State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Paul J. Lumetta,	)	**Case No. 11-0830652C**
	)	
Applicant.	)	

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On December 1, 2011, Carolyn H. Kerr, Legal Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue an insurance producer license to Paul J. Lumetta. 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. Paul J. Lumetta ("Lumetta") is an individual residing in Missouri.

2. On or about April 18, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Lumetta's Uniform Application for Individual Producer License/Registration Application ("Paper Application").

3. In his Paper Application, Lumetta listed his residential address as 48 Clermont Crossing, Apt. 16H, St. Louis, Missouri 63146. He listed business addresses as 3830 W. Clay, St. Charles, Missouri 63301.

4. On or about August 25, 2011, the Department received Lumetta's electronic Resident Individual Producer License Application ("Electronic Application").

5. In his Electronic Application, Lumetta listed his residential, business, and mailing addresses as 48 Clermont Crossing, Apt. H, St. Louis, Missouri 63146. All other information remained the same as in his Paper Application.

6. In the section of each of the Applications headed "Background Questions," Background Question No. 1 asks: "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?"

7. Lumetta answered "Yes" to Background Question No. 1.

8. Lumetta did not provide or otherwise attach any documentation relating to the crime, judgment, or conviction referred to by his answer to Background Question No. 1 with his Paper Application.

9. On or about May 27, 2011, the Department received a typed letter, signed by Lumetta, explaining the facts and circumstances that led to his two convictions and the resulting sentences, the actions he has taken in recent years following those convictions, and requesting the approval of his license application.

10. On or about August 24, 2011, the Department received a fax transmission from Lumetta which included a typed letter and copies of the 21st Judicial Circuit, St. Louis County, Circuit Court Docket Sheets for case numbers 2198R-04576-01 and 2102R-05722-01.

11. An Information, filed in the St. Louis Circuit Court, Missouri, on November 23, 1998, against Lumetta charged him with one count of the Class B felony of Attempted Robbery 1st Degree, in violation of § 564.011, RSMo. *State v. Lumetta*, Case No. 98CR-004576. The Information stated, in pertinent part, as follows:

> On or about Thursday, August 20, 1998, ... Lumetta, armed with what appeared to be a handgun, and two juveniles approached Michael Perrine, surrounded him, placed said handgun to his temple and demanded his wallet and such conduct was a substantial step toward the commission of the crime robbery in the first degree ..., and was done for the purpose of committing such robbery.

12. Section 564.011, RSMo (1986), states, in part:

> 1. A person is guilty of attempt to commit an offense when, with the purpose of committing the offense, he does any act which is a substantial step towards the commission of the offense. A "substantial step" is conduct which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense.
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> * * *
>
> 3. Unless otherwise provided, an attempt to commit an offense is a:
>
> (1) Class B felony if the offense attempted is a class A felony[.]

13. Lumetta entered an Alford Plea of Guilty to Attempted Robbery, 1st Degree, a class B felony, on March 5, 1999. The Circuit Court of St. Louis County, Missouri entered its Judgment and Sentence suspending Lumetta's imposition of sentence and placed Lumetta on probation for five years subject to the conditions that he complete 100 hours of community service within one year, continue his education for obtaining a high school education, and have no contact with the victim. *State v. Lumetta*, Case No. 98CR-004576.

14. An Information, filed in the St. Louis Circuit Court, Missouri, on February 7, 2003, against Lumetta charged him with one count of the Class D felony of Unlawful Use of a

Weapon, in violation of § 571.030.1(4), RSMo, and one count of the Class C Felony of Criminal Possession of a Weapon, in violation of § 571.020, RSMo. *State v. Lumetta*, Case No. 02CR-005722. The Information stated, in pertinent part, as follows:

* * *

> Count 02: ... That Paul J. Lumetta, ... committed the class C felony of unlawful possession of a short-barreled shotgun, ... in that on or about Friday, November 8, 2002, ... the defendant knowingly possessed a short-barreled shotgun.

15. Section 571.020, RSMo (Supp. 2002), states, in part:

> 1. A person commits a crime if such person knowingly possesses, manufactures, transports, repairs, or sells:
>
> * * *
>
> (5) A short-barreled rifle or shotgun[.]
>
> * * *
>
> 3. A crime pursuant to subdivision ... (5) ... of subsection 1 of this section is a class C felony[.]

16. Lumetta pleaded guilty to Unlawful Possession of a Weapon, a class C felony, on May 15, 2003. *State v. Lumetta*, Case No. 02CR-005722.

17. On May 15, 2003, the court also revoked Lumetta's probation in the 1998 case and entered a judgment against Lumetta. *State v. Lumetta*, Case No. 98CR-004576.

18. On June 26, 2003, the St. Louis County Circuit Court sentenced Lumetta to five years incarceration with the Missouri Department of Corrections (MDOC), with the sentence to be served concurrently with the sentence ordered as a result of his probation revocation in the 1998 case. *State v. Lumetta*, Case No. 02CR-005722 and *State v. Lumetta*, Case No. 98CR-004576.

