

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

In the Matter of Accusation Against:

FRANK J. NEGRETE,
Applicator's License No. RA 53877,

Respondent.

Case No.: 2015-56

OAH No.: 2015100052

ORDER OF DENIAL FOR PETITION FOR RECONSIDERATION

Respondent's Petition for Reconsideration is hereby denied. The Board's
Decision becomes effective on **May 23, 2016**.

IT IS SO ORDERED this 20th day of May 2016.



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:

FRANK JAVIER NEGRETE, aka
FRANCISCO JAVIER NEGRETE;

Applicator License No. RA 53877,

Respondent.

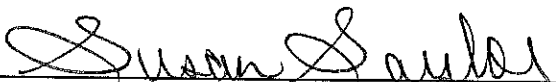
Case No.: 2015-56

OAH No.: 2015100052

**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 May 14, 2016 is hereby stayed for ten (10) days until May 23, 2016, in order to permit the Board to decide whether to order reconsideration.

IT IS SO ORDERED this 13th day of May 2016.


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:

FRANK JAVIER NEGRETE, aka FRANCISCO
JAVIER NEGRETE,

Applicator License No. RA 53877,

Respondent.

Case No.: 2015-56

OAH No.: 2015100052

DECISION

The Proposed Decision of John E. DeCure, Administrative Law Judge, dated March 2, 2016, in Los Angeles, 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 2, "Susan Taylor" is stricken and replaced with "Susan Saylor".

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 May 14, 2016.

IT IS SO ORDERED April 14, 2016.


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:

FRANK JAVIER NEGRETE, aka
FRANCISCO JAVIER NEGRETE

Respondent.

Case No. 2015-56

OAH Case No. 2015100052

PROPOSED DECISION

John E. DeCure, Administrative Law Judge, Office of Administrative Hearings, heard this matter on February 2, 2016, in Los Angeles, California.

Christina Thomas, Deputy Attorney General, represented Susan Taylor (Complainant), Registrar/Executive Officer for the Structural Pest Control Board of California (Board).

Frank Javier Negrete (Respondent) represented himself.

Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted on February 2, 2016.

FACTUAL FINDINGS

1. Complainant made the (Accusation) while acting in her official capacity.
2. The Board issued Applicator License number RA 53877 to Respondent on December 18, 2012. The license is active and renewed through June 30, 2016.
3. The Accusation alleges Respondent was convicted of two crimes, both substantially related to the qualifications, functions or duties of a licensed applicator and warranting discipline.

//
//

The Burglary/Vandalism Conviction

4. On June 18, 2014, Respondent was convicted in Los Angeles County Superior Court case number KA106107, on a nolo contendere plea, of one count of violating Penal Code section 459 (second degree commercial burglary, a felony) and one count of violating Penal Code section 594, subdivision (a) (vandalism, a felony). The court sentenced Respondent to serve 360 days in county jail and placed him on formal probation for three years with terms and conditions including payment of court fines, fees, and \$3,181.99 in restitution to the El Pollo Loco restaurant that was the victim of the crime.

5. The facts and circumstances underlying the conviction involve a June 2, 2014 early-morning incident at an El Pollo Loco restaurant in Glendora, California. At approximately 7:00 a.m., the restaurant manager unlocked the premises, entered, and smelled something burning. The alarm was not set and the inner-office lights were turned on, which was unusual. Inside the inner-office where a safe was located, an Hispanic man emerged carrying a white money bag and ran out. He was observed getting into an automobile which was later identified as Respondent's car. When police investigated the crime, they located Respondent through his car's vehicle license registration.¹

Conviction Offered as Disciplinary Consideration

6. On June 8, 2001, Respondent was convicted in Los Angeles County Superior Court case number, 1RH02787, on a nolo contendere plea, of one misdemeanor count of violating Business and Professions Code section 23300 (non-licensee use of license). Respondent was placed on two years' probation with terms and conditions. Complainant offered evidence of this conviction to determine the degree of discipline, if any, to be imposed on Respondent if the Accusation was sustained.

