State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Derek T. Billups,	)	Case No. 10-0916599C
	)	
Applicant.	)	

REFUSAL TO ISSUE BAIL BOND AGENT LICENSE

On or about May 10, 2011, Kristen E. Paulsmeyer, Enforcement Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue the bail bond agent license of Derek T. Billups. After reviewing the Petition, the Investigative Report, and the entirety of the file, the Director issues the following findings of fact, conclusions of law, and summary order:

FINDINGS OF FACT

1. Derek T. Billups ("Billups") is a Missouri resident with an address of 3916 S. Phoenix Rd., Columbia, Missouri 65202.

2. On or about November 16, 2009, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Billups' Missouri Uniform Application for Bail Bond or Surety Recovery License ("Application").

3. In the "Background Information" section of the Application, Question B 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).

4. Billups answered "Yes" to Background Question B.

5. Question B states:

If YES, provide a full, written explanation on a separate sheet of paper including the name and address of court, basis of charge, outcome, and whether you received an executive pardon. Also, attach certified court documents of the information or Indictment and the Final Adjudication.

6. Billups failed to provide a written explanation on a separate sheet of paper and failed to provide certified documents with the Application.

7. On or about November 19, 2009, because his Application was incomplete, the Department sent Billups an Additional Information Request in which he was notified that a written explanation was required as well as certified court documents in response to Question Part III, B and Part IV, A of the Application.

8. On or about December 2, 2009, the Department received Billups' supplement to the Application, which included four letters, each dated November 28, 2009, as well as some supporting documentation, with each letter addressing a separate criminal charge or case. In the four letters and supporting documents, Billups disclosed the following:

   a. In July 2009, Billups was arrested in the City of Columbia, State of Missouri, for Domestic Assault 3rd degree. No charges were filed as a result of this arrest.

   b. In October 1997, Billups was arrested in the City of St. Louis, State of Missouri, for the misdemeanor charge of Suspect Assault 3rd degree. The warrant was refused.

   c. In December 1994, Billups pleaded guilty to Acceding to Corruption by Public Servant committed in January 1994. The court documents provide the following:

      i. The Complaint alleged that on or about January 20, 1994, Billups, an officer for the St. Louis Metropolitan Police Department admitted to accepting $1,900.00 from another officer, Phillip P. Finerson, III, in exchange for Billups' agreement to assist, while on duty, in a staged arrest and simulated robbery of drug money allegedly in the possession of Michael Broom and Ely Goris. As a result, Billups and other officers arrested Broom and Goris for possession of cocaine found along with the drug money, and subsequently released them when they agreed to give the officers the money. Billups did not keep the alleged drug money, but was paid by Finerson from other funds. *State of Missouri v. Billups, Derek,* Cause No. 941-0004128.

ii. On or about December 9, 1994, by Information, Billups was charged with the Class D Felony of Acceding to Corruption by Public Servant in violation of § 576.020, in that on January 20, 1994, in the City of St. Louis, State of Missouri, Billups acting with others, and being a police officer for the St. Louis Metropolitan Police Department knowingly accepted from Phillip P. Finerson, III, a benefit namely, $1,900.00 in U.S. currency, in return for his official action as police officer for the St. Louis Metropolitan Police Department by placing Michael Broom and Ely Goris under arrest for violation of the Missouri's Controlled Substance Law and subsequently releasing them, without following the proper transportation and booking procedures and failing to report the same. *State of Missouri v. Billups, Derek,* Cause No. 941-4128.

iii. In the Court Order, on or about December 9, 1994, in the 22nd Judicial Circuit Court, Billups pleaded guilty to Acceding to Corruption by Public Servant. The court granted Billups' allocution and sentenced Billups to one year in the custody of Missouri Department of Corrections. The court suspended execution of sentence and placed Billups on one year supervised probation. *State of Missouri v. Derek Billups,* Case No. 941-4128.

