

**Structural Pest Control Commission
9535 E. Doubletree Ranch Road
Scottsdale, AZ 85258**

**COMMISSION MEETING
FRIDAY, June 10, 2005 - 9:00 A.M.
MINUTES**

I. Call to order, Commissioner roll call

Commissioners Present: Commissioners Paul Baker, Mike Fraker, Robert Hartley, Mary Leavitt, Virgil Robinson, Debbie Runbeck and Jack Peterson

Commissioners Absent: None

Staff Present: Jason Aanderud, Eric Bauer, Dave Colvin, Vince Craig, Mike Francis, Lisa Gervase, and Assistant Attorney General M. Elizabeth (Lisa) Burns

II. Call to the public

None.

III. Communication with Commissioners

None.

IV. Summary of Current SPCC Events, Activities, Notices

Applicator License Renewals were late after May 30, 2005

Lisa Gervase reminded those licensed applicators who have not yet renewed their licenses that their licenses expired on May 30. She stated that so far approximately 80 percent of the state's 6,600 licensed applicator have renewed, with approximately 56 percent of the renewals done online. She stated that those people who have not yet renewed will get a notice from the Commission saying that they will need to renew soon or else they will have to retest.

Watch Web site for future postings about Law and Rule Proposed Changes

Commissioner Peterson encouraged people to begin looking for a draft of the rules and laws that the Commission will be proposing to change on the Commission's website and to give their feedback.

V. Consent Agenda

A. Applications for New Business License

Qualifying Party

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|---------------------------------|--|
| 1. Maglanoc, Lee T. | Apocalypse Termite and Pest Control (Activating Qualifying Party for new business license in "B1" General Pest & Public Health, "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection) |
| 2. Hawkins, Johnathan R. | Advanced Home & Termite Inspections, LLC. (Activating Qualifying Party for new business license in "B8" Wood Destroying Insect Inspection) |
| 3. Stapley, Mark Curtis | Stapley Pest Control, Inc. (Activating Qualifying Party for new business license in "B1" General Pest & Public Health) |

MOTION: *To approve activating QP for new business license in "B1" by Commissioner Runbeck. Seconded by Commissioner Baker.*

VOTE: *6-0 Motion carried (Commissioner Fraker recused).*

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| 4. Ziemba, Mark Louis | Marksman Pest Control (Activating Qualifying Party for new business license in "B1" General Pest & Public Health) |
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- 5. Hancock, Dennis King Alternative Pest and Termite Control, LLC. (Activating Qualifying Party for new business license in "B1" General Pest & Public Health, "B2" Control of Wood-Destroying Insects, "B4" Fumigation and "B8" Wood Destroying Insect Inspection)

- 6. Olander, Robert Lee Olander's Landscape Creations, LLC. (Activating Qualifying Party for new business license in "B3" Right of Way & Weed Control)

- 7. Guss, Vance M. Wildcat Exterminating (Activating Qualifying Party for new business license in "B1" General Pest & Public Health, "B2" Control of Wood-Destroying Insects, "B3" Right of Way & Weed Control and "B8" Wood Destroying Insect Inspection)

- 8. Heinrich, Daniel Scott Homelife Inspection Group, LLC. (Activating Qualifying Party for new business license in "B2" Control of Wood-Destroying Insects and "B8" Wood Destroying Insect Inspection)

- 9. Murphy, James Albert Got Bugs? Exterminating (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)

B. Applications to activate Qualifying Party for Existing Business License

- 1. Cervantes, Melanie Dawn Horticulture West II, Inc. (Activating Qualifying Party for existing business license in "B3" Right of Way & Weed Control and "B5" Turf & Ornamental Horticulture)

- 2. **Hunt, Steven Carl** **S & B Pest Technologies (Activating Qualifying Party for existing business license in "B3" Right of Way & Weed Control)**

- 3. **Lindsay, Richard Barton** **North Country Pest Management Systems, Inc. (Activating Qualifying Party for existing business license in "B3" Right of Way & Weed Control)**

- 4. **Allen, Joseph Sharp** **Schendel Pest Control of Arizona, Inc. (Activating Qualifying Party for existing business license in "B1" General Pest & Public Health)**

- 5. **Workman, Jason Thomas** **Safeguard Pest Control, Inc. (Activating Qualifying Party for existing business license in "B1" General Pest & Public Health)**

C. Applications for Qualifying Party License

Commissioner Runbeck asked for clarification from staff regarding the fact that ten of the applications in the Commission book list experience from more than five years ago. Mike Francis stated that staff asks for all employment dates, and that before the applications are brought before the Commissioners for their review, staff member Robert Tolton verifies that at least 3,000 of the experience hours are within the past five years.

