Before the
Administrative Hearing Commission
State of Missouri

PHILLIP L. JOYCE, Petitioner, vs. DIRECTOR OF DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION, Respondent.	))))))))))))	No. 07-1364 DI 07081 5339C

DECISION

We deny Phillip L. Joyce's application for licensure as a bail bond agent because he has felony convictions and pleas that mandate denial under the law.

Procedure

On August 6, 2007, Joyce filed a complaint appealing a decision by the Director of the Department of Insurance, Financial Institutions and Professional Registration ("the Director") denying his application to renew his bail bond license. On December 20, 2007, we held a hearing on the complaint. Tamara A. Kopp represented the Director. Linda D. Lott represented Joyce. The matter became ready for our decision on May 5, 2008, the date the last brief was due.

Commissioner Nimrod T. Chapel, Jr., having read the full record including all the evidence, renders the decision.[1]

---

[1]Section 536.080.2, RSMo 2000. Statutory references, unless otherwise noted, are to RSMo Supp. 2007.

Findings of Fact

1. On February 3, 1995, the prosecuting attorney of Stoddard County, Missouri, charged that Joyce committed the class "C" felony of stealing.[2] On February 8, 1995, Joyce's case file was transferred to Butler County, Missouri. On October 31, 1995, Joyce entered an Alford plea of guilty and the Butler County Court accepted his plea of guilty. The court suspended the imposition of sentence and placed Joyce on three years' supervised probation. His probation terminated on June 1, 1998.

2. On June 30, 1995, Joyce entered pleas of nolo contendere to three felony counts of theft by deception in the Circuit Court of Craighead County, Arkansas, and was placed on five years' probation. Joyce's probation conditions included that Joyce "[s]hall not associate with any person known, or whom you have reason to believe, to have been convicted of or committed a crime[.]"[3]

3. On July 9, 1995, Joyce was tried in the Circuit Court of Scott County, Missouri, for three counts of class "C" felony of stealing.[4] A jury found Joyce guilty on all counts. On July 27, 1995, the Scott County court sentenced Joyce to one year in jail on each of the three felony counts. On August 22, 1995, Joyce filed an application for parole. On September 15, 1995, Joyce was placed on probation, with the requirement that he pay a $2,500 fine, $250 payment to the Crime Reduction Fund, court costs, and full restitution. His probation terminated on October 27, 1998.

4. In 1997, while still on probation, Joyce applied for a bail bond agent license with the Director. The Director refused Joyce's bail bond agent application.

---

[2]Ex. 9.
[3]Ex. 8.
[4]Ex. 3.

5. Joyce did not disclose the Craighead County, Arkansas, nolo contendere pleas or the Butler County, Missouri, Alford plea of guilty on his 1997 application.

6. Joyce appealed the Director's refusal to this Commission. The felony pleas were not addressed by any party as part of the hearing before us. We granted Joyce's application for a bail bond agent license.[5]

7. In July of 2000, Joyce applied for a general bail bond agent license while still on probation in the Craighead County, Arkansas, case. The Director refused Joyce's application in October of 2000 based on the Scott County, Missouri, felony conviction.

8. Joyce appealed the refusal to this Commission, and we denied his application.[6]

9. The Director renewed Joyce's bail bond agent license in 2005 by applying an interpretation of the Supreme Court rules that is different from the Director's present interpretation. Joyce's bail bond agent license expired on July 7, 2007.

10. On May 29, 2007, Joyce filed a Missouri Uniform Renewal Application for Bail Bond or Surety Recovery Agent License ("2007 renewal application").

11. On July 6, 2007, the Director notified Joyce in a notice, order and petition, by certified mail that the Director had refused Joyce's 2007 renewal application. Also on July 6, 2007, the Director informed Joyce of his right to appeal the denial of his 2007 renewal application.

