Before the
Administrative Hearing Commission
State of Missouri

EDWARD LYNN LOUGHARY, Petitioner, vs. DIRECTOR OF DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION, Respondent.	)))))))))))	No. 07-1610 DI 071005369G

DECISION

We deny Edward Lynn Loughary's application to renew his bail bond agent license ("2007 renewal application") because within 15 years of September 4, 2007 – the expiration date of his license – he was convicted of a crime that is a felony under federal law and that involves moral turpitude.

Procedure

The Director of the Department of Insurance, Financial Institutions and Professional Registration ("Director") denied Loughary's 2007 renewal application. On September 26, 2007, Loughary appealed. After granting one continuance for each party, we held a hearing on July 11, 2008. Elfin Noce, Enforcement Counsel, represented the Director. Loughary appeared on his

own behalf. The Director filed a written argument after the hearing. Loughary has not filed a written argument.

Findings of Fact

1. On January 21, 1993, an indictment ("the indictment") was filed against Loughary in the United States District Court for the Eastern District of Missouri. The indictment charged Loughary with one count of violating 18 USC § §§ 1341 and 2:[1]

> 1. From on or about September 1, 1991, and continuing through on or about June 30, 1992, in the Eastern District of Missouri and elsewhere, EDWARD L. LOUGHARY, the defendant herein, along with others known to the Grand Jury but not charged in this indictment, devised and intended to devise a scheme and artifice to defraud and obtain money and property from the Progressive Insurance Company by means of false and fraudulent pretenses, representations and promises, and the deceitful concealment of material facts, knowing that the pretenses, representations and promises were false and fraudulent when made, and that the concealed facts were material. . . .

2. On March 2, 1993, Loughary and his attorney entered into a "Stipulation of Facts and Plea Agreement Pursuant to Section 6B1.4 of the Sentencing Guidelines and Policy Statement" with the United States Government, in which the parties agreed as to the facts and circumstances of the offense in Count I of the indictment:[2]

> On March 18, 1991, the Defendant Edward L. Loughary purchased a 1988 Ford Rollback Tow Truck from Truck Equipment Company in St. Louis, Missouri for $16,000.00. At that time, he obtained a loan from the Boatmen's National Bank in St. Louis.
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> By September of 1991, Defendant Edward L. Loughary was significantly behind on his payments to the Boatmen's National Bank of St. Louis. On or about September 17, 1991, the Defendant Edward L. Loughary and another person brought the

[1]Ex. 2.
[2]*Id.*

> 1988 Ford Truck to Clarence J. Dowdy at the State Line Service Center in Neelyville, Missouri. Edward Loughary would testify that at the time he brought the truck to Clarence J. Dowdy, he believed he would be selling said truck to Clarence J. Dowdy. However, shortly after Defendant Edward L. Loughary delivered said truck to Clarence J. Dowdy, Loughary contends that Clarence J. Dowdy suggested through another person that Loughary report the vehicle as stolen to his insurance company, thereby making a false and fraudulent insurance claim based on that false allegation.
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> On or about September 27, 1991, Defendant Loughary falsely reported to the Columbia, Missouri police that the truck had been stolen in Columbia, Missouri. On or about September 30, 1991, Defendant Loughary contacted Progressive Insurance Company and falsely advised them that the vehicle had been stolen and requested that insurance claim forms be sent to him for his completion. With respect to Count I, on or about October 1, 1991, the Progressive Insurance Company placed an Affidavit of Vehicle Theft in the United States Mail for delivery to Edward Loughary, 105A North Division, Bonne Terre, Missouri, 63628, from Progressive Insurance, 11457 Old Cabin Road, St. Louis, Missouri, 63141. This claim form was mailed because of the telephone contacts of the Defendant Edward L. Loughary wherein he indicated that his vehicle had been stolen. On this form, he made a claim for insurance benefits in the amount of $20,000.00. However, because authorities discovered the scheme, no money was paid on the false insurance claim. Additionally, the Ford Truck that is the subject of the false and fraudulent claim is in the process of being returned to the lien holder, Boatmen's Bank.