d. In October 1989, Billups was arrested for Patronizing Prostitution and stated he later pleaded guilty to that charge. The court documents provide the following:

i. On or about October 5, 1989, in the 22nd Judicial Circuit Court (City of St. Louis), Billups was charged by Information with the Class B Misdemeanor of Patronizing Prostitution in violation of § 567.030 RSMo and alleged that on October 4, 1989, in the City of St. Louis, State of Missouri, Billups "requested Det. Michele Wiber to engage in deviate [sic] sexual intercourse" with Billups in return for money. *State of Missouri v. Billups, Derrick* [sic], Cause No. 899-06499B.

ii. In January 1990, the Sentence and Judgment stated Billups was found guilty of the Class B Misdemeanor of Patronizing Prostitution. The court suspended imposition of sentence and placed Billups on probation for a period of six months. *State of Missouri v. Derrick* [sic] *Billups*, Cause No. 899-06499B.

9. Billups failed to disclose the following misdemeanor on his Application:

a. On or about February 14, 2006, by Information, Billups was charged with

the Class A Misdemeanor of Passing Bad Check, in that on or about October 14, 2005, in Audrain County, Missouri, Billups with the purpose to defraud, passed a check knowing that it would not be paid. *State of Missouri v. Billups, Derek T.*, Case No. 06UI-CR00144.

b. On or about March 14, 2006, in the Circuit Court of Audrain County, State of Missouri, Billups pleaded guilty to the Class A Misdemeanor of Passing Bad Check – Less than $500.00 in violation of § 570.120 (Supp. 2005) for an offense date of October 14, 2005. The court sentenced Billups to a fine and court costs. *State v. Derek T. Billups*, Case No. 06UI-CR00144.

c. Billups did not disclose this offense on his Application or in his four letters to the Department.

10. On January 6, 2011, Billups testified under oath at a subpoena conference held at the offices of the Department in Jefferson City.

CONCLUSIONS OF LAW

11. Section 374.715.1 RSMo (Supp. 2010), states:

> Applications for examination and licensure as a bail bond agent or general bail bond agent shall be in writing and on forms prescribed and furnished by the department, and shall contain such information as the department requires. Each application shall be accompanied by proof satisfactory to the department that the applicant is a citizen of the United States, is a least twenty-one years of age, has a high school diploma or general education development certificate (GED), is of good moral character, and meets the qualifications for surety on bail bonds as provided by supreme court rule. Each application shall be accompanied by the examination and application fee set by the department. Individuals currently employed as bail bond agents and general bail bond agents shall not be required to meet the education requirements needed for licensure pursuant to this section.

12. Supreme Court Rule 33.17 states, 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 or nolo contendere 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 was imposed[.]

13. Section 374.750 RSMo (2000), states:

> 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. The department shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

14. Section 374.755.1 RSMo (Supp. 2010), provides, in part:

> 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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> * * *
>
> (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;
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> (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;
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> * * *
>
> (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[.]

15. Section 576.020 RSMo (1994), provides:

> 1. A public servant commits the crime of acceding to corruption if he knowingly solicits, accepts or agrees to accept any benefit, direct or indirect, in return for:
>
> (1) His official vote, opinion, recommendation, judgment, decision, action or exercise of discretion as a public servant; or
>
> (2) His violation of a known legal duty as a public servant.
>
> 2. Acceding to corruption by a public servant is a class D felony.

16. Section 567.030 RSMo (1986), provides:

> 1. A person commits the crime of patronizing prostitution if he patronizes prostitution.
>
> 2. Patronizing prostitution is a class B misdemeanor.

17. Section 570.120 RSMo (Supp. 2005) (emphasis added), provides, in part:

> 1. A person commits the crime of passing a bad check when:
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> (1) *With purpose to defraud*, the person makes, issues or passes a check or other similar sight order or any other form of presentment involving the transmission of account information for the payment of money, knowing that it will not be paid by the drawee, or that there is no such drawee; or
>
> (2) The person makes, issues, or passes a check or other similar sight order or any other form of presentment involving the transmission of account information for the payment of money, knowing that there are insufficient funds in or on deposit with that account for the payment of such check, sight order, or other form of presentment involving the transmission of account information in full and all other checks, sight orders, or other forms of presentment involving the transmission of account information upon such funds then outstanding, or that there is no such account or no drawee and fails to pay the check or sight order or other form of presentment involving the transmission of account information within ten days after receiving actual notice in writing that it has not been paid because of insufficient funds or credit with the drawee or because there is no such drawee.

