

ORAL ARGUMENT – 99-1159
10/18/00
HARRIS CO BAIL BOND BOARD V. BLACKWOOD, ETC

LAWYER: There are two very important questions that need to be answered by the court today. And the first question has to do with the scope of authority of a DC when it's reviewing a bail bond board's decision. And this is under §11 of the Bail Bond act. The second question deals with what is required of a corporate surety and what is the DC required to look to when it's deciding whether the corporate surety's license should have been renewed?

HANKINSON: Before you get to those issues would you address the question of whether or not this cause is moot?

LAWYER: This cause of action concerns a renewal of a bail bond license. And whether it was renewed or was not renewed is very significant. Because under the two-year scheme that legislature had envisioned, you have two years for a license. And if we don't decide whether renewal was authorized, then we don't know if we're working under the same license where it's being renewed, or we're required to provide an original license.

HANKINSON: But in order for us to decide this case, we still have to have a live controversy. And whether we accept your interpretation of the statute or your opponent's interpretation of the statute, in either event, the two year period of time has passed. The licensing period is gone, we're into a new time period. So why doesn't that moot this controversy?

LAWYER: Because the bail bond license is still being renewed under the original license number. And you would have to issue a new license if that should not have been granted a renewal.

HANKINSON: But why does that make any difference since the original application process is the same as the renewal process?

LAWYER: If a license is not renewed, that's something that a person that was bonded has to convey that they were not renewed a license, and that could have implications on their license.

HANKINSON: They have to convey it to...

LAWYER: If they would like to apply to another board, then they would have to be honest and say whether they were not renewed a license and what reason. And so it would be significant for any future bonds they might apply for. It's also significant for the bail bond board because this is an issue that was decided when the court didn't have jurisdiction. And this court decided only *Latty(?)*. When a court issues a void order this court can decide whether there was jurisdiction or not. And so this court does have that issue to decide in this case.

HANKINSON: Why is that a question of jurisdiction and not a question of whether or not the TC just exceeded its authority?

LAWYER: When the court exceeds its authority and issues an order for which is void because it didn't have the power over that subject matter, that is an issue that this court can decide.

HANKINSON: But there's a difference between a court not having subject matter jurisdiction, and a court having subject matter jurisdiction over a matter but entering an order that exceeds its authority under the law. And why isn't this a matter of the second?

LAWYER: In this case it's both. It exceeded its authority, and it issued an order which is void. At the time it entered its order it was void and this court can decide that question. Because in *Owens v. Latty*, this court said you could decide issues of jurisdiction.

HANKINSON: And why is it void?

LAWYER: The order is void because under art. 5, §8 of the constitution provides that a DC is only to exercise jurisdiction over matters for which it has appellate jurisdiction and not over matters for which an administrative tribunal has the original jurisdiction to exercise. In this case, also you have to consider that it's the administrative remedy that they were required to perform under the act were not performed. And that administrative remedy was first a renewal from the board before seeking adjudication on that on de novo review. This is extremely significant for the board to decide. If this court doesn't answer that question, then people will go to the DC and just continue the matter and get renewals, and renewals despite the board's not having the decision.

O'NEILL: Well what about the opposite end of that coin? It can also become moot and _____ affect an appeal?

LAWYER: Yes, but in that case, you could ask for an accelerated distribution. You could ask _____ submission. You could even ask for a mandamus to avoid a bad result. The legislature may have envisioned that this would occur because with the two-year period, you would think that you would have time to go to a court and _____ ask that remedy is being provided.

HANKINSON: Under your analysis because you say that this is for a specific two-year period of time as opposed to any two-year period of time that might be affected prospectively by a court order, whether or not you have an injunction wouldn't make any difference. Once that original two-year period of time runs the controversy is over. Because according to your view if a court does anything outside that two-year period of time, then the court has exceeded its authority under the constitution?

LAWYER: Actually the controversy is not a - we still need to know whether this license is to be renewed or if they have to apply for an original license. So that has to be decided. They have

to know whether it's going to be continuation of that and whether they have to represent that they have had a renewal denied.

HANKINSON: The application that's at issue in this case makes no reference to the specific two-year time period, and it doesn't ask for a renewal for a set time period. Did I read it correctly?

