



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:

Kyle L. T. Burgess,

Applicant.

)
)
)
)
)

Case No. 10-1118699C

REFUSAL TO ISSUE SURETY RECOVERY AGENT LICENSE

On or about March 14, 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 the surety recovery agent license of Kyle L. T. Burgess. After reviewing the Petition, the Investigative Report, and the entirety of the file, the Director issues the following findings of fact, conclusions of law, and summary order:

FINDINGS OF FACT

1. Kyle L. T. Burgess ("Burgess") is a Missouri resident with an address of 206 Third Street, Park Hills, Missouri, 63601.
2. On or about March 24, 2000, in the Circuit Court of St. Francois County, Missouri, Burgess was charged by Information of the Class C Felony of Possession of Certain Weapons in violation of § 571.020 RSMo (1994), in that on or about November 12, 1999 in St. Francois County, Missouri, Burgess acting alone or in concert with another possessed explosive weapons.
3. On or about July 7, 2000, in *State of Missouri v. Kyle L. Burgess*, Case No. CR0799-002840F, St. Francois County Circuit Court, Missouri, Burgess pleaded guilty to one count of the Class C Felony of Unlawful Possession, Transport, Manufacture, Repair or Sale of Illegal Weapon.
4. On or about September 8, 2000, the court suspended imposition of sentence and placed Burgess on probation for five years. As a special condition of probation, the court ordered Burgess to serve 90 days of shock probation in the St. Francois County jail, have no contact with co-defendants, not consume intoxicants, not be in the presence of controlled substances, and submit to drug and alcohol testing at the parole officer's request. Burgess was ordered

to pay court costs and \$46.00 to the Crime Victims Compensation Fund. Upon information and belief, on or about September 7, 2005, Burgess' probation term expired.

5. On or about September 16, 2004, in *State v. Kyle L. Burgess*, Case No. 04CR 613809 RSMo (2000), Burgess pleaded guilty to the Class A Misdemeanor of Littering in violation of § 577.070 RSMo for an offense date of August 25, 2004 in the 24th Judicial Circuit Court, Missouri. The court sentenced Burgess to a fine of \$100, court costs, and entered a Judgment of \$10 in favor of the State of Missouri and against the Defendant for the Crime Victim's Compensation Fund.
6. On or about January 31, 2008, in *State v. Kyle L. Burgess*, Case No. 07MD-CR00593, Burgess pleaded guilty to the Class A Misdemeanor of Harassment to Frighten or Disturb Another Person in violation of § 565.090 (2000) committed on November 6, 2007 in the 24th Judicial Circuit Court, Missouri. The court sentenced Burgess to a fine of \$100, court costs, and entered a Judgment of \$10 in favor of the State of Missouri and against the Defendant for the Crime Victim's Compensation Fund.
7. On or about May 28, 2010, the Department of Insurance, Financial Institutions, and Professional Registration ("Department") received Burgess' Missouri Uniform Application for Bail Bond or Surety Recovery License ("Application"), which was supplemented by Burgess on June 4, 2010.
8. In the "Background Information" section, 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).
9. Burgess answered "Yes" to Background Question B.
10. Question B in Part III contains the following instruction:

If YES, provide a full, written explanation on a separate sheet of paper including the name and address of court, basis of charge, outcome, and whether you received an executive pardon. Also attach certified court documents of the information or Indictment and the Final Adjudication.

11. In response Burgess attached a separate page which disclosed the Felony of Possession of Certain Weapons but did not disclose his other criminal history, and stated in part:

