

Before the  
Administrative Hearing Commission  
State of Missouri



DIRECTOR OF DEPARTMENT OF )  
INSURANCE, FINANCIAL )  
INSTITUTIONS AND PROFESSIONAL )  
REGISTRATION, )

Petitioner, )

vs. )

THOMAS CHARLES MCGEE, SR., )

Respondent. )

No. 08-0758 DI

**DECISION**

Thomas Charles McGee, Sr., is subject to discipline because he pled guilty to three felony criminal offenses within 15 years of being licensed as a bail bond agent.

**Procedure**

On April 21, 2008, the Director of the Department of Insurance, Financial Institutions and Professional Registration (“the Director”) filed a complaint seeking to discipline McGee. On October 21, 2008, McGee was personally served with a copy of the complaint, our notice of complaint/notice of hearing, and our order dated September 17, 2008. McGee did not respond to the complaint. On March 25, 2009, we held a hearing on the complaint. Tamara W. Kopp represented the Director. Although notified of the time, place and date of the hearing, neither

McGee nor anyone representing him appeared. The matter became ready for our decision on April 1, 2009, the date the transcript was filed.

The Director offered into evidence the request for admissions that he served on McGee on November 17, 2008. McGee did not respond to the request. Under Supreme Court Rule 59.01, the failure to answer a request for admissions establishes the matters asserted in the request, and no further proof is required.<sup>1</sup> Such a deemed admission can establish any fact, or “application of the facts to the law, or the truth of the ultimate issue, opinion or conclusion, so long as the opinion called for is not an abstract proposition of law.”<sup>2</sup> That rule applies to all parties, including those acting *pro se*.<sup>3</sup>

Our Regulation 1 CSR 15-3.420(1) applies that rule to this case and states that discovery shall be under the same conditions as provided for by the Missouri Supreme Court rules. Rule 59.01(c) states:

(2) When Requests May be Served. Without leave of court, requests may be served on:

\* \* \*

(B) A defendant or respondent upon the expiration of 30 days after the first event of the defendant entering an appearance or being served with process[.]

McGee was personally served on October 21, 2008. The Director served McGee with the request for admissions on November 17, 2008, which is 27 days after the personal service. Therefore, we consider the Director’s other evidence, but do not consider McGee’s failure to respond to the request for admissions.

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<sup>1</sup>*Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App., W.D. 1985).

<sup>2</sup>*Briggs v. King*, 714 S.W.2d 694, 697 (Mo. App., W.D. 1986).

<sup>3</sup>*Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App., W.D. 1983).

## **Findings of Fact**

1. The Director issued a bail bond agent license to McGee on March 10, 2004, with an expiration date of March 10, 2007. His bail bond agent license expired, and he has not filed an application to renew it.

2. On June 9, 1997, the prosecuting attorney for Jackson County, Missouri, filed an information in the Jackson County Circuit Court charging that Thomas E. Rowe, Jr., was in violation of § 570.030, the Class C felony of stealing and § 575.040, RSMo, the Class C felony of perjury. McGee used this alias throughout the case.<sup>4</sup>

3. The information alleged that on or about September 11, 1996, in Jackson County, Missouri, McGee appropriated a cellular telephone, a radar detector, and a briefcase of a value of at least \$ 150. The property was owned by Raymond Fitzwater, and McGee appropriated it without Fitzwater's consent and with the purpose to deprive him of it.

4. The information also alleged that on or about October 31, 1996, in Jackson County, Missouri, while a witness under oath legally administered by William Fly in Division 2 of the Circuit Court of Jackson County during a criminal plea involving a felony charge, with the purpose to deceive, McGee knowingly testified falsely to a material fact by stating that his name was Timothy C. Grother and subsequently pled guilty to stealing and was placed on two years' probation.

5. On June 9, 1997, McGee entered a plea of guilty to the Class C felonies of stealing and perjury. The court sentenced McGee to five years' imprisonment for the felonies, but suspended the execution of sentence and placed him on probation.

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<sup>4</sup>The court records are all in the name of Thomas E. Rowe, Jr.

6. On April 17, 2000, the prosecuting attorney for Jackson County, Missouri, filed an indictment in the court charging that McGee was in violation of § 569.040, RSMo, the Class C felony of attempted arson in the first degree.

7. The indictment alleged that on or about February 23, 2000, in Jackson County, Missouri, McGee saturated the hallway of a residence and threatened to start a fire at a time when persons were present in the residence and thereby recklessly placed such persons in danger of death or serious physical injury. The indictment also alleged that such conduct was a substantial step toward the commission of the crime of arson in the first degree and was done for the purpose of committing such crime.

8. On February 20, 2001, McGee entered a plea of guilty to the Class C felony of attempted arson in the first degree. McGee was sentenced to seven years' imprisonment.

9. McGee entered a plea of guilty, within the past 15 years in a criminal prosecution under a state or federal law for a felony, prior to the date the Department issued his license.

#### **Conclusions of Law**

We have jurisdiction to hear the complaint.<sup>5</sup> The Director has the burden of proving that McGee has committed an act for which the law allows discipline.<sup>6</sup> The Director argues that there is cause for discipline under § 374.755:

1. The department may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any license required by sections 374.695 to 374.775 or any person who has failed to renew or has surrendered his or her license for any one or any combination of the following causes:

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<sup>5</sup>Section 621.045. Statutory references, unless otherwise noted, are to RSMo Supp. 2008.

<sup>6</sup>*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

(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 or a crime involving moral turpitude whether or not a sentence is imposed, prior to issuance of license date;

\* \* \*

(6) Violation of any provision of or any obligation imposed by the laws of this state, department of insurance, financial institutions and professional registration rules and regulations, or aiding or abetting other persons to violate such laws, orders, rules or regulations, or subpoenas[.]

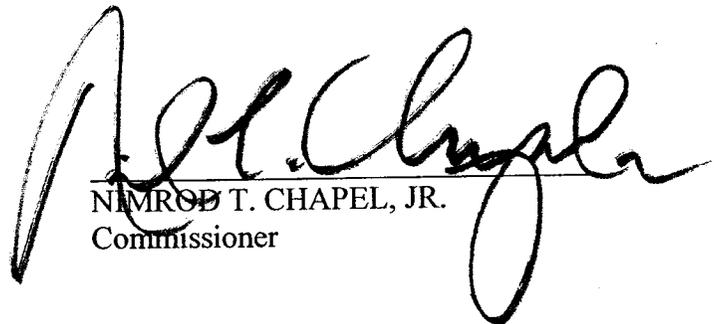
Within 15 years of the date he was issued a license, McGee pled guilty to three felonies – stealing, perjury, and attempted arson. There is cause for discipline under § 374.755.1(2).

The Director argues that the criminal acts underlying the guilty pleas are cause for discipline as violations of provisions of law. We agree. There is cause for discipline under § 374.755.1(6).

**Summary**

There is cause for discipline under § 374.755.1(2) and (6).

SO ORDERED on May 14, 2009.



NIMROD T. CHAPEL, JR.  
Commissioner