LAWYER: Yes. But the license is due. The license always under the act is required to state what time period it applies to. So when you have a renewal, you have to look to the license and you have to look to the specific two-year period that's being provided there.

HANKINSON: But if in this case the renewal of the license was denied by the board, so we have no license, and we have an application that is not in any way date sensitive, it doesn't say I'm applying for a license that's good between Jan. 1, 1995 and Dec. 31, 1997...

LAWYER: But under the act, you could only be renewing the license. But under the terms of the act, it has a specific time frame in that license for two-years.

HANKINSON: What provision of the statute do we look to for that, that is that specific with respect to the two-year time period?

LAWYER: In §5 of the Act.

GONZALES: Is it in §8(a)?

LAWYER: Yes, you are correct. Section 8(c) actually. Each license when issued shall show on its face the date of expiration, license number and it shall be the responsibility of the licensee to file for a new one under the terms of this act.

GONZALES: If this governs a renewal of licenses, was the three-month temporary license a renewal license?

LAWYER: Well the act envisions you could have a shorter license than a full two-years. Because obviously licenses can be revoked.

GONZALES: Does the act allow you to grant those licenses without meeting the other statutory requirements like having three letters of recommendation?

LAWYER: Actually if the board overlooked a legal reason why it shouldn't have been granted, that's something a DC could look at if that had been reviewed. But the three-month license was not at issue in this case. The only issue in this case dealt with the license from Nov. 1995 till Nov. 1997.

GONZALES: I understand that. But the board did issue a temporary license without full compliance with the act even though the statutory requirements for letters not met? Isn't that correct?

LAWYER: There was only one letter attached. Apparently it was overlooked.

GONZALES: And Mr. Blackwood was in default as you claim?

LAWYER: He was in default. Actually that was conclusive.

GONZALES: But the board went ahead and issued a license?

LAWYER: Correct. There was a 3-month license issued at that point, which brings us to one of the issues about why the license from 1995-1997 should not have been granted and the court's decision was correct. And that has to do with the lack of good standing which you just brought up.

HANKINSON: I'm still concerned about this two-year time period. The issue that you raise about the fact that the TC order should not have been for a two-year time period from the date of judgment, but instead should have been backdated basically to the date of expiration of the previous license.

LAWYER: Correct.

HANKINSON: And the language that you hang your hat on is in §8?

LAWYER: Correct.

HANKINSON: Any place else in the act that we should look for those limitations since the application itself does not have any reference to the time period that is subject?

LAWYER: But the license does.

HANKINSON: But we don't have a license in this case.

LAWYER: Yes, we do.

HANKINSON: I'm confused then.

LAWYER: There was a license issued for the 3-month period. And so any renewal would have had to have been at the expiration of that 3-month period. So renewals deal with a license that

already exist. In this case, the court didn't have a license that if existing that it's renewing because there was never a renewal requested for which it was denied. In this case, the 1997 - 1999 renewal was not asking for renewal from a past license because there was no application filed for that time period. And this is to defeat the effectiveness of the Act, because as you know, under §4b of the Act, 30 days prior to you asking for a renewal, they are supposed to check the records. This checks the records to ensure that there has been everything done that the legislature intended. The policy of the act is two things. One, it's to ensure that there is not unreasonable rules that is going to restrict your right to have a bond if you're a criminal defendant, and also to ensure the criminal defendant is there. We have to make sure, because it's the very _____ of business that there is an ability to make sure that it's being done with competency, honesty and integrity so that there is not unreasonable restrictions being placed on criminal defendants trying to get bonds.

In addition, there is a \$500 fee _____ application. Effectively in this case the \$500 fee was waived. Which I would contend under art. 3, §52 of the constitution, would be an unconstitutional _____. In effect what happened in this case because there was an injunction that allowed them to operate during the pendency of this case, they are allowed to operate a 4-year license as opposed to a 2-year license. And that's another reason this case was not moot. Because they are waived a \$500 fee and we need to have an adjudication as to that issue because...

HANKINSON: That issue has not been briefed or raised here.

LAWYER: Yes, the issue has been raised about the court's lack of jurisdiction. And the mootness issue which you raised in connection with that has to consider that.

