



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN THE MATTER OF:)
)
Rusty L. Monchil,) Case No. 11-0302292C
)
Applicant.)

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On or about September 13, 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 an insurance producer license to Rusty L. Monchil. After reviewing the Petition, the Investigative Report, the entirety of the file, and all of the facts and circumstances surrounding this Application, the Director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Rusty L. Monchil ("Monchil") is an individual residing in Missouri.
2. On or about November 2, 2010, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Monchil's Uniform Application for Individual Insurance Producer License ("Application") dated October 29, 2010.
3. In his Application, Monchil listed his residence/home address as 8940 SW Duroc Drive, Cameron, Missouri, 64429.
4. Background Information Question No. 1 of the Application asks whether the applicant has ever been convicted of a crime, had a judgment withheld or deferred, or is currently charged with committing a crime?
5. Monchil answered "Yes" to Question No. 1.
6. In regard to Monchil's "Yes" answer to Background Question No. 1 of the Application, Monchil made the following statement, in part:

In 1987, I turned 16 years old and had my license for 2 months. I was driving over a hill and when I crested the hill there was a truck parked in my lane. As I went around the truck I did not see that there were children there in the road until it was too late. (No drugs or alcohol were involved.) I was totally sober. I was charged with involuntary manslaughter. My parents had me plead guilty to probation. While I was on probation, a friend came by and asked if I knew where he could buy some drugs. I did not do drugs, but I knew where you could buy them, so I introduced him to someone. This may shock you that drugs were so easily available to kids in high school, but they were. I went to school in Kansas [sic] City, MO and drugs were more accessible to kids than alcohol because it is not taxed and regulated. I did not know it at the time, but he was working with law enforcement to set people up so a drug charge against him would be dropped.

At this point my probation was violated, so I plead [sic] guilty to 3 years total. I served a year and a half and was released. This all happened over 20 years ago when I was just a teenage kid!

7. On or about May 19, 1988, the assistant prosecuting attorney in the Circuit Court of Platte County, Missouri, filed an Amended Information with three counts in *State of Missouri v. Rusty Lee Monchil*, Case No. CR187-969-FX.
8. The court records indicate Monchil pleaded guilty on May 19, 1988 to the three counts in the Amended Information and received a suspended imposition of sentence, and the court placed Monchil on five years probation under the supervision of Missouri Probation and Parole. *State of Missouri v. Rusty Lee Monchil*, Case No. CR187-969-FX.
9. Monchil's probation and parole records refer to three counts of Involuntary Manslaughter. *Order of Release on Parole*, No. 175360.
10. Monchil's Missouri State Highway Patrol Criminal History Record confirms that he was guilty of three counts of the Class C Felony of Involuntary Manslaughter - 1st Degree, § 565.024 in Case No. CR1892687F.¹ *Department of Public Safety Missouri State Highway Patrol Criminal History Record*.
11. On or about May 23, 1990, by First Substitute Information, in the Circuit

¹ The Missouri State Highway Patrol Criminal History Record refers to Case No. CR1892687F rather than CR187-969-FX. This is because Monchil's original sentence was suspended and then later revoked in combination with Case No. CR1892687F.

Court of Clay County, Missouri, Monchil was charged with the Class C Felony of Possession of Cocaine, a Schedule II Controlled Substance in violation of § 195.202 RSMo in that on or about June 14, 1989, Monchil knowingly possessed Cocaine, a controlled substance. *State of Missouri v. Rusty Lee Monchil*, Case No. CR189-2687F.

12. On or about June 28, 1990, in Clay County Circuit Court, Monchil pleaded guilty to the Class C Felony of Possession of Cocaine, a Schedule II Controlled Substance, and the Court sentenced Monchil to three years in the Missouri Department of Corrections. *State of Missouri v. Rusty Lee Monchil*, Case No. CR189-2687F.
13. On or about October 11, 1990, the Circuit Court of Platte County found Monchil in violation of his probation and revoked his suspended imposition of sentence and imposed a sentence of three years on Count I, three years on Count II and three years on Count III with sentences to run concurrent with each other and to run concurrently with the sentence in Clay County Case No. CR 189-2687-F. *State of Missouri v. Rusty Lee Monchil*, Case No. CR187-969-FX.
14. On or about August 22, 1991, Monchil was released on Parole, and was discharged by the Missouri Board of Probation and Parole on February 21, 1993. *Order of Release on Parole*, No. 175360.

CONCLUSIONS OF LAW

15. Section 379.901 RSMo (2000) (emphasis in original statute; accompanying note in original statute) provides:
 1. As used in this section the term "prepaid legal service plan", means any person, company, corporation, partnership or other legal entity who collects periodic fees on a prepaid basis from residents of this state in connection with legal coverage other than:
 - (a) Retainer contracts made by attorneys-at-law with an individual client with fees based on estimates of the nature and amount of legal services to be provided to that specific client and similar contracts made with a group of clients involved in the same or closely related legal matters;
 - (b) Any lawyer aid or other legal services program for the indigent;

(c) Any employer-employee welfare benefit plans to the extent that state laws are superseded by the Employee Retirement Income Security Act of 1974, 29 U.S.C., s. 1144, or any amendments thereto, provided evidence of exemption from state law is shown to the department;

(d) The furnishing of legal assistance by labor unions and other employee organizations to their members in matters relating to employment or occupations;²

(e) The furnishing of legal assistance to members or their dependents by churches, cooperatives, educational institutions, credit unions, labor unions or other organizations of employees, where such organizations contract with and pay directly a lawyer or law firm for the provision of legal services, where the assistance is provided as an incident to membership and not on the basis of an optional fee or charge and the administration of such program of legal assistance is wholly conducted by the organization;

(f) Legal services provided by an agency of the federal or state government or a subdivision thereof to its employees.

