

GROUNDNS FOR DENIAL

5. Sufficient legal and factual grounds existed for denying Petitioner's renewal application for a bail bond agent license. They are as follows:
 - a. Petitioner pled guilty to the felony of Mail Fraud, subjecting him to refusal of the renewal of his bail bond agent license, under § 374.750, RSMo (2000), and § 374.755.1(2), RSMo (Supp. 2006);
 - b. Petitioner failed to disclose on his original application that he pled guilty to the felony of Mail Fraud, a cause for refusal to renew under § 374.750, RSMo (2000), and § 374.755.1(3), RSMo (Supp. 2006); and
 - c. Petitioner is no longer qualified to hold a bail bond agent license because he fails to meet the qualifications for a surety on bail bonds as provided by Supreme Court Rule 33.17, as provided in § 374.715.1, RSMo (Supp. 2006).

6. Sufficient legal and factual grounds existed for denying Petitioner's renewal application for a bail bond agent license on the grounds that Petitioner had entered a "plea of guilty...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..." and for deception or misrepresentation in that Petitioner provided a false answer to a question posed by Respondent on said Renewal Application. Sections 374.715.1, 374.755.1(2), and 374.755.1(3), RSMo (Supp. 2006).

7. The facts are as follows:
 - a. Petitioner was first licensed by the Department as a bail bond agent on September 4, 2003.

- b. Petitioner's bail bond agent license expired on September 4, 2007.
 - c. On July 18, 2007, Petitioner filed a Missouri Universal Renewal Application for Bail Bond or Surety Recovery Agent License ("Renewal Application") with the Department seeking to renew his bail bond agent license.
 - d. On the Renewal 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)...
 - e. Petitioner checked the "YES" box in response to the immediately preceding question.
 - f. Petitioner first applied for a bail bond agent license by an application submitted to the Missouri Department of Insurance on August 29, 2003.
 - g. On the 2003 application, Part III, Question C asked:

Have you ever been convicted of or pled nolo contendere...to any misdemeanor or felony or currently have pending misdemeanor or felony charges filed against you?
 - h. Petitioner answered "NO" to Question C of Part III of the 2003 application.
 - i. In a case filed on January 21, 1993, Petitioner was indicted in the United States District Court, Eastern District of Missouri, on one count of Mail Fraud, a violation of Title 18 U.S.C. § 1341.
 - j. On May 27, 1993, Petitioner pleaded guilty and was sentenced to four (4) months in the United States Bureau of Prisons. Following the four (4) months time served, Petitioner was on supervised release for two (2) years.
8. Section 374.750, RSMo (2000), provides:

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

9. Section 374.755.1, RSMo (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...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...;

[or]

(3) Use of...deception, misrepresentation...in securing any license...required pursuant to sections 374.695 to 374.775;...

10. Section 374.715.1, RSMo (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 is...of good moral character, and meets the qualifications for surety on bail bonds as provided by supreme court rule...

(Emphasis added).

11. 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 or *pleaded guilty*...to:

(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;...

(Emphasis added).

12. Petitioner may be disqualified and therefore, refused a renewal of his bail bond license, based upon § 374.750, RSMo (2000), § 374.755.1(2), RSMo (Supp. 2006), for his 1993 felony guilty plea.

13. Because § 374.750, RSMo (2000), provides that the Director “may” refuse a license renewal, the Director has discretion under this section for disqualifying Petitioner for the 1993 guilty plea. *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). A bail bond agent has quasi-police powers including the authority to take custody of defendants released on bail by the courts. While a plea of guilty to a charged felony may have been entered for reasons other than actually being guilty of the crime, it does reveal a risk to the courts and the public-at-large in licensing Petitioner. In applying this discretion, Respondent has considered Petitioner’s history and all of the circumstances surrounding Petitioner’s Renewal Application. Although Petitioner appears to have successfully completed his probation and has not pled guilty to other crimes during the past ten (10) years and may be fully rehabilitated and possess a respect for the laws of this state, the 2003 Application has raised additional questions regarding Petitioner’s integrity, an essential quality for a bail bond agent appearing in the courts of this state. For these reasons, Respondent exercised his discretion in refusing to renew Petitioner’s bail bond agent license.

