STATE OF MISSOURI
DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Edward Lynn Loughary,	)	Case No. 10-1117688C
	)	
Applicant.	)	
	)	
Serve at:	)	
	)	
305 Lindsay Avenue	)	
Crystal City, Missouri 63019	)	

REVISED ORDER REFUSING TO ISSUE SURETY RECOVERY AGENT LICENSE

On January 10, 2011, Tamara W. Kopp, Senior Enforcement Counsel and counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue a surety recovery agent license to Edward Lynn Loughary. 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.

FACTUAL BACKGROUND

A. Criminal History

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

2. Loughary pleaded guilty to violating § 565.070 RSMo misdemeanor assault 3rd degree, on August 31, 1992. *See State v. Edward L. Loughary*, Case No. 23CR191-0380.

3. Twice in 1991 Loughary committed misdemeanors when he violated § 455.085 RSMo by violating an order of protection. *See State v. Edward L. Loughary*, Case No. 23CR191-1357 and *State v. Edward L. Loughary*, Case No. 23CR191-1713. Loughary pleaded guilty in both cases on August 31, 1992.

4. Loughary violated 18 U.S.C. §§ 1341 and 2. The Administrative Hearing Commission in *Edward Lynn Loughary v. Director*, 07-1610 DI (Mo. Admin. Hrg. Comm'n November 5, 2008) found the following facts:

a. On January 21, 1993, an indictment ("the indictment") was filed against Loughary in the United States District Court for the Eastern District of Missouri. The indictment charged Loughary with one count of violating 18 USC § §§ 1341 and 2, felony mail fraud.

> From on or about September 1, 1991, and continuing through on or about June 30, 1992, in the Eastern District of Missouri and elsewhere, EDWARD L. LOUGHARY, the defendant herein, along with others known to the Grand Jury but not charged in this indictment, devised and intended to devise a scheme and artifice to defraud and obtain money and property from the Progressive Insurance Company by means of false and fraudulent pretenses, representations and promises, and the deceitful concealment of material facts, knowing that the pretenses, representations and promises were false and fraudulent when made, and that the concealed facts were material.

b. On March 2, 1993, Loughary and his attorney entered into a "Stipulation of Facts and Plea Agreement Pursuant to Section 6B1.4 of the Sentencing Guidelines and Policy Statement" with the United States Government, in which the parties agreed as to the facts and circumstances of the offense in Count I of the indictment.

> On March 18, 1991, the Defendant Edward L. Loughary purchased a 1988 Ford Rollback Tow Truck from Truck Equipment Company in St. Louis, Missouri for $16,000.00. At that time, he obtained a loan from the Boatmen's National Bank in St. Louis. By September of 1991, Defendant Edward L. Loughary was significantly behind on his payments to the Boatmen's National Bank of St. Louis. On or about September 17, 1991, the Defendant Edward L. Loughary and another person brought the 1988 Ford Truck to Clarence J. Dowdy at the State Line Service Center in Neelyville, Missouri. Edward Loughary would testify that at the time he brought the truck to Clarence J. Dowdy, he

believed he would be selling said truck to Clarence J. Dowdy. However, shortly after Defendant Edward L. Loughary delivered said truck to Clarence J. Dowdy, Loughary contends that Clarence J. Dowdy suggested through another person that Loughary report the vehicle as stolen to his insurance company, thereby making a false and fraudulent insurance claim based on that false allegation. On or about September 27, 1991, Defendant Loughary falsely reported to the Columbia, Missouri police that the truck had been stolen in Columbia, Missouri. On or about September 30, 1991, Defendant Loughary contacted Progressive Insurance Company and falsely advised them that the vehicle had been stolen and requested that insurance claim forms be sent to him for his completion. With respect to Count I, on or about October 1, 1991, the Progressive Insurance Company placed an Affidavit of Vehicle Theft in the United States Mail for delivery to Edward Loughary, 105A North Division, Bonne Terre, Missouri, 63628, from Progressive Insurance, 11457 Old Cabin Road, St. Louis, Missouri, 63141. This claim form was mailed because of the telephone contacts of the Defendant Edward L. Loughary wherein he indicated that his vehicle had been stolen. On this form, he made a claim for insurance benefits in the amount of $20,000.00. However, because authorities discovered the scheme, no money was paid on the false insurance claim. Additionally, the Ford Truck that is the subject of the false and fraudulent claim is in the process of being returned to the lien holder, Boatmen's Bank.

c. On May 27, 1993, Loughary pled guilty to Count I of the indictment. The court adjudged Loughary guilty of Count I and sentenced him to four months' imprisonment followed by two years of supervised release.

See United States v. Edward L. Loughary, United States District Court Eastern District of Missouri, No. 4:93CR00012SNL.

