STATE OF MISSOURI
DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
John Wesley Garrett,	)	Case No. 07A000468
	)	
Applicant.	)	
	)	
Serve at:	)	
	)	
11420 N Tennessee Ave Kansas City, MO 64157	)))	

REFUSAL TO RENEW BAIL BOND AGENT LICENSE

On September 20, 2007, Kathyrn Turner, as Chief Investigations Counsel for the Investigations Section of the Division of Consumer Affairs, submitted a petition to the Director alleging cause for refusing to renew the bail bond agent license of John Wesley Garrett ("Applicant"). After reviewing the petition, and the investigative report, the Director issues the following findings of fact, conclusions of law and summary order:

FINDINGS OF FACT

1. Applicant, John Wesley Garrett, is a Missouri resident with an address of 11420 N. Tennessee Avenue, Kansas City, Missouri 64157.

2. On June 11, 2007, Applicant filed a Missouri Uniform Renewal Application for Bail Bond or Surety Recovery License ("Application") with the Department of Insurance, Financial Institutions and Professional Registration seeking renewal of his bail bond agent license.

3. Applicant's bail bond agent license expired on July 18, 2007.

4. Question B of Part III of the 2007 Renewal Application 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)...

5. Applicant checked the "No" answer to this question.

6. An investigator with the Consumer Affairs Division requested additional information from the Applicant, who then confirmed a felony charge in March 1996.

7. On April 2, 1996, Applicant was charged by information filed in the Jackson County Circuit Court with a felony of Unlawful Use of a Weapon, in that:

> "...the defendant knowingly exhibited, in the presence of one or more persons, a 9mm handgun, a weapon readily capable of lethal use, in an angry or threatening manner."

8. On April 2, 1996, Applicant pled guilty to the class D felony of Unlawful Use of a Weapon, a violation of Section 571.030.1(4) RSMo in the Circuit Court of Jackson County, Missouri. The court suspended imposition of sentence and placed Applicant on one year probation.

9. On August 28, 1997, Applicant was discharged from probation.

10. The Applicant graduated in 1987 from Missouri Western State College with a bachelor of science degree in criminal justice.

11. This Order is in the public interest.

CONCLUSIONS OF LAW

12. Section 374.750, RSMo 2000 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.

13. Section 374.755.1, RSMo (Cum. 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 or nolo contendere within the past fifteen years in a criminal prosecution under any state or federal law for a felony...whether or not a sentence is imposed...

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

(6) Violation of any provision of or any obligation imposed by the laws of this state ....

14. Section 374.715.1 RSMo (Cum. 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...meets the qualifications for surety on bail bonds as provided by supreme court rule.

15. 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;

Court Rule Disqualification by 1996 Plea of Guilty

16. On April 2, 1996, Applicant pled guilty to the class D felony of Unlawful Use of a weapon, a violation of Section 571.030.1(4) RSMo, in the Circuit Court of Jackson County, Missouri. The court suspended imposition of sentence and

placed Applicant on one year probation. Applicant's guilty plea is grounds for refusal to renew his bail bond agent license under §374.750, RSMo 2000 and §374.755.1(2) RSMo (Cum. Supp. 2006).

17. As §374.750 provides that the Director "may" refuse a license renewal, at first blush it appears that the Director has discretion under this section for disqualifying Applicant for the 1996 Plea under 374.755.1(2). ***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).

18. However, Applicant 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 (Cum. Supp. 2006), a "violation of ...[an] obligation imposed by the laws of this state", also a ground for refusal to renew his bail bond agent license under §374.750, RSMo 2000 and §374.755.1(6) RSMo (Cum. Supp. 2006).

19. The current statute is to be properly applied to licensing actions. The Director must apply the statute in effect at the time of the renewal application. ***Huddlestonsmith v. Director of Insurance***, Case No. 06-0161 DI (November 13, 2006); ***Polsky v. Director of Insurance***, Case No. 06-1458 DI (April 24, 2007). The effective Supreme Court rules are also properly applied.

20. As Applicant 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 (Cum. Supp. 2006), the Director has no discretion to renew the bail bond license. ***Phillip L. Joyce v. Director of Insurance***, No. 00-2668 DI (Mo. Admin. Hearing Comm'n July 3, 2001). The interplay of §374.715.1 and Supreme Court Rule 33.17 remove any discretion in regards to Applicant's 1996 plea. Section 374.715 and Supreme Court Rule 33.17 impose "a mandatory and not a discretionary requirement. ....[U]nder those provisions, [the Applicant] cannot be licensed as a general bail bond agent because of his felony convictions." ***Joyce*** (2001), at p.5. Neither the law, nor Supreme Court Rule makes any distinction for bail bond agents.

Misrepresentation or Deception in Renewal Application

21. The Applicant failed to disclose the 1996 plea on his renewal application, which the Consumer Affairs Division has alleged is also grounds for refusal to renew the Applicant's bail bond agent license under §374.750, RSMo 2000 and §374.755.1(3) RSMo (Cum. Supp. 2006).

22. The Applicant may also be disqualified, and therefore renewal refused because Applicant's "No" answer to Question B of Part III of the Application to the Department was fraud and deception by concealment of a material fact, in that Applicant concealed his 1996 plea. "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). The facts concerning the 1996 offense are material as the Director has the responsibility to determine the qualification of bail bond agents under the terms of Supreme Court Rules 33.17 and 33.20. In his attorney's written submission, Applicant claims that he "just plain forgot to disclose the charge..." Nevertheless, the Director concludes that an arrest, plea of guilty to a felony, and a sixteen month probation only ten years ago are memorable events in the life of an individual possessing a criminal justice degree and the license of a bail bond agent.

23. While the Director has concluded that the Applicant is disqualified as a bail bond agent, this disqualification may not extend to a license as a surety recovery agent under §374.783, RSMo. Further, on April 3, 2011, may again be able to qualify for licensure as a bail bond agent.

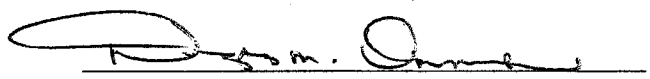
24. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the renewal of the bail bond agent license of Applicant John Wesley Garrett is hereby summarily REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 15th DAY OF October, 2007.



DOUGLAS M. OMMEN
DIRECTOR

NOTICE

TO: Applicant and any unnamed persons aggrieved by this Order:

You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri within (30) days after the mailing of this notice pursuant to Section 621.120 RSMo.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of October, 2007, a copy of the foregoing notice, order and petition was served upon the Applicant in this matter by certified mail.

Karen Crutchfield

Karen Crutchfield
Senior Office Support Staff