State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Stephan Edward Burke	)	Case No. 07A000771
	)	
Applicant.	)	
	)	
Serve at:	)	
	)	
17 Oxen Pasture Road Doniphan, MO 63935	))	
	)	

REFUSAL TO RENEW A GENERAL BAIL BOND AGENT LICENSE

On December 21, 2007, Dale Hardy Roberts, Assistant Chief Investigations Counsel for the Investigations Section of the Consumer Affairs Division ("Division"), submitted a petition to the Director alleging cause to refuse the renewal of the general bail bond agent license of Stephan Edward Burke ("Applicant").

After reviewing the petition, Applicant's records from past applications, and the investigative file containing the sworn affidavit of Matt Barton, the Director issues the following findings of fact, conclusions of law and summary order.

FINDINGS OF FACT

1. Stephan Edward Burke is a Missouri resident with an address of 17 Oxen Pasture Road, Doniphan, Missouri, 63935.

2. Applicant's current license as a general bail bond agent expired on October 3, 2007.

3. On November 13, 2007, Applicant filed a request for a late renewal on a Missouri Uniform Renewal Application for Bail Bond or Surety Recovery Agent License ("Renewal Application") with the Department of Insurance, Financial Institutions and Professional Registration ("Department") seeking renewal of his bail bond agent license.

4. On November 26, 2007, a special investigator for the Division sent a letter to Applicant Stephan Burke directing him to submit certain information not later than December 24, 2007.

5. Applicant has refused to respond to the request for information.

6. For over five years, Applicant has either failed or refused to file his monthly sworn affidavit with the Department as required by Section 374.760 RSMo Cum Supp 2006.

7. This order is in the public interest.

CONCLUSIONS OF LAW

8. Section 374.760 RSMo Cum Supp 2006, requires that:

> Each general bail bond agent shall file, between the first and tenth day of each month, sworn affidavits with the department stating that there are no unsatisfied judgments against him. Such affidavits shall be in the form and manner prescribed by the department.

Applicant has failed or refused to file monthly sworn affidavits as required by Section 374.760 RSMo Cum Supp 2006. Applicant has failed to file more than seventy such affidavits spanning a period of more than five years.

9. Supreme Court Rule 33.17 provides in part:

> A person shall not be accepted as a surety on any bail bond unless the person: ...
> (f) Has no outstanding forfeiture or unsatisfied judgment thereon entered upon any bail bond in any court of this state or of the United States.

10. Section 374.760, RSMo enables the Department to regularly monitor unsatisfied judgments and therefore, compliance with Rule 33.17. While there is no showing of overdue judgments, those judgments do not come to the Department until six months after they occur. It is the duty of a general bail bond agent to make a monthly report to the Department to facilitate the prevention of ongoing and irreparable damage to Missouri's judicial system.

11. 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.

12. Section 374.755, RSMo, Cum Supp 2006, provides:

> The department may cause a complaint to be filed ....for any one or any combination of the following causes: ...
>
> (6) Violation of any provision of or any obligation imposed by the laws of this state, [or] the department of insurance rules and regulations, ...

As §374.750 provides that the Director "may" refuse a license renewal, the Director has discretion under this section for disqualifying Applicant for his ongoing failure to comply with statutory filing requirements which ensure financial responsibility. Failure to file these reports for over five years has raised questions regarding Applicant's fiscal and managerial responsibility, essential qualities for a general bail bond agent appearing in the courts of this state. For this reason, alone, the Director may exercise his discretion in refusing to renew the Applicant. Moreover, Applicant's failure to meet these obligations as imposed by law causes concern regarding the ability of Applicant to adhere to the fiduciary duties required in the bail bond business handling money or property belonging to others and paid or pledged for bail bonds. In light of all of the circumstances of the Applicant's failure to comply with 374.760 RSMo Cum Supp 2006, and all of the surrounding circumstances in this proceeding, including the Applicant's refusal to provide requested information, if the Applicant is not subject to a mandatory disqualification as set forth below, the Director does exercise his discretion to refuse to renew Applicant's license.

13. 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.

The Applicant has refused to submit proof that he "meets the qualifications for surety on bail bonds as provided by supreme court rule". Therefore, under §374.715.1 RSMo Cum Supp 2006, Applicant does not meet the mandatory requirements. Because Applicant has failed or refused to file a sworn affidavit

each month regarding unsatisfied judgments against him, the Applicant has failed to provide the proof required the he is qualified pursuant to Supreme Court rule 33.17(f). By statute, the burden of proof is upon the Applicant. "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." Section 374.715.1 RSMo Cum Supp 2006. (Emphasis added.) Applicant has failed to meet his burden and prove that he meets the qualifications. Applicant's failure to meet the qualification under Rule 33.17 is a mandatory disqualification from licensure as a general bail bond agent.

14. The issuance of a license to an Applicant "...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). Based on the facts presented in the Application and the information gathered by the Division, the seal of the state's approval will be withheld.

15. 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 the investigative staff of the 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.

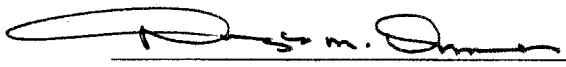
16. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the issuance of the bail bond agent license of Applicant Stephan Edward Burke is hereby summarily REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 31st DAY OF DECEMBER, 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 thirty (30) days after the mailing of this notice pursuant to Section 621.120 RSMo.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of January, 2008, a copy of the foregoing notice, order and petition was served upon the Applicant in this matter by certified mail.

Karen Crutchfield
Senior Office Support Staff