5. Loughary did not appeal the Administrative Hearing Commission decision.

6. Loughary violated § 307.400 RSMo (1994), a class B misdemeanor. Loughary pleaded guilty on February 28, 1997. *See State v. Edward L.*

Loughary, Case No. 24T099700024.

7. Loughary violated § 577.010 RSMo (1994) by operating a motor vehicle in an intoxicated condition. Loughary pleaded guilty to the misdemeanor on January 3, 2000. *See State v. Edward Loughary*, Case No. CR19913760T.

B. Loughary's Previous Applications and Licensures

8. Loughary first applied for a bail bond agent on August 29, 2003 ("2003 application").

9. On the 2003 application, Question C in Part III asks:

> Have you ever been convicted of or pled nolo contendere (no contest) to any misdemeanor or felony or currently have pending misdemeanor or felony charges filed against you?

10. Loughary answered Question C in Part III "NO" and signed the following oath:

> This applicant first being duly sworn upon his oath, states that the statements contained in the above and foregoing application are true to the best of his knowledge and belief.

11. The Director granted Loughary's 2003 application and licensed Loughary as a bail bond agent on September 4, 2003.

12. Loughary applied for renewal in 2005 and the Director renewed Loughary's bail bond agent license.

13. On July 18, 2007, Loughary filed his 2007 renewal application, accompanied by a certification that he had completed eight hours of continuing education courses and his application fee.

14. On the 2007 renewal application, Question B in Part III asks:

> Have you ever been adjudicated, convicted, pled or found guilty of any misdemeanor or 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)[.]

15. Loughary answered, "YES."

16. Question B in Part III contains the following instruction:

> If YES, give date, name and address of court, basis of charge, outcome, and whether you received an executive pardon. Also attach certified copies of the information or indictment and the final adjudication.

17. In response, Loughary disclosed the felony mail fraud conviction by writing next to the instruction, "Information provided to Dana Whaley on Aug. 24, 2006. Your File # 05A000549." Loughary did not disclose his remaining criminal history.

18. The Director denied the 2007 renewal application on multiple grounds based upon the felony mail fraud conviction. *See In the Matter of Edward Lynn Loughary*, Refusal to Renew Bail Bond Agent License, August 31, 2007, DIFP Case No. 07A000593.

19. Loughary's bail bond agent license expired on September 4, 2007.

20. Loughary appealed the 2007 refusal to the Administrative Hearing Commission which ultimately upheld the Director's decision to refuse Loughary's 2007 renewal application because:

    a. Loughary had, within the past fifteen years, been found guilty of a felony which is cause to deny his 2007 renewal application pursuant to § 374.755.1(2).
    b. Loughary had, within the past fifteen years, been found guilty of a crime involving moral turpitude which is cause to deny his 2007 renewal application pursuant to § 374.755.1(2).
    c. Loughary used deception and misrepresentation to obtain his bail bond agent license in 2003 which is cause to deny his 2007 renewal application pursuant to § 374.755.1(3).
    d. Loughary was disqualified from serving as a bail bond agent pursuant to Supreme Court Rule 33.17(c) as applied by § 374.715.

    Edward Lynn Loughary v. Director, 07-1610 DI (Mo. Admin. Hrg. Comm'n November 5, 2008)

C. Loughary's Present Application

21. The Department received Loughary's 2010 surety recovery agent

application (2010 application) on or about July 6, 2010.

22. On the 2010 application, Question B in Part III asks:

> Have you ever been adjudicated, convicted, pled or found guilty of any misdemeanor or 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)[.]

23. Loughary answered, "YES."

24. Question B in Part III contains the following instruction:

> If YES, give date, name and address of court, basis of charge, outcome, and whether you received an executive pardon. Also attach certified copies of the information or indictment and the final adjudication.

25. In response, Loughary attached a separate page which disclosed his felony mail fraud conviction but did not disclose his other criminal history:

> I pled guilty to a felony conviction of mail fraud on May 27, 1993 in the U.S. Federal District Court – case #4:93CR12 SNL. My sentence was four (4) months at the Dismas House of St. Louis and then supervised probation for a term of two (2) years. The information and full "exemplified" (certified) court file was mailed to Investigator Dana Whaley at the Department of Insurance on August 24, 2006. Your file number in reference to this case is #05A000549.

26. Loughary also enclosed a copy of the "exemplified" (certified) court file that he had previously submitted in 2006.

CONCLUSIONS OF LAW

27. A surety recovery agent is "a person not performing the duties of a sworn peace officer who tracks down, captures and surrenders to the custody of a court a fugitive who has violated a bail bond agreement, excluding a bail bond agent or general bail bond agent." § 374.695(10) RSMo (Supp. 2009). No person shall hold himself or herself out as being a surety recovery agent in Missouri unless the person is licensed

in accordance with §§ 374.783 to 374.789 RSMo (Supp. 2009).