HANKINSON: But any effort to deal with the \$500 fee is not something that's been decided by the CA or is raised here in the briefing.

LAWYER: But if the court didn't exceed its authority then it wouldn't have granted a license which effectively waived the \$500 fee.

HANKINSON: You're saying it waived the fee because it was for a period for which no application had been made?

LAWYER: Correct. And that two-year period did not have - you see that's the way the legislature envisioned it. That you have two-year periods in which you could check the bond every two years. And it's like a policing authority. In the *Robinson* case, this court when it examined the \$500 fee recognized that this is a regulatory scheme and that this \$500 is part of the policing power authority which you have. The \$500 is supposed to be the reasonable fee. It's needed by the agency to check. And so in this case, we're effectively waiving the \$500 fee and we need to have an adjudication if that's not possible. That's not been done.

HANKINSON: You mentioned earlier the statute dealing with the reporting of a failure to get

a renewal, what provision of the statute are you looking to? You said that there was a provision in the statute that dealt with having to report to other bail bond boards if you failed to get a renewal that you had applied for, and that that's what saved this controversy from being mooted. What provision in the statute are you relying on?

LAWYER: Under §6 of the Act, if you received a bond in another county, you're supposed to get letters of good standing from all the counties for which you had bail bond licenses with. And so the bonding agency is going to provide information to them in that letter of standing that says whether you didn't have a license renewed or not.

HANKINSON: Section 6 what?

LAWYER: Section 6(b). It says: Letters shall be required for the person being charged. And at the end it requires that if the applicant or person charged with license in another county, there must be a letter from each board stating whether they are in good standing. So that would probably be included in that report from the other county as to whether they was good standing on a license - on any license that they had been issued in that county.

HANKINSON: Would that require a report if someone had not been renewed and so currently does not have a license?

LAWYER: Correct.

HANKINSON: But then they wouldn't have been licensed in another county, so why would they have to report anything? If someone's license was not renewed, then they would no longer be licensed in a particular county. Right?

LAWYER: Correct.

HANKINSON: So why would they have to report anything under 6(b)?

LAWYER: If you're applying for a license in another county, then they want to know if you were licensed previously - because you are licensed in each county. For instance, _____ in Harris County and you had had a license in Dallas County, then Dallas county would have to provide a letter of good standing that you attach to your application that says whether or not your license was good there.

HANKINSON: What if you just chose to let your license lapse in Dallas county because you didn't want to do business there anymore and you wanted to move to Harris county. Would you have to tell anyone you had ever been licensed in Dallas county under the act?

LAWYER: Yes, I believe you do.

HANKINSON: And is that 6(b), too?

LAWYER: Yes.

HANKINSON: No other provision?

LAWYER: Well the board can ask any questions that they think are relevant and that does go to competency. So I think it would be a relevant question before the board.

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RESPONDENT

MOORE: This statute is surprisingly silent as to what the procedure is _____, and in that respect this case does present some novel questions for this court. The statute simply provides that if there is an appeal, it's a pure trial de novo to the DC, and that the DC's jurisdiction is invoked by the filing of a petition within 30 days after in this case the refusal to renew the license.

HANKINSON: Is this controversy moot?

MOORE: In our view it is not moot, but purely under this doctrine of controversies capable of repetition _____ in review. That is because this is a time sensitive renewal period. Although the license at issue and the court's judgment at issue in this case has already expired, it's entirely possible that this court could never review it if it doesn't fall within that exception.

PHILLIPS: Do we have to look at whether or not an accelerated appeal is possible when we're considering the doctrine?

MOORE: I frankly don't know the answer to that.

PHILLIPS: One area that you and the petitioner seem to disagree on rather fundamentally is _____ financial history that is relevant. It is the company, or is it the agent? And I gather from the briefs that Allegheny has a lot of different agents that have failed - you have a lot of different licenses in Harris county.

MOORE: Correct. As of time of trial 8 or 9 agents. Every one of those agents writes only on the financial strength of the company. And under the statute, section 7 of the statute, that financial strength is conclusive and the board may not even inquire into it because it has a certificate of authority from the Dept. of Insurance.

PHILLIPS: Why do you have 8 or 9 different licenses? If just the company, how come you are not just one _____?

