State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Edward Lynn Loughary	)	Case No. 07A000593
	)	
Applicant.	)	
	)	
Serve at:	)	
	)	
305 Lindsay Avenue	)	
Crystal City MO 63019	)	
	)	

REFUSAL TO RENEW BAIL BOND AGENT LICENSE

On August 28, 2007, Kathyrn Turner, Senior Counsel for the Investigations Section of the Consumer Affairs Division ("Consumer Division"), submitted a petition to the Director alleging cause for refusing to renew the bail bond agent license of Edward Lynn Loughary ("Applicant"). After reviewing the petition and the file in this matter the Director issues the following findings of fact, conclusions of law and summary order:

FINDINGS OF FACT

1. Edward Lynn Loughary ("Applicant") is a Missouri resident with an address of 305 Lindsay Avenue, Crystal City, Missouri, 63019.

2. On July 18, 2007, Applicant filed a Missouri Uniform Renewal Application for Bail Bond or Surety Recovery License ("Renewal 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 expires on September 4, 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 "Yes" answer to this question.

6. Applicant first applied for a bail bond agent license by an application submitted to the Missouri Department of Insurance on August 29, 2003.

7. Question C of Part III of the 2003 application 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?

8. Applicant answered "NO" to the question on the 2003 application. A bail bond agent license was issued to Applicant with an effective date of September 4, 2003.

9. In a case filed on January 21, 1993, Applicant 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.

10. In May 27, 1993, Applicant pled guilty and was sentenced to four (4) months in the United States Bureau of Prisons. Following the four (4) months time served, Applicant was on supervised release for two (2) years.

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...law for...a crime involving moral turpitude...whether or not 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;

Disqualification by 1993 Plea

16. Applicant may be disqualified and therefore, refused the issuance of a bail bond agent license, based upon §§374.750 and 374.755.1(2) for the 1993 Plea. The current statute is to be properly applied to licensing actions. (*Compare* ***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).

17. Moreover, the current Supreme Court Rule 33.17, which became effective on January 1, 2007, is also properly applied. 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 2002 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. Section 374.715.1 does not make any distinction for bail bond agents. As Supreme Court Rule 33.17 is now effective and being applied by courts throughout the state, it is now appropriate to apply the current rule in this matter.

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

Disqualification for Fraud and Deception in Application

19. Applicant may also be disqualified, and therefore renewal refused because Applicant'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 Applicant concealed his 1993 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 1993 mail fraud 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.

20. While fraud and deception under §374.755.1.(3) involves an intent to mislead, the Director concludes that being charged with mail fraud in a federal court, serving four (4) months in a federal prison and two (2) years on supervised release are memorable events, not subject to lapse of memory. Given the direct nature of the question and the clear instruction to disclose all convictions, the Director concludes the Applicant's concealment of the 1993 offense was intended to conceal from the Director the Applicant's criminal history in his 2003, which concealment resulted in the issuance of the license

Discretion

21. As §374.750 provides that the Director "may" refuse a license renewal, the Director has discretion under this section for disqualifying Applicant for the 1993 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). The issuance of a license to an Applicant for a bail bond agent license "places the seal of the state's approval upon the licentiate and certifies to the public that he possess these requisites [competency, skill...]" ***State ex rel. Lentine v. State Bd. Of Health***, 66 S.W. 2d 943, 950 (Mo. 1993) cited in ***David R. Hess v. Director of Insurance***, No. 93-000368DI, p.4, footnote 5 (Mo. Admin. Hearing Comm'n August 9, 1993). A bail bond agent has quasi-police powers including the authority to take custody of defendants released on bail by the courts. A plea of guilty to federal mail fraud and subsequent concealment on the application reveals a risk to the courts and the public-at-large in licensing the Applicant, which is unjustified. In applying this discretion, the Director has considered the history of the Applicant and all of the circumstances surrounding the Applicant's Renewal Application. The nature of the offense and the failure to disclose the offense and plea in his original application raises questions regarding Applicant's integrity and reliability, essential qualities for a bail bond agent appearing in the courts of this state. For all of these reasons, even if the disqualification under §374.715.1 RSMo Cum Supp 2006 were not mandatory, the Director would exercise his discretion in refusing to issue a bail bond agent license to the Applicant.

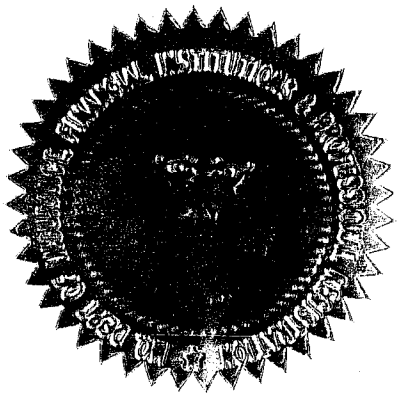
22. The Director, in making this decision, has considered all of the information within the whole record of Application as presented by the Applicant as well as information gathered by the Consumer Affairs Division. Any failure to specifically address a piece of evidence, information, position or argument 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.

ORDER

IT IS THEREFORE ORDERED that the renewal of the bail bond agent license of Applicant Edward Lynn Loughary is hereby summarily REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 31st DAY OF August, 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 31st day of August, 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