

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

In the Matter of the Statement of Issues Against:

KARI LEANNE GANSEN,

Respondent.

Case No. 2014-56

OAH No. 2014070051

DECISION

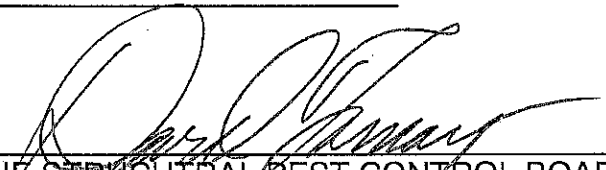
The Proposed Decision of Alan S. Meth, Administrative Law Judge, dated September 24, 2014, in San Diego, is attached hereto. Said decision is hereby amended, pursuant to Government Code section 11517(c)(2)(c) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. On page 1, paragraph 1, "Taylor" is stricken and replaced with "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 November 26, 2014.

IT IS SO ORDERED October 27, 2014.



FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

KARI LEANNE GANSEN

Applicator License Applicant,

Respondent.

No. 2014-56

OAH No. 2014070051

PROPOSED DECISION

Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 12, 2014, in San Diego, California,

Adrian R. Contreras, Deputy Attorney General, represented the complainant.

Respondent Kari Leanne Gansen represented herself.

The matter was submitted on September 12, 2014.

FACTUAL FINDINGS

1. On May 7, 2014, Susan Taylor, Registrar/Executive Officer, Structural Pest Control Board, State of California (Board) filed Statement of Issues No. 2014-56 in her official capacity.

2. Ms. Gansen submitted an application to the Board for an applicator's license in Branches 2 and 3. By letter dated February 19, 2014, the Board denied the application. Ms. Gansen appealed the denial of her application.

3. On June 4, 2013, in the Superior Court of California, County of Orange, respondent pleaded guilty and was convicted of violating Penal Code sections 459-460, subdivision (b) [second degree commercial burglary], a misdemeanor. The court placed Ms. Gansen on informal probation for three years on

condition, among others, she perform 30 days of community service for CalTrans in lieu of 30 days in jail, and pay various fines and fees.

4. The facts and circumstances of the offense are as follows:

On August 15, 2012, Ms. Gansen and another woman entered the Walmart store in Tustin, took some merchandise from the cosmetics section of the store, and left without paying. Two Loss Prevention Officers of Walmart observed this and stopped Ms. Gansen and the other woman after they exited the store. They both voluntarily returned to the store where all of the merchandise they had stolen was recovered. One of the officers placed the two women under a private persons arrest and notified the police.

A police officer with the Orange Police Department arrived at the Walmart and interviewed Ms. Gansen. Ms. Gansen told the officer she entered Walmart with the intention of stealing merchandise but did not know what she was going to steal. She told the officer she took eye shadow, toothpaste, mouthwash, makeup remover, eye cloths, powder foundation, vitamins, eyeliner, and a deodorant spray. The value of the merchandise was \$52.97.

5. Ms. Gansen's offense is substantially related to the qualifications, functions, and duties of a licensee of the Structural Pest Control Board. (Cal. Code. Regs., tit. 16, § 1937.1, subd. (b)).

6. Ms. Gansen, age 26, testified she is not the person she was two years ago. She explained that she had been living with her mother and when her mother died, she became homeless, moving from one couch to another. She stopped caring about herself and made wrong decisions. She then met some people she called the "wrong crowd" who used drugs and alcohol and had no morals or goals or responsibilities, and she started using drugs and alcohol. Ms. Gansen testified she no longer sees these people, uses drugs or drinks alcohol.

After her conviction, Ms. Gansen testified she moved in with her older sister and her family and she straightened her life out. She stopped drinking and using marijuana and started working. She worked in a series of low-paying jobs until she was hired by Roadrunner Exterminating in January 2014. She completed a training program and hoped to be hired as an applicator but when she did not receive a license, she began working in the office and performing quality control duties. She works full time as an administrator. Ms. Gansen testified she loves the job and wants to continue working there.

Ms. Gansen testified that she completed the 30 days of community service working for CalTrans and paid the fines and fees.

Ms. Gansen admitted committing the offense and candidly admitted that she told the police officer that she intended to steal merchandise from Walmart. She testified she planned to use the items she attempted to steal.

Ms. Gansen volunteers and assists her sister with the sports teams on which one of her nephews plays.

7. Robert Heinkel is the owner of Roadrunner Exterminating. He has been in the exterminating business for 34 years and holds numerous licenses. He has owned and operated Roadrunner Exterminating since 2001. The business employs 18 people. Before that he worked for a company in Newport Beach as the qualifying manager for 16 years.