MOORE: We would not agree that a felon could be licensed under the act. Because the act prohibits someone from being licensed, who for example, has a conviction for a felony or a misdemeanor involving moral turpitude. In our view the license is a license granted to the corporation for a specific agent to operate in that county. The act requires that a separate application be filed for each agent that a corporation intends to appoint within the county. for that reason, we believe it is appropriate for the board to review general character, make sure that there are no convictions, make sure that they have not been dishonest in dealing with the public. But with respect to financial matters, because only the corporation's finances are ever at issue on a bond that that agent may execute within the county, the board should appropriately look only to the financial resources of the company, the corporation.

HANKINSON: Wouldn't someone's financial history, particular if they had a bad one, wouldn't that reflect on their character with respect to the individual agent?

MOORE: It might. It might depend upon however the facts. I'm not suggesting that the fact that someone has a model history is entirely irrelevant to the board's consideration, where in this case, the TC's consideration on de novo what. I am suggesting though is that the fact that someone owes a debt does not show that a person has bad character or has a reputation of dishonesty.

GONZALES: But doesn't the board need to look at that to make that determination?

MOORE: Well the board did look at it in this case, and the TC looked at it and concluded that despite that background, this license should be renewed. In our view, owing a debt to the county is not a disqualification for the agent. At most it is a factor that the board or the TC on de novo appeal could consider, and the court did consider this.

HANKINSON: Isn't it mandatory under the statute that the three letters of recommendation be provided?

MOORE: That's correct.

HANKINSON: And this record does not contain the three letters of recommendation?

MOORE: There are not documents contained within this record. There was unequivocal testimony at trial, however, that the application was complete at the time it was filed with the board, and that all documents requested by the board were included with the application.

HANKINSON: But if this is a trial de novo, which means you have to make your record all over again, wouldn't there be a requirement that you would have to make sure that the complete application was before the TC so that the TC could in fact review the letters and make sure that they complied with the statute?

MOORE: That's one of the issues that this court ultimately is going to have to decide.

HANKINSON: I would like to hear your view on it.

MOORE: In our view, there are certain necessary steps before you can get to the TC: the filing of an application; the consideration of that application by the bail bond board; a refusal to renew; and then the filing of a petition with the DC. It is those steps that must be followed in order to invoke the jurisdiction of the DC. Once the jurisdiction has been invoked, then the question is: Does the TC abuse its discretion in renewing a license if one of those statutorily listed things that must be included is not presented in documentary form before the TC. In our view, those requirements that are listed in the statute are a basis by which the court or the bail bond board could refuse to renew, or could continue the hearing and ask that additional documentation be provided. But they are not jurisdictional requirements whereby either the board or the TC on appeal would have exceeded its jurisdiction if it granted a license in the absence of those requirements.

BAKER: Would you on the other hand agree that a full record is necessary for appellate purposes and without one somebody raising a point of error may not have any basis to have it sustained? In other words, Justice Hankinson's question is different than jurisdiction. It's whether you have perfected an appeal for this case without an adequate remedy for this Harris county bail bond have you?

MOORE: If all the requirements of §6...

BAKER: In other words, your argument is well we complied with everything. But we look at the record and we see zero. What's here to support that argument for the TC having made a bad or good decision?

MOORE: Again, there is unequivocal testimony that all the requirements were met - unchallenged; no cross examination on that point. And on that state of the record, I believe that there is evidence to support the TC's decision.

BAKER: In a de novo situation?

MOORE: Correct.

O'NEILL: What exactly is the TC's authority?

MOORE: Under this statute it is deciding whether the license should be renewed with no deference being given. It is not a review in the sense of a substantial evidence review.

If the question is, Did the bail bond board below err in refusing to renew? Then it seems to me that the burden of proof is going to be on the board.

O'NEILL: If the decision is whether the board erred, then aren't we reviewing the provision to extend the 2-year window as the defendants asked, as opposed to making the initial determination at the TC level? Under your argument, we would have to look at it in the latter scenario to be able to say the 2-year period would run under the TC's decision.