* * *

4. Passing bad checks is a class A misdemeanor, unless:

(1) The face amount of the check or sight order or the aggregated amounts is five hundred dollars or more; or

(2) The issuer had no account with the drawee or if there was no such drawee at the time the check or order was issued, in which cases passing bad checks is a class C felony.

18. A plea of guilty is an admission as to the facts alleged in the information. *See, e.g., Wallace v. State*, 308 S.W.3d 283, 286-7 (Mo. App. S.D. 2010).

19. Moral turpitude is an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything "done contrary to justice, honesty, modesty, and good morals." *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)). Moral turpitude has also been found in crimes involving fraud and false pretenses. *In re Frick*, 694 S.W.2d at 479.

20. "[T]he crime of passing bad checks involves fraud and/or dishonesty and therefore is one involving moral turpitude." *Halinski v. Missouri State Bd. of Podiatric Medicine*, No. 06-1611 CP (Mo. Admin. Hrg. Comm'n, Sept. 18, 2007); *see State Bd. of Nursing v. Smith*, No. 04-0084 BN (Mo. Admin. Hrg. Comm'n, May 18, 2004).

21. Acting "with purpose to defraud" is always an element of § 570.120.1(1). *Gillotti v. Missouri Real Estate Comm'n*, No. 07-0860 RE (Mo. Admin. Hrg. Comm'n, Feb. 1, 2008). Passing a bad check necessarily involves moral turpitude because it always involves the purpose to defraud and to take what belongs to another without consent. *Id.*

22. Missouri Supreme Court Rule 33.17 uses the term "shall" to describe how the listed disqualifications affect the decision on whether to accept a person as a surety. *Cherry v. Dir. of Dept. of Ins., Fin. Inst. and Prof. Reg'n*, No. 08-1917 DI (Mo. Admin. Hrg. Comm'n, May 11, 2009).[1] "Unless the context demands otherwise, 'shall' is a mandatory term, leaving no discretion in the decision maker." *Id.* (citing *State v. Teer*, 275 S.W.3d 258, 261 (Mo. banc 2009)). The Administrative Hearing Commission found nothing in the context of Rule 33.17 to indicate that "shall" has any meaning other than mandatory. *Id.*

[1] Each applicant for a bail bond agent license must meet the qualifications for surety as provided by Missouri Supreme Court Rule. § 374.715.1 RSMo (Supp. 2010).

Therefore, Rule 33.17 requires denial of an application for licensure if there exists one of the disqualifications listed in Rule 33.17(c). *Id.*

CAUSE FOR ORDER TO REFUSE TO ISSUE A BAIL BOND AGENT LICENSE

23. The Director must refuse to issue a bail bond agent license to Billups pursuant to § 374.715.1 RSMo (Supp. 2010) because Billups fails to meet the minimum qualifications of a surety under Supreme Court Rule 33.17(c) and thus, does not meet the minimum qualifications of a bail bond agent under § 374.715.1 RSMo (Supp. 2010), in that Billups pleaded guilty in 2006 to the Class A Misdemeanor of Passing Bad Check, which is a crime of a moral turpitude. *State v. Derek T. Billups*, Case No. 06UI-CR00144.

24. The Director may refuse to issue a bail bond agent license to Billups pursuant to § 374.755.1(6) RSMo (Supp. 2010), because Billups violated a provision of the laws of this state by committing the Class D Felony of Acceding to Corruption by a Public Servant in Missouri in violation of § 576.020 RSMo (1994). *State of Missouri v. Derek Billups,* Case No. 941-4128.

25. The Director may refuse to issue a bail bond agent license to Billups pursuant to § 374.755.1(2) RSMo (Supp. 2010) because Billups pleaded guilty to the Class A Misdemeanor of Passing Bad Check – Less than $500.00 in violation of § 570.120, which is a crime of moral turpitude. *State v. Derek T. Billups*, Case No. 06UI-CR00144.