- 1. **Emmord, Jr.; Ralph F.** **"B1" (General Pest & Public Health)**

Pulled-Mr. Emmord appeared.

Commissioner Baker stated that one of the issues that has been raised by the Commission concerns the ability of people who have had felony convictions to move up the ranks. Mr. Emmord stated that he has a QP license in the "B3" Right of Way/Weed Control and "B5" Turf and Ornamental categories and has already gone through this type of scrutiny. Commissioner Robinson asked if Mr. Emmord had a felony conviction in 2000 also. Mr. Emmord stated that he did not. Commissioner Runbeck clarified that it appeared that it was a charge regarding failure to comply with a court order, and was dismissed. Mr. Emmord confirmed this.

MOTION: To approve QP testing in "B1" by Commissioner Runbeck.
Seconded by Commissioner Baker.

VOTE: 7-0 Motion carried.

2. Riley, Timothy John "B1" (General Pest & Public Health),
"B2" (Control of Wood-Destroying Insects) and
"B8" (Wood Destroying Insect Inspection)

Tabled.

Mike Francis stated that Mr. Riley has not yet renewed his applicator license. Lisa Gervase added that, according to A.A.C. R4-29-204(B), a QP applicant has to have a valid applicator license in order to get a QP license. She stated that the Commission can table this application, deny it, or approve it subject to Mr. Riley renewing his applicator license. Commissioner Baker recommended that the application be tabled.

3. Dotson, John Warren "B1" (General Pest & Public Health)

MOTION: To approve QP testing in "B1" by Commissioner Baker.
Seconded by Commissioner Runbeck.

VOTE: 6-0 Motion carried (Commissioner Fraker recused).

4. Hicks, Arthur Leon "B3" (Right of Way & Weed Control)
and "B5" (Turf & Ornamental Horticulture)

5. Hill, Michael Douglas "B5" (Turf & Ornamental Horticulture)

6. Sheffield, Allen Nalder "B2" (Control of Wood-Destroying Insects) and "B8" (Wood Destroying Insect Inspection)

7. Whitted, Keith "B1" (General Pest & Public Health),
"B2" (Control of Wood-Destroying
Insects), "B4" (Fumigation) and "B8"
(Wood Destroying Insect Inspection)

8. Josephson, Kyle Sperry "B1" (General Pest & Public Health)

Pulled-Mr. Josephson appeared.

Commissioner Peterson asked about the size of the business and why the QP didn't verify his experience. He stated that the employees are he, the QP and the QP's son. The office manager, not his boss, verified his work experience, because the QP only provides his paycheck. He stated that he is pretty much on his own as he and his boss are on separate sides of the city. Commissioner Peterson acknowledged that Mr. Josephson does have a lot of experience.

MOTION: *To approve QP testing in "B1" by Commissioner Runbeck.
Seconded by Commissioner Robinson.*

VOTE: *7-0 Motion carried.*

9. Klapper, Raymond Thomas "B1" (General Pest & Public Health)

10. Oleson, Eric Lavon "B1" (General Pest & Public Health)

11. Soldwisch, Michael Gerald "B1" (General Pest & Public Health),
"B2" (Control of Wood-Destroying
Insects), and "B8" (Wood Destroying
Insect Inspection)

12. Dennee, Darrall Joe "B3" (Right of Way & Weed Control)
and "B5" (Turf & Ornamental
Horticulture)

13. Wagner, Robert Michael "B2" (Control of Wood-Destroying
Insects), and "B8" (Wood Destroying
Insect Inspection)

14. Kruse, Michael Dale "B9" (Aquatic Pest Control)

15. Kolander, Robert Jonathan "B1" (General Pest & Public Health), "B2" (Control of Wood-Destroying Insects), and "B8" (Wood Destroying Insect Inspection)

Pulled-Mr. Kolander appeared.

Commissioner Hartley noticed that Mr. Kolander was fined last year for unlicensed activity. Mr. Kolander stated that the existing QP at the time, the person from whom he purchased the business, was disassociated from the company. He stated that he had a temporary QP license, but it expired.

MOTION: *To approve QP testing in "B1", "B2", and "B8" by Commissioner Hartley.
Seconded by Commissioner Baker.*

VOTE: *7-0 Motion carried.*

16. Bailey, Gerald D. "B1" (General Pest & Public Health)

17. Johnston, Timothy Lee "B1" (General Pest & Public Health), "B2" (Control of Wood-Destroying Insects) and "B8" (Wood Destroying Insect Inspection)

D. Business License Name Change Requests

1. Raven Golf Club @ South Mountain to Intrawest Golf Holdings, Inc.

End of Consent Agenda

MOTION: *By Commissioner Baker to accept Consent Agenda with the exception of those items pulled for discussion (A3, C1, C2, C3, C8, C15). Seconded by Commissioner Runbeck.*

VOTE: *7-0 Motion carried.*

VI. Request for Temporary Qualifying Party License Renewals

None

VII. Complaints

A. Terminix Commercial (BL)/Kevin Hogue (QP) - Case # 2004-146

MOTION: *To accept staff's recommendation to dismiss the complaint against the business and qualifying party licensees, by Commissioner Runbeck. Seconded by Commissioner Fraker.*

VOTE: 7-0 *Motion carried.*

B. SPM, Inc. (Unlicensed)/Nancy J. Nicolosi (President/CEO) - Case # 2004-161

Commissioner Peterson stated that he appreciated staff's explanation in the file justifying the recommended penalty.