2. Any person who solicits memberships on behalf of a prepaid legal services plan shall be licensed as an insurance agent as provided by chapter 375, RSMo.

16. Section 375.141 RSMo (Supp. 2010) provides, in 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:

* * *

(6) Having been convicted of a felony or crime involving moral turpitude[.]

17. Section 195.202 RSMo (Supp. 1989) states, in part:

1. Except as authorized by sections 195.005 to 195.425, it is

² Words "to employment or occupations" were inadvertently omitted in original rolls.

unlawful for any person to possess or have under his control a controlled substance.

2. Any person who violates this section with respect to any controlled substance except thirty-five grams or less of marijuana is guilty of a class C felony.

3. Any person who violates this section with respect to not more than thirty-five grams of marijuana is guilty of a class A misdemeanor.

18. Section 565.024 RSMo (1986) states:

1. A person commits the crime of involuntary manslaughter if he:

(1) Recklessly causes the death of another person; or

(2) While in an intoxicated condition operates a motor vehicle in this state and, when so operating, acts with criminal negligence to cause the death of any person.

2. Involuntary manslaughter is a class C felony.

19. Moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow man 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)). In *Brehe v. Missouri Dep't of Elementary and Secondary Education*, the court referred to three classifications of crimes: (1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes); (2) crimes "so obviously petty that conviction carries no suggestion of moral turpitude," such as illegal parking (Category 2 crimes); and (3) crimes that "may be saturated with moral turpitude," yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes). 213 S.W.3d 720, 725 (Mo. App. W.D. 2007).

20. The Administrative Hearing Commission found in *Missouri Real Estate Commission v. Simmons*, No. 09-1245 RE (Mo. Admin. Hrg. Comm'n, January 11, 2010) that involuntary manslaughter is a Category 1 crime, and thus, a crime involving moral turpitude. "Involuntary manslaughter always

involves the death of another person. Driving with criminal negligence shows a lack of integrity." *Id.*

21. "Courts invariably find moral turpitude in the violation of narcotic laws." *In re Frick*, 694 S.W.2d at 479. Specifically, the Missouri Supreme Court has held that a felony conviction for possession of narcotics is a crime involving moral turpitude. *Brehe*, 213 S.W.3d at 726 (citing *In re Shunk*, 847 S.W.2d 789, 791-92 (Mo. banc. 1993))
22. 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).
23. The principal purpose of § 375.141 RSMo is not to punish licensees or applicants, but to protect the public. *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo. App. E.D. 1984).
24. The Director may refuse to issue an insurance producer license to Monchil pursuant to § 375.141.1(6), RSMo (Supp. 2010) because Monchil pleaded guilty to, and was convicted of, three counts of the Class C Felony of Involuntary Manslaughter, each of which is a separate and independent cause to refuse.
25. The Director may refuse to issue an insurance producer license to Monchil pursuant to § 375.141.1(6), RSMo (Supp. 2010) because Monchil pleaded guilty to, and was convicted of, the Class C Felony of Possession of a Cocaine, a Schedule II Controlled Substance.
26. The Director may refuse to issue an insurance producer license to Monchil pursuant to § 375.141.1(6) RSMo (Supp. 2010) because Monchil pleaded guilty to, and was convicted of, three counts of the Class C Felony of Involuntary Manslaughter, a crime of moral turpitude, each of which is a separate and independent cause to refuse.
27. The Director may refuse to issue an insurance producer license to Monchil pursuant to § 375.141.1(6) RSMo (Supp. 2010) because Monchil pleaded guilty to, and was convicted of, the Class C Felony of Possession of a Cocaine, a Schedule II Controlled Substance, a crime of moral turpitude.
28. Monchil pleaded guilty to four felonies, each of which is a crime of moral turpitude, and each of which is a separate and independent cause to refuse Monchil an insurance producer license. Given the grounds stated above and Monchil's disregard of the role of the Director and the Department as the insurance regulator for the state of Missouri, granting Monchil a Missouri insurance producer license would not be in the interest of the public. For all

of the reasons stated in the Petition, the Director has considered Monchil's history, all of the circumstances surrounding Monchil's Application, and Monchil's correspondence relating to his Application, and exercises his discretion in refusing Monchil's insurance producer license.

29. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the insurance producer license of Rusty L. Monchil is hereby REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 19th DAY OF SEPTEMBER, 2011.




JOHN M. HUFF
DIRECTOR

NOTICE

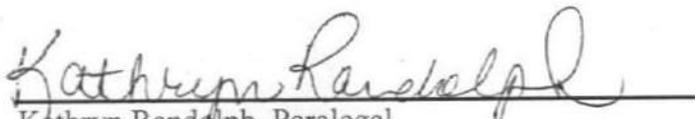
TO: Applicant and any unnamed persons aggrieved by this Order:

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 September, 2011, a copy of the foregoing Notice and Order was served upon the Applicant in this matter by regular mail and certified mail No. 7008 2810 0000 2014 8687 to:

Rusty L. Monchil
8940 SW Duroc Drive
Cameron, Missouri 64429


Kathryn Randolph, Paralegal