

BEFORE THE ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI

EDWARD LYNN LOUGHARY )  
)  
Petitioner, )  
)  
vs. )  
)  
DIRECTOR OF DEPARTMENT OF )  
INSURANCE, FINANCIAL INSTITUTIONS )  
AND PROFESSIONAL REGISTRATION )  
)  
Respondent. )

**FILED**

JUL 31 2008

ADMINISTRATIVE HEARING  
COMMISSION

Case No.: 07-1610 DI

071605 369C

**RESPONDENT'S BRIEF**

Pursuant to the Commission's Order dated July 15, 2008, the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, through counsel, hereby submits the following Proposed Findings of Fact, Conclusions of Law and Legal Brief.

**PROPOSED FINDINGS OF FACT**

1. Respondent is the Director of the Missouri Department of Insurance, whose duties include the regulation, supervision, and discipline of licensed bail bond agents and general bail bond agents pursuant to Chapter 374, RSMo.
2. On May 27, 1993, Petitioner Edward Lynn Loughary pleaded guilty in the United States District Court, Eastern District of Missouri, Case No. 4:93CR12 SNL, to Mail Fraud for falsely reporting that his truck had been stolen and then making an insurance claim for said truck. *See Respondent's Exhibit 2.* Petitioner was sentenced to four (4) months imprisonment and two (2) years of supervised release. *Id.*

3. In August of 2003, Petitioner applied for a bail bond agent license. On his application, Petitioner answered “no” to the question, “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?” *See Respondent’s Exhibit 3.*
4. Respondent was unaware of Petitioner’s 1993 felony guilty plea.
5. Respondent issued Petitioner a bail bond agent license on September 4, 2003.
6. Respondent renewed Petitioner’s bail bond agent license in 2005. Respondent was still unaware of Petitioner’s 1993 felony guilty plea.
7. Petitioner’s bail bond agent license expired on September 4, 2007. *See Respondent’s Exhibit 1.*
8. On August 24, 2006, Petitioner provided information regarding his 1993 felony guilty plea to Respondent. *See Respondent’s Exhibit 5.*
9. On July 18, 2007, Petitioner filed a Missouri Uniform Renewal Application for Bail Bond or Surety Recovery Agent License (“2007 Renewal Application”). *See Respondent’s Exhibit 5.*
10. On August 31, 2007, Respondent notified Petitioner in a notice, order and petition, by certified mail that Respondent had refused Petitioner’s 2007 Renewal Application. Also on August 31, 2007, Respondent informed Petitioner of his right to appeal the denial of his 2007 Renewal Application within thirty (30) days as provided in, and in compliance with, § 621.120, RSMo (2000). Respondent’s refusal of Petitioner’s 2007 Renewal Application was based on Petitioner’s felony conviction and felony guilty plea, Petitioner’s nondisclosure of the felony guilty plea, and Petitioner’s failure to meet

the qualifications for surety on bail bonds as provided by Supreme Court rule under section 374.715, RSMo.

11. On or about September 26, 2007, Petitioner appealed Respondent's refusal of Petitioner's 2007 Renewal Application. This Commission held a hearing regarding this matter on July 11, 2008.

### CONCLUSIONS OF LAW

12. The Administrative Hearing Commission has jurisdiction over this case pursuant to § 621.045, RSMo (Supp. 2007).

13. Section 374.715.1, RSMo (Supp. 2007) provides, in part:

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.

14. 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, 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 is imposed;

15. Section 374.750, RSMo (2000) provides:

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

16. Section 374.755.1, RSMo (Supp. 2007) provides, in part:

The department may cause a complaint to be filed . . . for any one or any combination of the following causes:

\* \* \*

(3) Use of fraud, deception, misrepresentation or bribery in securing any license or in obtaining permission to take any examination required pursuant to sections 374.695 to 374.755;

17. Mail Fraud is a crime of moral turpitude, as fraud is a crime that necessarily involves moral turpitude. *Brehe v. Missouri Dep't of Elementary & Secondary Educ.*, 213 S.W.3d 720, 725 (Mo. App., W.D. 2007).
18. Petitioner's felony conviction of a crime involving moral turpitude within the past fifteen (15) years of his bail bond agent application disqualifies him from acting as a surety on bail bonds. Because Petitioner 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. 2007), Respondent had no discretion to issue the bail bond agent license. *See Phillip L. Joyce v. Director of Insurance*, No. 07-1364 DI (Mo. Admin. Hearing Comm'n July 7, 2008).
19. Petitioner's answer of "no" to Question C of Part III on his 2003 application was a fraud and deception by concealment of a material fact, in that Petitioner concealed his 1993 plea of guilty to Mail Fraud. "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).
20. Respondent has the discretion to deny Petitioner's renewal application due to Petitioner's fraud, deception and misrepresentation on Petitioner's 2003 bail bond agent application.

## LEGAL BRIEF

Sufficient legal and factual grounds exist for denying Petitioner's 2007 Renewal Application. Within the past 15 years, Petitioner pleaded guilty of Mail Fraud, a felony and a crime of moral turpitude. Because of this, Petitioner 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, RSMo (Supp. 2007).

Further, Petitioner submitted the deceptive 2003 bail bond agent application, in which he concealed his 1993 guilty plea of Mail Fraud, notwithstanding his oath that the statements contained in that application were true to the best of his knowledge and belief. Such conduct constitutes fraud, deception, and misrepresentation and subjects Petitioner to refusal of the renewal of his bail bond agent license under § 374.750, RSMo (2000), and § 374.755.1(3), RSMo (Supp. 2007).