MOTION: *To accept proposed resolution and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to impose the terms in an Order, by Commissioner Runbeck. Seconded by Commissioner Hartley.*

VOTE: 7-0 *Motion carried.*

C. Litchfield Termite Division, LLC dba Litchfield Termite Division (BL)/Kenneth Rael (QP/App) - Case # 2004-171

Mr. Rael appeared.

Commissioner Peterson asked if Mr. Rael has paid what he owes to the Commission. Mr. Rael stated that as of the settlement conference three weeks ago, he has paid \$1,300 and still owes \$4,160. He stated that he does not have all the money to pay it now and that this case about TARFs goes back several years. Commissioner Peterson stated that Mr. Rael took all the money in though, so he should have it. Mr. Rael acknowledged that he is responsible for this and that he should be able to come up with the money within the agreed upon time period. He stated that his office manager would handle much of the paperwork and that he would just sign the checks. He stated when the Commission staff conducted the office inspection, he gave them a bunch of stuff, the records that he had. Commissioner Peterson asked Mr. Rael what he has done to change. Mr. Rael stated that he no longer does pretreats and that his office manager is gone. He stated that he

does welding now and doesn't even do pest control, although he might still do a little work for his mom's pest control business, Rainbow Bug Connection. He stated that Litchfield Termite Division is a one-man show (himself) and, although his license is active, he is not operating. He stated that he is concentrating his time and efforts toward going back to work at a nuclear power plant. Commissioner Robinson noted that it appears that the Consent Agreement for this case has already been signed by Mr. Rael. Lisa Gervase stated that it is unique for the Commissioners to have a signed Consent Agreement in front of them at the meeting. She stated that there is also another Consent Agreement signed by Mr. Rael vacating the hearing for another case to be considered later in the meeting, so staff obtained signed consents for both cases. Commissioner Runbeck stated that the practical effect of Mr. Rael already having signed the Consent Agreement is that if the Commission approves it today, then it will become effective today and Mr. Rael will have 30 days from today to pay. Commissioner Fraker noted that Mr. Rael's client in this case is a homebuilder. He asked if this client is the only homebuilder for whom Mr. Rael does pretreats. Mr. Rael stated that it is. Commissioner Fraker stated that this case bothers him because with all of the pretreats that were done and with all of the money that was taken in (approximately \$45,000), there is a failure to pay approximately \$3,000. He stated that this shows blatant disregard of the Commission's laws and rules by Mr. Rael. He stated that it is a good thing that the Commission inspectors verified records from the builders because the Commission inspectors don't necessarily know all of Mr. Rael's records because he did not provide them all, and this compounds the situation. He stated that Mr. Rael got checks from the builders and failed to pay the State, and this gave him a competitive advantage over those pest control operators who do pay their fees to the state.

MOTION: To accept proposed resolution, by Commissioner Runbeck.
Seconded by Commissioner Hartley.

VOTE: 7-0 Motion carried.

D. Alhambra School District #68 (BL)/Manuel Montano (QP/App) - Case # 2004-154

Commissioner Hartley stated that in the text of the investigation, there appears to be evidence of goodwill. However, goodwill is not noted in the Matrix that is used to calculate the Civil Penalty in this case. He stated that he thinks it would be fair to reduce the Civil Penalty.

MOTION: To accept proposed resolution for the applicator with the modification that the Civil Penalty be reduced from \$400 to \$200, and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, and to dismiss the complaint against the business and qualifying party licensees, by Commissioner Hartley.
Seconded by Commissioner Baker.

VOTE: 7-0 Motion carried.

E. Burns Pest Elimination (BL)/David G. Burns (Vice-President/QP)/Scott C. Gibbs (App) - Case # 2004-147

Scott Richardson, attorney for the business, QP and applicator, was present.
Mr. Burns was present.

MOTION: To accept proposed resolution for the applicator and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, and to dismiss the complaint against the business and qualifying party licensees, by Commissioner Runbeck.
Seconded by Commissioner Robinson.

VOTE: 7-0 Motion carried.