On 12-11-1999, I was involved with two other gentlemen with possession of a certain weapon. It was a felony arrest. I have enclosed the court documents. I was sentenced to 5 years S.I.S. probation through Farmington probation and Parole, in Farmington Missouri. I was young and ignorant. I thought I would stand up for my friends and I got in just as much trouble as they did. They stole explosives and I was guilty by association and because I knew about it and did nothing to report it. I was not in possession of it. They place the items 1000 feet from my parent's house, where I was living at the time. Some people found the items and reported it to the police. I cooperated with the Local Law Enforcement Officials. And told them everything that was taken and those we had no intentions of ever using them. We were just curious about what was in the concrete storage. The items were stored at the St. Francois County Hwy Dept in side Farmington City limits by day cares and SMTS, behind the Super Center Wal Mart. The Hwy Dpt. Had to move the items because they was not to have those items within 2000 feet of city limits, and they were told that if 3 boys got those items and no intentions to use it what if some one wanted to harm some one. It was too easy for kids to get into it. So I pled guilty to it or it would have gone to trial and I would have been charged with a felony. Since I walked the probation down with a clean slate, I have obtained a Certified Nurses Aide License, a Med Level One License, and a CCW License. I have also sent you some other items that shows that I am an outstanding citizen and have fished school, received honors from ITT Technical Institute, High School Diploma, Volunteer Fireman' Certificate from the city Of Leadington Missouri. I am responsible for my actions. There is the Felony arrest on my record with no charges and no pending charges. I thank you so very much for taking the time to review my application and this explanation letter. Also I would like to add that there "Was not," any attentions to use the device. I and the two other boys with me, was in the Farmington High School USAFJROTC Mo-961. I was a Lt. of logistics, member of the Honor Guard, Drill Team, and Kitty Hawk Air Society for Honor Roll, and Founder of the Model Rocketry Program at the Farmington High School. I hope that this incident I was involved in as a young boy doesn't keep me from doing what I

have dreamed of being one day. I want to follow in my father's foot steps of being a Surety Recovery Agent, A police Officer and one Day a Guard for the Dpt. Of Corrections for the state of Missouri. [sic]

12. In a letter dated June 9, 2010, the Department recommended Burgess consider withdrawing his bail bond application. In a letter attached to an email dated June 14, 2010, Burgess responded:

I Kyle L. T. Burgess would like to proceed forward with the Surety Recovery license, file # 103114. Knowing that there is little chance to get it, & I could be denied it. I would still like to go forward with this. Thank you for the information, & the phone call.

CONCLUSIONS OF LAW

13. A surety recovery agent is "a person not performing the duties of a sworn peace officer who tracks down, captures and surrenders to the custody of a court a fugitive who has violated a bail bond agreement, excluding a bail bond agent or general bail bond agent." § 374.700(10) RSMo (Supp. 2010)¹. No person shall hold himself or herself out as being a surety recovery agent in Missouri unless the person is licensed in accordance with §§ 374.783 to 374.789 RSMo.

14. Section 374.784.5 RSMo, states:

5. The director may refuse to issue any license pursuant to sections 374.783 to 374.789, for any one or any combination of causes stated in section 374.787. The director shall notify the applicant in writing of the reason or reasons for refusal and shall advise the applicant of the right to file a complaint with the administrative hearing commission to appeal the refusal as provided by chapter 621.

15. Section 374.787.1 RSMo provides, in part:

1. The director may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any surety recovery agent or any person who has failed

¹ All statutory references are to the 2010 Supplement to the Revised Statutes of Missouri unless otherwise noted.

to renew or has surrendered his or her license for any one or any combination of the following causes:

(1) Violation of any provisions of, or any obligations imposed by, the laws of this state, the 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;

(2) Final adjudication or a plea of guilty or nolo contendere in a criminal prosecution under state or federal law for a felony or a crime involving moral turpitude, whether or not a sentence is imposed;

(3) Using fraud, deception, misrepresentation, or bribery in securing a license or in obtaining permission to take any examination required by sections 374.783 to 374.789[.]

16. Section 571.020 RSMo (1994) provides, in part:

1. A person commits a crime if he knowingly possesses, manufactures, transports, repairs, or sells:

(1) An explosive weapon;

(2) A machine gun;

(3) A gas gun;

(4) A short barreled rifle or shotgun;

(5) A firearm silencer;

(6) A switchblade knife;

(7) A bullet or projectile which explodes or detonates upon impact because of an independent explosive charge after having been shot from a firearm; or

(8) Knuckles.

3. A crime under subdivision (1), (2), (3), (4) or (5) of subsection 1 of this section is a class C felony; a crime under subdivision (6), (7) or (8) of subsection 1 of this section is a class A misdemeanor.

17. Section 565.090 RSMo (2000) states:

1. A person commits the crime of harassment if for the purpose of frightening or disturbing another person, he

(1) Communicates in writing or by telephone a threat to commit any felony; or

(2) Makes a telephone call or communicates in writing and uses coarse language offensive to one of average sensibility; or

(3) Makes a telephone call anonymously; or

(4) Makes repeated telephone calls.