3. On May 27, 1993, Loughary pled guilty to Count I of the indictment. The court adjudged Loughary guilty of Count I and sentenced him to four months' imprisonment followed by two years of supervised release.

4. Loughary first applied for a bail bond agent license by application submitted to the Department of Insurance on August 29, 2003 ("2003 application").

5. On the 2003 application, Question C in Part III asks:[3]

> Have you ever been convicted of or pled nolo contendere (no contest) to any misdemeanor or felony or currently have pending misdemeanor or felony charges filed against you?

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[3]Ex. 3.

6. Loughary answered Question C in Part III "NO" and signed the following oath:[4]

> This applicant first being duly sworn upon his oath, states that the statements contained in the above and foregoing application are true to the best of his knowledge and belief.

7. The Director granted Loughary's 2003 application and licensed Loughary as a bail bond agent on September 4, 2003.

8. Effective August 19, 2005, the Director, upon Loughary's application, renewed Loughary's bail bond agent license, with an expiration date of September 4, 2007.

9. On July 18, 2007, Loughary filed his 2007 renewal application, accompanied by a certification that he had completed eight hours of continuing education courses and his application fee.

10. On the 2007 renewal application, Question B in Part III asks:[5]

> 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) . . . .

11. Loughary answered, "YES."

12. Question B in Part III contains the following instruction:[6]

> If YES, give date, name and address of court, basis of charge, outcome, and whether you received an executive pardon. Also attach certified copies of the information or indictment and the final adjudication.

13. In response, Loughary wrote next to the instruction, "Information provided to Dana Whaley on Aug. 24, 2006. Your File # 05A000549."[7]

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[4]Ex. 3.
[5]Ex. 5.
[6]*Id.*
[7]*Id.*

14. The Director denied the 2007 renewal application. Loughary's license expired on September 4, 2007.

Conclusions of Law

We have jurisdiction to hear Loughary's complaint.[8] Loughary has the burden to show that he is entitled to renewal of his license.[9] We exercise the same authority that has been granted to the Director.[10] Therefore, we simply decide the application anew.[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 Director asserts two causes under § 374.755 to deny Loughary's 2007 renewal application: (a) that Loughary pled guilty to the felony of mail fraud, subjecting him to refusal to renew his bail bond agent license under § 374.755.1(2) and (b) that Loughary failed to disclose on his original application that he pled guilty to the felony of mail fraud, a cause for refusal to renew under § 374.755.1(3).

Section 374.750[13] 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. . . .

I. Mail Fraud Conviction

Section 374.755.1 states the following cause:

> (2) 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[.]

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[8]Section 621.045. Statutory references, unless otherwise noted, are to RSMo Supp. 2007.
[9]Section 621.120, RSMo 2000.
[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]RSMo 2000.

A. Conviction of a Felony

Loughary was finally adjudicated guilty of mail fraud under 18 U.S.C. § 1341, a federal law. Title 18 USC § 1(1) defines a felony under federal law as "[a]ny offense punishable by death or imprisonment for a term exceeding one year[.]" The statutory maximum sentence of imprisonment available for Loughary's violation of 18 U.S.C. § 1341 was five years' imprisonment.[14] Therefore, Loughary's conviction was of a felony. Loughary's conviction occurred on May 27, 1993, when the court sentenced him. The date of conviction is within fifteen years of the date on which his license was to be renewed, September 4, 2007.

Loughary has, within the past 15 years, been found guilty of a felony. This is cause to deny Loughary's 2007 renewal application under § 374.755.1(2).

B. Conviction for a Crime Involving Moral Turpitude

Title 18 U.S.C. § 1341 defines mail fraud as:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, ... for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both.

Moral turpitude is:[15]

> an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general,

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[14]Ex. 2, "Stipulation of Facts and Plea Agreement Pursuant to Section 6B1.4 of the Sentencing Guidelines and Policy Statement," at 5.

[15]***In re Frick***, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting ***In re Wallace***, 19 S.W.2d 625 (Mo. banc 1929)).

> contrary to the accepted and customary rule of right and duty between man and man; everything "done contrary to justice, honesty, modesty, and good morals."