26. The Director may refuse to issue a bail bond agent license to Billups pursuant to § 374.755.1(6) RSMo (Supp. 2010), because Billups violated a provision of the laws of this state by committing the Class B Misdemeanor of Patronizing Prostitution in violation of § 567.030 RSMo (1986). *State of Missouri v. Derrick [sic] Billups,* Cause No. 899-06499B.

27. The Director may refuse to issue a bail bond agent license to Billups pursuant to § 374.755.1(6) RSMo (Supp. 2010), because Billups violated a provision of the laws of this state by committing the Class A Misdemeanor of Passing Bad Check – Less than $500.00 in violation of § 570.120. *State v. Derek T. Billups*, Case No. 06UI-CR00144.

28. The Director may refuse to issue a bail bond agent license to Billups pursuant to § 374.755.1(3) RSMo (Supp. 2010) because Billups used fraud, deception, misrepresentation or bribery to attempt to secure a bail bond agent license through his Application by failing to disclose his guilty plea in a criminal case as required by the Application: the Class A Misdemeanor of

Passing Bad Check – Less than $500.00 in violation of § 570.120. *State v. Derek T. Billups*, Case No. 06UI-CR00144.

29. "[T]he license granted places the seal of the state's approval upon the licen[see.]" *State ex rel. Lentine v. State Bd. of Health*, 65 S.W.2d 943, 950 (Mo. 1933). Granting Billups a bail bond agent license is not in the interest of the public where Billups has pleaded guilty to the Class D Felony of Acceding Corruption by a Public Servant as well as the Class B Misdemeanor of Patronizing Prostitution. Even though Billups' felony conviction is in excess of 15 years old, Billups' felony involved corruption while serving the public as a police officer. Such a disregard for the law in his role as a public servant draws into question Billups' ability to handle the responsibilities of a bail bond agent which also involves work within the criminal justice system and dealings with individuals charged with crimes. Billups' corruption as a police officer is still present today as he attempted to obtain a license from this agency through fraud, deception or misrepresentation by not fully disclosing all of his transgressions on his application.

30. Billups' failure to disclose on his Application the Class A Misdemeanor of Passing Bad Check, which is a crime of moral turpitude, constituted fraud, deception or misrepresentation on the Application, which is an independent reason for the Director to refuse to issue Billups a bail bond agent license. Moreover, the Director has no discretion under § 374.715.1 RSMo (Supp. 2010) because Billups does not meet the requirements of Missouri Supreme Court Rule 33.17. Therefore, the Director must refuse to issue Billups a bail bond agent license because the Class A Misdemeanor of Passing Bad Check is a crime of moral turpitude, and consequently, Billups does not meet the minimum qualifications of a bail bond agent.

31. In light of Billups' conviction for Acceding to Corruption by a Public Servant, his inadequate explanation thereof at the subpoena conference, his recent conviction for a crime of moral turpitude, his failure to disclose the same either on the Application or at the subpoena conference, and an otherwise inadequate affirmative showing of good moral character, Billups has failed to establish that he possesses the good moral character required of applicants pursuant to § 374.715.1 RSMo (Supp. 2010).

32. Because Billups does not meet the minimum qualifications of a bail bond agent, the Director must refuse to issue Billups a bail bond agent license. Even if the Director had discretion in this case, the Director has considered Billups' history and all of the facts and circumstances surrounding the Application, and for the reasons stated in this Petition refuses to issue Billups a bail bond agent license.

33. This order is in the public interest.

ORDER

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

SO ORDERED.

WITNESS MY HAND THIS 10TH DAY OF MAY, 2011.

JOHN M. HUFF
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. Pursuant to 1 CSR 15-3.290, unless you send your complaint by registered or certified mail, it will not be considered filed until the Administrative Hearing Commission receives it.

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of May, 2011, a copy of the foregoing Notice and Order was served upon the Applicant in this matter by certified mail No. 70093410000193493089 to:

Derek T. Billups
3916 S. Phoenix Rd.
Columbia, Missouri 65202

Kathryn Randolph
Paralegal