19. The court suspended the execution of the sentence and ordered Lumetta participate in and complete the MDOC Regimented Discipline Program (Boot Camp). *State v. Lumetta*, Case No. 02CR-005722 and *State v. Lumetta*, Case No. 98CR-004576.

CONCLUSIONS OF LAW

20. Section 375.141, RSMo (Supp. 2010)[1] provides, in relevant part:

> 1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:
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> * * *
>
> (6) Having been convicted of a felony or crime involving moral turpitude[.]

21. A plea of guilty to a criminal charge is admissible as an admission against penal interest in any subsequent proceeding against the one who made it, for it is a solemn confession of the truth of the charge, though it is not conclusive and may be explained. *Pruiett v. Wilform*, 477 S.W.2d 76, 80 (Mo. 1972). "A licensee's guilty plea may lead to collateral estoppel, a doctrine that precludes a licensee from denying charges against him." *Stanton v. State Brd. of Nursing*, Mo. Admin. No. 05-1661BN (Mo. Admin. Hrg. Commn.).

22. A crime involving "moral turpitude" is a crime involving "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).

23. The court in *Brehe v. Mo. Dept. of Elementary & Secondary Education*, referred to three categories of moral turpitude crimes, drawn from 21 Am.Jur.2d. Criminal Law § 22 (1998):

> (1) crimes that necessarily involve moral turpitude (referred to in *Brehe* as "category 1" crimes);
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> (2) crimes "so obviously petty that conviction carries no suggestion of moral turpitude" ("category 2" crimes); and
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> (3) crimes that "may be saturated with moral turpitude," yet do not involve it necessarily ("category 3" crimes).

Brehe v. Missouri Dept. of Elementary & Secondary Educ., 213 S.W.3d 720, 725 (Mo. App. W.D. 2007).

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[1] All statutory references are to the 2010 Supplement to the Revised Statutes of Missouri, unless otherwise noted.

24. Category 1 crimes, since they necessarily involve moral turpitude, require no analysis beyond their elements to show moral turpitude. They require only a showing of a conviction or guilty plea. *Id.*

25. Category 3 crimes require consideration of "the related factual circumstances" of the offense to determine whether moral turpitude is involved. *Id.*

26. "Violence" is defined as:

> 1 a: exertion of physical force so as to injure or abuse (as in effecting illegal entry into a house) b: an instance of violent treatment or procedure 2: injury by or as if by distortion, infringement, or profanation: OUTRAGE 3 a: intense, turbulent, or furious and often destructive action or force < the ~ of the storm> b: vehement feeling or expression: FERVOR; also: an instance of such action or feeling.

State Brd. of Nursing v. Tuttle, Mo. Admin. No. 95-000742BN (Mo. Admin. Hrg. Commn.), citing Merriam Webster's Collegiate Dictionary 1319 (10th ed. 1993). It is an "exertion of any physical force so as to injure or abuse." *State Brd. of Nursing v. Plemmons*, Mo. Admin. No. 07-0495 BN (Mo. Admin. Hrg. Commn.), citing *Webster's Third New International Dictionary* 2554 (1993).

27. Attempted robbery necessarily involves violence and physical contact or risk of physical injury, and therefore, is a crime of moral turpitude. *See State Brd. of Nursing v. Plemmons.*

28. The principal purpose of § 375.141 is not to punish licensees, but to protect the public. *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo. App. E.D. 1984).

29. The Director may refuse to issue Lumetta a non-resident insurance producer license pursuant to § 375.141.1(6), because the crime of Attempted Robbery 1st Degree, in violation of § 564.011, RSMo, is a felony.

30. The Director may refuse to issue an insurance producer license to Lumetta pursuant to § 375.141.1(6), RSMo, because the crime of Criminal Possession of a Weapon, in violation of § 571.020, RSMo, is a felony.

31. Lumetta may be refused an insurance producer license pursuant to § 375.141.1(6) RSMo, because the offenses of Attempted Robbery 1st Degree, in violation of § 564.011, RSMo, respectively, is a crime of moral turpitude.

32. Therefore, in applying his discretion, the Director should consider all of the facts and circumstances surrounding each of the enumerated disqualifying events and refuse to issue an insurance producer license to Lumetta.

33. The requested order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the insurance producer license of PAUL. J. LUMETTA is hereby summarily REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 16TH DAY OF DECEMBER, 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 20th day of December 2011, a copy of the foregoing notice and order was served upon Paul J. Lumetta in this matter by U.S. mail, postage pre-paid and by certified mail at the following address:

Paul J. Lumetta
48 Clermont Crossing, Apt. 16H
St. Louis, MO 63146

Certified Mail # 7008 2810 0000 2014 8854

Kathryn Randolph

Kathryn Randolph
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