F. - M.: None

N. Pesty Pest Control (BL)/Charles L. Asplin, Jr. (President/CEO/QP) - Case # 2004-170

Staff asked if the consumer was present because the office had received a telephone call that he may be providing additional information. No one was present.

MOTION: To accept staff's recommendation to dismiss the complaint against the business and qualifying party licensees, by Commissioner Runbeck.
Seconded by Commissioner Robinson.

VOTE: 7-0 Motion carried.

O. Dewayne Prince (App) - Case # 2005-005

Note: date on agenda should have been 12-22-04, not 12-22-05.

Mr. Prince appeared.

Commissioner Baker asked if Mr. Prince is still in the pest control business. Mr. Prince stated that he is an applicator with Sexton Pest Control.

MOTION: *To accept proposed resolution and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Runbeck.
Seconded by Commissioner Fraker.*

VOTE: 6-0 *Motion carried (Commissioner Hartley recused).*

P. Cowboy Pest Control (BL)/William Wilson (Sole Proprietor/QP/App) - Case # 2004-055

MOTION: *To accept staff's recommendation to dismiss the complaint without prejudice, by Commissioner Runbeck.
Seconded by Commissioner Fraker.*

VOTE: 7-0 *Motion carried.*

Q. Cowboy Pest Control (BL)/William Wilson (Sole Proprietor/QP/App) - 2004-015

MOTION: *To accept staff's recommendation to dismiss the complaint without prejudice against the business and qualifying party licensees, by Commissioner Runbeck.
Seconded by Commissioner Fraker.*

VOTE: 7-0 *Motion carried.*

R. Strike Force Pest & Termite Control, Inc. (BL)/Robert Norton (CEO/President/QP)/Dennis Osvog (App) - Case # 2004-155

*Scott Richardson, attorney for the business and QP, appeared.
Complainant Gayle Collins appeared.
Complainant John Wood was present.*

Ms. Collins, the homeowner who hired Strike Force Pest & Termite Control, stated that during the course of the home inspection, the Strike Force inspector walked her through the report and pointed out some boards that needed to be replaced. She stated that the inspector did not say anything about another area in the home that she thought might be a problem. Her realtor said that if it was anything to worry about, it would be in the WDIIIR. She relied on his professional judgment. However, shortly after they purchased the house, a handyman who was doing repairs for them pointed out the area as dry rot. Another Strike Force employee then came out and confirmed that the area was dry rot. Since then, four contractors have taken a look at it and have given repair quotes between \$3,000 and \$10,000. She stated that they would not have purchased the house had they known the area was dry rot. She stated that Strike Force has not contacted them to resolve this matter and that Strike Force's actions since then have not shown that this was just an honest mistake by the inspector. She stated that she would like to see more than an Administrative Warning be imposed against Strike Force, perhaps a fine or suspension of their license, something that would equal what Strike Force has done to them. She stated that as an electronics engineer, her time is valuable, billed out at \$5,000 per day, and she has spent approximately 100 hours putting reports together and handling correspondence in dealing with this situation. Commissioner Peterson stated that the Commission, as a regulatory body, cannot resolve Ms. Collins' damages situation. Scott Richardson stated that the inspection took place in July, 2004, dry rot was not a target of the inspection, and the realtors did not get this change for some time. Ms. Collins stated that there is a place on the home inspection form to mark for dry rot, and the fact that nothing was marked led them to believe that dry rot did not exist. Vince Craig stated that there were some notes although nothing was marked. Mr. Collins stated that during the home inspection, the inspector pointed out thin boards to be replaced but said nothing about the area underneath. Commissioner Baker asked why Strike Force did not make any effort to come to an agreement with Ms. Collins. Scott Richardson stated that they cannot come to an agreement with a consumer without first getting a release from their insurance company. He stated that if they made admissions and concessions without first notifying the insurance company, they would put their insurance at risk. This is the very insurance that protects the consumer. Ms. Collins stated that she did contact Strike Force but they told her that she has no recourse for mistakes made on the report. Scott Richardson stated that he could give Ms. Collins the name of the insurance company, who can file a claim on her behalf and give her a claim number and adjuster. Ms. Collins stated that this is the first she has heard of this and that she will contact the insurance company. Commissioner Runbeck advised her to contact the insurance company about this because she may have options that the Commission has no jurisdiction

to pursue. Commissioner Peterson added that the maximum that can be imposed is an Administrative Warning against the business licensee under the facts of this case. Lisa Gervase stated that, according to the record here, there is no condition precedent to impose more than an Administrative Warning against the business licensee. Commissioner Fraker stated that cases like this one point out the importance of the WDI inspection reports and how they affect people's lives and decision-making processes in purchasing homes. He stated that even though these reports are underpriced for the amount of time put into them, it is not an excuse for an inspector to say he was in a hurry or felt pressure from the realtor. An inspector has to review his/her notes and be diligent because the QP relies on the inspector who is representing the company. Commissioner Peterson agreed that these reports should be double checked. Ms. Collins stated that next time she will call Commissioner Fraker's company. Commissioner Hartley asked who picked Strike Force. Ms. Collins stated that the home inspection company did. Commissioner Hartley asked who paid Strike Force. Ms. Collins stated that she did, and that she also paid for a mold inspection. Commissioner Peterson stated that Ms. Collins would need to pursue this matter civilly.

