



**DEPARTMENT OF INSURANCE, FINANCIAL
INSTITUTIONS AND PROFESSIONAL REGISTRATION**

P.O. Box 690, Jefferson City, Mo. 65102-0690

In re:) DIFP No. 100617492C
)
Harold Dean McBee) AHC No. 11-0505 DI

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE**

Based on the competent and substantial evidence on the whole record, I, John M. Huff, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, hereby issue the following findings of fact, conclusions of law, and order of discipline:

Findings of Fact

1. John M. Huff is the duly appointed Director ("Director") of the Missouri Department of Insurance, Financial Institutions and Professional Registration ("Department") whose duties, pursuant to Chapter 374 RSMo, include supervision, regulation and discipline of bail bond agents and general bail bond agents.

2. The Department issued Respondent Harold Dean McBee ("McBee") a bail bond agent license (No. 0304735) on October 2, 2002, which expired on October 2, 2011.

3. The Department issued McBee a general bail bond agent license (No. 0304735) on April 12, 2007. McBee voluntarily cancelled his general bail bond agent license, effective April 6, 2010.

4. The Director filed a Complaint with the Administrative Hearing Commission ("Commission") on March 14, 2011, seeking a finding that cause existed for disciplining McBee's bail bond agent license and general bail bond agent license pursuant to §§ 374.755.1(6) and 374.210¹ RSMo because McBee failed to comply with a subpoena. *Director of Dep't of Ins., Fin. Insts. & Prof'l Reg'n v. Harold Dean McBee*, No. 11-0505 DI (Mo. Admin. Hrg. Comm'n).

5. On April 5, 2011, McBee was served with a copy of the Complaint. McBee never filed an Answer to the Complaint.

6. On July 5, 2011, the Director filed a Motion for Summary Decision and Suggestions in Support. The Commission gave McBee until July 21, 2011 to file a response, but he did not respond.

7. On December 28, 2011, the Commission issued a Decision making the following findings of fact:

- a. The Department issued McBee a bail bond agent license on October 2, 2002. It expired on October 2, 2011.
- b. The Department issued McBee a general bail bond agent license on April 12, 2007.
- c. The Consumer Affairs Division ("the Division") has the duty of conducting investigations into the acts of bail bond agents and general bail bond agents.
- d. In November 2009, the Division received a call from the Boone County Sherriff's Department alleging an unlicensed person, Arlie David Nole, Sr., was engaging in the bail bond business under McBee's general bail bond agent authority.

¹ All statutory references are to the 2011 Supplement of the Revised Statutes of Missouri unless otherwise indicated.

- e. On January 13, 2010, Division Investigator Les Hogue mailed a letter to McBee asking him for a good date to meet in Jefferson City, Missouri, to discuss the investigation regarding unlicensed bail bond activity. McBee never responded to the letter or provided Hogue with a convenient date.
- f. On February 23, 2010, the Director issued a subpoena ordering McBee to appear at the Department's office in Jefferson City, Missouri, on March 22, 2010. The subpoena conference was continued to March 31, 2010, at McBee's attorney's request.
- g. On March 31, 2010, McBee's attorney submitted a letter and affidavit to the Director through which McBee stated he would not comply with the subpoena. McBee asserted his privilege against self-incrimination under the Fifth Amendment to the U.S. Constitution.
- h. McBee surrendered and cancelled his general bail bond license by letter dated March 31, 2010. His license cancellation was effective April 6, 2010.

8. Based on its factual findings, the Commission found no cause to discipline McBee's licenses under either § 374.755.1(6) or § 374.210 because McBee had surrendered his general bail bond agent license and his bail bond agent license had expired during the pendency of the Commission case. The Commission concluded, "McBee does not have a license that the Director can suspend, revoke or refuse." *Director of Dept. of Ins., Fin. Insts. & Prof'l Reg'n v. McBee*, Case No. 11-0505 DI (Mo. Admin. Hrg. Comm'n Dec. 28, 2011).