Mr. Heinkel testified he met Ms. Gansen about a year ago through Ms. Gansen's sister, who is also an employee of Roadrunner Exterminating. He had an opening for a technician and offered the job to Ms. Gansen. He testified she excelled during the training and passed the examination, but when the Board denied Ms. Gansen a license, he decided to keep her in an administrative capacity. He described Ms. Gansen's work as checking up on the work of the other technicians and making sure that his customers are satisfied. He described Ms. Gansen as an excellent employee who works hard and is responsible. He believed the death of Ms. Gansen's mother may have traumatized her and that explained why her behavior became erratic. He testified that she has matured and he has seen her grow and become more responsible as she handles her job duties.

Mr. Heinkel knew of Ms. Gansen's conviction at the time he hired her and yet he wants to employ her as a licensed technician. He is aware that he is responsible for the actions of his employees and believes that Ms. Gansen will remain on the right track and do well. He is not concerned that Ms. Gansen might take advantage of an opportunity presented by her employment to commit another offense.

Mr. Heinkel testified he never observed any indication that Ms. Gansen has used drugs or alcohol since she starting working for him.

8. Gary Farris is the pest control manager for Roadrunner Exterminating and has known Ms. Gansen since January. He knew of her before that through Ms. Gansen's sister. He worked at the same company in Newport Beach as did Mr. Heinkel for 18 years and has been at Roadrunner Exterminating for two years. He has been in the pest control business for 28 years.

Mr. Farris testified that he trained Ms. Gansen and observed that she learned quickly, worked hard, paid attention to details, and was able to get along with all the men she worked with. He testified that she earned their respect as well as his. Mr. Farris trusted Ms. Gansen and believed she made his team better. He recognized his job was on the line if Ms. Gansen were licensed and committed another criminal act but he expressed no concerns about her. He felt Ms. Gansen was honest and truthful.

9. Kellie Snyder, Ms. Gansen's sister, wrote a letter dated November 6, 2013. She reported that Ms. Gansen had been living with her and her family for five months and had made significant changes in her life. She wrote that Ms. Gansen completed the CalTrans sentence, paid her fines and faced her mistakes. She indicated that Ms. Gansen was hardworking, dependable and had a perfect personality to deal with the public.

LEGAL CONCLUSIONS

1. Business and Professions Code section 8649 provides;

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.

2. Business and Professions Code section 480 provides in part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

3. Cause to deny Ms. Gansen's application for a pest control applicator license pursuant to Business and Professions Code sections 8649 and 480, subdivision (a)(1) and (a)(3)(A) was established by Findings 3, 4 and 5 in that Ms. Gansen was convicted of a crime substantially related to the qualifications, functions, and duties of a structural pest control applicator.

4. Cause to deny Ms. Gansen's application for a pest control applicator license pursuant to Business and Professions Code section 480, subdivision (a)(2), was established by Findings 3 and 4 in that Ms. Gansen committed an act involving dishonesty with the intent to benefit herself.

5. California Code of Regulations, title 16, section 1937.2 provides in part:

¶ ...

(b) When considering the suspension or revocation of a structural pest control license or company registration on the grounds that the licensee or registered company has been convicted of a crime, the board, in evaluating the rehabilitation of such person or company and his or her or its present eligibility for a license or company registration will consider the following:

- (1) 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 or registered company has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee or registered company.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any of rehabilitation submitted by the licensee or registered company.

6. The evidence in light of the criteria of rehabilitation shows that Ms. Gansen was convicted of one misdemeanor offense 17 months ago and she remains on probation. She complied with the requirement of probation that she complete 30 days of community service and she paid her fine. Ms. Gansen has been convicted of no other criminal offenses. The conviction has not been expunged.

The offense is a relatively minor one. Ms. Gansen attempted to shoplift about \$50 worth of toiletries from a Walmart and was caught as she left the store. She readily admitted she intended to commit the theft when she entered the store. Since Walmart recovered the items Ms. Gansen attempted to steal, it suffered no loss.

Ms. Gansen presented substantial evidence that established that she does not represent a threat to the public because of her conviction. Both the owner of Roadrunner Exterminating and its operations manager testified that they were aware of Ms. Gansen's conviction but they were convinced that she was honest and would not take an opportunity afforded to a pest control applicator to steal from a customer's home. Both recognized that if Ms. Gansen were to do something like that, their own licenses could be affected. Nevertheless, both testified they wanted Ms. Gansen to receive a license so that she could work for Roadrunner Exterminating in a licensed capacity. Finally, both corroborated Ms. Gansen's testimony that she had turned her life around and matured.