MOORE: I don't agree for two reasons. First, section 8(a) specifically provides that all licenses run 24 months from date of issuance. If the TC's decision has to be retroactive in some way, then the court's judgment could not have granted the 24-month license. And secondly, if the TC's judgment somehow is retroactive, it means that a bondsman who's renewal was erroneously turned down by the bail bond board was simply out of business for some period of time before the TC's judgment and could never recover that period of time.

HANKINSON: But if the statute provides for a renewal and the renewal runs from the date of expiration, then the expiration would be the key date wouldn't it under the statute as opposed to the date of the TC's judgment?

MOORE: Under normal circumstances a renewal would run from date of expiration. Of course, the application would be considered by the board prior to some renewal date. You have to file more than 30 days...

HANKINSON: And that's what the statute says.

MOORE: That's certainly what it contemplates.

HANKINSON: Well that's what it says doesn't it?

MOORE: It says 24 months from date of expiration or date of issuance. However, when an appeal takes place, there is inevitably some delay. And the statute 8(11) specifically provides that the decision of the bail bond board stays in force and effect while the appeal is pending.

BAKER: Which was for a 3-month extension. That's what their decision was.

MOORE: Their decision was not to renew the license after that 3-month period, or not to grant a renewal, period. So under the state of the record, this license expired in Nov. 1995, and there was no license in effect until the TC's judgment in August 1997.

GONZALES: What happens if the board got behind and couldn't act within the 30 days? Are there instances where renewals aren't issued in time and what do your clients do in that instance?

MOORE: We asked for a special meeting to have it reviewed before the expiration date of the prior license. From time to time we asked that a temporary license be issued if the delay was through no fault of our own. For example, if the bondsman just fails to file the renewal application

on time and the old license expired, Harris county said sorry, you go get a new license.

HANKINSON: Would you respond to the argument that this is a statutory scheme that contemplates continuity once an original license has been issued and then there are renewals at the end of each 2-year time period, and that that scheme as expressed in the statute then prevents the TC from jumping ahead and issuing a renewal for a time period that is not tacked on to the expiration in the previous?

MOORE: Well I would agree that the scheme and that the normal course of things contemplates an uninterrupted set of renewals every 2 years. When that is interrupted by a refusal to renew, however, and it goes up to the DC, that in and of itself provides a break. In our view, the court has to issue a license for 2 years from date of judgment.

OWEN: But didn't the legislature already decided that the other way? They said, if the board doesn't renew the license or that the board's decision remains in effect couldn't appeal. So haven't they already waived that and said in the interest of the public the risk of nonrenewal falls on the bondsman not on the public?

MOORE: If that were the case, then we would agree with the CA's decision that that's an absurd result. And that the legislature isn't presumed to have done something that's absurd...

OWEN: What's absurd about it? It may not be the call that you would make, but how can you say it's absurd?

MOORE: In this case, for example, we did not reach trial until 21 months after the board's decision below.

BAKER: Your fault or the TC?

MOORE: We were ready for trial whenever the court told us. We simply weren't reached.

OWEN: Did you ask for _____ setting or expedited consideration?

MOORE: We did not ask for expedited consideration. There was a temporary injunction in place that allowed my clients to continue to post bonds, not because they had a license, but because the bail bond board had agreed to this temporary injunction. But for that temporary injunction, however, my clients would have been shut down for those 21 months.

HANKINSON: The record that the TC is reviewing contains information about the financial condition of Allegheny in this case, the information relevant to the character of the agent, and so on as of the date the application was made for renewal. By the time this case was tried almost 21

months later, that information was no longer current. Don't we have a trial judge then making a decision to renew a license from that day forward based on old information if we accept your interpretation which completely undercuts the statutory scheme?

MOORE: We don't. The information that was before the TC was not only the contents of the written application, but oral testimony that updated that information. There were specific questions and testimony that Allegheny continued to be in good standing in every county. A number of counties in which it was licensed. The amount that Mr. Blackwood currently owed on the debt, which had dropped some \$125,000 during the pendency of the case.

HANKINSON: Then that goes back to the question that Judge O'Neill was talking about what's being reviewed. Are we reviewing the board's decision to not renew, or are we allowing the TC to just start over again and say let's treat this as an application for renewal as of 2 years later and we will go forward?

MOORE: In our view, the application before the TC is the application that was considered by the board...

