State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Nicole D. Guerra	)	Case No. 07A000311
Aka Nicole Boyd	)	
	)	
Applicant.	)	
	)	
Serve at:	)	
	)	
640 West Logan	)	
Moberly MO 65270	)	
	)	

REFUSAL TO ISSUE BAIL BOND AGENT LICENSE

On August 21, 2007, Kathyrn Turner, as senior counsel for the Investigations Section of the Consumer Affairs Division, submitted a petition to the Director alleging cause for refusing to issue the bail bond agent license of Nicole D. Guerra aka Nicole Boyd ("Applicant"). After reviewing the petition, and the investigative report, the Director issues the following findings of fact, conclusions of law and summary order:

FINDINGS OF FACT

1. Nicole D. Guerra aka Nicole Boyd ("Applicant") is a Missouri resident with an address of 640 West Logan, Moberly, Missouri 65270.

2. On April 19, 2007, Applicant filed a Missouri Uniform Application for Bail Bond or Surety Recovery Agent License ("Application") with the Department of Insurance, Financial Institutions and Professional Registration seeking issuance of a bail bond agent license.

3. On the Application, Part III, Question C asks:

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

4. Applicant checked the "YES" box in response to that question.

5. On August 6, 2002, Applicant was found guilty on a plea of guilty to the class C felony of Arson 2nd Degree in the Circuit Court of Lincoln County, Missouri ("2002 Plea").

6. The Circuit Court suspended imposition of sentence and placed Applicant on five (5) years probation.

7. This order is in the public interest.

CONCLUSIONS OF LAW

8. Section 374.750, RSMo 2000 provides:

> 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.

9. Section 374.755.1, RSMo Cum. Supp. 2006 provides, in part:

> The department may cause a complaint to be filed ....for any one or any combination of the following causes: .....
>
> (2) Final adjudication or a plea of guilty...within the past fifteen years in a criminal prosecution under any state...law for...a crime involving moral turpitude...whether or not sentence is imposed...; [or]
>
> (6) Violation of any provision of or any obligation imposed by the laws of this state ....

10. Section 374.715.1 RSMo Cum. Supp. 2006 provides, in part:

> 1. Applications for...licensure as a bail bond agent...shall contain such information as the department requires...Each application shall be accompanied by proof satisfactory to the

> department that the applicant...meets the qualifications for surety on bail bonds as provided by supreme court rule.

11. Supreme Court Rule 33.17 provides, 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 ...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 is imposed;

Disqualification for 2002 Plea

12. Applicant may be disqualified and therefore, refused the issuance of a bail bond agent license, based upon §§374.750 and 374.755.1(2) for the 2002 Plea. The current statute is to be properly applied to licensing actions. ***Huddlestonsmith v. Director of Insurance,*** Case No. 06-0161 DI (November 13, 2006); ***Polsky v. Director of Insurance***, Case No. 06-1458 DI (April 24, 2007).

13. Moreover, the current Supreme Court Rule 33.17, which became effective on January 1, 2007 is also properly applied. As Applicant has failed to submit proof that she "meets the qualifications for surety on bail bonds as provided by supreme court rule" under §374.715.1 RSMo Cum Supp 2006, the Director has no discretion to issue the bail bond license. ***Phillip L. Joyce v. Director of Insurance***, No. 00-2668 DI (Mo. Admin. Hearing Comm'n July 3, 2001). The interplay of §374.715.1 and Supreme Court Rule 33.17 remove any discretion in regards to Applicant's 2002 Plea. Section 374.715 and Supreme Court Rule 33.17 impose "a mandatory and not a discretionary requirement. ....[U]nder those provisions, [the Applicant] cannot be licensed as a general bail bond agent because of his felony convictions." ***Joyce*** (2001), at p.5. Section 374.715.1 does not make any distinction for bail bond agents.

14. Applicant's failure to submit proof that he "meets the qualifications for surety on bail bonds as provided by supreme court rule" also constitutes a "violation of ... [an] obligation imposed by the laws of this state", which is grounds for disqualification and refusal under §374.755.1(6), RSMo (Cum. Supp. 2006).

15. As §374.750 provides that the Director "may" refuse a license renewal, the Director also has discretion under this section for disqualifying Applicant for the

2002 Plea. ***State Bd. Of Regis'n for the Healing Arts v. Finch***, 514 S.W. 2d 608 (Mo. App., E.D. 1984); ***Joyce v. Director of Insurance***, No. 97-3416 DI (Mo. Admin. Hearing Comm'n May 28, 1998); ***James A. Gillihan v. Director of Insurance***, No. 04-1652 DI (Mo. Admin. Hearing Comm'n December 21, 2006); ***Rochelle K. Whatley v. Director of Insurance***, No. 05-1074 DI (Mo. Admin. Hearing Comm'n January 3, 2007). A bail bond agent has quasi-police powers including the authority to take custody of defendants released on bail by the courts. Applicant admitted to setting the fire in her home that led to the charge and subsequent plea of guilty to 2nd Degree Arson. Applicant attributes her attempted arson to "poor.... choices out of sadness, heartache and being overwhelmed with my life at the time." In applying the director's discretion, the Director has considered the history of the Applicant and all of the circumstances surrounding the Applicant's charge and plea of guilty. Applicant appears to have successfully completed her probation. Nevertheless, the facts, which gave rise to the plea only five years ago, in Applicant's own words, reveal a risk of an inappropriate response to emotionally charged circumstances. The bail bond business involves taking custody of defendants in an emotionally charged environment. Appellant's 2002 Plea reveals a risk to the courts and the public-at-large, which is simply not justified.

16. The issuance of a license to an Applicant for a bail bond agent license "places the seal of the state's approval upon the licentiate and certifies to the public that he possess these requisites [competency, skill...]" ***State ex rel. Lentine v. State Bd. Of Health***, 66 S.W. 2d 943, 950 (Mo. 1993) cited in ***David R. Hess v. Director of Insurance***, No. 93-000368DI, p.4, footnote 5 (Mo. Admin. Hearing Comm'n August 9, 1993). Based on the facts presented in the Application and the information gathered by the Consumer Affairs Division, the seal of the state's approval should not be granted. For all of these reasons, even if the disqualification under §374.715.1 RSMo Cum Supp 2006 were not mandatory, the Director would exercise his discretion in refusing to issue a bail bond agent license to the Applicant.

17. The Director, in making this decision, has considered all of the information within the whole record of Application as presented by the Applicant as well as information gathered by the Consumer Affairs Division. Any failure to specifically address a piece of evidence, information, position or argument of any party does not indicate that the Director has failed to consider relevant information, but indicates rather that the omitted material was not dispositive of the Director's decision.

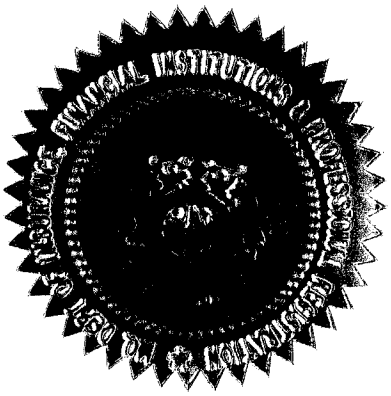
18. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the renewal of the bail bond agent license of Applicant Nicole D. Guerra aka Nicole Boyd is hereby summarily REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 23rd DAY OF August, 2007.



DOUGLAS M. OMMEN
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.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of August, 2007, a copy of the foregoing notice, order and petition was served upon the Applicant in this matter by certified U.S. Mail.