

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

In the Matter of the Statement of Issues
Against:

JUAN CARLOS RAMIREZ,

Applicator License Applicant,

Respondent.

Case No. 2016-11

OAH No. 2015100191

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Structural Pest Control Board, Department of Consumer Affairs, as its Decision in this matter.

The Decision shall become effective on February 25, 2016.

IT IS SO ORDERED January 26, 2016



FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

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STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

JUAN CARLOS RAMIREZ

Respondent.

Case No. 2016-11

OAH No. 2015100191

PROPOSED DECISION

This matter came on regularly for hearing on December 16, 2015, at Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Susan Saylor (Complainant) was represented by Morgan Malek, Deputy Attorney General.

Juan Carlos Ramirez (Respondent) was present and represented himself.

At the outset of the hearing, Complainant amended the Statement of Issues to cause paragraph 12 of the Statement of Issues to read as follows:

Respondent's application is subject to denial pursuant to section 8568 and section 480, subdivision (a)(1) of the Code, in conjunction with California Code of Regulations, title 16, section 1937.1, in that Respondent was convicted of a crime substantially related to the qualifications, functions and duties of a structural pest control applicator, as follows:

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a. On or about April 29, 2011, after pleading guilty, Respondent was convicted of one felony count of violating Health and Safety Code section 11352, subdivision (a) [sale, transport, or offer to sell a controlled substance], one felony count of violating Penal Code section 12072, subdivision (d) [transfer of firearm with no licensed firearms dealer], and one felony count of violating Penal Code section 12031, subdivision (a)(1) [carrying a loaded handgun, not registered], in the criminal proceeding entitled *The People of the State of California v. Juan Carlos Ramirez* (Super. Ct. L.A. County, 2011, No. SA076487). The Court sentenced Respondent to five years in state prison. However, execution of sentencing was suspended, and Respondent was placed on five years formal probation, ordered to complete 120 days of beach clean-up, and ordered to register as a convicted narcotics offender.

b. The circumstances underlying the conviction are that on or about November 2, 2009, Respondent sold 27.46 grams of cocaine to an under cover (*sic*) law enforcement officer. On or about December 15, 2009, Respondent unlawfully and willfully transferred and sold a firearm without being a licensed firearms dealer. On or about December 15, 2010, Respondent carried a loaded handgun which was not registered to him.

c. On or about June 10, 2011, after pleading nolo contendere, Respondent was convicted of one felony count of violating Penal Code section 12021, subdivision (a)(1) [possession of a firearm by a felon with a prior conviction], in the criminal proceeding entitled *The People of the State of California v. Juan Carlos Ramirez* (Super. Ct. L.A. County, 2011, No. SA 077799). The Court sentenced Respondent to three years in state prison.

d. The circumstances underlying the conviction are that on or about May 26, 2011, a law enforcement officer executed a search warrant at Respondent's residence. Respondent informed the officer that Respondent had a gun and ammunition in his residence, which the officers [*sic*] recovered.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

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FACTUAL FINDINGS

1. Complainant is the Registrar/Executive Officer of the Structural Pest Control Board, Department of Consumer Affairs (Board).

2. On April 7, 2014, Respondent filed with the Board an application for an applicator license. The Board denied the application on November 7, 2014, and this action ensued.

3. On April 29, 2011, in the Superior Court of California, County of Los Angeles, in case number SA076487, Respondent pled guilty and was convicted of violating Health and Safety Code section 11352, subdivision (a) (sale, transport, or offer to sell a controlled substance), Penal Code section 12072, subdivision (d) (transfer of a firearm without a firearm dealer's license), and Penal Code section 12031, subdivision (a)(1) (carrying a loaded, unregistered handgun). (All three crimes were felonies that are substantially related to the qualifications, functions, and duties of an applicator pursuant to California Code of Regulations, title 16, section 1937.1.

4. Respondent was sentenced to five years in State Prison with credit for one day. Execution of sentence was suspended, and Respondent was placed on formal probation for a period of five years under various terms and conditions including orders to pay fines and assessments totaling \$270, seek and maintain training, schooling or employment, register as a convicted narcotics offender, not associate with gang members, use or possess any narcotics, dangerous or restricted drugs, submit to anti-narcotic testing, and not own, use or possess any dangerous or deadly weapons, including firearms.

5. The facts and circumstances underlying the conviction are that, on November 2, 2009, Respondent sold cocaine to an undercover police officer. The evidence did not disclose the facts and circumstances underlying the firearm conviction.

6. On June 10, 2011, in the Superior Court of California, County of Los Angeles, in case number SA077799, Respondent pled nolo contendere and was convicted of violating Penal Code section 12021, subdivision (a)(1) (possession of a firearm by a convicted felon) a felony substantially related to the qualifications, functions, and duties of an applicator pursuant to California Code of Regulations, title 16, section 1937.1.

