State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Phillip Lee Joyce	)	Case No. 00A000258
	)	
Applicant.	)	
	)	
Serve at:	)	
	)	
20591 State Highway 38 Marshfield, MO 65706	)))	

REFUSAL TO RENEW BAIL BOND AGENT LICENSE

On July 5, 2007, Dale Hardy Roberts, Assistant Chief Investigations 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 Phillip Lee Joyce ("Applicant"). After reviewing the petition and the file in this matter the Director issues the following findings of fact, conclusions of law and summary order:

FINDINGS OF FACT

1. Phillip Lee Joyce ("Applicant") is a Missouri resident with an address of 20591 State Highway 38, Marshfield, Missouri, 65706.

2. A license as a bail bond agent was initially issued to Applicant by the Director on July 7, 1998.

3. Applicant's current bail bond agent license was renewed on July 7, 2005 and expires on July 7, 2007.

4. On June, 1, 2007, Applicant filed a Missouri Uniform Renewal Application for Bail Bond or Surety Recovery Agent License ("2007 Renewal Application") with the Department of Insurance, Financial Institutions and Professional Registration seeking renewal of his bail bond agent license.

5. Question B of Part III of the 2007 Renewal Application 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" answer to this question.

1995 Scott County Adjudication

7. In response to Question B of Part III of the 2007 Renewal Application, Applicant did disclose information known to the Director concerning convictions in Scott County, Missouri:

   a. On July 9, 1995, Applicant was tried in the Circuit Court of Scott County, Case No. CR 395-2F, for three counts of felony stealing by deceit. The jury found Applicant guilty on all counts.

   b. On July 27, 1995, after reviewing the pre-sentence investigation, the Court sentenced Applicant to one year in jail on each of the three counts ("1995 Scott County Adjudication").

   c. On August 22, 1995, Applicant filed an "application for parole" and on September 15, 1995, Applicant was placed on probation, with the requirement that he pay a $2500 fine, $250 payment to the crime Reduction Fund, court costs and full restitution.

8. Applicant's felony convictions in Scott County, occurred fewer than 12 years prior to the 2007 Renewal Application.

1995 Craighead County Plea

9. In response to Question B of Part III of the 2007 Renewal Application, Applicant concealed the fact he had entered pleas of nolo contendere in the state of Arkansas:

   a. On November 18, 1994, Applicant was charged in the Circuit Court of Craighead County, Arkansas with three counts of Felony Theft by Deception in violation of Arkansas law, cited as "A.C.A. § 5-36-103."

   b. On June 30, 1995, Applicant entered pleas of nolo contendere to the three counts in the Circuit Court of Craighead County, Arkansas and was placed on five years probation ("1995 Craighead County Plea"). Applicant was moved

from supervised to unsupervised probation by order of the Court on September 22, 1999.

10. Applicant's 1995 Craighead County Plea of nolo contendere occurred fewer than 12 years prior to the 2007 Renewal Application.

11. In his initial bail bond application with the Director, filed on July 14, 1997, the Applicant failed to report his 1995 Craighead County Plea.

12. A condition of Appellant's probation from the 1995 Craighead County Plea was that Applicant "[s]hall not associate with any person known, or whom you have reason to believe, to have been convicted of or committed a crime."

13. This order is in the public interest.

CONCLUSIONS OF LAW

14. Section 374.750, RSMo 2000 provides:

> The department may refuse to issue or renew any license required pursuant to sections 374.700 to 374.775 for any one or any combination of causes stated in section 374.755.

15. Section 374.755.1, RSMo (Cum. Supp. 2006) provides, in part:

> The department may cause a complaint to be filed ....for any one or any combination of the following causes: .....
>
> (2) Final adjudication or a plea of guilty or nolo contendere...within the past fifteen years in a criminal prosecution under any state...law for...a crime involving moral turpitude...whether or not sentence is imposed...;
>
> (3) Use of...fraud, deception, misrepresentation...in securing any license...required pursuant to sections 374.695 to 374.775; ... [or]
>
> (6) Violation of any provision of or any obligation imposed by the laws of this state ....

16. 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.

17. 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;

Disqualification for 1995 Scott County Adjudications

18. Applicant may be disqualified and therefore, refused a renewal of his license, based upon the §§374.750 and 374.755.1.(2), RSMo (Cum. Supp. 2006) for the 1995 Scott County Adjudications. The Director must apply the statute in effect at the time of the application. Huddlestonsmith v. Director of Insurance, Case No. 06-0161 DI (November 13, 2006); Polsky v. Director of Insurance, Case No. 06-1458 DI (April 24, 2007).

19. Moreover, as 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). A prior decision of the Administrative Hearing Commission involving this Applicant was in error and the Applicant, despite his felony convictions, has remained licensed since 1998 because the Director failed to plead this mandatory disqualification. (see Joyce v. Director of Insurance, No. 97-3416 DI (Mo. Admin. Hearing Comm'n May 28, 1998)). The interplay of §374.715.1 and Supreme Court Rule 33.17 remove any discretion in regards to Applicant's 1995 Scott County Adjudications. 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.

Neither the law, nor Supreme Court Rule makes any distinction for bail bond agents.

20. Applicant's failure to submit proof that he "meets the qualifications for surety on bail bonds as provided by supreme court rule" also constitutes a "violation of ... [an] obligation imposed by the laws of this state", which is grounds for disqualification and refusal under §374.755.1(6), RSMo (Cum. Supp. 2006).