2. Harassment is a class A misdemeanor.

18. Section 577.070 RSMo (2000) states:

1. A person commits the crime of littering if he throws or places, or causes to be thrown or placed, any glass, glass bottles, wire, nails, tacks, hedge, cans, garbage, trash, refuse, or rubbish of any kind, nature or description on the right-of-way of any public road or state highway or on or in any of the waters in this state or on the banks of any stream, or on any land or water owned, operated or leased by the state, any board, department, agency or commission thereof or on any land or water owned, operated or leased by the federal government or on any private real property owned by another without his consent.

2. Littering is a class A misdemeanor.

19. 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).

**CAUSE FOR ORDER TO REFUSE TO ISSUE A
SURETY RECOVERY AGENT'S LICENSE**

20. The Director may refuse to issue a surety recovery agent license to Burgess pursuant to § 374.787.1(1), RSMo because Burgess violated a provision of the laws of this state by committing the crime of Possession of Certain Weapons in Missouri in violation of § 571.020 RSMo (1994), as well as pleading guilty

to the Class A Misdemeanor of Harassment to Frighten or Disturb Another Person in violation of § 565.090 RSMo (2000) and the Class A Misdemeanor of Littering § 577.070 RSMo (2000). *State of Missouri v. Kyle L. Burgess*, Case No. CR0799-002840F; *State v. Kyle L. Burgess*, Case No. 07MD-CR00593; *State v. Kyle L. Burgess*, Case No. 04CR613809.

21. The Director may refuse to issue a surety recovery agent license to Burgess pursuant to § 374.787.1(2) RSMo because Burgess pleaded guilty to the Class C Felony of Possession of Certain Weapons in violation of § 571.020 RSMo (1994). *State of Missouri v. Kyle L. Burgess*, Case No. CR0799-002840F.
22. The Director may refuse to issue a surety recovery agent license to Burgess pursuant to § 374.787.1(3) because Burgess used fraud, deception or misrepresentation to attempt to secure a surety recovery agent license through his 2010 application by failing to disclose his guilty pleas in two criminal cases as required by the Application: the Class A Misdemeanor of Harassment to Frighten or Disturb Another Person in violation of § 565.090 RSMo (2000) and the Class A Misdemeanor of Littering in violation of § 577.070 RSMo (2000). *State v. Kyle L. Burgess*, Case No. 07MD-CR00593; *State v. Kyle L. Burgess*, Case No. 04CR613809.
23. Though Burgess stated, "I was young and ignorant. I thought I would stand up for my friends and I got in just as much trouble as they did. They stole explosives and I was guilty by association and because I knew about it and did nothing to report it. I was not in possession of it. They place the items 1000 feet from my parent's house, where I was living at the time." This statement does little to explain the circumstances or background of the felony, show responsibility for his felony or offer qualifications necessary to be a surety recovery agent. A surety recovery agent must be responsible for his or her own actions, responsible and law abiding with respect to weapons, and abide by the laws of the state of Missouri. Burgess has failed to show he is qualified in this regard.
24. "[T]he license granted places the seal of the state's approval upon the licen[see.]" *State ex rel. Lentine v. State Bd. of Health*, 65 S.W.2d 943, 950 (Mo. 1933). Granting Burgess a surety recovery agent license is not in the interest of the public because Burgess has pleaded guilty to a felony involving stealing explosives and failure to comply with the law regarding weapons and offered little explanation.
25. Burgess failed to disclose his entire criminal history on the license application. It is not in the public interest to license an untrustworthy person as a surety recovery agent.

26. In applying his discretion, the Director has considered Burgess' history and all of the facts and circumstances surrounding the Application, and for the reasons stated in this Petition refuses to issue Burgess a surety recovery agent license.
27. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the surety recovery agent license of Kyle L. T. Burgess is hereby summarily REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 14th DAY OF MARCH, 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 15th day of March, 2011, a copy of the foregoing Notice and Order was served upon the Applicant in this matter by certified mail No. 7009-3410-0001-9349 - to:
6448

Kyle L. T. Burgess
206 Third Street
Park Hills, Missouri 63601


Kimberly Landers