**Refusal is mandatory because Petitioner fails to meet the qualifications for surety provided by Supreme Court rule.**

Sufficient legal and factual grounds exist for refusing Petitioner's 2007 Renewal Application on the grounds that Petitioner has been finally adjudicated guilty and entered "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 . . . ."

In 1993, Petitioner pleaded guilty to Mail Fraud in United States District Court, Eastern District of Missouri. *See Respondent's Exhibit 2.* This felony plea disqualifies

Petitioner from acting as a surety on bail bonds. *See Rule 33.17*. As such, Respondent's refusal of Petitioner's license was mandatory and should be upheld.

Because Petitioner 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. 2007), Respondent has no discretion to issue the bail bond license. *Phillip L. Joyce v. Director of Insurance*, No. 07-1364 DI (Mo. Admin. Hearing Comm'n July 7, 2008).

In *Joyce* (2008), this Commission found that Joyce's felony convictions and pleas disqualified him from acting as a surety on bail bonds. The Commission also found that it had no discretion to issue the bail bond license due to that fact that 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." *Id.* at p. 11.

In *Phillip L. Joyce v. Director of Insurance*, No. 00-2668 DI (Mo. Admin. Hearing Comm'n July 1, 2001), the Commission noted the interplay between § 374.715.1, RSMo (2000), and Rule 33.17 and upheld the Director's denial of the applicant's general bail bond agent application.<sup>1</sup> Section 374.715, RSMo,<sup>2</sup> and Rule 33.17<sup>3</sup> impose "a mandatory and not a discretionary requirement . . . [U]nder those provisions, [Petitioner] cannot be licensed as a . . . general bail bond agent because of his

---

<sup>1</sup> In this case, the AHC did not discuss whether Petitioner could be licensed as a bail bond agent. The AHC only analyzed Petitioner's application for a general bail bond agent license.

<sup>2</sup> The AHC cites to section 374.715, RSMo (2000). Section 374.715, RSMo (2007) includes the additional requirement that bail bond agents and general bail bond agents supply proof that they have a high school diploma or general education development certificate. This change does not impact Petitioner's or Respondent's arguments in this case.

<sup>3</sup> 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.)

felony convictions.” *Joyce* (2001), at p. 5. As such, Respondent has no authority to grant Petitioner a bail bond agent license.

This Commission’s finding that Rule 33.17 imposes “a mandatory and not a discretionary requirement” compelled Respondent to deny Petitioner’s 2007 Renewal Application. *Id.*

**Petitioner failed to disclose felony plea on his 2003 Application.**

Sufficient legal and factual grounds exist for discretionary refusal of Petitioner’s 2007 Renewal Application for deception or misrepresentation in that Petitioner failed to disclose his guilty plea to Mail Fraud on the 2003 Application. Sections 374.715.1, 374.755.1(2), and 374.755.1(3), RSMo (Supp. 2007).

Question C of Part III of the 2003 Application asks:

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?

Petitioner checked the “No” answer to this question. Hence, in response to Question C of Part III of the 2003 Application, Petitioner failed to disclose the fact he had entered a guilty plea to Mail Fraud in the United States District Court, Eastern District of Missouri in 1993.

Petitioner’s failure to disclose the above noted plea on the 2003 Application constitutes fraud, deception, and misrepresentation, and such failure is grounds to refuse his license pursuant to § 374.755.1(3), RSMo (Supp. 2007). Fraud is an intentional perversion of the truth to induce another, in reliance on it, to part with some valuable thing belonging to him. *State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910). Misrepresentation is a falsehood or untruth made with the intent and purpose of deceit.

MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY at 794 (11th ed. 2004).

Deception is the act of causing someone to accept as true what is not true. *Id.* at 322.

Petitioner benefited from his 2003 fraud, deception, and misrepresentation by securing his first bail bond agent license.

During the hearing before this Commission on July 11, 2008, Petitioner claimed he misunderstood the question. However, the question presented to Petitioner on the 2003 bail bond agent application was very straightforward, "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?"

Deception under § 374.755.1(3), RSMo (Supp. 2007) involves an intent to mislead. Respondent concluded that being charged with a felony and appearing in court to enter a plea of guilty is a memorable event, not subject to lapse of memory. Given the direct nature of the questions and the clear instruction to disclose all convictions or pleas of nolo contendere, Respondent concluded that Petitioner's concealment of his guilty plea in his 2003 Application was intended to conceal from Respondent Petitioner's criminal history. Considering that 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.

**WHEREFORE**, Respondent respectfully requests this Commission issue findings of facts and conclusions of law upholding the decision of the Director of the Department of Insurance, Financial Institutions and Professional Registration to deny Petitioner's 2007 Renewal Application.

Respectfully submitted,



Elfin L. Noce  
Missouri Bar # 57682  
Missouri Department of Insurance,  
Financial Institutions & Professional  
Registration  
301 West High Street, Room 530  
Jefferson City, Missouri 65101  
Telephone: (573) 751-2619  
Facsimile: (573) 526-5492

ATTORNEY FOR RESPONDENT  
Linda Bohrer, Acting Director  
Missouri Department of Insurance,  
Financial Institutions & Professional  
Registration

**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that a true and correct copy of the foregoing Respondent's Brief was mailed first class, with sufficient postage attached, via the United States Postal Service on the 31<sup>st</sup> day of July, 2008, to:

Edward Loughary  
Petitioner  
305 Lindsay Ave  
Crystal City, Missouri 63019  
Telephone: (636) 931-7656

