Before the
Administrative Hearing Commission
State of Missouri

DIRECTOR OF INSURANCE,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 06-1603 DI
	)	
DONALD E. CHRISTIAN,	)	
	)	
Respondent.	)	

DECISION

The Director of Insurance ("the Director") has no cause to discipline Donald E. Christian under the version of § 374.755[1] set forth in the Director's complaint because that version did not exist at the time Christian was convicted of a felony.

Procedure

The Director filed a complaint. We served our notice of complaint/notice of hearing with a copy of the complaint on Christian by certified mail on November 16, 2006. Christian did not respond. We held our hearing on April 2, 2007. Stephen R. Gleason represented the Director. Neither Christian nor anyone representing him appeared. The case became ready for decision when the reporter filed the transcript on May 2, 2007.

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[1]Statutory references are to RSMo Supp. 2006, unless otherwise noted.

Findings of Fact

1. On October 20, 1998, Christian pled guilty to the felony of possession of a controlled substance (Cocaine, Schedule II) in the Circuit Court of Montgomery County. On the same day, the court sentenced Christian to three years' imprisonment and remanded him to the sheriff for delivery to the reception center of the Department of Corrections.

2. The Director licensed Christian as a bail bond agent on March 17, 2005. Christian is currently licensed as such.

Conclusions of Law

We have jurisdiction over the complaint.[2] The Director has the burden of proving facts for which the law allows discipline.[3]

Our Regulation 1 CSR 15-3.350(2)(A)3 and 4 require: "An agency's complaint shall set forth . . . [a]ny fact supporting the relief that the agency seeks . . . **and [a]ny provision of law that allows discipline for such facts.**" (Emphasis added.) This benefits the Director. It allows the Director to choose the legal basis on which we must base our decision. Presumably, the Director will choose the legal basis most favorable to his case.[4]

In the complaint, the Director sets forth as the "provision of law that allows discipline" the current version of the bail bond agent disciplinary statute, § 374.755. Unfortunately, the current version of § 374.755 did not become law until January 1, 2005,[5] well after Christian's

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[2]Section 621.045.

[3]***Missouri Real Estate Comm'n v. Berger***, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

[4]The above-quoted pleading requirements also satisfy a basic due process requirement in licensing cases. The courts have held that the licensee "can be subject to discipline only on the basis of grounds prescribed by statute. Procedural due process requires that the complaint specify the exact basis for any disciplinary action against the licensee." ***Sander v. Missouri Real Estate Comm'n***, 710 S.W.2d 896, 901 (Mo. App., E.D. 1986).

[5]Laws 2004, SB 1122, § B, at p. 1188 (92d Gen. Assem., 2d Reg. Sess.). This version of § 374.755.1(2) allows discipline for:

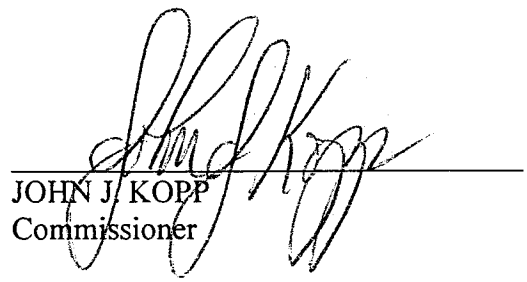
> Final adjudication or a plea of guilty or nolo contendere within the past fifteen years in a criminal prosecution under any state or federal law for a felony or a crime involving moral turpitude whether or not a sentence is imposed, prior to issuance of license date[.]

1998 guilty plea and conviction. We have no authority to discipline a licensee on the basis of a version of the disciplinary statute that did not exist at the time that the factual basis (the guilty plea and conviction) for a proposed disciplinary action occurred. We can use only the disciplinary statute that was in effect when Christian pled guilty.[6] The version of § 374.755.1(2)[7] in effect at the time of Christian's 1998 guilty plea allowed discipline for a licensee "[h]aving entered a plea of guilty or having been found guilty of a felony[.]" However, we cannot use that version because the Director did not rely on it in his complaint. Therefore, we can find no cause to discipline Christian.

Summary

We find no cause to discipline Christian because the law upon which the Director relies, the present version of § 374.755.1(2), did not exist when Christian pled guilty and was convicted.

SO ORDERED on May 22, 2007.



JOHN J. KOPP
Commissioner

[6]Section 1.170, RSMo 2000; ***Comerio v. Beatrice Foods Co.***, 595 F. Supp. 918, 920-21 (E.D. Mo. 1984).
[7]RSMo 2000.