Respondent's Defense

7. Respondent claimed that his brother, a Mexican national living in Los Angeles illegally, was actually the burglar who had broken into the El Pollo Loco restaurant. Respondent admitted that his car had been used by the burglar, but he surmised that his brother, who did not have a key to his car, must have somehow broken into the car, used it during the burglary, then returned it to its parking spot outside Respondent's apartment. Respondent claimed he "knew" his brother committed the burglary because he knew his brother had engaged in other criminal behavior before, including using Respondent's

¹ Complainant alleged in a Second Cause for Discipline that on August 12, 2011, Respondent was convicted in Los Angeles Superior Court case number 1RI03172, , on a nolo contendere plea, of one count of violating Business and Professions Code section 25657, subdivision (b) (permitting person to solicit alcoholic beverages). Complainant did not offer evidence of this alleged conviction.

California driver's license, and his brother was still inclined to break the law.² According to Respondent, had his brother been arrested and convicted of the burglary and vandalism, he would have been deported to Mexico as a result. This outcome would have upset Respondent's mother, throwing her into a deep depression. Respondent claims he "took responsibility" for his brother's crime to spare his mother from experiencing a deep depression.

8. Respondent's defense was not credible. Although he described himself as an honest person who had cooperated with the authorities when he was arrested, his explanation involving his brother, if taken at face value, indicates otherwise. When Respondent admitted to having committed the crime, he told a substantial lie, shielding a criminal from investigation and prosecution. At the administrative hearing, Respondent also admitted he knew his brother was living in California as an illegal alien, in violation of state and federal law. By shielding his brother from investigation and prosecution, Respondent was complicit in his brother's continuing illegal residence. Respondent's explanation that he was sparing his mother from depression was implausible. Respondent admitted that his own relationship with his mother was close and that she was very fond of him. If Respondent's mother was prone to depression over the well-being of his brother, she would have suffered similar, if not equal, distress as a result of Respondent's felony conviction and year-long incarceration for a crime he says he did not commit. Respondent had no explanation for this apparent paradox. As a witness Respondent's manner was respectful and sincere. However, by his testimony he gave the impression that he was attempting to cast himself in the best light possible rather than to be truthful.

9. Respondent did not offer evidence in mitigation, or to show his rehabilitation.

Costs

10. The Board reasonably incurred costs, including fees of the Attorney General, in the sum of \$2,002.50 in connection with the investigation and prosecution of this matter.

LEGAL CONCLUSIONS

1. Cause exists pursuant to Business and Professions Code (Code) sections 8649 and 490, in conjunction with California Code of Regulations, title 16 (Regulation), section 1937.1, to suspend or revoke Respondent's applicator license in that Respondent was convicted of felony commercial burglary and vandalism, crimes which are substantially related to the qualifications, functions or duties of a licensed applicator, as set forth in Factual Findings 4 and 5.

² Respondent also provided a written statement he authored, entitled "Notice of Defense," in which he described his brother's previous attempts to assume Respondent's identity. (See Exhibit A.)

2. Cause does not exist pursuant to Code sections 8649 and 490, in conjunction with Regulation section 1937.1, to suspend or revoke Respondent's applicator license in that Complainant did not prove that Respondent sustained the conviction alleged in the Second Cause for Discipline. (See footnote 1.)

3. Business and Professions Code section 490, subdivision (a), provides that the Board may suspend or revoke a license when the licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of a licensed applicator. Code section 8649 further provides that conviction of a substantially related crime is grounds for disciplinary action. Regulation section 1937.1 provides that a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee if to a substantial degree it evidences the licensee's present or potential unfitness to perform in a manner consistent with the public health, safety, or welfare.

4. Complainant must prove her case by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence means the evidence is "so clear as to leave no substantial doubt" and is "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Mathieu v. Norrell Corporation* (2004) 115 Cal.App.4th 1174, 1190 [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333].) Complainant met her burden as to the First Cause for Discipline. (Legal Conclusion 1.) Complainant did not meet her burden as to the Second Cause for Discipline. (Legal Conclusion 2.)