Disqualification for 1995 Craighead County Plea

21. Applicant may be disqualified and therefore, the Director may refuse to renew a license, based upon the §§374.750 and 374.755.1.(2), RSMo (Cum. Supp. 2006) for the 1995 Craighead County Plea. As concluded above, the statute in effect at the time of the application must be applied.

22. For similar reasons stated in ¶19 above, Applicant's disqualification is mandatory with the 1995 Craighead County Plea, since under the Supreme Court's new Rule 33.17, which became effective January 1, 2007, 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. Hence, the Director has no discretion to renew the bail bond license.

23. Likewise, similar to the conclusion in ¶20, Applicant has violated his legal obligation to meet the qualifications for surety on bail bonds as provided by supreme court rule with this 1995 Craighead County Plea.

Fraud and Deception in 2007 Renewal Application

24. The Director may also find disqualification and therefore, refuse a renewal of a bail bond license because Applicant's answer to Question B of Part III of the 2007 Renewal Application is fraud by concealment of a material fact, in that Applicant concealed his 1995 Craighead County Plea. "Concealment of a material fact of a transaction, which a party has a duty to disclose, constitutes fraud as actual as by affirmative misrepresentation." Daffin v. Daffin, 567 S.W.2d 672, 677 (Mo.App., K.C.D. 1978).

25. The facts concerning the 1995 Craighead County Plea are material as the Director has the responsibility to determine the qualification of bail bond agents under the terms of Supreme Court Rule 33.17. Applicant's concealment of his plea is no less material today than when he fraudulently concealed this fact in his initial bail bond application in 1997, although the condition of probation that Appellant not associate with persons known to have committed a crime, certainly would have been material to his performance of bail bond activity at that time.

26. While fraud and deception under §374.755.1.(3) involves an intent to mislead, the Director concludes that being charged with a felony and appearing in court to

enter that plea of nolo contendere is a memorable event, not subject to lapse of memory. Given the direct nature of the question and the clear instruction to disclose all pleas of nolo contendere, the Director concludes the Applicant's concealment of the 1995 Craighead County Plea and the subsequent criminal probation to 2000 in his 2007 Renewal Application was intended to conceal from the Director the Applicant's criminal history in Arkansas.

Discretion

27. As §374.750 provides that the Director "may" refuse a license renewal, the Director has discretion under this section for disqualifying Applicant for any or all of the above findings and conclusions. State Bd. Of Regis'n for the Healing Arts v. Finch, 514 S.W. 2d 608 (Mo. App., E.D. 1984); Joyce v. Director of Insurance, No. 97-3416 DI (Mo. Admin. Hearing Comm'n May 28, 1998); James A. Gillihan v. Director of Insurance, No. 04-1652 DI (Mo. Admin. Hearing Comm'n December 21, 2006); Rochelle K. Whatley v. Director of Insurance, No. 05-1074 DI (Mo. Admin. Hearing Comm'n January 3, 2007).

28. A bail bond agent has quasi-police powers including the authority to take custody of defendants released on bail by the courts. Honesty and candor are very important to this law enforcement function. While a conviction for felony stealing by deceit nearly twelve years ago standing alone may not reveal a risk to defendants, the courts and the public-at-large in licensing the Applicant, taken together with the plea to theft by deception in Arkansas and in light of the long-standing concealment of the 1995 Craighead County Plea, the risk to the public is significant.

29. In applying this discretion, the Director has considered the history of the Applicant and all of the circumstances surrounding the Applicant's 2007 Renewal Application. Although the Applicant appears to have completed both of his criminal probations without proven violations and has served as a bail bond agent without additional pleas to criminal charges during the past twelve years, the 2007 Renewal Application has raised substantial doubt regarding Applicant's integrity and respect for the law.

30. Finally, despite decisions by the Administrative Hearing Commission that may be subject to contrary opinion, the Director believes that Rule 33.17 is currently effective and is intended by the Missouri Supreme Court to guide all Missouri courts charged with administering the qualifications for bail bond agents operating in those courts. For the Director to apply a conflicting or different qualification standard would produce the very undesirable result of the executive branch granting licenses to individuals, but who are unqualified by review in the judicial branch. For all of these reasons, and even if the §374.715 could be interpreted in such a manner to not mandate disqualification of the Applicant, the Director exercises his discretion in refusing to renew the Applicant.

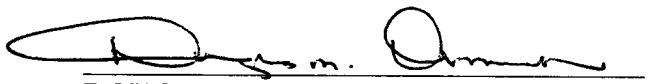
31. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the renewal of the bail bond agent license of Applicant Phillip Lee Joyce is hereby summarily REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 6th DAY OF July, 2007.

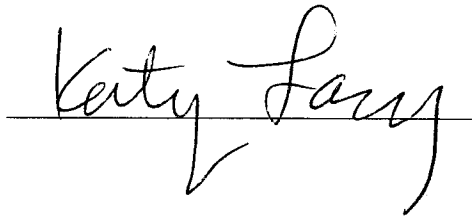


DOUGLAS M. OMMEN
DIRECTOR

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 (30) days after the mailing of this notice pursuant to Section 621.120 RSMo.

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of July, 2007, a copy of the foregoing notice, order and petition was served upon the Applicant in this matter by certified U.S. Mail.