HANKINSON: It's not if you're giving information that didn't even exist at the time the board made its decision.

MOORE: That happens in virtually every hearing held by a bail bond board. An application is filed on a certain day, and it may be considered by the board 30, 60, 90 days later. There's always some gap.

HANKINSON: I understand that. But I'm talking about giving this 2-year renewal scheme. And obviously what the legislature has done is decide we're not going to have long periods of time. We are going to keep track of the financial condition of bail bondsmen, so that we don't run into any kind of problem. And so that goes back to Judge O'Neill's question, then, again: What's being reviewed? If we're reviewing the bail bond board's decision, then why aren't we dealing with information as it existed at the time the bail board made its decision? Or, if we are throwing out everything that happened in considering the application in a different light with a completely different set of information, that makes it an entirely different proceeding doesn't it?

MOORE: I don't believe it does. It simply is an application that is being considered as of the time that the trial takes place in the TC.

ENOCH: I'm not really clear about the record before the TC. The statute requires 3 letters of recommendation to be a part of the application. It seems to me, you are relying on some concession by the board at the trial that they considered the application complete. You're relying on that in lieu of the record showing 3 letters of recommendation, correct?

MOORE: The documents in the record do not conclude those 3 letters. There was simply oral testimony that all the documents were there when it was submitted to the board.

ENOCH: I've heard actually three answers now. The first answer was, that there was testimony that Allegheny had submitted everything the board had requested, which is not the same thing as submitted what the statute requires. The second answer was that there was testimony that the documentation was complete. And now you're saying that there was testimony that the three letters were attached when it was given to the board. I'm now not clear.

MOORE: The specific testimony was that the application was complete and that all documents requested by the board were included with the application.

GONZALES: Did the application meet the statute? What you're saying is, the letters were there?

MOORE: That's correct.

GONZALES: I don't care what the board required. I want to know whether or not the application...

MOORE: Certainly the laundry list attached to the front of the application has everything that is required in the statute.

ENOCH: Then my next question will be, you're position is that this is a de novo before the TC. So in effect, we now produce the application for the TC which is required by statute, the TC then looks at the record and determines whether or not a license ought to be issued.

MOORE: Correct.

ENOCH: And the TC made a specific finding rather that the application was complete. The TC made a finding that there was no evidence that Mr. Blackwood was not financially irresponsible or something like that. It was kind of a reverse finding. If this is de novo under your argument, wouldn't we have to find that the application, not the oral testimony, required by the statute in this record is complete in order to enable the TC to render a decision renewing the license?

MOORE: First, the TC made a specific finding that the application was complete, that it complied in all respects with the law, that it was tendered within 30 days before with the appropriate _____.

ENOCH: And the record would have to demonstrate that?

MOORE: That's correct. And we've pointed out those parts of the record that do

support that. The court also made a specific finding that there had been no demonstration that Mr. Blackwood did not have the appropriate reputation for honesty and fair dealing. And that is also supported by the record.

ENOCH: Your burden is to show that you have the records of representation and that there is not a burden on the other side to prove that he doesn't?

MOORE: And the evidence shows that he had been a licensed bondsman for 15 years, that there was never any complaints, no financial problems other than nonpayment of that old debt, that there were no problems with Allegheny, no complaints with Allegheny, that it was financially strong.

HANKINSON: I'm confused again about what the review looks like. If on the one hand in the de novo review the TC is actually standing in the shoes of the bail bond board and making a decision about whether or not to renew, not reviewing the board's decision, then wouldn't we have to have a complete application with 3 letters of recommendation in the record in order to meet the requirements of the statute? If that's what the review is.

MOORE: If the laundry list of requirements is jurisdictional, if they are a bases for which the board or the TC on de novo review could say, No, we're not going to renew or, no, you need to supplement the record in order to get all those things there, then no.

HANKINSON: Because you say that what supports the TC's finding is testimony that the bail bond board had before it a complete application, which puts us back in the position of reviewing the bail bond board's decision as opposed to the TC actually make decision. I'm having a hard time squaring that.

MOORE: I _____ a fundamental question might be, Does the applicant have a requirement of filing a new application with the TC 30 days before any review by the TC of that application, or is the application to be reviewed by the TC the one that was presented and denied by the bail bond board?