9. The Director appealed the Commission's Decision to the Cole County Circuit Court. *Huff v. Harold Dean McBee*, Cole Co. Cir. Ct., Case No. 12AC-CC00060.

10. On May 25, 2012, the circuit court issued an Amended Judgment finding the Director had cause to discipline both of McBee's licenses pursuant to § 374.755.1(6) because McBee failed to comply with the subpoena. The court noted that "authority [to discipline a surrendered or expired license] is expressly set forth in the statute [§ 374.755.1]." *Id.* The court held, *inter alia*, that the Commission erroneously declared and applied the law when the

Commission found it had no authority to discipline a surrendered or expired license pursuant to § 374.755.1. The circuit court also concluded that the Director had no authority to proceed against a surrendered or expired license under § 374.210.

11. On August 10, 2012, the Commission certified the record of its proceeding to the Director pursuant to § 621.110.

12. The Director served the Notice of Hearing upon McBee by certified mail and first class mail, which set the disciplinary hearing for 9:30 a.m., September 11, 2012, in the offices of the Department, 301 West High Street, Room 530, Jefferson City, Missouri. The certified mail receipt was unclaimed, but the Notice of Hearing sent by first class mail was not returned as undeliverable.

13. On September 11, 2012, the Director, through his hearing officer, Mary S. Erickson, held the disciplinary hearing. Neither McBee nor anyone representing him appeared at the disciplinary hearing. Tamara Kopp appeared as counsel for the Department's Consumer Affairs Division ("Division"). *Disciplinary Hearing Transcript ("Tr.")*, 5-6.

14. The hearing officer admitted into evidence the Division's Exhibit 1, the Commission's record of proceedings, and Exhibit 2, the Notice of Hearing. *Tr.* 7-8.

15. At the hearing, the Division offered Exhibit 3, a certified copy of the "Judgment" in *Huff v. Harold Dean McBee*, Cole Co. Cir. Ct., Case No. 12AC-CC00060. However the Division recognized that Exhibit 3 was not the final judgment in the circuit court action. The Division requested that the record remain open to allow it to supplement Exhibit 4, the Amended Judgment in *Huff v. Harold Dean McBee*, Cole Co. Cir. Ct., Case No. 12AC-CC00060. *Tr.* 8-9.

16. The hearing officer granted the Division's request and held the record open until

the supplementation of Exhibit 4. *Tr.* 9.

17. On September 24, 2012, counsel for the Division provided the hearing officer a certified copy of the Amended Judgment in *Huff v. Harold Dean McBee*, Cole Co. Cir. Ct., Case No. 12AC-CC00060. Exhibit 3 is not admitted but Exhibit 4 is admitted as evidence in this matter, consistent with the hearing officer's rulings at the hearing. *Tr.* 9-10.

18. At the hearing, the Division, through counsel, recommended that McBee's general bail bond agent license and bail bond agent license be revoked. *Tr.* 9-10.

19. The Director hereby adopts and incorporates the findings of fact in the December 28, 2011 Decision of the Commission referenced herein and does hereby find in accordance with such facts. *Director of Dep't of Ins., Fin. Insts. & Prof'l Reg'n v. Harold Dean McBee*, No. 11-0505 DI (Mo. Admin. Hrg. Comm'n Dec. 28, 2012).

20. After the disciplinary hearing, the Division submitted proposed findings of fact, conclusions of law and order.

Conclusions of Law

21. Section 621.110 provides, in relevant part:

Upon a finding in any cause charged by the complaint for which the license may be suspended or revoked as provided in the statutes and regulations relating to the profession or vocation of the licensee . . . , the commission shall deliver or transmit by mail to the agency which issued the license the record and a transcript of the proceedings before the commission together with the commission's findings of fact and conclusions of law. The commission may make recommendations as to appropriate disciplinary action but any such recommendations shall not be binding upon the agency. . . . Within thirty days after receipt of the record of the proceedings before the commission and the findings of fact, conclusions of law, and recommendations, if any, of the commission, the agency shall set the matter for hearing upon the issue of appropriate disciplinary action and shall notify the licensee of the time and place of the hearing[.] . . . The licensee may appear at said hearing and be

represented by counsel. The agency may receive evidence relevant to said issue from the licensee or any other source. After such hearing the agency may order any disciplinary measure it deems appropriate and which is authorized by law. . . .