MOTION: To accept proposed resolution and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Runbeck.
Seconded by Commissioner Hartley.

VOTE: 7-0 Motion carried.

(Break from 10:25 A.M. to 10:40 A.M.)

VIII. Requests for Review or Rehearing of Previous Commission Decisions.

None

IX. Review or Rehearing of Previous Commission Decisions.

A. Troy L. Price - Denial of Temporary Qualifying Party Renewal

Joseph Allen, branch manager for Schendel Pest, appeared.

Mr. Allen stated that he has a QP license in the "B1" General Pest/Public Health category and is working on obtaining a QP license in the "B4"

Fumigation category. Lisa Gervase stated that this matter was on last month's agenda to grant review of the previous denial of temporary QP license renewal request. Mr. Price submitted a letter stating why he wants a temporary QP license, and Mr. Allen has been activated today as the "B1" QP for Schendel Pest Control. Commissioner Runbeck asked if Mr. Allen has yet taken the fumigation test. Mr. Allen stated that he will take it today. Commissioner Fraker stated that Mr. Allen is requesting that Mr. Price's temporary QP license be renewed although Mr. Price does not want to be responsible for a permanent fumigation QP position in the future. Commissioner Peterson asked why Mr. Allen is not the temporary QP. Mr. Allen stated that the reason is because at that time he did not have an applicator license in fumigation. There was only one temporary QP period, and Mr. Price became the temporary QP for the gamut of the business. Commissioner Peterson asked how long it would give him if the Commission was to grant a renewal. Lisa Gervase stated that there is no set time frame for granting a renewal, although historically it has been 60 days. The clock would start ticking today. Lisa Burns added that the decision has been stayed because of Mr. Price's appeal, and his temporary QP license continued until today. Commissioner Fraker stated that he does not see any reason to reverse the denial. He acknowledged that Mr. Allen is getting things done in obtaining his licenses, but Mr. Price should not be considered disassociated because he did not leave the firm. He also stated that Mr. Allen is not qualified now because he has not passed the exam. Lisa Gervase added that there has not been a disassociation of a "B4" QP because there is only a temporary QP in "B4". Mr. Allen stated that he would not want to be responsible if he wasn't doing the training. Commissioner Peterson stated that Tim Powell works for Schendel Pest Service and has an inactive QP license but is not the company's QP, even though all he would have to do is activate his license. Commissioner Baker stated that he does not understand why Mr. Powell does not want to be the active QP until the company gets another one. Commissioner Runbeck stated that if the Commission upholds the denial, it would be effective as of today and Schendel Pest Control could not do fumigation work until Mr. Allen passes the "B4" QP exam. Commissioner Fraker stated that he does not believe anything has changed that would encourage a reversal of the denial. Commissioner Leavitt asked if there is any new evidence. Lisa Gervase stated that the new evidence being presented by Mr. Allen is that he is taking exams to obtain and activate his QP licenses, and he has been successful with two of the exams but not with the fumigation exam. Commissioner Baker asked what would happen if Mr. Allen passes the exam today. Mr. Allen stated that he would still have to wait another 30 days to come before the Commission again and have his QP license activated. He added that there would be a substantial economic impact if his company is not able to do fumigations.

MOTION: *To uphold Commission decision to deny renewal of the Temporary Qualifying Party license because the new evidence is insufficient to change the decision, by Commissioner Fraker.
Seconded by Commissioner Robinson.*

VOTE: 7-0 *Motion carried.*

- X. **Consideration of Suspension of Business, Qualifying Party and/or Applicator Licenses for Non-payment of Civil Penalties and/or Nonpayment of Renewal Fees [Possible Dismissal of Cases without prejudice, if applicable].**

None

- XI. **Consideration of lifting Suspension of Business, Qualifying Party and/or Applicator Licenses.**

- A. **Norstar Pest Control, LLC (BL)/Eric Lund (QP/App) - Case # 2003-084**
On January 21, 2005 the Commission voted to suspend Norstar Pest Control, LLC Business License No. 8250, Qualifying Party License No. 3215 B1 and two Applicator Licenses Nos. 040079 B1 and 010542 B1 for failing to pay a \$50.00 balance of a civil penalty ordered on June 8, 2004, which has been paid.

