



DEPARTMENT OF COMMERCE AND INSURANCE

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

IN RE:

ANDREW JAMES BROTHERS,

Applicant.

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Case No. 1906120871C

**ORDER REFUSING TO ISSUE
A BAIL BOND AGENT LICENSE**

On September 20, 2019, the Consumer Affairs Division (“Division”) of the Department of Commerce and Insurance (“Department”), submitted a Petition to the Director alleging cause for refusing to issue a bail bond agent license to Andrew James Brothers. After reviewing the Petition and the Investigative Report, the Director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Andrew James Brothers (“Brothers”) is a Missouri resident with a residential address of 1232 NE Hendrix Drive, Lee’s Summit, Missouri 64086.
2. On April 9, 2019, the Department of Insurance, Financial Institutions and Professional Registration¹ received Brothers’ completed Missouri Uniform Application for Bail Bond or Surety Recovery License (“Application”).
3. Part V, the “Applicant Signature” section of the Application, states, in relevant part:

I hereby certify that, under penalty of perjury, all of the information

¹ The Department of Insurance, Financial Institutions and Professional Registration is the predecessor agency of the Department of Commerce and Insurance. See Executive Order 19-02.

submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties.

4. Brothers signed the Application on February 11, 2019.
5. Part III, the Background Information section of the Application, Question B, asks:

Have you ever been adjudicated, convicted, pled or found guilty of any misdemeanor or felony or currently have pending misdemeanor or felony charges filed against you? 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).
6. Brothers answered “Yes” to Question B.
7. In a letter attached to his Application, Brothers indicated that he was charged with misdemeanor marijuana possession in 2010 and forgery in 2011. Brothers also attached certified court documents relating to his forgery charge.
8. The documents that Brothers provided and the Division’s investigation showed that on November 23, 2011, Brothers pled guilty to one count of the Class C Felony of Forgery, in violation of § 570.090.² *State v. Andrew J. Brothers*, Clay Co. Cir. Ct., Case No. 11CY-CR02151. The prosecutor dismissed a second forgery count in this case. *Id.* Also on November 23, 2011, the court suspended imposition of sentence and placed Brothers on probation for five years. *Id.*
9. On April 12, 2019, Division Special Investigator Kevin Davidson (“Davidson”) sent an inquiry letter to Brothers via first class mail, postage prepaid, to Brothers’ residential address, 1232 NE Hendrix Drive, Lee’s Summit, Missouri 64086. In it, Davidson referenced Missouri Supreme Court Rule 33.17 and asked if Brothers wanted to withdraw his application due to having pled guilty to a felony within the previous 15 years. Davidson indicated that if Brothers wanted to proceed with his application, he had to provide a detailed letter of explanation regarding how Brothers was in compliance with Missouri Supreme Court Rule 33.17. Davidson indicated that Brothers’ response was due in 20 days, and that “[f]ailure to respond could result in disciplinary action.”

² All criminal statutory citations are to that version of RSMo in effect at the time of the commission of the crime.

10. The United States Postal Service did not return Davidson's April 12, 2019 letter to the Division as undeliverable; therefore, Brothers is presumed to have received it.
11. Brothers did not provide a written response to Davidson's April 12, 2019 inquiry letter and Brothers did not demonstrate reasonable justification for delay.
12. Again on May 7, 2019, Davidson sent another inquiry letter to Brothers via first class mail, postage prepaid, to Brothers' residential address. In it, Davidson again referenced Missouri Supreme Court Rule 33.17 and asked if Brothers wanted to withdraw his application due to having pled guilty to a felony within the previous 15 years. Davidson indicated that if Brothers wanted to proceed with his application, he had to provide a detailed letter of explanation regarding how Brothers was in compliance with Missouri Supreme Court Rule 33.17. Davidson indicated that Brothers' response was due in 20 days, and that "[f]ailure to respond could result in disciplinary action."
13. The United States Postal Service did not return Davidson's May 7, 2019 inquiry letter to the Division as undeliverable; therefore Brothers is presumed to have received it.
14. On May 10, 2019, the Division received a response from Brothers. Brothers indicated in a letter that it was his understanding in reference to his forgery guilty plea that he had "pled to an amended misdemeanor charge."

CONCLUSIONS OF LAW

15. Section 374.715.1, RSMo Cum. Supp. 2018, provides as follows:

Applications for examination and licensure as a bail bond agent or general bail bond agent shall be in writing and on forms prescribed and furnished by the department, and shall contain such information as the department requires. Each application shall be accompanied by proof satisfactory to the department that the applicant is a citizen of the United States, has a high school diploma or general education development certificate (GED), is of good moral character, and meets the qualifications for surety on bail bonds as provided by supreme court rule. Each application shall be accompanied by the examination and application fee set by the department. Individuals currently employed as bail bond agents and general bail bond agents shall not be required to meet the education requirements needed for licensure pursuant to this section.