Under this definition, the Supreme Court has held that mail fraud involves moral turpitude.[16]

Loughary has, within the past 15 years, been found guilty of a crime involving moral turpitude. This is cause to deny Loughary's 2007 renewal application under § 374.755.1(2).

II. Deception or Misrepresentation

Section 374.755.1 states the following cause:

> (3) Use of fraud, deception, misrepresentation or bribery in securing any license or in obtaining permission to take any examination required pursuant to section 374.695 to 374.775[.]

The Director asserts that Loughary's denial on his 2003 application that he had ever been convicted of a felony constituted deception or misrepresentation in securing the renewal of his bail bond agent license. A misrepresentation is a falsehood or untruth made with the intent of deceit rather than inadvertent mistake.[17] To "deceive" is "to cause to accept as true or valid what is false or invalid."[18]

At our hearing, Loughary did not deny that he remembered having the felony conviction when he answered "no" to Question C in Part III on his 2003 application. His defense was that he thought he did not have to report the conviction after ten years:[19]

> As far as the original 2003 application, I misunderstood the question. I thought there was only a ten-year time limit on that. Since I've been convicted of my crime, which I didn't really realize I'd been -- I thought it would go away as per se. And apparently it didn't.

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[16]***Neibling v. Terry***, 177 S.W.2d 502, 503 (Mo. banc 1944). *Also,* ***Brehe v. Missouri Dept. of Elementary & Secondary Educ.***, 213 S.W.3d 720, 725 (Mo. App. W.D. 2007).

[17]***Hernandez v. State Bd. of Regis'n for Healing Arts***, 936 S.W.2d *supra* at 899 n.3.

[18]MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 321 (11th ed. 2004).

[19]Tr. at 21-24.

> Right, I understand that. But in 2005 they asked me to disclose, once I understood the question, I disclosed what they asked for and I did not lie on my application in 2007. You know, once I understood the question in 2005, we gave the Department everything they asked for and they still granted my license. I feel that if they granted it then they shouldn't have denied it in 2007. They should have denied it in 2005 -- 2006 I mean.
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> * * *
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> Like I said, I didn't understand the question on the initial application. When it was brought to my attention, we did everything that the Department asked me to and they granted me another license and then I think administration changed somewhere down the line and that's when I was denied. So that's my only argument.

Loughary gave no indication what "ten-year limit" he was referring to or where he came by that notion.

Loughary further claimed that he gave the Director information about the mail fraud conviction in 2005 and that the Director renewed his license anyway. There is no evidence of this independent of Loughary's testimony. In fact, Loughary's testimony is contradicted by his answer to Question B in Part III on his 2007 renewal application in which he indicated that he had provided the information on August 24, 2006, which would have been after the 2005 renewal action.

We do not believe Loughary's claim that he innocently misunderstood the question on the 2003 application. He answered "no" knowing that his answer was false and did so to deceive the Director into granting his bail bond agent license. Not knowing about the mail fraud conviction, the Director granted the license. Loughary used deception and misrepresentation to obtain his license in 2003. This is cause to deny Loughary's application for renewal under § 374.755.1(3).

III. Discretion

For the reasons stated above, we may deny Loughary's application. "May" means an option, not a mandate.[20] The appeal vests in this Commission the same degree of discretion as the Director has, and we need not exercise it in the same way.[21] The primary purpose of professional licensing is to protect the public.[22] But "the license granted places the seal of the state's approval upon the licen[see.]"[23]

We may consider rehabilitation as a reason for granting an application for licensure despite there being facts that could serve as cause for denial.[24] A rehabilitant should at least acknowledge guilt and embrace a new moral code.[25] Loughary's claim that he misunderstood the question on the 2003 application because of some "ten-year limit" is not credible. We know of no such limit, and Loughary presented nothing to show why he believed that such a limit applies. Further, Loughary continued to engage in misrepresentation at the hearing by claiming that the Director had renewed his license in 2005 after Loughary informed the Director of the mail fraud conviction. That directly contradicts Loughary's notation on the 2007 renewal application that he informed the Director's staff of the conviction in 2006.

We see no evidence of rehabilitation. We deny Loughary's 2007 renewal application based on the separate and independent causes in § 374.755.1(2) and (3).

