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

IN THE MATTER OF:	)	
	)	
Gerald Thomas Franks	)	Case No. 07A000561
	)	
Applicant.	)	
	)	
Serve at:	)	
	)	
1211 S Mayview Avenue Independence MO 64057	))	
	)	

REFUSAL TO RENEW GENERAL BAIL BOND AGENT LICENSE

On August 27, 2007, Kathyrn Turner, as chief investigations counsel for the Consumer Affairs Division, submitted a petition to the Director alleging cause for refusing to renew the general bail bond agent license of Gerald Thomas Franks ("Applicant"). After reviewing the petition, the investigative report, and the full record of Applicant's disciplinary proceeding previously before the Director, the Director issues the following findings of fact, conclusions of law and summary order:

FINDINGS OF FACT

1. Gerald Thomas Franks ("Applicant") is a Missouri resident with an address of 1211 South Mayview, Independence, Missouri 664057.

2. On July 30, 2007, Applicant submitted a Missouri Uniform Renewal Application for Bail Bond or Surety Recovery License ("Renewal Application") to apply for renewal of a general bail bond agent license with the Department of Insurance, Financial Institutions and Professional Registration.

3. Applicant's general bail bond agent license expired on August 31, 2007.

4. Question B of Part III of the Renewal Application asked:

> 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 "Yes" answer to this question.

6. On February 7, 2006, in the Circuit Court of Daviess County, Missouri, Applicant pled guilty to the class C felony of Possession of a Controlled Substance ("2006 Plea").

7. The circuit court suspended the imposition of sentence and ordered that Applicant be placed on probation for five (5) years.

8. On May 11, 2006, the Director authorized the filing of a complaint with the Administrative Hearing Commission, seeking a finding of cause to discipline the license of Gerald T. Franks, ***In Re: Gerald T. Franks***, Case No. 06-0331176C; ***Director v. Gerald T. Franks***, Admin. Hrg. Comm'n, Case No. O6-0655DI.

9. Following a hearing before the Administrative Hearing Commission on October 2, 2006, Applicant consented to the issuance of an order finding cause for discipline and the Administrative Hearing Commission issued a consent order on December 4, 2006, ***Director v. Gerald T. Franks***, Admin. Hrg. Comm'n, Case No. O6-0655DI.

10. On February 1, 2007, the Director entered findings of fact, conclusions of law and an order of discipline, ***In Re: Gerald T. Franks***, Case No. 06-0331176C.

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...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...
>
> (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. Prior to January 1, 2007, Supreme Court Rule 33.17, provided, in part:

> A person shall not be accepted as a surety on any bail bond unless the person:
>
> (c) Has not been convicted of any felony under the laws of any state or of the United States;

16. The current qualification requirement in 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;

17. Applicant has pled guilty to the class C felony of Possession of a Controlled Substance and is on five (5) years probation. As Applicant is on probation, he remains subject to arrest and imprisonment, subjecting him to refusal of the renewal of his general bail bond agent license under the provisions of §374.750, RSMo 2000 and §374.755.1(2) and (6) RSMo (Cum. Supp. 2006).

Disqualification by 2006 Plea

18. Applicant may be disqualified and therefore, refused a renewal of his license, based upon §§374.750 and 374.755.1(2), RSMo (Cum. Supp. 2006) for the 2006 guilty plea in Daviess County. The Director must apply the statute in effect at the time of the 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).

19. In the prior administrative action involving the Applicant, the license had been renewed as of August 31, 2005 for the two year term to expire August 31, 2007. The conduct that subjected the Applicant to discipline occurred at his plea of guilty on February 7, 2006. The statute applied in the prior two year license term of August 31, 2005 through August 31, 2007 was the statute in effect at the time of the occurrence of the plea, which is the same statute as currently in effect. However, in that prior administrative action, the Director had full discretion to impose a three day suspension for the marijuana possession. On January 1, 2007, the qualification standard of the Missouri Supreme Court for bail bond agents was substantially raised for recent prior criminal history.

20. The current Supreme Court Rule 33.17, which became effective on January 1, 2007, is now properly applied to the Applicant. 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 issue 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 2006 plea of guilty in Daviess County to the class C felony of possession of a controlled substance. 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.

21. Applicant's failure to submit proof that he "meets the qualifications for surety on bail bonds as provided by supreme court rule" also constitutes a "violation of ... [an] obligation imposed by the laws of this state", which is grounds for disqualification and refusal of the renewal of the general bail bond agent license under §374.750 RSMo 2000 and §374.755.1(6), RSMo (Cum. Supp. 2006).

Discretion

22. As §374.750 provides that the Director "may" refuse a license renewal, to the extent the statute appears to grant to the Director discretion under this section for disqualifying Applicant for the 2006 Plea, the Director now applies that discretion by following the qualification standard set by the Missouri Supreme Court. A bail bond agent has quasi-police powers including the authority to take custody of defendants released on bail by the courts. Under the prior Supreme Court rule, which disqualified any individual who had been convicted of a felony, the Director applied his discretion to suspend the Applicant for three days. Yet the Director believes the Supreme Court's new standard for recent criminal pleas will significantly aid the state in eliminating many of the problems afflicting the bail bond business.

23. Despite decisions by the Administrative Hearing Commission that could be subject to an interpretation that the law in effect at the time of the plea should be applied, the Director believes that Rule 33.17 is currently effective and is intended by the Missouri Supreme Court to guide all Missouri courts charged with administering the qualifications for bail bond agents operating in those courts. For the Director to apply a conflicting or different qualification standard would produce the very undesirable result of the executive branch granting licenses to individuals, but who are unqualified by review in the judicial branch. For all of these reasons, and even if the §374.715 could be interpreted in such a manner to not mandate disqualification of the Applicant, the Director now exercises his discretion in refusing to renew the Applicant.

24. The Director, in making this decision, has considered all of the information within the whole record of this matter and the prior administrative action. Any failure to specifically address a piece of evidence, information, position or argument of any party does not indicate that the Director has failed to consider relevant information, but indicates

rather that the omitted material was not dispositive of the Director's decision.

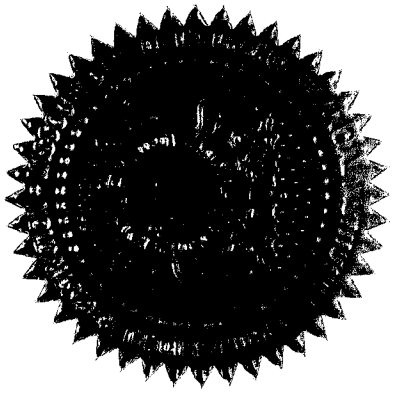
25. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the renewal of the general bail bond agent license of Applicant Gerald Thomas Franks is hereby summarily REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 4th DAY OF September, 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 4th day of September, 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