Lisa Gervase stated that staff has requested the lifting of the suspensions even though Mr. Lund has not. She stated that the Commission also has a complaint pending against him for unlicensed activity. Commissioner Runbeck asked why staff is recommending the lifting of the suspensions. Lisa Gervase stated that the complaint and the suspensions are two separate issues. The Commission will consider the complaint at a future meeting. The basis for the suspensions was failure to fully pay a civil penalty, which now has been paid.

MOTION: *To lift the suspensions of the business license, qualifying party license and both applicator licenses, by Commissioner Hartley.
Seconded by Commissioner Runbeck.*

VOTE: 7-0 *Motion carried.*

- XII. **Recommended Decisions and Orders of the Office of Administrative Hearings' Administrative Law Judges.**

A. Saxton Services, Inc. dba SST Exterminators (BL)/John Franklin Saxton, Sr. (QP)/Brett Alessandri (App)/John Franklin Saxton, Jr. (App) - OAH Docket # 2003A-128-SPC/Case # 2003-128

*Lisa Burns, Assistant Attorney General for the State of Arizona, representing the Structural Pest Control Commission, appeared.
Tony Behrens, attorney for the business and QP, appeared.*

Lisa Burns asked that the Commission adopt, in toto, the Administrative Law Judge's ("ALJ") Decision from the April 5, 2005 hearing held at the Office of Administrative Hearings ("OAH"). Tony Behrens stated that about a year ago this matter was before the Commission based on a good faith agreement that the parties had negotiated with Commission staff. At the time it was the understanding that this matter would be resolved then, but it ended up not being resolved and this is why they ended up in OAH in front of an ALJ. He stated that Mr. Saxton is not here and is on a preplanned vacation. Mr. Behrens encouraged the board to look again at the good faith settlement that had been negotiated between his clients and staff. He stated that it had come before the Commission with a motion and a second to approve it, but things went otherwise because of other collateral matters of interest to one of the Commissioners. He stated that this complaint also has to do with the fact that his client lost lots of records because of water damage from a severe storm in 2001. He stated that things are different today and storm damage won't be a problem, and that there has been no injury to the public. He understands that the rules provide that companies are supposed to keep records, but this case does not justify the severity of the sanctions recommended by the ALJ. He stated that the idea of a suspension was not even presented by the Assistant Attorney General at the hearing. It was pulled by the ALJ without argument. He urged the Commission to look again at the original deal that was struck, because that is the deal that they would like to have. He stated that even though he realizes that the Commission can review and accept or reject the settlement proposals, the idea of having deals struck and unstruck causes chaos and uncertainty. Commissioner Peterson stated that a one day suspension is almost humorous, and also that it appears that Mr. Behrens' client did himself harm at the hearing with some of the things he said. Commissioner Fraker asked why a one day suspension was imposed. Lisa Burns stated that she did not make that recommendation, but, after reviewing a case and making a decision, an ALJ is free to make his/her own recommendations. The ALJ did accept Lisa Burns' recommendations also. She stated that it is the State's position that the only limitations on the Commission in changing the Order are that it has to be reasonable and can't be excessive or arbitrary and capricious.

MOTION: To adopt the ALJ's Findings of Fact and Conclusions of Law, by Commissioner Hartley.
Seconded by Commissioner Runbeck.

VOTE: 7-0 Motion carried.

Commissioner Runbeck stated that she has been unable to locate what the original agreement was and why the Commission turned it down, and that it is difficult to consider the ALJ's Decision and Recommended Order without also thinking about the past proposed resolution. Lisa Gervase stated that the proposed resolution was brought before the Commission in July, 2004, and she does not think that it is in today's Commission book materials. Lisa Burns stated that it is the State's position that today's record only consists of discussion of the ALJ's Decision. If the Commission wants to entertain and review the record of the proposed resolution from before this Decision, it would need to review it in its entirety. Commissioner Hartley stated that he thinks a one day suspension is ridiculous and is a red herring unless it has some significant meaning. He stated that he hates suspensions unless there is an immediate danger to the public, because suspensions carry different economic impacts for different companies based on their size. A one day suspension could be akin to a substantial fine or akin to a fairly insignificant fine. Commissioner Peterson agreed in dropping the suspension, but for a different reason, namely that a one day suspension will not serve any purpose. He stated that the hurt would be proportionately and relatively the same for each company regardless of size. Commissioner Runbeck suggested that perhaps the ALJ was thinking that a one day suspension would mean that from now on the respondent would have to answer in the affirmative to those questions on questionnaires, surveys, applications, etc. that ask if a license has ever been suspended. She also stated that she understands Lisa Burns' argument that the Commission would have to review the past record in its entirety if it were to consider the past proposed resolution, but that she does not agree with this because she thinks that the Commissioners should be able to hear the past Commission meeting minutes if they want to. Commissioner Peterson disagreed that any external information should be presented because the Commissioners have been directed to only make a decision based on the ALJ's Recommended Order from the OAH hearing.