12. The Director's refusal of Joyce's 2007 renewal application was based on Joyce's felony conviction and felony guilty pleas, Joyce's nondisclosure of the felony guilty pleas, and Joyce's failure to meet the qualifications for surety on bail bonds as provided by Supreme Court rule.

---

[5] ***Joyce v. Director of Insurance***, No. 97-3416 DI (May 28, 1998).
[6] ***Joyce v. Director of Insurance***, No. 00-2668 DI (July 3, 2001).

13. Joyce is employed by and works under the authority of Gwen Joyce, d/b/a Freedom Bail Bonds, a person with a general bail bond agent license and who is a property bail bondsman.

14. Joyce contracts together with Gwen Joyce for providing bond related services. Gwen is a general bail bond agent who is the surety for each bond issued by her agents. Gwen contracts with Joyce for services in her name to be provided in Missouri counties. Joyce had an expectation of earnings under the contract.

15. Joyce has been involved in no criminal activities of any kind, including traffic offenses, since the 1995 felony incidents in Missouri and Arkansas.

16. Since being granted a bail bond agent license in 1998, Joyce has never had a bond forfeiture.

Conclusions of Law

We have jurisdiction to hear Joyce's complaint.[7] The applicant has the burden to show that he or she is entitled to licensure.[8] We decide the issue that was before the Director,[9] which is the application. We exercise the same authority that has been granted to the Director.[10] Therefore, we simply decide the application *de novo*.[11] When an applicant for licensure files a complaint, the agency's answer provides notice of the grounds for denial of the application.[12] The primary purpose of professional licensing is to protect the public.[13]

Section 374.715 states:

> 1. Applications for examination and licensure as a bail bond agent or general bail bond agent shall be in writing and on forms prescribed and furnished by the department, and shall contain such

---

[7]Section 621.045.
[8]Section 621.120, RSMo 2000.
[9]***Department of Soc. Servs. v. Mellas***, 220 S.W.3d 778 (Mo. App., W.D. 2007).
[10]***J.C. Nichols Co. v. Director of Revenue***, 796 S.W.2d 16, 20 (Mo. banc 1990).
[11]***State Bd. of Regis'n for the Healing Arts v. Finch***, 514 S.W.2d 608, 614 (Mo. App., K.C.D. 1974).
[12]***Ballew v. Ainsworth***, 670 S.W.2d 94, 103 (Mo. App., E.D. 1984).
[13]***Lane v. State Comm. of Psychologists***, 954 S.W.2d 23, 25 (Mo. App., E.D. 1997).

information as the department requires. **Each application shall be accompanied by proof satisfactory to the department that the applicant** is a citizen of the United States, is at least twenty-one years of age, has a high school diploma or general education development certificate (GED), is of good moral character, and **meets the qualifications for surety on bail bonds as provided by supreme court rule.** Each application shall be accompanied by the examination and application fee set by the department. Individuals currently employed as bail bond agents and general bail bond agents shall not be required to meet the education requirements needed for licensure pursuant to this section.

2. In addition, each applicant for licensure as a general bail bond agent shall furnish proof satisfactory to the department that the applicant or, if the applicant is a corporation, that each officer thereof has completed at least two years as a bail bond agent, and that the applicant possesses liquid assets of at least ten thousand dollars, along with a duly executed assignment of ten thousand dollars to the state of Missouri. The assignment shall become effective upon the applicant's violating any provision of sections 374.695 to 374.789. The assignment required by this section shall be in the form and executed in the manner prescribed by the department. The director may require by regulation conditions by which additional assignment of assets of the general bail bond agent may occur when the circumstances of the business of the general bail bond agent warrants additional funds. However, such additional funds shall not exceed twenty-five thousand dollars.