7. Respondent's probation in case number SA076487 was revoked, and the five-year prison sentence was reinstated. In case number SA077799, Respondent was sentenced to three years in State Prison with credit for 15 days served and 15 days good time/work time, and he was ordered to pay fines and assessments totaling \$240. The prison sentences were to run concurrently.

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8. The facts and circumstances underlying the conviction are that, during the execution of a search warrant at Respondent's home on May 27, 2011, Respondent informed police officers that he had a firearm in one room of the home and ammunition for the firearm in another room. The officers found a .45 caliber handgun locked and secured in a hard plastic gun box. The ammunition for the gun was in another room. Because one of the terms of his probation was a prohibition against possessing a firearm, Respondent and his attorney were in the process of determining how to turn the gun in at and around the time the search warrant was executed.

9. Respondent earned an early release from prison on September 3, 2014, because his crimes were non-violent in nature.

10. Around the time of the convictions, Respondent was in a difficult and stressful time in his life. His father died in March 2011, leaving him as the sole support of his mother and sister, both of whom suffered from health-related problems. In addition, Respondent had health problems of his own including a congenital deformed right leg which resulted in increasing back and leg pain as he grew older. He also developed three kidney stones between 2004 and 2011. Respondent dealt with those burdens by turning to drug use.

11. Except for between May and June 2004, Respondent was employed by Dewey Pest Control in Santa Monica from April 2004 to June 2011. His supervisor wrote:

In that time, Juan has always been a steady worker, always one of the first to step up and accept additional work, with no complaints. He has always performed his assigned duties promptly and efficiently and often receives compliments from his customers.

Juan has always maintained good relations with his coworkers, and with management. He is considered a team player, as well as a team leader, by his coworkers. I consider him a valued employee, as well as a great asset to my team, and this company.

(Exhibit A, page 1.)

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12. Another supervisor at Dewey Pest Control, who oversaw Respondent's work as a sales and service technician, wrote:

During that time of employment with me at the Santa Monica location he performed all tasks that were given to him and always did as he was asked with out (*sic*) having to ask twice. I did not receive any bad feedback from the clients when I conducted quality assurance checks on his route production. His clients enjoyed his service and suggested his service's (*sic*) to their family members to choose Dewey Pest Control, for all their pest services based on the experience they had with Juan. I would say when Juan is given a task he will perform above and beyond what was expected of him. I know that he was a great piece to the puzzle, (*sic*) for me at Dewey Pest Control Santa Monica when I worked with him.

(*Id.* at page 2.)

13. In addition to the letters from his supervisors at Dewey Pest Control, Respondent offered character reference letters from friends and relatives. All of those authors appear to have been aware of Respondent's criminal past, but nonetheless, characterized him as decent, kind, generous, and with a strong sense of duty to his job, family and community. They observed his great remorse for the mistakes he made between 2009 and 2011.

14. Respondent accepts responsibility for his criminal conduct, but he does not believe that conduct reflects the kind of person he is today. He enjoys working in pest control, and he desires a second chance to prove that he is no longer the man who committed the crimes leading to his convictions.

LEGAL CONCLUSIONS

1. Cause exists to deny Respondent's application for an applicator license pursuant to Business and Professions Code sections 8568, and 480, subdivision (a)(1) for conviction of a crime substantially related to the qualifications, functions and duties of the licensed activity, as set forth in Findings 3, 4, 5, 6, 7, 8, and 9.

2. Cause exists to deny Respondent's application for an applicator license pursuant to Business and Professions Code sections 8568, and 480, subdivision (a)(3) for acts which, if done by a licensee would be grounds for suspension or revocation of his/her license, as set forth in Findings 3, 4, 5, 6, 7, 8, and 9.

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3. In the Revised Disciplinary Guidelines for the Structural Pest Control Board (July 22, 2014), the Board recommends the following factors be considered in determining the level of discipline to be imposed against a disciplined licensee. Those guidelines are germane to this case as well:

- a. Actual or potential harm to the public.
- b. Actual or potential harm to any consumer.
- c. Prior disciplinary record.
- d. Number and/or variety of current violations.
- e. Mitigation evidence.
- f. In case of a criminal conviction, compliance with terms of sentence.
- g. Overall criminal record.
- h. Whether the conduct was knowing, willful, reckless or inadvertent.
- i. The financial benefit to the respondent.
- j. Evidence that the unlawful act was part of a pattern of practice.
- k. Currently on probation.