MOTION: To accept the ALJ's Recommended Order with the modification that no suspension will be imposed, by Commissioner Hartley.
Seconded by Commissioner Runbeck.

VOTE: 5-1-1 Motion carried. (Roll call vote: Commissioner Hartley-Yes, Commissioner Robinson-Abstain, Commissioner Fraker-Yes, Commissioner Runbeck-No, Commissioner Baker-Yes, Commissioner Leavitt-Yes, Commissioner Peterson-Yes)

XIII. Settlement Proposals [not part of Complaints agenda item].

A. Litchfield Termite Division, LLC dba Litchfield Termite Division (BL)/Kenneth Rael (QP/App) - Case # 2004-056

Lisa Burns, Assistant Attorney General for the State of Arizona, representing the Structural Pest Control Commission, appeared.

Lisa Burns asked that the Commission accept the proposed resolution of this matter. There would be a delayed payment of the Civil Penalty in this case. She stated that it is the State's position that because Mr. Rael will have difficulty making payment of the fine that was part of the Consent Agreement for Case No. 2004-171 earlier in today's agenda, he will be more likely to comply with the Order in this case if he is allowed to have up to 90 days to pay the fine. Commissioner Baker stated that he agrees in principle, but he took exception here, saying that this case is different because it involves money already collected by Mr. Rael but not paid to the State along with TARFs. He stated that he thinks that Mr. Rael should only be given 24 hours to pay the TARP money to the State, and that the Commission is being extremely generous with in giving him 90 days. By not complying with the Commission's laws and rules, Mr. Rael is able to have an advantage over his competitors. Lisa Burns stated that she understands Commissioner Baker's position, but this second case here is not a TARP case. Commissioner Peterson stated that he was really amazed that the spacing between the treatment holes was 36-59 inches. Commissioner Baker stated that there should never be that type of spacing. Commissioner Fraker stated that measuring is not the issue. The issue is intent. He stated that he thinks it is good to have this discussion in an open forum because he can see where it can be misconstrued as to whether a complete treatment or spot treatment was to be done. An applicator can make these decisions regarding spot treatments in some circumstances, but with full treatments, the spacing between the holes should not be that much.

MOTION: *To accept proposed resolution and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case*

*to the Office of Administrative Hearings, by
Commissioner Runbeck.
Seconded by Commissioner Hartley.*

VOTE: 7-0 Motion carried.

XIV. Consideration of Informal Settlement Conference proposed resolutions [for License Denial Applicants].

None

XV. Reporting by Licensees on Probation.

None

XVI. Felony Applicants

A. Gaona, Emiliano

Mr. Gaona appeared.

Matthew Reyelts, President/QP of Yuma Pest & Termite Systems, appeared.

Commissioner Peterson asked what Mr. Gaona has been doing since his offense in 2000. Mr. Gaona stated that he has had no trouble since then, was married in November, 2003, and is trying to move on and learn from his past mistakes. He stated that he got a great opportunity from his current employer. Mr. Reyelts stated that he recruited Mr. Gaona after seeing him as a waiter at a restaurant. He stated that Mr. Gaona is respectful and professional and has been working for Yuma Pest & Termite Systems for a while. Commissioner Runbeck stated that it appears that Mr. Gaona was discharged from probation and the felony has been reclassified as a Class 1 misdemeanor. Mr. Gaona confirmed this. Commissioner Peterson asked about Mr. Gaona's drug problem. Mr. Gaona stated that he had a drug problem coming out of high school, but not now.

MOTION: *To approve applicant testing by Commissioner Runbeck.
Seconded by Commissioner Hartley.*

VOTE: 7-0 Motion carried.

B. Leyva, Jose Rubin

Mr. Leyva appeared.

Joe Roy Wright, supervisor for Handyman Maintenance, Inc., appeared.