(Emphasis added.) Section 374.700 provides the following definitions:

(1) **"Bail bond agent"**, a surety agent or an agent of a property bail bondsman who is duly licensed under the provisions of sections 374.695 to 374.789, is employed by and is working under the authority of a licensed general bail bond agent;

* * *

(5) **"General bail bond agent"**, a surety agent or a property bail bondsman, as defined in sections 374.700 to 374.775, who is licensed in accordance with sections 374.700 to 374.775 and who devotes at least fifty percent of his working time to the bail bond business in this state;

* * *

(8) **"Property bail bondsman"**, a person who pledges United States currency, United States postal money orders or cashier's

> checks or other property as security for a bail bond in connection with a judicial proceeding, and who receives or is promised therefor money or other things of value;
>
> (9) **"Surety bail bond agent"**, any person appointed by an insurer by power of attorney to execute or countersign bail bonds in connection with judicial proceedings, and who receives or is promised money or other things of value therefor.

A licensed bail bond agent works under the authority of a licensed general bail bond agent who has the necessary net worth and meets the qualifications to be a surety.[14] Section 374.702(3) provides:

> A licensed bail bond agent shall not execute or issue an appearance bond in this state without holding a valid appointment from a general bail bond agent and without attaching to the appearance bond an executed and prenumbered power of attorney referencing the general bail bond agent or insurer.

Supreme Court Rule 33.17, entitled "Misdemeanors or Felonies – Bonds – Surety, Individual – Qualifications," provides:

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

> (a) Is reputable and at least twenty-one years of age;
>
> (b) Has net assets with a value in excess of exemptions at least equal to the amount of the bond that are subject to execution in the state of Missouri;
>
> (c) Has not, within the past 15 years, been found guilty of or pleaded guilty or nolo contendere to:
>
> (1) Any felony of this state, any state, or the United States; or
>
> (2) Any other crime of this state, any other state, or the United States involving moral turpitude, whether or not a sentence was imposed;
>
> (d) Is not a lawyer, except that this disqualification shall not apply if the principal is the spouse, child or family member of the surety;

---

[14] ***Division of Employment Sec. v. Hatfield***, 831 S.W. 2d 216, 220 (Mo. App., W.D. 1992).

> (e) Is not an elected or appointed official or employee of the State of Missouri or any county or other political subdivision thereof, except that this disqualification shall not apply if the principal is the spouse, child or family member of the surety; and
>
> (f) Has no outstanding forfeiture or unsatisfied judgment thereon entered upon any bail bond in any court of this state or of the United States.

Supreme Court Rule 33.20, entitled "Misdemeanors or Felonies – Bond – Surety Company and Agent – Qualifications," provides:

> (a) Any corporation, association, or company formed under the provisions of section 379.010, RSMo, for the purpose of making surety insurance shall be qualified to act as a surety upon any bail bond taken under the provisions of these rules upon presenting evidence satisfactory to the court of its solvency. Any such bond shall be executed in the manner provided by law.
>
> (b) An agent acting on behalf of such a corporation shall be subject to the qualifications set forth in Rule 33.17(c), (d), and (e), and, in addition, shall be licensed as a bail bond agent as required by law.

Mandatory Denial

The Director argues that Joyce is not qualified to hold a bail bond agent license because he fails to meet the qualifications for surety on bail bonds as provided by Supreme Court Rules 33.17 and 33.20, as required by section 374.715.1.

Felony/Crime Involving Moral Turpitude

In 1995, Joyce was convicted of felony stealing in Scott County, Missouri. Also in 1995, Joyce entered a nolo contendere plea to felony theft by deception in Craighead County, Arkansas. Finally, in 1995, Joyce entered an Alford plea of guilty to three counts of felony stealing in Butler County, Missouri. An Alford plea is not an admission of guilt, but is a type of guilty plea for the purpose of statutes that allow discipline for guilty pleas.[15]

---

[15] ***Watkins v. State Bd. of Reg'n for the Healing Arts***, 651 S.W.2d 582, 583-84 (Mo. App., W.D. 1983).