28. Section 374.784.5 RSMo (Supp. 2009), states:

> 5. The director may refuse to issue any license pursuant to sections 374.783 to 374.789, for any one or any combination of causes stated in section 374.787.

29. Section 374.787.1 RSMo (Supp. 2009), 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:
>
> (1) Violation of any provisions of, or any obligations imposed by, the laws of this state, the 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;
>
> * * *
>
> (3) Using fraud, deception, misrepresentation, or bribery in securing a license or in obtaining permission to take any examination required by sections 374.783 to 374.789[.]

30. At the time Loughary was charged with and pleaded guilty to Violation of Order of Protection For Adult, § 455.085 RSMo (Supp. 1990) provided, in part:

> 1. When a law enforcement officer has probable cause to believe a party has committed a violation of law amounting to abuse or assault, as defined in section 455.010, against a family or household member, the officer may arrest the offending party whether or not the violation occurred in the presence of the arresting officer.
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> * * *
>
> 7. A violation of the terms and conditions, with regard to abuse,

child custody, or entrance upon the premises of the petitioner's dwelling unit, of an ex parte order of protection of which the respondent has notice, shall be a class A misdemeanor[.]

* * *

8. A violation of the terms and conditions, with regard to abuse, child custody, or entrance upon the premises of the petitioner's dwelling unit, of a full order of protection shall be a class A misdemeanor, unless the respondent has previously pleaded guilty to or has been found guilty of violating an ex parte order of protection or a full order of protection within five years of the date of the subsequent violation, in which case, the subsequent violation shall be a class D felony.

* * *

31. Section 565.070 RSMo (1986), Assault in the third degree, provides:

1. A person commits the crime of assault in the third degree if:

(1) He attempts to cause or recklessly causes physical injury to another person; or

(2) With criminal negligence he causes physical injury to another person by means of a deadly weapon; or

(3) He purposely places another person in apprehension of immediate physical injury; or

(4) He recklessly engages in conduct which creates a grave risk of death or serious physical injury to another person; or

(5) He knowingly causes physical contact with another person knowing the other person will regard the contact as offensive or provocative.

2. Assault in the third degree is a class A misdemeanor unless committed under subdivision (3) or (5) of subsection 1 in which case it is a class C misdemeanor.

32. Title 18 U.S.C §§ 1341-1342 (1991), Mail Fraud, provides:

1341. Frauds and swindles. Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

1342. Fictitious name or address. Whoever, for the purpose of conducting, promoting, or carrying on by means of the Postal Service, any scheme or device mentioned in section 1341 of this title or any other unlawful business, uses or assumes, or requests to be addressed by, any fictitious, false, or assumed title, name, or address or name other than his own proper name, or takes or receives from any post office or authorized depository of mail matter, any letter, postal card, package, or other mail matter addressed to any such fictitious, false, or assumed title, name, or address, or name other than his own proper name, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

33. Section 307.400 RSMo (1994) provides, in part:

It is unlawful for any person to operate any commercial motor vehicle licensed for more than twelve thousand pounds either singly or in combination with a trailer, as both vehicles are defined in section 301.010, RSMo, unless such vehicles are equipped and operated as required by Parts 390 through 397,

Title 49, Code of Federal Regulations, as such regulations have been and may periodically be amended, whether intrastate transportation or interstate transportation. Members of the Missouri state highway patrol are authorized to enter the cargo area of a commercial motor vehicle or trailer to inspect the contents when reasonable grounds exist to cause belief that the vehicle is transporting hazardous materials as defined by Title 49 of the Code of Federal Regulations. The director of the department of public safety is hereby authorized to further regulate the safety of commercial motor vehicles and trailers as he deems necessary to govern and control their operation on the public highways of this state by promulgating and publishing rules and regulations consistent with this chapter. Any such rules shall, in addition to any other provisions deemed necessary by the director, require:

(1) Every commercial motor vehicle and trailer and all parts thereof to be maintained in a safe condition at all times;

(2) Accidents arising from or in connection with the operation of commercial motor vehicles and trailers to be reported to the department of public safety in such detail and in such manner as the director may require. Except for the provisions of subdivisions (1) and (2) of this subsection, the provisions of this section shall not apply to any commercial motor vehicle operated in intrastate commerce and licensed for a gross weight of sixty thousand pounds or less when used exclusively for the transportation of solid waste or forty-two thousand pounds or less when the license plate has been designated for farm use by the letter "F" as authorized by the Revised Statutes of Missouri, unless such vehicle is transporting hazardous materials as defined in Title 49, Code of Federal Regulations.

34. Section 577.010 RSMo (1994) provides, in part:

1. A person commits the crime of "driving while intoxicated" if he operates a motor vehicle while in an intoxicated or drugged condition.

