

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

In the Matter of the Petition to Revoke  
Probation Against:

**MITCHELL B. GARCIA**

**Applicator License No. RA 53832**

Respondent.

Case No. 2012-42

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 26, 2015, Complainant Susan Saylor, in her official capacity as the Executive Officer of the Structural Pest Control Board, Department of Consumer Affairs, filed Petition to Revoke Probation No. 2012-42 against Mitchell B. Garcia (Respondent) before the Structural Pest Control Board. (Petition to Revoke Probation attached as Exhibit A.)
2. On or about November 30, 2012, the Structural Pest Control Board ("Board") issued inactive Probationary Applicator License No. 53832 in Branches 2 and 3 to Mitchell B. Garcia ("Respondent").
3. On or about August 4, 2015, Respondent was served by Certified and First Class Mail copies of the Petition to Revoke Probation No. 2012-42, Statement to Respondent, Notice of

1 Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,  
2 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and  
3 Professions Code section 136, is required to be reported and maintained with the Board.

4 Respondent's address of record was and is:

5 Mitchell B. Garcia  
6 1584 Blossom Hill Road, Unit 3  
7 San Jose, California 95118.

8 4. Service of the Petition to Revoke Probation was effective as a matter of law under the  
9 provisions of Government Code section 11505, subdivision (c) and/or Business & Professions  
10 Code section 124.

11 5. On or about August 20, 2015, the aforementioned documents were returned by the  
12 U.S. Postal Service marked "Forwarding Address Expired." The address on the documents was  
13 the same as the address on file with the Board. Respondent failed to maintain an updated address  
14 with the Board and the Board has made attempts to serve the Respondent at the address on file.  
15 Respondent has not made himself available for service and therefore, has not availed himself of  
16 his right to file a notice of defense and appear at hearing.

17 6. Government Code section 11506 states, in pertinent part:

18 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
19 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
20 of the accusation not expressly admitted. Failure to file a notice of defense shall  
21 constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
22 may nevertheless grant a hearing.

23 7. Respondent failed to file a Notice of Defense within 15 days after service upon him  
24 of the Petition to Revoke Probation, and therefore waived his right to a hearing on the merits of  
25 Petition to Revoke Probation No. 2012-42.

26 8. California Government Code section 11520 states, in pertinent part:

27 (a) If the respondent either fails to file a notice of defense or to appear at the  
28 hearing, the agency may take action based upon the respondent's express admissions  
or upon other evidence and affidavits may be used as evidence without any notice to  
respondent.

9 Pursuant to its authority under Government Code section 11520, the Board finds  
Respondent is in default. The Board will take action without further hearing and, based on the

1 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
2 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
3 file at the Board's offices regarding the allegations contained in Petition to Revoke Probation No.  
4 2012-42, finds that the charges and allegations in Petition to Revoke Probation No. 2012-42, are  
5 separately and severally, found to be true and correct by clear and convincing evidence.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Mitchell B. Garcia has subjected  
8 his Applicator License No. 53832 to discipline.

9 2. The agency has jurisdiction to adjudicate this case by default.

10 3. The Structural Pest Control Board is authorized to revoke Respondent's Applicator  
11 License No. 53832 based upon the following violations alleged in the Petition to Revoke  
12 Probation which are supported by the evidence contained in the Default Decision Evidence  
13 Packet in this case:

14 a. Respondent's application for licensure was initially denied pursuant to Business  
15 and Professions Code ("Code") sections 8637 (misrepresentation of a material fact by an  
16 applicant in order to obtain a license), and, 8568 and 480, subdivision (a)(1) in that Respondent  
17 was convicted of crimes substantially related to the qualifications, functions, or duties of an  
18 applicator, as follows:

19 1. On or about October 5, 1999, in the Superior Court of California, Santa Clara County,  
20 Case No. C9926588, entitled *The People of the State of California v. Mitchell Bedolla Garcia*,  
21 Respondent was found guilty by a jury of violating Penal Code sections 211-212.5, subdivision  
22 (e) (taking personal property from victim against his will by means of force or fear of violence  
23 while using a firearm); 664 (attempt to commit a crime), and 215 (carjacking); 245, subdivision  
24 (a)(2) (assault on victim with a firearm); 182, subdivision (a)(1) (conspiracy to commit crime of  
25 false imprisonment; 211 (robbery); and 484 (theft). Respondent was sentenced to thirteen years  
26 in prison.

1           The factual circumstances surrounding the crimes are that on or about April 14, 1999,  
2 Respondent, along with another individual, robbed and attempted to carjack two men, while using  
3 a handgun.

4           2.    On or about November 26, 1997, in the Municipal Court of California, Santa Clara  
5 County, Case No. C976524, entitled *The People of the State of California v. Mitchell Bedolla*  
6 *Garcia*, Respondent was found guilty of violating Vehicle Code section 23152, subdivision (a)  
7 (driving under the influence of alcohol). Respondent was sentenced to twenty days in jail and  
8 place on probation for three years.

9           3.    On or about October 4, 1999, in Superior Court of California, Santa Clara County,  
10 Case No. C9928388 entitled, *The People of the State of California v. Mitchell Bedolla Garcia*,  
11 Respondent was convicted of violating Health and Safety Code section 11378 (possession of  
12 Methamphetamine and Lysergic Acid Diethylamide for sale). Respondent was sentenced to eight  
13 months in jail.

14           b.    Effective November 30, 2012, the Board issued a Decision and Order to issue a  
15 probationary license to Respondent, pursuant to terms and conditions. Grounds exist for  
16 revocation of Respondent's probation for the following reasons:

17           1.    Respondent violated Condition 2 of the Decision and Order, in that Respondent failed  
18 to file quarterly reports that were due May 30, 2014, August 30, 2014, November 30, 2014,  
19 February 28, 2015, and May 30, 2015.

20           2.    Respondent violated Condition 1 of the Decision and Order in that Respondent failed  
21 to follow all rules and regulations relating to the practice of structural pest control, in that  
22 Respondent failed to provide his current address to the Board in violation of California Code of  
23 Regulations, title 16, section 1911.

24           3.    Respondent violated Condition 1 of the Decision and Order in that Respondent failed  
25 to comply with the terms and conditions of his probation, as set for in paragraphs 3(b)(1)(2),  
26 above.

27           ///

28           ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

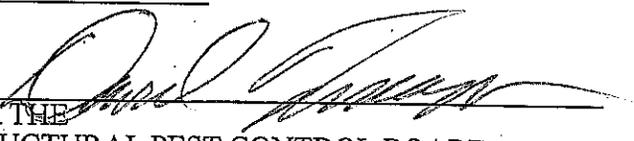
ORDER

IT IS SO ORDERED that Applicator License No. 53832, heretofore issued to Respondent Mitchell B. Garcia, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on December 13, 2015.

It is so ORDERED November 13, 2015

  
FOR THE  
STRUCTURAL PEST CONTROL BOARD  
DEPARTMENT OF CONSUMER AFFAIRS

90547509.DOC  
SF2015900394

Attachment:  
Exhibit A: Petition to Revoke Probation