22. Where an agency seeks to discipline a license, the Commission “finds the predicate facts as whether cause exists” for the discipline, and then the agency “exercises final decisionmaking authority concerning the discipline to be imposed.” *Tendai v. Board of Reg'n for the Healing Arts*, 161 S.W.3d 358, 364-65 (Mo. banc 2005), *overruled on other grounds*, *Albanna v. Board of Reg'n for the Healing Arts*, 293 S.W.3d 423, 428 n.2 (Mo. banc 2009).

23. Section 374.051.2, relating to a proceeding to revoke or suspend a license, states, in relevant part:

2. If a proceeding is instituted to revoke or suspend a license of any person under sections 374.755, 374.787, and 375.141, the director shall refer the matter to the administrative hearing commission by directing the filing of a complaint. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in such cases. The director shall have the burden of proving cause for discipline. If cause is found, the administrative hearing commission shall submit its findings of fact and conclusions of law to the director, who may determine appropriate discipline.

24. Section 374.755.1 provides, in part:

1. The department may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 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:

* * *

(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[.]

25. As to his legal conclusions, the Director hereby adopts and incorporates the May 25, 2012 Amended Judgment of the Cole County Circuit Court in *Huff v. Harold Dean McBee*, Cole Co. Cir. Ct., Case No. 12AC-CC00060. The Director concludes in accordance with the circuit court's Amended Judgment that the express authority of § 374.755.1 allows the Director to discipline a surrendered or expired license. Further, while the Director disagrees with the circuit court that he does not have authority to proceed under § 374.210 against a surrendered or expired license, such disagreement is immaterial as the circuit court found cause to discipline McBee's licenses pursuant to § 374.755.

26. The Director has discretion to discipline McBee's general bail bond agent license and bail bond agent license, including the discretion to revoke such licenses. §§ 374.051.2, 374.755.1(6), and 621.110.

27. The principal purpose of § 374.755, much like § 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).

28. Section 374.755.1 provides that the Director may "cause a complaint to be filed with the administrative hearing commission . . . 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 listed grounds.

29. Section 621.110 allows the Director to receive evidence relevant to the appropriate disciplinary action.

30. Based on the nature and severity of the aforementioned conduct, including McBee's disregard for the authority of the Director, sufficient grounds exist for revoking

McBee's general bail bond agent license and bail bond agent license pursuant to § 374.744.1(6).

ORDER

Based on the foregoing findings and conclusions, the general bail bond agent license of **Harold Dean McBee** (License No. 0304735) is hereby **REVOKED**.

Based on the foregoing findings and conclusions, the bail bond agent license of **Harold Dean McBee** (License No. 0304735) is hereby **REVOKED**.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 2ND DAY OF OCTOBER, 2012.



John M. Huff, Director
Missouri Department of Insurance,
Financial Institutions and
Professional Registration

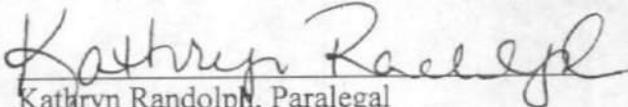
CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of October 2012, a copy of the foregoing Findings of Fact, Conclusions of Law and Order of Discipline, was served by United States mail, postage prepaid, and certified mail, No. 7009 3410 9255 5719, to the following:

Harold D. McBee
10786 Old Highway 190
Chillicothe, Missouri 64601

And by hand-delivery to:

Tamara Kopp, Esq.
Senior Counsel
Consumer Affairs Division
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