Mr. Ray stated that Mr. Leyva has been working well for HMI for about a year and his father also worked for HMI. He stated that Mr. Leyva will possibly be going to another job for more money and a better future. Commissioner Peterson stated that it appears that theft was a repeating issue with Mr. Leyva. Mr. Leyva stated that the people with whom he was hanging around were not good. Commissioner Peterson asked what has changed. Mr. Leyva stated that he is not with those same people anymore, is engaged and has a baby. Commissioner Peterson asked if Mr. Leyva has completed his probation. Mr. Leyva stated that he got off early from standard probation, and he thinks it was in January. Commissioner Peterson asked how old Mr. Leyva is. Mr. Leyva stated that he is 27. He stated that he will be pursuing a pool repair job, which he has been doing on the side, and he just wanted to get this cleared up. Commissioner Fraker asked Mr. Leyva if he planned on testing if the Commission approves his application. Mr. Leyva stated that he would like to because he would like to have this license. Commissioner Peterson asked if Mr. Leyva is clean. Mr. Leyva responded that he is clean. Commissioner Peterson noted that this offense occurred less than two years ago. He asked where the people with whom Mr. Leyva used to surround himself are now. Mr. Leyva stated that he has not met up with them any more and does not live in the same place anymore. Commissioner Fraker stated that the Commission may not want to take the risk of approving Mr. Leyva if he will not even be working in the pest control industry. Commissioner Peterson stated that Mr. Leyva has a long history of theft and has just recently gotten off of probation. The Commission usually likes a person to show a little bit longer of a clean track record before being granted a license. If the Commission chooses to deny Mr. Leyva's application today, then there will be a denial on the record. He wondered if Mr. Leyva has another option. Lisa Gervase stated that Mr. Leyva could withdraw his application. Commissioner Peterson suggested that Mr. Leyva could then come back to the Commission and reapply in the future if he decides that the pool business isn't for him, without having had a previous denial on his record. And, if he remains clean, then he will have shown more of a clean track record and would have a better chance of being approved for testing. Mr. Leyva then chose to withdraw his application.

XVII. SPCC Status update and Reports

A. HB 2516 - No update.

Lisa Gervase stated that this minor law change will go into effect on August 1.

B. Possible Future Law Changes - No update.

C. Possible Future Rule Changes - No update.

D. Complaint Status Log

Commissioner Peterson complimented staff's efforts in preparing the Commission books each month.

E. Computer Based Testing "CBT" Status and Statistics

Lisa Gervase stated that Metro Institute moved servers from Utah to Texas this past month and this means they are receiving less computer glitches.

F. Expenditure Report - separate handout or verbal report

Lisa Gervase stated that June 30 will mark the end of a two-year budget cycle and she does not expect the Commission to have much money (maybe \$500) at the end of it.

G. Case Status Report - separate handout

Lisa Gervase stated that the turn-around time now for cases after Commission meetings is less than two months, and staff will be working on turning them around even faster in the future, perhaps within 30 days or less. She also stated that six more cases have been referred for collection action and that staff is still working on the old cases.

XVIII. Approval of Minutes

A. May 13, 2005 (regular session) Minutes

MOTION: *To approve the May 13, 2005 Minutes by Commissioner Hartley.
Seconded by Commissioner Runbeck.*

VOTE: *7-0 Motion carried.*

B. May 13, 2005 (executive session) Minutes

MOTION: *To approve the May 13, 2005 executive session Minutes by Commissioner Hartley.
Seconded by Commissioner Runbeck.*

VOTE: *7-0 Motion carried.*

C. Continuing Education Minutes

MOTION: *To approve the Continuing Education Minutes by Commissioner Runbeck.
Seconded by Commissioner Baker.*

VOTE: 7-0 *Motion carried.*

XIX. Scheduling of future meetings/agenda items

Current Proposed dates

July 8, 2005 - *Commissioner Robinson unavailable.*

August 12, 2005

September 9, 2005

October 14, 2005

November 10, 2005 ***Note: this is a THURSDAY***

December 9, 2005

January 13, 2006

Commissioner Baker requested a Tucson meeting. Lisa Gervase stated that although there isn't a meeting scheduled in Tucson, there have been CE courses this past year held in Tucson, and there are one or two upcoming seminars that Chemtech is putting on for QPs and there will also be upcoming SPCC CE courses in Tucson. But there isn't the turnout of people in Tucson to justify holding a Commission meeting there, considering the staff time and other costs. Commissioner Fraker asked how long it has been since a meeting was held up north. Lisa Gervase stated that it has been over two years. Commissioner Leavitt stated that Prescott is nice in the summer. Lisa Gervase stated that for people who do come from north or south, Scottsdale is a more central location. It is not efficient to add more driving time for staff. It is tough to get people who don't come on a regular basis anyway, to come anywhere else other than Scottsdale. She stated that people want to get on the agenda as soon as they can and will drive wherever they have to and won't necessarily wait for a meeting to be held in their area. Commissioner Fraker asked if attendees get laws and rule CE credit for attending. Lisa Gervase stated that they can get one hour of credit per year. She stated that she just needs to get a consensus from the Commission about meeting locations. Commissioner Peterson stated that although there has been insufficient attendance in the past at meetings outside of Scottsdale, it is a good idea to try another meeting in Tucson and that industry members should encourage people to attend.

XX. Adjournment - 11:30 a.m.

MOTION: *To adjourn by Commissioner Hartley.
Seconded by Commissioner Runbeck.*

VOTE: 7-0 *Motion carried.*