

State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:

Nathan Charles Ament

Applicant.

Serve at:

1127 Madeline St
Jefferson City MO 65101

Case No. 07A000270

ORDER TO STAY BAIL BOND LICENSE PROCEEDING

On May 18, 2007, Kathyrn Turner, as senior counsel for the Investigations Section of the Consumer Affairs Division, submitted a petition to the Director alleging cause for refusing to renew the bail bond agent license of Nathan Charles Ament ("Applicant"). After reviewing the petition, the investigative report and recent administrative law decisions of the Administrative Hearing Commission, the Director enters the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. Nathan Charles Ament ("Applicant") is a Missouri resident with an address of 1127 Madeline Street, Jefferson City, Missouri 65101.
2. Applicant was first licensed as a bail bond agent by the Department of Insurance on April 15, 2002.
3. Applicant's bail bond agent license expired on April 15, 2007.
4. On March 26, 2007, Applicant filed a Missouri Uniform Renewal Application for Bail Bond or Surety Recovery Agent License ("Renewal Application") with the Department of Insurance, Financial Institutions and Professional Registration seeking renewal of his bail bond agent license.

5. On the Application, Part III, Question B asks:

Have you ever been adjudicated, convicted, pled or found guilty of any...felony...? Applicants are required to report all criminal cases whether or not a sentence has been imposed, a suspended imposition of sentence has been entered or the applicant has pled nolo contendere (No contest)...

6. Applicant checked the "YES" box in response to that question.
7. On April 19, 1993, Applicant at the age of 17 years old, pled guilty to a class C felony and a class D felony, and was given a suspended imposition of sentence, with 5 years probation. Applicant admitted that he pled guilty to the offense.
8. This order is in the public interest.

CONCLUSIONS OF LAW

9. Section 374.715.1 RSMo Cum Supp 2006 provides, in part:

1. Applications for...licensure as a bail bond agent...shall contain such information as the department requires...Each application shall be accompanied by proof satisfactory to the department that the applicant...meets the qualifications for surety on bail bonds as provided by supreme court rule.

10. Supreme Court Rule 33.17 provides, in part:

A person shall not be accepted as a surety on any bail bond unless the person:

- (c) Has not, within the past 15 years, been found guilty of or pleaded guilty ...to:
- (1) Any felony of this state or the United States; or
 - (2) Any other crime of this state or the United States involving moral turpitude,

whether or not a sentence is imposed.

11. Prior to amendment, which became effective January 1, 2007, Rule 33.17 provided that this disqualification was limited to persons who had been "convicted of any felony...."

12. The Administrative Hearing Commission has recently issued decisions which conflict on the question of whether the licensing statute should be applied retrospectively or whether a statute that has been repealed must be applied. (See *Huddlestonsmith v. Director of Insurance*, No. 06-0161 DI (Mo. Admin. Hearing Comm'n November 13, 2006; *Director of Insurance v. Donald E. Christian*, No. 06-1603 DI (Mo. Admin. Hearing Comm'n May 22, 2007)). The conflict within the Administrative Hearing Commission does not appear to have been resolved by the recent Cole County Circuit Court reversal of the Administrative Hearing Commission decision in *Finke v. Cummings*, Case No. 06AC-CC01084, March 23, 2007.

13. The Director has consistently advanced the view that the qualification standards in current law are to be properly applied to licensing actions. Reversing the Administrative Hearing Commission, the Circuit Court in *Finke v. Cummings* concluded:

“Missouri courts have interpreted Section 1.170, RSMo, to apply to acts done or rights established in a proceeding prior to the repeal of a given statute, but retrospective application of statutes does not run afoul of Section 1.170 if such use is procedural and does not impair any substantive rights vested by a prior statute.”

(*Finke v. Cummings*, Conclusion of Law 9. p.2)

14. Applying this qualification standard does not impair any vested right of the Applicant.

“A statute which does not take away or impair a ‘vested right’ or impose a new or greater duty is not unconstitutionally retrospective merely because it relates to prior facts or transactions..... Missouri courts have routinely held that licensing statutes confer no substantive rights and that professional licensing is a privilege granted by the state.”

(*Finke v. Cummings*, Conclusions of Law 12. & 13. p. 3). Neither does applying the current Supreme Court Rule 33.17 impair a vested right of the Applicant.

15. To apply the current statute to Applicant does not violate the Missouri Constitution.

“Article I, Sec. 13 of the Missouri Constitution relating to a prohibition of ex post facto law or a law retrospective in operation had two exceptions, one of which is relevant in this Petition for Refusal to Renew: (2) where the statute is procedural only and does not affect any substantive right of the parties.”

(*Finke v. Cummings*, Conclusion of Law 11. p.3). Neither would an application of the current Supreme Court Rule 33.17 violate the Missouri Constitution.

16. In addition to licensure by the Director, local Missouri judges retain responsibility in the qualification of persons writing bail in their courts. Those courts will be immediately applying the qualification standards set forth for them by the Missouri Supreme Court in amended Rule 33.17.
17. If the current qualification standard in Rule 33.17 does apply, Applicant has failed to submit proof that he "meets the qualifications for surety on bail bonds as provided by supreme court rule." Under §374.715.1 RSMo Cum Supp 2006, the Director has no discretion to issue the bail bond license. *Phillip L. Joyce v. Director of Insurance*, No. 00-2668 DI (Mo. Admin. Hearing Comm'n July 3, 2001). The interplay of §374.715.1 and Supreme Court Rule 33.17 remove any discretion in regards to Applicant's guilty pleas. Section 374.715 and Supreme Court Rule 33.17 impose "a mandatory and not a discretionary requirement.[U]nder those provisions, [the Applicant] cannot be licensed as a general bail bond agent because of his felony convictions." *Joyce* (2001), at p.5. With the Supreme Court's amendment to Rule 33.17, this disqualification would now extend to a person who has entered a plea of guilty to a felony.
18. Nevertheless, due to the continued conflict in Administrative Hearing Commission on retrospective application of qualification standards for licensure as demonstrated in *Director v. Christian*, the Director concludes that he has equitable authority to delay these proceedings until such time as the question of law is resolved.
19. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that this proceeding is stayed until further order of the Director and the bail bond agent license of Applicant Nathan Charles Ament shall be temporarily renewed.

IT IS FURTHER ORDERED that a copy of this order be delivered to the Administrative Hearing Commission.

SO ORDERED.

WITNESS MY HAND THIS 29th DAY OF May, 2007.


DOUGLAS M. OMMEN
DIRECTOR


NOTICE

TO: Applicant and any unnamed persons aggrieved by this Order:

You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri within thirty (30) days after the mailing of this notice pursuant to Section 621.120 RSMo.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of May, 2007, a copy of the foregoing notice, order and petition was served upon the Applicant in this matter by certified mail.


Karen Crutchfield
Senior Office Support Staff