IV. Qualifications of Supreme Court Rule 33.17

Section 374.700(1) defines a bail bond agent as:

> a surety agent or an agent of a property bail bondsman who is duly licensed pursuant to the provisions of sections 374.695 to 374.789,

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[20] ***S.J.V. ex rel. Blank v. Voshage***, 860 S.W.2d 802, 804 (Mo. App., E.D. 1993).
[21] ***State Bd. of Regis'n for the Healing Arts v. Finch***, 514 S.W.2d 608, 614 (Mo. App., K.C.D. 1974).
[22] ***Lane v. State Comm. of Psychologists***, 954 S.W.2d 23, 25 (Mo. App., E.D. 1997).
[23] ***State ex rel. Lentine v. Sate Bd. of Health***, 65 S.W.2d 943, 950 (Mo. 1933).
[24] ***Finch***, 514 S.W.2d at 616-17.
[25] ***Francois v. State Bd. of Regis'n for the Healing Arts***, 880 S.W.2d 601, 603 (Mo. App., E.D. 1994).

> is employed by and is working under the authority of a licensed general bail bond agent[.]

Section 374.715 provides:

> 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 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**. . . .

(Emphasis added.) Supreme Court Rule ("Rule") 33.17 provides:

> A person shall not be accepted as a surety on any bail bond unless the person:
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> * * *
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> **(c)** Has not, within the past 15 years, been found guilty of or pleaded guilty or nolo contendere to:
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> (1) Any felony of this state, any other 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[.]

We apply § 374.715 and the disqualification set out in Rule 33.17 to a renewal application because statutes intended to protect the public interest are to be interpreted liberally to effect their purpose. In ***Bhuket v. Missouri St. Bd. of Regis'n for the Healing Arts***, 787 S.W.2d 882, 885 (Mo. App., W.D. 1990), the Court of Appeals explained:

> Statutes authorizing the Missouri State Board of Registration for the Healing Arts to regulate and discipline physicians are remedial statutes enacted in the interest of the public health and welfare and must be construed with a view to suppression of wrongs and mischiefs undertaken to be remedied.

Further, the law favors a construction in harmony with reason and common sense and that avoids unreasonable and absurd results.[26] We must interpret statutes to be "free from unjust, oppressive or absurd consequences."[27] It would make little sense to apply the felony prohibition of Rule 33.17 to new applicants without applying it also to renewal applicants.

As explained above, Loughary has been found guilty of a felony of the United States within 15 years before his license was to expire on September 4, 2007, and, in the alternative, was found guilty of a crime involving moral turpitude.

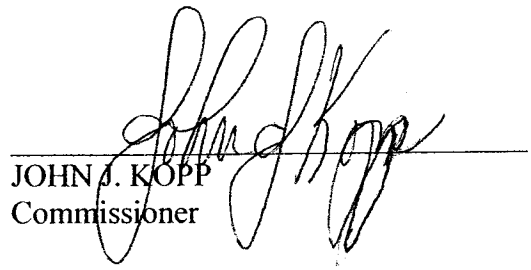
Rule 33.17 uses the term "shall" in regard to its prohibition in subsection (c). Section 374.715 uses the term "shall" in applying the terms of Rule 33.17 to Loughary's 2007 renewal application. "Shall" signifies a mandate and means "must" in the present tense.[28] Therefore, we have no discretion to consider any rehabilitation.

We deny Loughary's 2007 renewal application because Rule 33.17(c) disqualifies him from serving as a bail bond agent.

Summary

We deny Loughary's 2007 renewal application under § 374.755.1(2) and (3), as applied by § 374.750, RSMo 2000, and under Rule 33.17(c), as applied by § 374.715.

SO ORDERED on November 5, 2008.



JOHN J. KOPP
Commissioner

[26] ***In re B.C.H.***, 718 S.W.2d 158 (Mo. App., 1986).
[27] ***Hyde v. City of Columbia***, 637 S.W.2d 251, 263 (Mo. App., W.D. 1982).
[28] ***State ex rel. Scott v. Kirkpatrick***, 484 S.W.2d 161, 164 (Mo. banc 1972).