State of Missouri
Department of Insurance, Financial Institutions & Professional Registration

IN THE MATTER OF:	)	
	)	
David Glen Clevenger	)	Case No. 08A000404
	)	
Applicant.	)	
	)	
Serve at:	)	
	)	
2602 South Highland Joplin, Missouri 64804	))	
	)	

REFUSAL OF BAIL BOND AGENT LICENSE

On December 18, 2008, Rita Heimericks-Ash, Chief Investigator for the Division of Consumer Affairs, submitted a petition to the Director alleging cause to refuse to license the above named 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, David Glen Clevenger, is a Missouri resident with an address of 2602 South Highland, Joplin, Missouri 64804.

2. On or about May 12, 2008, Applicant filed a Missouri Uniform Application for Bail Bond or Surety Recovery Agent License with the Department seeking a Bail Bond Agent license.

3. Question C of Part III of the Application asks:

> Have you ever been adjudicated, convicted, pled or found guilty of any misdemeanor or felony or currently have pending misdemeanor or felony charges filed

> against you? 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)... (Emphasis added.)

4. Applicant answered "No" to this question.

5. Immediately above the signature line on the application, the text reads: "This applicant being duly sworn upon his/her oath, states that the statements contained in the above and foregoing application are true to the best of his/her knowledge and belief."

6. The term 'true' has been defined, under similar circumstances, as: "...that only is true which is conformable to the actual state of things. In that sense, a statement is untrue which does not express things exactly as they are. But in another and broader sense the word 'true' is often used as a synonym of honest, sincere, not fraudulent." *Moulor v. American Life Ins. Co.*, 111 U.S. 335 (1884).

7. A certified copy of the records from case number CR401-1986FX, from the Circuit Court of Newton County, Missouri, confirms that on or about January 17, 2002, Clevenger entered a guilty plea to the class D felony of non-support.

8. The Applicant's plea of guilty to a felony offense occurred within 15 years immediately prior to submitting the application.

9. Applicant failed to disclose the guilty plea to a felony and, instead, fraudulently claimed no conviction or suspended imposition of sentence.

10. All of the competent and substantial evidence within the investigative record has been considered. In making this decision on behalf of the Department, I have considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, a position, an allegation or any argument of any party does not indicate there was a failure to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

CONCLUSIONS OF LAW

11. Section 374.715, RSMo (Cum. Supp. 2007) provides, in part:

> 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.

12. 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 or the United States;

13. 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.

14. Section 374.755.1, RSMo (Cum. Supp. 2007) 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 felony...whether or not a sentence is imposed, prior to issuance of license date;
>
> (3) Use of fraud, deception, misrepresentation or bribery in securing any license or in obtaining permission to take any examination required pursuant to sections 374.695 to 374.775;
>
> (6) Violation of any provision of or any obligation imposed by the laws of this state, department rules and regulations, or aiding or abetting other persons to violate such laws, orders, rules or regulations, or subpoenas;.

15. Applicant was found guilty of a felony, or entered a plea of guilty to a felony, within the 15 years prior to the date of the application in question, which prevents applicant from meeting the qualifications for surety on bail bonds as provided by Supreme Court Rule 33.17(f), thus a disqualification from obtaining a Bail Bond Agent license under section 374.715, RSMo (Cum. Supp. 2007.)

16. Applicant failed to disclose a suspended imposition of sentence and, instead, fraudulently claimed no conviction or suspended imposition of sentence. Applicant thereby made use of a misrepresentation or deception in an attempt to secure a bail bond agent license under 374.755.1(3), RSMo. (Cum. Supp. 2007.)

17. The plain meaning of 374.755.1 RSMo (Cum. Supp. 2007) includes both persons convicted as well as persons who entered a plea of guilty.

18. Interpreting a provision in a similar Missouri statute, the Western District Court of Appeals agreed that "if the legislature intended to enable persons who plead guilty to a crime and receive a suspended imposition of sentence to be granted a permit to acquire a concealable firearm, the legislature would not have included the "pled guilty" language in Section 571.090.1(2)." The Court held that the mere plea of guilty to the designated offense would prevent the applicant from qualifying for a license. *Carr v. Sheriff of Clay County*, 210 S.W.3d 414 (Mo.App. W.D. Nov 21, 2006) rehearing denied (Jan 30, 2007.)

19. A bail bond agent has quasi-police powers including the authority to take custody of a defendant released on bail by the courts. Honesty, candor, and respect for the judicial system are critical to this quasi-law enforcement function.

20. If, as the Director, I were to exercise my discretion in this matter, I would refuse the application based upon the fraudulent concealment of a criminal record. However, my discretion in this matter is superseded by the absolute prohibition against licensing an applicant with a criminal offense within the past 15 years.

21. The denial of this application is, as a matter of law, mandatory.

22. This order is in the public interest.

ORDER

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

SO ORDERED.

WITNESS MY HAND THIS 9th DAY OF February, 2009.

John M. Huff, ~~DIRECTOR~~ (ACTING)

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 10th day of February, 2008, a copy of the foregoing notice and order was served upon the Applicant in this matter by certified mail.

Karen Crutchfield
Karen Crutchfield
Senior Office Support Staff