5. At the administrative hearing, Respondent challenged the burglary and vandalism convictions by alleging that he had no involvement in the crime itself. Despite this contention, a conviction may not be impeached in administrative proceedings by evidence of the surrounding circumstances of the crime. A conviction "stands as conclusive evidence of [Respondent's] guilt of the offense charged." *Arneson v. Fox* (1980) 28 Cal.3d 440, at 449. Thus, for purposes of this case, Respondent's guilt is not at issue.

6. No matter how the underlying facts leading to the conviction are viewed, Respondent's defense to the crimes evidenced that he struggles with fundamental issues of honesty. If Respondent were the true burglar, then his attempt to cast his brother as the real criminal was dishonest and misleading. If his defense that his brother was the criminal is instead the truth, then Respondent effectively admitted to misleading police and actively frustrating the administration of justice. Respondent was an unconvincing witness. His claim that he lied in order to spare his mother from depression defied logic and rang false. As a licensee who deals with the public and visits consumers' residences to do his work, Respondent's lack of honesty represents a danger to the public.

7(a). The Board has promulgated Disciplinary Guidelines to be considered regarding the level of discipline to be imposed in cases in which culpability has been established. The Guidelines state:

In determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, factors such as the following should be considered:

1. Actual or potential harm to the public.
2. Actual or potential harm to any consumer.
3. Prior disciplinary record.
4. Number and / or variety of current violations.
5. Mitigation evidence.
6. In case of a criminal conviction, compliance with terms of sentence.
7. Overall criminal record.
8. Whether the conduct was knowing, willful, reckless or inadvertent.
9. The financial benefit to the respondent.
10. Evidence that the unlawful act was part of a pattern of practice.
11. Currently on probation.

The Board does not intend that any one of the above factors be required to justify the minimum or maximum penalty as opposed to an intermediate one.

(See A Manual of Disciplinary Guidelines and Model Disciplinary Orders, Structural Pest Control Board (2010).)

7(b). The actual harm to the public is that Respondent's criminal misconduct victimized an El Pollo Loco restaurant. (Guidelines, subd. 1.) No actual harm to consumers was evident. However, Respondent's dishonest behavior poses a danger to potential customers. (Subd. 2.) Respondent has no prior disciplinary record. (Subd. 3.) Respondent's current violation is contained in only one cause for discipline. (Subd. 4.) Respondent offered no evidence of rehabilitation. (Subd. 5.) Respondent offered no evidence of compliance with his criminal probation. (Subd. 6.) Respondent's other crime is a 2001 misdemeanor offense, which is minor and remote in time. (Subd. 7.) The crime was knowing, as it was planned. (Subd. 8.) The purpose for the crime was theft, although the attempted theft was interrupted before it occurred. (Subd. 9.) There was no evidence of a pattern or practice of unlawfulness. (Subd. 10.) Respondent is currently serving his term of criminal probation. (Subd. 11.)

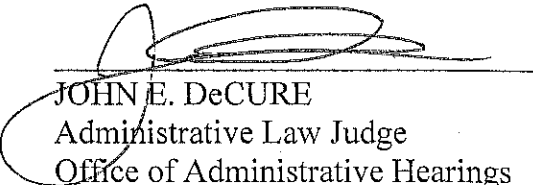
7(c). The Disciplinary Guidelines, as applied to this matter, suggest a maximum penalty. Although Respondent claims he was not involved in the crime leading to his conviction, he is responsible for the crime pursuant to law, and it was a very serious offense resulting in a year of incarceration. His defense of that crime was implausible and, even if true, would only evidence an alternate thread of dishonest behavior. Respondent is still on criminal probation and offered no mitigation or rehabilitation evidence. Under these circumstances, members of the public are at risk of harm. Because the Board's primary priority is public protection, the following order is necessary.

ORDER

Respondent's Applicator License Number RA 53877 is revoked.

In the event that Respondent should reapply for licensure with the Board, upon submission of his application, he shall pay Complainant's reasonable costs of investigation and prosecution of this matter in the sum of \$2,002.50, under the provisions of Code section 123.5, by reason of Factual Finding 9.

Date: MARCH 2, 2016


JOHN E. DeCURE
Administrative Law Judge
Office of Administrative Hearings