2. Driving while intoxicated is for the first offense, a class B misdemeanor. No person convicted of or pleading guilty to the offense of driving while intoxicated shall be granted a suspended imposition of sentence for such offense, unless such person shall

be placed on probation for a minimum of two years.

* * *

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

36. The Director may refuse to issue a surety recovery agent license to Loughary pursuant to § 374.787.1(3) because Loughary used fraud, deception or misrepresentation to secure his 2003 bail bond agent license by failing to disclose his convictions for assault, violating a protective order, mail fraud, violating § 307.400 RSMo, and driving while intoxicated. *Edward Lynn Loughary v. Director*, 07-1610 DI (Mo. Admin. Hrg. Comm'n November 5, 2008); *State v. Edward L. Loughary*, Case No. 23CR191-0380; *State v. Edward L. Loughary*, Case No. 23CR191-1357; *State v. Edward L. Loughary*, Case No. 23CR191-1713; *United States v. Edward L. Loughary*, United States District Court Eastern District of Missouri, No. 4:93CR00012SNL; *State v. Edward L. Loughary*, Case No. 24T099700024; and *State v. Edward Loughary*, Case No. CR19913760T.

37. The Director may refuse to issue a surety recovery agent license to Loughary pursuant to § 374.787.1(3) because Loughary used fraud, deception or misrepresentation to attempt to secure renewal of his bail bond agent license in 2007 by failing to disclose his convictions for assault, violating a protective order, § 307.400 RSMo, and driving while intoxicated. *Edward Lynn Loughary v. Director*, 07-1610 DI (Mo. Admin. Hrg. Comm'n November 5, 2008); *State v. Edward L. Loughary*, Case No. 23CR191-0380; *State v. Edward L. Loughary*, Case No. 23CR191-1357; *State v. Edward L. Loughary*, Case No. 23CR191-1713; *State v. Edward L. Loughary*, Case No. 24T099700024; and *State v. Edward Loughary*, Case No. CR19913760T.

38. The Director may refuse to issue a surety recovery agent license to Loughary pursuant to § 374.787.1(3) because Loughary used fraud, deception or misrepresentation to attempt to secure a surety recovery agent license with his 2010 application by failing to disclose his convictions for assault, violating a protective order, violating § 307.400 RSMo, and driving while intoxicated. *Edward Lynn Loughary v. Director*, 07-1610 DI (Mo. Admin. Hrg. Comm'n November 5, 2008); *State v. Edward L. Loughary*, Case No. 23CR191-0380; *State v. Edward L. Loughary*, Case No. 23CR191-1357; *State v. Edward L.*

Loughary, Case No. 23CR191-1713; *State v. Edward L. Loughary*, Case No. 24T099700024; and *State v. Edward Loughary*, Case No. CR19913760T.

39. The Director may refuse to issue a surety recovery agent license to Loughary pursuant to § 374.787.1(1) because Loughary violated the laws of this state by committing assault, twice violating a protective order, violating § 307.400 RSMo, and driving while intoxicated. *State v. Edward L. Loughary*, Case No. 23CR191-0380; *State v. Edward L. Loughary*, Case No. 23CR191-1357; *State v. Edward L. Loughary*, Case No. 23CR191-1713; *State v. Edward L. Loughary*, Case No. 24T099700024; and *State v. Edward Loughary*, Case No. CR19913760T.

40. Granting Loughary a surety recovery agent license is not in the interest of the public where Loughary has demonstrated a repeated refusal to fully disclose his criminal history. Loughary failed to disclose any criminal history in 2003. Loughary failed to fully disclose his criminal history in 2007 and again in 2010. Loughary failed to disclose his criminal history on the 2010 application even *after* the Director refused his 2007 renewal for failing to disclose criminal history and the Administrative Hearing Commission affirmed that decision. Loughary should have understood that the 2010 application required full disclosure of his criminal history. His failure is more likely an attempt to prevent the Director from considering Loughary's criminal history when deciding the 2010 application.

41. "[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). Loughary's history demonstrates untrustworthiness in that he committed insurance fraud which resulted in a mail fraud conviction, and he lied to this Department at least three times by failing to disclose his entire criminal history on license applications. It is not in the public interest to license an untrustworthy person as a surety recovery agent.

42. The Director has considered Loughary's history and all of the facts and circumstances surrounding the Application, and for the reasons stated in this Order refuses to issue Loughary a surety recovery agent license.

43. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the surety recovery agent license of Edward Lynn Loughary is hereby summarily REFUSED.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 19TH DAY OF JANUARY, 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, P.O. Box 1557, Jefferson City, Missouri within 30 days after the mailing of this notice pursuant to § 621.120, RSMo. Under 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 21st day of January, 2011, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by certified mail No. 7004 1350 0003 1413 5430 and by facsimile to Loughary's counsel.

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