Based upon the above considerations, Ms. Gansen established that she was entitled to the issuance of an applicator's license in branches 2 and 3. She has no history of criminal behavior except her 2013 conviction and she completed the requirements imposed upon her by the order of probation. The offense was a relatively minor one and Walmart suffered no harm. Her application is supported by her employer and its operations manager who have come to know her well during the nine months Ms. Gansen has worked for them. However, because Ms. Gansen's conviction is a recent one and she remains on probation, the license issued to her should be a probationary one.

ORDER

The application of respondent Kari Leanne Gansen for an applicator's license in branches 2 and 3 is granted. However, upon issuance of the license, the license shall be revoked, the revocation shall be stayed, and Ms. Gansen shall be placed on probation for three (3) years on the following terms and conditions:

1. Ms. Gansen shall obey all laws and rules relating to the practice of structural pest control.
2. Ms. Gansen shall file quarterly reports with the Board during the period of probation.
3. Should Ms. Gansen leave California to reside outside this state, she 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. Ms. Gansen shall notify all present and prospective employers of the decision in case No. 2014-56 and the terms, conditions and restrictions imposed on Ms. Gansen by said decision. Within 30 days of the effective date of this decision, and within 15 days of Ms. Gansen undertaking new employment, Ms. Gansen shall cause her employer to report to the Board in

writing acknowledging the employer has read the decision in case No. 2014-56.

5. Upon successful completion of probation, Ms. Gansen's license will be fully restored.

6. Should Ms. Gansen violate probation in any respect, the Board, after giving Ms. Gansen 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 Ms. Gansen 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.

DATED: September 24, 2014



ALAN S. METH

Administrative Law Judge

Office of Administrative Hearings

1 KAMALA D. HARRIS
2 Attorney General of California
3 LINDA K. SCHNEIDER
4 Supervising Deputy Attorney General
5 State Bar No. 101336
6 AMANDA DODDS
7 Senior Legal Analyst
8 110 West "A" Street, Suite 1100
9 San Diego, CA 92101
10 P.O. Box 85266
11 San Diego, CA 92186-5266
12 Telephone: (619) 645-2141
13 Facsimile: (619) 645-2061
14 Attorneys for Complainant

FILED

Date 5/7/14 By 

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

In the Matter of the Statement of Issues
Against:

Case No. 2014-56

KARI LEANNE GANSEN

STATEMENT OF ISSUES

Applicator License Applicant

Respondent.

Complainant alleges:

PARTIES

1. Susan Saylor (Complainant) brings this Statement of Issues solely in her official capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of Consumer Affairs.

2. On or about November 15, 2013, the Structural Pest Control Board, Department of Consumer Affairs received an application for an Applicator License from Kari Leanne Gansen (Respondent). On or about November 1, 2013, Kari Leanne Gansen certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on February 19, 2014.

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JURISDICTION

3. This Statement of Issues is brought before the Structural Pest Control Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 8623 of the Code states:

(a) Notwithstanding Section 8620 or any other provision of law, the board may revoke, suspend, or deny at any time a license under this chapter on any of the grounds for disciplinary action provided in this chapter. The proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

(b) The board may deny a license to an applicant on any of the grounds specified in Section 480.

....

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

///

1 (1) Been convicted of a crime. A conviction within the meaning of this section
2 means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any
3 action that a board is permitted to take following the establishment of a conviction may be
4 taken when the time for appeal has elapsed, or the judgment of conviction has been
5 affirmed on appeal, or when an order granting probation is made suspending the
6 imposition of sentence, irrespective of a subsequent order under the provisions of Section
7 1203.4 of the Penal Code.

8 (2) Done any act involving dishonesty, fraud, or deceit with the intent to
9 substantially benefit himself or herself or another, or substantially injure another.

10 (3)(A) Done any act that if done by a licentiate of the business or profession in
11 question, would be grounds for suspension or revocation of license.

12 (B) The board may deny a license pursuant to this subdivision only if the crime
13 or act is substantially related to the qualifications, functions, or duties of the business or
14 profession for which application is made.

15 (b) Notwithstanding any other provision of this code, no person shall be denied a
16 license solely on the basis that he or she has been convicted of a felony if he or she has
17 obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section
18 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a
19 misdemeanor if he or she has met all applicable requirements of the criteria of
20 rehabilitation developed by the board to evaluate the rehabilitation of a person when
21 considering the denial of a license under subdivision (a) of Section 482.

22 (c) A board may deny a license regulated by this code on the ground that the
23 applicant knowingly made a false statement of fact required to be revealed in the
24 application for the license.

