabilitative efforts.

6. Petitioner worked for Hunter's Pest Control in 2006. He stayed for one year and subsequently worked for Eagle Shield Pest Control. Petitioner was told by operators at both companies that it was acceptable for him to solicit business as an Applicator without a license as long as the agreements to do business were verbal agreements and nothing was in writing. Petitioner essentially worked as an independent contractor soliciting business on a month-to-month basis. Petitioner stated that he now knows that a verbal agreement is a contract and requires the proper license.

7. Petitioner subsequently moved without informing the Board of his new address. As such, he never received the Amended Accusation from the Board. He acknowledged that it is his responsibility to maintain his current address with the Board.

8. Petitioner did not renew his last Applicator license because he decided to pursue other job opportunities. Petitioner now seeks to return to pest control. His father is a partner at Eagle Shield and he has an opportunity to work in the pest control industry again. He feels it will help him create a better life for his family.

² The performing or soliciting of structural pest control work, the inspecting for structural or household pests, or the applying of any pesticide, chemical, or allied substance for the purpose of eliminating, exterminating, controlling, or preventing structural pests in branches of pest control other than those for which the operator, field representative, or applicator is licensed or the company is registered is a ground for disciplinary action. (Bus. & Prof. Code, § 8651.)

9. Petitioner solicited work beyond the scope of his license. There was no evidence of actual harm to the public. He was acting on information he received from two different operators and did not at the time understand he was in violation of pest control law. Petitioner has acknowledged this violation and taken responsibility for failing to maintain a current address with the Board. He is willing to become better educated on the laws pertaining to the pest control industry. He is also willing to pay costs previously ordered by the Board in the amount of \$862.50. Petitioner is capable of practicing safely and competently at this time, with appropriate restrictions.

Colclusion

10. Cause exists to grant the Petition for Reinstatement of a Revoked License submitted by petitioner based on clear and convincing evidence of rehabilitation. However in order to protect the public, three (3) years of probation is imposed.

LEGAL CONCLUSIONS

1. Government Code section 11522 states:

A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefore, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

2. Petitioner bears the burden of establishing that he is now fit to engage in the structural pest control activities for which he seeks a license. The Board has evaluated the evidence submitted by petitioner. Petitioner has satisfied the Board that he intends to be more diligent in complying with the pest control law. As such, good cause exists for the reinstatement of petitioner's applicator license with a three year probationary period under standard terms and conditions. (Cal. Code Regs., tit. 16, § 1937.12.)

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ORDER

The Petition for Reinstatement of Applicator License No. RA 50644 (Branches 2 and 3), and licensing rights, filed by petitioner Sean Neufeld, is granted with terms and conditions. Petitioner shall be issued a license, the license shall be immediately revoked, the revocation stayed and the petitioner's license shall be placed on probation for a period of three (3) years, subject to 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, Petitioner 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 - Petitioner shall notify all present and prospective employers of the decision in case No. 2011-72(f), and the terms, conditions and restriction imposed on Petitioner by this Decision to reinstate a revoked license.

Within 30 days of the effective date of this Decision, and within 15 days of Petitioner undertaking new employment, Petitioner shall cause his employer to report to the Board in writing acknowledging the employer has read this Decision to reinstate a revoked license.

5. Notice to Employees - Petitioner shall, upon or before the effective date of this decision, post or circulate a notice to all employees involved in structural pest control operations which accurately recites the terms and conditions of probation. Petitioner shall be responsible for said notice being immediately available to said employees. "Employees" as used in this provision includes all full-time, part time, temporary and relief employees and independent contractors employed or hired at any time during probation.
6. Completion of Probation - Upon successful completion of probation, Petitioner's license will be fully restored.
7. 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 which 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.

8. Petitioner shall complete with a final grade of C Minus (C-) or better within one (1) year of the effective date of this decision, four (4) hours of coursework pertaining to the laws and regulations governing his license. These four hours of coursework shall not count toward the total number of hours needed for license renewal and are in addition to regular continuing education requirements.

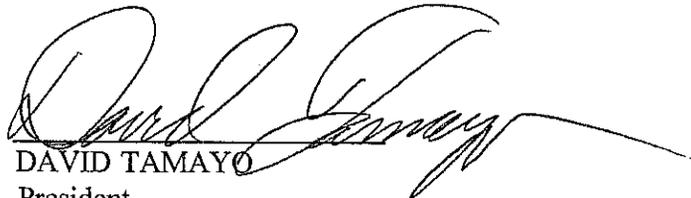
DECISION

This Decision is hereby adopted by the Structural Pest Control Board.

This Decision shall become effective on February 1, 2015.

IT IS SO ORDERED.

Dated: January 2, 2015


DAVID TAMAYO
President
Structural Pest Control Board.