State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Keith Lamont Murrell	)	Case No. 06A000615
	)	
Applicant.	)	
	)	
Serve at:	)	
	)	
1103 Grand, Apt. 23 Kansas City MO 64106	)	
	)	

COPY

REFUSAL TO ISSUE BAIL BOND AGENT LICENSE

On August 21, 2007, Kathyrn Turner, Senior Counsel for the Investigations Section of the Consumer Affairs Division ("Consumer Division"), submitted a petition to the Director alleging cause for refusing to issue the bail bond agent license of Keith Lamont Murrell ("Applicant"). After reviewing the petition and the file in this matter the Director issues the following findings of fact, conclusions of law and summary order:

FINDINGS OF FACT

1. Keith Lamont Murrell ("Applicant") is a Missouri resident with an address of 1103 Grand, Apt 23, Kansas City, Missouri, 64106.

2. On August 30, 2006, Applicant filed a Missouri Uniform Application for Bail Bond or Surety Recovery Agent License with the Department of Insurance, Financial Institutions and Professional Registration seeking a bail bond agent license.

3. Question C of Part III of the Application 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 "No" answer to this question.

5. The Consumer Division received information that during 2002, the Applicant had pled guilty to a class C felony in the Circuit Court of Jackson County ("2002 Plea").

6. On October 12, 2006, a Consumer Division investigator directed to the address submitted by the Applicant by U.S. Mail, a request for additional information regarding the plea and requiring a response on or before December 11, 2006. The letter was returned as undeliverable by the postal service.

7. On April 3, 2007, the Consumer Division investigator was able to obtain a new address and sent by U.S. Mail, a request for additional information regarding the plea and requiring a response on or before December 11, 2006. No reply was received from the Applicant.

8. The Consumer Division has received some information that the Circuit Court suspended the imposition of sentence and placed the Applicant on probation for three (3) years.

9. This order is in the public interest.

CONCLUSIONS OF LAW

7. 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.

8. 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 or nolo contendere...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...;

> (3) Use of...fraud, deception, misrepresentation...in securing any license...required pursuant to sections 374.695 to 374.775; ... [or]
>
> (6) Violation of any provision of or any obligation imposed by the laws of this state ....

9. 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.

10. 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 by 2002 Plea

11. 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. (*Compare* ***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).

12. 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 he "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. As Supreme Court Rule 33.17 is now effective and being applied by courts throughout the state, it is now appropriate to apply the current rule in this matter.

13. Applicant's failure to notify the Director of a current address and failure to reply to the Consumer Division's requests for information concerning the 20002 Plea is a failure to submit satisfactory proof that Applicant "meets the qualifications for surety on bail bonds as provided by supreme court rule", which also constitutes a "violation of ... [an] obligation imposed by the laws of this state", and is grounds for disqualification and refusal under §374.755.1(6), RSMo (Cum. Supp. 2006).

Disqualification for Fraud and Deception in Application

14. Applicant may also be disqualified, and therefore refuse to issue a bail bond license because Applicant's answer to Question C of Part III of the Application of "no", was a fraud and deception by concealment of a material fact, in that Applicant concealed his 2002 Plea. "Concealment of a material fact of a transaction, which a party has a duty to disclose, constitutes fraud as actual as by affirmative misrepresentation." ***Daffin v. Daffin***, 567 S.W.2d 672, 677 (Mo.App., K.C.D. 1978). The facts concerning the 2002 tampering offense are material as the Director has the responsibility to determine the qualification of bail bond agents under the terms of Supreme Court Rules 33.17 and 33.20.

15. While fraud and deception under §374.755.1.(3) involves an intent to mislead, the Director concludes that being charged with a felony and appearing in court to enter a plea is a memorable event, not subject to lapse of memory. Given the direct nature of the question and the clear instruction to disclose all criminal cases, the Director concludes the Applicant's concealment of the 2002 offense was intended to conceal from the Director the Applicant's criminal history.

Discretion

16. As §374.750 provides that the Director "may" refuse a license renewal, the Director 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. While a plea of guilty to the charged felony may have occurred for reasons other than actually being guilty of the crime, it does reveal a risk to the courts and the public-at-large in licensing the Applicant, which is unjustified. In applying this discretion, the Director has considered the history of the Applicant and all of the circumstances surrounding the Applicant's Application. Although the Applicant did not reply to the inquiry and it is uncertain whether Applicant completed his probation, the Application and the subsequent failure to respond to inquiries from the Consumer Division, has raised additional questions regarding Applicant's integrity and reliability, essential qualities for a bail bond agent appearing in the courts of this state. Additionally, although it is possible that the Applicant has been fully rehabilitated and possesses a respect for the laws of this state, other conduct associated with his Application and the failure to submit satisfactory proof of qualification under court rules, has raised substantial doubt as to that conclusion. 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 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.

18. 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.

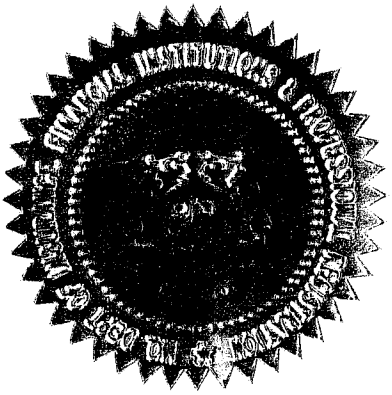
19. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the renewal of the bail bond agent license of Applicant Keith Lamont Murrell 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.

Karen Crutchfield
Karen Crutchfield
Senior Office Support Staff