Joyce was convicted of felonies. We must determine whether stealing is a crime involving moral turpitude. In ***Brehe v. Missouri Dep't of Elementary & Secondary Education***,[16] a case that involved discipline of a teacher's certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three classifications of crimes:[17]

(1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);

(2) crimes "so obviously petty that conviction carries no suggestion of moral turpitude," such as illegal parking (Category 2 crimes); and

(3) crimes that "may be saturated with moral turpitude," yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

The court stated that Category 3 crimes require consideration of "the related factual circumstances" of the offense to determine whether moral turpitude is involved.[18] In order to determine whether a crime is a Category 1 or 3 crime, the court looked at crimes for which discipline was mandated under § 168.071, which include murder, rape, and child endangerment in the first degree. But the court determined that the crime the teacher committed, child endangerment in the second degree, was a Category 3 crime, and that the Department of Elementary and Secondary Education must show the circumstances surrounding the commission of the crime. The court stated:

---

[16]213 S.W.3d 720 (Mo. App., W.D. 2007). While we realize that the ***Brehe*** court made its decision based on the teacher discipline statute that mandated discipline in some cases, and made it discretionary in others, we find the analysis compelling. If every crime is a crime involving moral turpitude, the "moral turpitude" language is superfluous. The distinction that the court made between the types of crimes gives us guidance and finds support in other courts' decisions.

[17]***Brehe***, 213 S.W.3d at 725 (quoting ***Twentieth Century-Fox Film Corp. v. Lardner***, 216 F.2d 844, 852 (9th Cir. 1954)).

[18]*Id.*

> The legislature restricted the Board's [of Education's] authority to discipline so that the Board could discipline only for the commission of a felony or an offense "involving moral turpitude." The Board could discipline when the offense *necessarily* involves moral turpitude (as in the case of a category 1 crime). The board could also exercise discipline when the related circumstances are such as to demonstrate actual moral turpitude (in the case of a category 3 crime). The Department was not precluded in this case from showing any circumstances indicating that Ms. Brehe was guilty of moral turpitude. The Department did not do so.[[19]]

Our review of other cases also convinces us that stealing is a Category 1 crime.[20] Therefore, we find without further analysis that stealing is a crime involving moral turpitude.

Joyce has, within the past 15 years, been found guilty of or pleaded guilty or nolo contendere to a felony and a crime involving moral turpitude.

Rule 33.17 Applies to all Bail Bond Agents

Joyce argues that the Supreme Court did not intend that Rule 33.17 apply to all bail bond agents, only those who work as bail bond agents under a particular type of surety and would be required by Rule 33.20(b) to be subject to paragraphs (c), (d), and (e) of Rule 33.17. Joyce works under a general bail bond agent who is a property bail bondsman.

The Director admits that he has changed his interpretation of the rules to make Rule 33.17(c), (d) and (e) applicable not just to general bail bond agents, but to all bail bond agents. Although we remake the Director's decision,[21] we give deference to an agency's interpretation of a law if that interpretation is reasonable and consistent with the language of the law.[22]

---

[19] ***Brehe***, 213 S.W.3d at 727.

[20] *See* ***In re Carpenter***, 891 A.2d 223 (D.C. 2006) (moral turpitude is inherent in crimes that have an intent to defraud or steal). *See also* ***U.S. v. Morrow***, 2005 WL 3163801 (D.D.C. June 2, 2005), and ***Johnson v. Commonwealth***, 581 S.E.2d 880 (41 Va. App., 2003) (misdemeanor crimes of moral turpitude are limited to those crimes involving lying, cheating, and stealing).

[21] ***Department of Soc. Servs. v. Mellas***, 220 S.W.3d 778 (Mo. App., W.D. 2007) (AHC was not required to defer to the Department of Social Services as to the amount of sanction that a physician had to pay to the Department).

[22] ***Morton v. Missouri Air Conservation Comm'n***, 944 S.W.2d 231, 236-37 (Mo. App., S.D. 1997).