14. Moreover, as Petitioner 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 (Supp. 2006), Respondent 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). In *Joyce v. Director of Insurance*, No. 97-3416 DI (Mo. Admin. Hearing Comm’n May 28, 1998), the Administrative Hearing Commission granted a bail bond license to an individual who had been convicted of three counts of felony stealing by deceit in the Circuit Court of Scott County. In the latter *Joyce* decision, the Administrative Hearing Commission noted the interplay between § 374.715.1, RSMo (then 2000, Supp. 2006), and Supreme Court Rule 33.17. *Joyce (2001)*. Said interplay removes any department discretion regarding Petitioner’s 1993 guilty plea. Section 374.715, RSMo (Supp. 2006) and Supreme Court Rule 33.17¹ impose “a mandatory and not a discretionary requirement...[U]nder those provisions, [Petitioner] cannot be licensed as a...bail bond agent because of his felony convictions.” *Joyce (2001)*, at p. 5. The Administrative Hearing Commission’s 2001 finding that Supreme Court Rule 33.17 imposes “a mandatory and not a discretionary requirement” compelled Respondent to deny Petitioner’s renewal application. *Id.*

15. Further, Petitioner may be disqualified and therefore, refused a renewal of his license, based upon § 374.750, RSMo (2000), and § 374.755.1(3), RSMo (Supp. 2006), for deception or misrepresentation by providing a false answer and failing to disclose the

¹ The Administrative Hearing Commission is referencing a former version of Supreme Court Rule 33.17 which required that bond sureties have “not been *convicted* of any felony under the laws of any state or of the United States; . . .” (Emphasis added). The current Supreme Court Rule 33.17 requires that bond sureties have “not, within the past 15 years, been found guilty or *pleaded guilty* . . . to: (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; . . .” (Emphasis added).

1993 guilty plea on his 2003 Application. The question posed to Petitioner on the 2003 Application was very straightforward: "Have you ever been convicted of or pled nolo contendere...to any misdemeanor or felony or currently have pending misdemeanor or felony charges filed against you?" While deception under § 374.755.1(3), RSMo (Supp. 2006), involves an intent to mislead, Respondent concluded that being charged with a felony, appearing in court to enter a guilty plea and being sentenced to four (4) months in prison is a memorable event, not subject to lapse of memory. Given the direct nature of the question, Respondent concluded that Petitioner's answer of "NO" was given to lead Respondent to conclude that Petitioner had never been convicted or pled guilty to a felony. Honesty and candor are important qualifications of a bail bond agent. Respondent exercised his discretion in refusing to renew Petitioner's bail bond agent license.

AFFIRMATIVE DEFENSE

Petitioner's complaint does not comply with § 621.120, RSMo (2000), or 1 CSR 15-3.350(2)(C), in that Petitioner has not set out with particularity his qualifications for licensure and should therefore be dismissed. Specifically, Petitioner failed to state that he meets the qualifications for licensure as a bail bond agent, namely his "qualifications for surety on bail bonds as provided by supreme court rule. . ." Supreme Court Rule 33.17 states that surety on a bail bond will not be accepted from any person who has pled guilty to a felony within the past fifteen (15) years. Section 374.715.1, RSMo (Supp. 2006).

WHEREFORE, Respondent respectfully requests this Commission uphold the decision of the Department of Insurance, Financial Institutions and Professional Registration to deny Petitioner's application for renewal of his bail bond agent license.

Respectfully submitted,



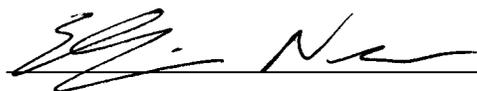
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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the foregoing was mailed first class, with sufficient postage attached, via the United States Postal Service on this 24th day of October, 2007, to:

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A handwritten signature in black ink, appearing to read "D.R. Crosby", is written over a horizontal line.