25 7. Section 482 of the Code states:

26 Each board under the provisions of this code shall develop criteria to evaluate the
27 rehabilitation of a person when:

28 (a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished
by the applicant or licensee.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board
within the department pursuant to law to deny an application for a license or to suspend
or revoke a license or otherwise take disciplinary action against a person who holds a
license, upon the ground that the applicant or the licensee has been convicted of a crime
substantially related to the qualifications, functions, and duties of the licensee in question,
the record of conviction of the crime shall be conclusive evidence of the fact that the
conviction occurred, but only of that fact, and the board may inquire into the
circumstances surrounding the commission of the crime in order to fix the degree of
discipline or to determine if the conviction is substantially related to the qualifications,
functions, and duties of the licensee in question.

1 As used in this section, "license" includes "certificate," "permit," "authority," and
2 "registration."

3 9. Section 8649 of the Code states:

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

8 10. Section 8655 of the Code states:

9 A plea or verdict of guilty or a conviction following a plea of nolo contendere made
10 to a charge substantially related to the qualifications, functions, and duties of a structural
11 pest control operator, field representative, applicator, or registered company is deemed to
12 be a conviction within the meaning of this article or Section 8568 of this chapter. The
13 board may order the license or registration suspended or revoked, or may decline to issue
14 a license, when the time for appeal has elapsed, or the judgment of conviction has been
15 affirmed on appeal or when an order granting probation is made suspending the
16 imposition of sentence, irrespective of a subsequent order under the provisions of Section
17 1203.4 of the Penal Code allowing the individual or registered company to withdraw a
18 plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
19 dismissing the accusation, information or indictment.

20 REGULATORY PROVISIONS

21 11. California Code of Regulations, title 16, section 1937.1 states:

22 For the purposes of denial, suspension or revocation of a license or company
23 registration pursuant to Division 1.5 (commencing with Section 475) of the code, a crime
24 or act shall be considered to be substantially related to the qualifications, functions or
25 duties of a licensee or registered company under Chapter 14 of Division 3 of the code if to
26 a substantial degree it evidences present or potential unfitness of such licensee or
27 registered company to perform the functions authorized by the license or company
28 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.

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12. California Code of Regulations, title 16, section 1937.2 states:

(a) When considering the denial of a structural pest control license or company registration under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his or her or its present eligibility for a license or company registration will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

....

FIRST CAUSE FOR DENIAL OF APPLICATION

(June 4, 2013 Criminal Conviction for Burglary on August 15, 2012)

13. Respondent's application is subject to denial under sections 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that she was convicted of a crime that is substantially related to the qualifications, duties, and functions of a licensed applicator. Said conviction would be a ground for discipline under section 8649 of the Code for a licensed applicator. The circumstances are as follows:

a. On or about June 4, 2013, in a criminal proceeding entitled *People of the State of California v. Kari Leanne Gansen, aka Krystal Lucia Palumbo*, in Orange County Superior Court, case number 12CM08466, Respondent was convicted on her plea of guilty to violating Penal Code section 459-460, subdivision (b), second degree commercial burglary, a misdemeanor. The court dismissed an additional count of violating Penal Code section 484(a)/488, petty theft, pursuant to a plea agreement.

b. As a result of the conviction, on or about June 4, 2013, Respondent was sentenced to serve 30 days in the Orange County Jail. Respondent was permitted to complete 30 days in the CalTrans labor program in lieu of jail. Respondent was granted three years informal

1 probation, and ordered to pay fees and fine, submit to a Fourth Amendment waiver, and comply
2 with probation terms. Respondent was ordered to stay away from all WalMart stores in Orange
3 County.

4 c. The facts that led to the conviction are that on or about the evening of
5 August 15, 2012, Respondent and a friend entered a WalMart store in Tustin. They were
6 observed by a loss prevention officer selecting various cosmetic and hygiene items and concealing
7 them in their purses. Both left the store without paying for the merchandise, and they were
8 intercepted and detained until the arrival of the Orange Police Department. Respondent admitted
9 to the police officer that she entered the WalMart store with the intention to steal merchandise.
10 The stolen property was returned to WalMart and Respondent was placed under arrest.

11 **SECOND CAUSE FOR DENIAL OF APPLICATION**

12 **(Acts Involving Dishonesty)**


13 14. Respondent's application is subject to denial under section 480, subdivision (a)(2)
14 of the Code in that Respondent's conduct, as described in paragraph 13, above, constituted acts
15 involving dishonesty and deceit with the intent to substantially benefit herself.

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
18 and that following the hearing, the Structural Pest Control Board issue a decision:

- 19 1. Denying the application of Kari Leanne Gansen for a Applicator License;
20 2. Taking such other and further action as deemed necessary and proper.

21
22
23 DATED: 5/7/14


24 SUSAN SAYLOR
25 Registrar/Executive Officer
26 Structural Pest Control Board
27 Department of Consumer Affairs
28 State of California
Complainant

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