Joyce makes several arguments against this interpretation. He argues that the Supreme Court Rules may not change substantive rights. The Director cites a recent case holding that retroactive application of a statute is permissible if it does not require a new obligation or impose a new duty, but merely is used "as a basis for future decision-making by the state, in regard to things such as the issuance of a license[.]"[23]

In ***Pearson v. Director of Revenue***, the Director of Revenue relied upon a statute that took effect in September of 2005 to suspend Pearson's commercial driver's license for one year based on a 2002 conviction for driving while his license was suspended. The Director of Revenue relied on a statute that took effect at least two years after Pearson's conviction. The Director of Revenue asserted that Pearson's driving privileges were not a vested or substantial right protected by the constitutional prohibition on retrospective laws and that the licensing statutes may therefore apply retroactively.

The Court of Appeals held that the Director of Revenue's retroactive application of § 302.755 "merely uses petitioner's past conduct . . . as a basis for future decision-making by the state to determine whether petitioner's commercial driving privileges should be disqualified for one year."[24] The Court of Appeals further noted that such retroactive application of a licensing statute complies with the Missouri Supreme Court's recent decision in ***Doe v. Phillips***, 194 S.W.3d 833 (Mo. 2006), regarding retroactive application of a registration requirement for convicted sex offenders.

In ***State Board of Regis'n for the Healing Arts v. Boston***,[25] the court found that a statute change that limited the number of times a physical therapist assistant could take a licensing

---

[23]***Pearson v. Director of Revenue***, 234 S.W.3d 481, 483 (Mo. App., E.D. 2007) (citation and emphasis omitted).

[24]*Id.* at 484.

[25]72 S.W.3d 260 (Mo. App., W.D. 2002).

examination included her attempts prior to the effective date of the amendment. The statute used the words "has failed," which showed that there was an intent to apply this retrospectively. The Supreme Court Rule is even more clear, using the language: "Has not, within the past 15 years, been found guilty of or pleaded guilty or nolo contendere . . . ." The rule references past conduct as a basis to determine whether an application should be denied. Such retroactive application by a state agency is proper according to ***Pearson***, ***Boston*** and ***Doe***. That the Director and this Commission granted Joyce's application in the past does not affect our decision in this case, under different circumstances and different interpretation of the laws.

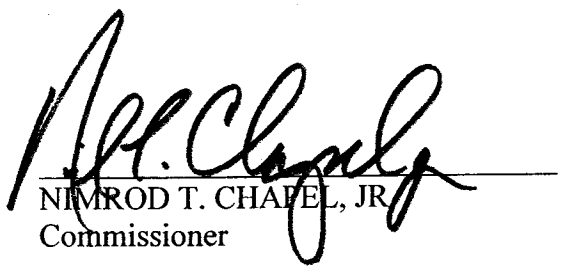
Joyce also argues that this interpretation interferes with his constitutional right to contract. This Commission does not have authority to decide constitutional issues.[26] The issue has been raised and may be argued before the courts if necessary.[27]

The felony convictions and pleas disqualify Joyce from acting as a surety on bail bonds. Because Joyce failed to submit proof that he "meets the qualifications for surety on bail bonds as provided by supreme court rule" under § 374.715.1, we have no discretion to issue the bail bond license.

Summary

We deny Phillip L. Joyce's application for licensure as a bail bond agent because he does not meet the qualifications for licensure under the Supreme Court Rules.

SO ORDERED on July 7, 2008.



NIMROD T. CHAPEL, JR.
Commissioner

---

[26] ***Cocktail Fortune, Inc. v. Supervisor of Liquor Control***, 994 S.W.2d 955, 957 (Mo. banc 1999); ***Williams Cos. v. Director of Revenue***, 799 S.W.2d 602, 604 (Mo. banc 1990).

[27] ***Tadrus v. Missouri Bd. of Pharmacy***, 849 S.W.2d 222 (Mo. App., W.D. 1993).