4. Respondent suffered four felony convictions between 2009 and 2011. Three of the convictions occurred on a single day. They were not part of a pattern of practice in that they appear to have been related to the same isolated incident. The other conviction was derivative of the first in that it constituted a probation violation from the earlier case. However, at the time of the raid, Respondent was attempting to comply with that probationary term by submitting the firearm to the court, as was evidenced by Respondent telling the officers of the firearm's existence and location, and by the firearm being locked and secured inside a gun box at the time the police recovered it. Respondent's drug and firearm sales/transfer had the potential of harm to the public, and his conduct was both knowing and willful. However, his criminal conduct occurred over the course of a few years and was due to overwhelming difficulties in his life at the time, including a painful medical condition and financial responsibilities as the sole support of his family in the wake of his father's death. Respondent is not currently on probation. He has no history of Board discipline.

5. Respondent has a proven track record in the pest control industry and has earned praise from his two former supervisors. His reputation among friends and family members stands in contrast to his criminal past. He has accepted responsibility and is remorseful for his past conduct. Although insufficient time has passed to justify unrestricted licensure (*In re Gossage* (2000) 23 Cal.4th 1080, 1099), the public safety, welfare, and interest should be adequately protected by the issuance of a properly-conditioned probationary license.

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ORDER

The application of Respondent Juan Carlos Ramirez for an applicator license is granted. The license is immediately revoked. The revocation is stayed, and the license is placed on probation for a period of five years on the following terms and conditions:

1. Obey All Laws

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

2. Quarterly Reports

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

3. Tolling of Probation

Should Respondent leave California to reside outside this state, Respondent 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

Respondent shall notify all present and prospective employers of the decision in case No. 2016-11 and the terms, conditions and restrictions imposed on Respondent by that decision.

Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking new employment, Respondent shall cause his employer to report to the Board in writing acknowledging the employer has read the decision in case No 2016-11.

5. Notice to Employees

Respondent 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 recite the terms and conditions of probation. Respondent shall be responsible for the notice being immediately available to those 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, Respondent's license/certificate will be fully restored.

7. Violation of Probation

Should Respondent violate probation in any respect, the Board, after giving Respondent 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 Respondent 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: December 24, 2015

DocuSigned by:
H. Stuart Waxman
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H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

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FILED

Date 8/16/15 By *Susan Saylor*

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

In the Matter of the Statement of Issues
Against:
JUAN CARLOS RAMIREZ
Applicator License Applicant
Respondent.

Case No. 2016-11
STATEMENT OF ISSUES

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 April 7, 2014, the Structural Pest Control Board (Board), Department of Consumer Affairs received an application for an Applicator License from Juan Carlos Ramirez (Respondent). On or about April 3, 2014, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on November 7, 2014.

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1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Board under the authority of the
3 following laws. All section references are to the Business and Professions Code (Code) unless
4 otherwise indicated.

5 **STATUTORY PROVISIONS**

6 4. Section 480 of the Code states, in pertinent part:

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

9 "(1) Been convicted of a crime. A conviction within the meaning of this section means a
10 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
11 board is permitted to take following the establishment of a conviction may be taken when the
12 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
13 an order granting probation is made suspending the imposition of sentence, irrespective of a
14 subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

15

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

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

21 5. Section 490 of the Code states, in pertinent part:

22 "(a) In addition to any other action that a board is permitted to take against a licensee, a
23 board may suspend or revoke a license on the ground that the licensee has been convicted of a
24 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
25 or profession for which the license was issued.

26 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
27 discipline a licensee for conviction of a crime that is independent of the authority granted under
28 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties

1 of the business or profession for which the licensee's license was issued.

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

8 "(d) The Legislature hereby finds and declares that the application of this section has been
9 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
10 554, and that the holding in that case has placed a significant number of statutes and regulations
11 in question, resulting in potential harm to the consumers of California from licensees who have
12 been convicted of crimes. Therefore, the Legislature finds and declares that this section
13 establishes an independent basis for a board to impose discipline upon a licensee, and that the
14 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
15 constitute a change to, but rather are declaratory of, existing law."

16 6. Section 8568 of the Code provides that the Board may deny a license or registration if
17 the applicant, while unlicensed or not registered, knowingly committed or aided or abetted the
18 commission of any act for which a license or company registration is required, or has committed
19 any act or omissions constituting grounds for discipline under section 480 of that code.

20 7. Section 8649 of the Code states, in pertinent part:

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

24 8. Section 8654 of the Code states, in pertinent part:

25 "Any individual who has been denied a license for any of the reasons specified in Section
26 8568, or who has had his or her license revoked, or whose license is under suspension, or who has
27 failed to renew his or her license while it was under suspension, or who has been a member,
28 officer, director, associate, qualifying manager, or responsible managing employee of any

1 partnership, corporation, firm, or association whose application for a company registration has
2 been denied for any of the reasons specified in Section 8568, or whose company registration has
3 been revoked as a result of disciplinary action, or whose company registration is under
4 suspension, and while acting as such member, officer, director, associate, qualifying manager, or
5 responsible managing employee had knowledge of or participated in any of the prohibited acts for
6 which the license or registration was denied, suspended or revoked, shall be prohibited from
7 serving as an officer, director, associate, partner, qualifying manager, or responsible managing
8 employee of a registered company, and the employment, election or association of such person by
9 a registered company is a ground for disciplinary action."