16. Section 374.750, RSMo 2016, provides as follows:

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. The department shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his right to file a complaint with the administrative hearing commission as provided by chapter 621.

17. Section 374.755.1, RSMo 2016, provides, in part, as follows:

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:

* * *

(2) Final adjudication or a plea of guilty or nolo contendere within the past fifteen years in a criminal prosecution under any state or federal law for a felony or a crime involving moral turpitude whether or not a sentence is imposed, prior to issuance of license date;

* * *

(6) Violation of any provision of or any obligation imposed by the laws of this state, department of commerce and insurance rules and regulations, or aiding or abetting other persons to violate such laws, orders, rules or regulations, or subpoenas[.]

18. Missouri Supreme Court Rule 33.17 provides, in part, as follows:

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 or nolo contendere 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 was imposed[.]

19. 20 CSR 100-4.100(2)(A) provides as follows:

Upon receipt of any inquiry from the division, every person shall mail to the division an adequate response to the inquiry within twenty (20) days from the date the division mails the inquiry. An envelope's postmark shall determine the date of mailing. When the requested response is not produced by the person within twenty (20) days, this nonproduction shall be deemed a violation of this rule, unless the person can demonstrate that there is reasonable justification for that delay.

20. "There is a presumption that a letter duly mailed has been received by the addressee." *Clear v. Missouri Coordinating Bd. for Higher Educ.*, 23 S.W.3d 896, 900 (Mo. App. E.D. 2000) (internal citation omitted).
21. "A plea of guilty is an admission as to the facts alleged in the information." *Milligan v. State*, 772 S.W.2d 736, 739 (Mo. App. W.D. 1989).
22. By pleading guilty to the Class C Felony of Forgery, in violation of § 570.090, within the past fifteen (15) years (Brothers pled guilty in 2011), Brothers is disqualified for bail bond agent licensure because he fails to meet the qualifications set forth in Missouri Supreme Court Rule 33.17(c)(1) and § 374.715.1, RSMo Cum. Supp. 2018. *State v. Andrew J. Brothers*, Clay Co. Cir. Ct., Case No. 11CY-CR02151. The Director has no discretion when a person does not meet the minimum qualifications of a bail bond agent, and therefore must refuse to issue Brothers a bail bond agent license.
23. The Director may refuse to issue a bail bond agent license to Brothers under § 374.755.1(2), RSMo 2016, because Brothers pled guilty within the past fifteen (15) years in a criminal prosecution under any state law for a felony, specifically, Brothers pled guilty in 2011 to Forgery in violation of § 570.090. *State v. Andrew J. Brothers*, Clay Co. Cir. Ct., Case No. 11CY-CR02151.
24. The Director may refuse to issue a bail bond agent license to Brothers under § 374.755.1(6), RSMo 2016, because Brothers violated a law of this state, specifically § 570.090. *State v. Andrew J. Brothers*, Clay Co. Cir. Ct., Case No. 11CY-CR02151.
25. The Director may refuse to issue a bail bond agent license to Brothers under

§ 374.755.1(6), RSMo 2016, because Brothers violated a Department regulation, specifically 20 CSR 100-4.100(2)(A), in that Brothers failed to timely respond to an inquiry letter from the Division from April 12, 2019.

26. Each of Brothers' violations of a law or Department regulation constitutes separate and sufficient cause for the Director to refuse to issue Brothers a bail bond agent license under § 374.755.1(6), RSMo 2016.
27. Under Missouri Supreme Court Rule 33.17(c) and § 374.715.1, RSMo Cum. Supp. 2018, Brothers is disqualified for a bail bond agent license and, therefore, the Director has no discretion and must refuse to issue a bail bond agent license to Brothers.
28. Moreover, the above described instances constitute cause for the Director to refuse to issue a bail bond agent license to Brothers. Issuing a bail bond agent license to Brothers would not be in the interest of the public.
29. The Director has considered Brothers' history and all of the circumstances surrounding Brothers' Application. Issuing a bail bond agent license to Brothers would not be in the interest of the public. The Director refuses to issue a bail bond agent license to Brothers because he is disqualified from holding a bail bond agent license. Further, the Director exercises her discretion to refuse to issue a bail bond agent license to Brothers.
30. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the bail bond agent license Application of **Andrew James Brothers** is hereby **REFUSED**.

SO ORDERED. **WITNESS MY HAND THIS** 19th **DAY OF**
November, 2019.



CHLORA LINDLEY-MYERS
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.

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of November, 2019, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by United Parcel Service, with signature required, at the following addresses:

Andrew James Brothers
1232 NE Hendrix Drive
Lee's Summit, Missouri 64086

Tracking No. 1Z0R15W84295205025



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