

Before the
Administrative Hearing Commission
State of Missouri

HAND
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SEP 03 2010
DEPT OF INSURANCE,
FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

KENNETH L. TRICE,)
)
Petitioner,)
)
vs.) No. 10-1006 DI
)
DIRECTOR OF DEPARTMENT OF)
INSURANCE, FINANCIAL INSTITUTIONS)
AND PROFESSIONAL REGISTRATION,)
)
Respondent.)

DECISION

The Director of the Department of Insurance, Financial Institutions and Professional Registration ("the Director") has cause to deny Kenneth L. Trice's application for an insurance producer license because Trice was found guilty of felony theft and criminal attempt to commit theft.

Procedure

Trice filed a complaint on June 2, 2010, challenging the Director's denial of his application. The Director filed an answer and motion for summary decision on July 12, 2010. Trice responded to the motion on August 26, 2010.

Our Regulation 1 CSR 15-3.446(5)(A) provides:

The commission may grant a motion for summary decision if a party establishes facts that entitle any party to a favorable decision and no party genuinely disputes such facts.

Findings of Fact

1. In 1976, Trice was hired by Occidental Life/Trans America Life Insurance Company in Colorado as a general agent, given signing authority on that company's bank account, and given a supply of the company's bank drafts.
2. Trice used the company's bank drafts to pay his own creditors without the company's permission.
3. On or about November 28, 1980, in the Denver County, Colorado, District Court, Trice pled guilty to felony theft in violation of Colo. Rev. Stat. § 18-4-401 (1973). He was sentenced to five to eight years' imprisonment.
4. On August 26, 1981, the remainder of Trice's sentence for the first conviction was suspended, and he was ordered to pay \$17,213.36 in restitution conditioned upon his ability to pay.
5. On May 26, 1982, in the Arapahoe County, Colorado, District Court, Trice pled guilty to a felony charge of criminal attempt to commit theft in violation of Colo. Rev. Stat. § 18-2-101 (1973). He was sentenced to four years' imprisonment, which sentence was suspended, and Trice was put on probation.
6. On November 22, 1988, Trice's probation was terminated. He had paid a portion of the court-ordered restitution and executed a promissory note for the balance. Trice did not pay any amounts on the note, however.
7. Trice applied to the Director for licensure as an insurance producer. On May 3, 2010, the Director issued a decision denying the application.

Conclusions of Law

This Commission has jurisdiction over the Director's complaint.¹ The applicant has the burden to show that he or she is entitled to licensure.²

Section 375.141.1 provides:

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;

* * *

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]

I. Felonies or Crimes Involving Moral Turpitude

At all relevant times, Colo. Rev. Stat. § 18-4-401(1) (1973) provided:

A person commits theft when he knowingly obtains or exercises control over anything of value of another without authorization, or by threat or deception, and:

(a) Intends to deprive the other person permanently of the use or benefit of the thing of value; or

(b) Knowingly uses, conceals, or abandons the thing of value in such manner as to deprive the other person permanently of its use or benefit; or

¹Section 621.045. Statutory references are to RSMo Supp. 2009 unless otherwise noted.

²Section 621.120, RSMo 2000.

(c) Uses, conceals, or abandons the thing of value intending that such use, concealment, or abandonment will deprive the other person permanently of its use and benefit; or

(d) Demands any consideration to which he is not legally entitled as a condition of restoring the thing of value to the other person.

At all relevant times, Colo. Rev. Stat. § 18-2-101(1) (1973) provided:

A person commits criminal attempt if, acting with the kind of culpability otherwise required for commission of an offense, he engages in conduct constituting a substantial step toward the commission of the offense. A substantial step is any conduct, whether act, omission, or possession, which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense. Factual or legal impossibility of committing the offense is not a defense if the offense could have been committed had the attendant circumstances been as the actor believed them to be, nor is it a defense that the crime attempted was actually perpetrated by the accused.

Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman 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. . . . Theft has been held to involve moral turpitude."³

In *Brehe v. Missouri Dep't of Elementary and Secondary Education*,⁴ a case that involved discipline of a teacher's certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three classifications of crimes:⁵

- (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*In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).

⁴213 S.W.3d 720 (Mo. App., W.D. 2007).

⁵*Id.* at 725 (quoting *Twentieth Century-Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9th Cir. 1954)).

- (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).

A survey of other cases indicates that theft is a Category 1 crime and therefore involves moral turpitude.⁶ Also, in this case, Trice was placed in a position of trust by his employer (an insurance company), and he betrayed that trust.

We agree that the crimes of felony theft and attempt to commit theft under the circumstances here constitute Category 1 crimes. There is cause to deny Trice’s application under § 375.141.1(6).

II. Section 375.141.1(8)

The Director also argues that there is cause to refuse Trice’s application under § 375.141.1(8) for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business. Fraud is “an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him.”⁷ Dishonesty is a lack of integrity, a disposition to defraud or deceive.⁸ Dishonesty also includes actions that reflect adversely on trustworthiness.⁹ Here, Trice was placed in a position of responsibility, in the same profession he seeks to re-enter, and he stole from his employer, who placed enough trust in him to give him access to its bank account. His actions demonstrate fraudulent and dishonest practices as well as untrustworthiness.

III. Lack of Discretion

Section 374.051.1 provides in part:

⁶See *In re Carpenter*, 891 A.2d 223 (D.C. 2006) (moral turpitude is inherent in crimes that have an intent to defraud or steal). See also *Johnson v. Commonwealth*, 581 S.E.2d 880 (41 Va. App., 2003) (misdemeanor crimes of moral turpitude are limited to those crimes involving lying, cheating, and stealing).

⁷*State ex rel. Williams v. Purl*, 128 S.W. 196 201 (Mo. banc 1910).

⁸MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 359 (11th ed. 2004).

⁹See *In re Duncan*, 844 S.W.2d 443, 444 (Mo. banc 1992).

Notwithstanding section 621.120, RSMo, the director shall retain discretion in refusing a license or renewal and such discretion shall not transfer to the administrative hearing commission.

Under this provision, we have no discretion when there is any cause to refuse the issuance of a license. Although we note Trice's assertions that he has led a virtuous life since his crimes and imprisonment in the 1980s, we must deny the application.

Summary

We deny Trice's application for an insurance producer license. We cancel the hearing.

SO ORDERED on September 2, 2010.



TIM R. T. CHAPEL, JR.
Commissioner