10 9. Section 8655 of the Code states, in pertinent part:

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

21 **REGULATORY PROVISION**

22 10. California Code of Regulations, title 16, section 1937.1, states, in pertinent part:

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

1 health, safety, or welfare.”

2 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

3 11. Cocaine, and any cocaine base, is a narcotic drug pursuant to Health and Safety Code
4 section 11019, subdivision (e). It is a Schedule I controlled substance pursuant to Health and
5 Safety Code section 11054, subdivision (f)(1), a Schedule II controlled substance pursuant to
6 Health and Safety Code section 11055, subdivision (b)(6), and a dangerous drug pursuant to
7 section 4022 of the Code.

8 **FIRST CAUSE FOR DENIAL OF APPLICATION**

9 **(Convictions of Substantially Related Crimes)**

10 12. Respondent’s application is subject to denial pursuant to section 8568 and section
11 480, subdivision (a)(1) of the Code, in conjunction with California Code of Regulations, title 16
12 section 1937.1, in that Respondent was convicted of a crime substantially related to the
13 qualifications, functions and duties of a structural pest control applicator, as follows:

14 a. On or about April 29, 2011, after pleading guilty, Respondent was convicted of one
15 felony count of violating Health and Safety Code section 11352, subdivision (a) [sale, transport,
16 or offer to sell a controlled substance], one felony count of violating Penal Code section 12072,
17 subdivision (d) [transfer of firearm with no licensed firearms dealer], and one felony count of
18 violating Penal Code section 12031, subdivision (a)(1) [carrying a loaded handgun, not
19 registered], in the criminal proceeding entitled *The People of the State of California v. Juan*
20 *Carlos Ramirez* (Super. Ct. L.A. County, 2011, No. SA076487). The Court sentenced
21 Respondent to five years in state prison, placed him on five years formal probation, ordered him
22 to complete 120 days of beach clean-up, and ordered him to register as a convicted narcotics
23 offender.

24 b. The circumstances underlying the conviction are that on or about November 2, 2009,
25 Respondent sold 27.46 grams of cocaine to an under cover law enforcement officer.

26 c. On or about June 10, 2011, after pleading nolo contendere, Respondent was convicted
27 of one felony count of violating Penal Code section 12021, subdivision (a)(1) [possession of
28 firearm by a felon with a prior conviction], in the criminal proceeding entitled *The People of the*

1 *State of California v. Juan Carlos Ramirez* (Super. Ct. L.A. County, 2011, No. SA077799). The
2 Court sentenced Respondent to three years in state prison.

3 d. The circumstances underlying the conviction are that on or about May 26, 2011, a
4 law enforcement officer executed a search warrant at Respondent's residence. Respondent
5 informed the officer that Respondent had a gun and ammunition in his residence, which the
6 officers recovered.

7 **SECOND CAUSE FOR DENIAL OF APPLICATION**

8 **(Acts Warranting Discipline of Licensee)**

9 13. Respondent's application is subject to denial pursuant to sections 8568 and 480,
10 subdivision (a)(3), in that Respondent committed acts which if done by a licentiate of the
11 business and profession would be grounds for suspension or revocation of his license when
12 Respondent was convicted of crimes substantially related to the qualifications, functions and
13 duties of a structural pest control applicator in violation of section 8649 and section 490 of the
14 Code in conjunction with California Code of Regulations, title 16, section 1937.1. Complainant
15 refers to and by this reference incorporated the allegation set forth above in paragraph 12, as
16 though set forth fully.

17 **OTHER MATTERS**

18 14. Pursuant to section 8654, if Respondent's Application for an applicator's license is
19 denied, Respondent shall be prohibited from serving as an officer, director, associate, partner,
20 qualifying manager, or responsible managing employee for any registered company, and any
21 registered company which employees, elects, or associates Respondent shall be subject to
22 disciplinary action.

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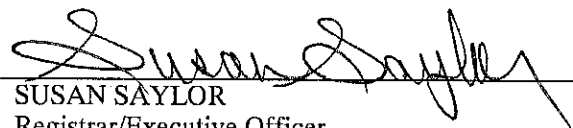
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PRAYER

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

1. Denying the application of Juan Carlos Ramirez for an Applicator License; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 8/6/15



SUSAN SAYLOR
Registrar/Executive Officer
Structural Pest Control Board
Department of Consumer Affairs
State of California
Complainant

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