HANKINSON: And if it's not complete in the record before the TC, then does the TC have any option about what it can do?

MOORE: It has an option - if the laundry list requirements in the act are not jurisdictional, if they are directory, if they are jurisdictional then clearly the TC or the bail bond board would have no authority to grant a license.

BAKER: What if they are not jurisdictional and we look at it as a matter of proof on a de novo trial. What is your burden?

MOORE: If they are not jurisdictional, then again, they were a basis by which the TC could say, No, I will not renew because you haven't met all of these requirements. Or the court could say, I'm going to continue this hearing...

BAKER: Isn't that what the de novo trial is for? Would you agree that the usual connotation of de novo is, that whatever the previous decision was it's set aside and the new tribunal is starting all over again and that there is jurisdiction to hear that because it's given to them and now somebody's got a burden to prove something one way or the other and the record is supposed to support it?

MOORE: Again if that laundry list of requirements is jurisdictional, we lose.

BAKER: No. That's exactly opposite of what I think is supposed to be going on in a de novo trial. You're there jurisdictionally because the legislature has given you or the board the authority to appeal. And so now you've got to do something to prove to this tribunal that you're entitled to have that application you originally filed granted. And so you've got a burden to say, I've met the statutory requirements. And the issue that both Justices Hankinson and O'Neill saying, Did you did that?

MOORE: We believe that we did...

BAKER: By the oral testimony?

MOORE: That's correct.

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REBUTTAL

LAWYER: An issue, which is extremely important for this court to consider is, one of the first questions this court asked, and that concerned the financial history of the bondsman. And why is that relevant? It's very relevant. And it's not just because we're trying to find out if this person is going to be able to secure the bonds, because obviously they're not the ones. But that goes to their competency. And competency is obviously something that the legislature intended us to consider because it's listed as something that has to be attested to in the 3 letters of recommendation. That was specifically shown not to be true.

ENOCH: Mr. Moore says there is testimony and from the board in this trial that the application was complete. And all we're doing is arguing over the fact that well the exhibits are missing pages. So should this case turn on the mere existence of missing pages, or do you take some other position about what happened to those two letters?

LAWYER: The issue about his financial history, the bondsman's lack of paying a debt

is a different question than letters of recommendation. That's another reason why it should have not been moot. But as to the letters of recommendation, it was their burden of proof to present a complete application because the act requires that the renewal license meet the same requirements as an original license which would require all of the things that is required under the act, which includes the 3 letters of recommendation. And we brought this up in our motion for new trial. The appellate court effectively found that it was waived because it wasn't _____ to that point. Why would it be our burden of proof to say something about it during the trial to help them win their case? I don't believe that there is any evidence that there were ever 3 letters of recommendation because they could have at the point we filed the motion for new trial said, Oops, I forgot to include them and ask for a new trial so they could produce them. But that did not occur. They were given an opportunity - they did not.

ENOCH: Do you agree that the record shows the board agreed that the application was complete when it was filed with the board?

LAWYER: I don't believe there is testimony from the board. I think there is testimony from their representatives that, Yes, I gave a complete application. And then the CA looks at the language on the cover page of the application that says, We will not accept it unless everything is there. Well just because it says that on the top cover doesn't mean that they were attached. And the TC had to make the decision whether everything was there that the act requires.

HANKINSON: Would you answer the question that Judge O'Neill posed earlier, and that is, what is the TC reviewing?

LAWYER: It's reviewing the decision of the board. And that's what the act says.

HANKINSON: If it's reviewing the decision of the board, then why is there evidence put on about the then current financial condition of the company or information about the current character references of the agent? Why would that be relevant to anything?

LAWYER: As to his competency, honesty or whatever, that evidence was presented to try to explain why the board shouldn't have made the decision it made.

PHILLIPS: Did the trial judge err in allowing any new evidence to come in? Should the trial judge have just read a typed up transcript of what happened in front of the bail board and then made a decision, or should the trial judge have heard something else?

LAWYER: I think that probably you are restricted to the application that was presented to the board. Because it's an administrative review, it's not going to have the same evidentiary concerns as you would have in a regular trial. And so the way it can be presented to a TC is going to be different than before an administrative board where of course _____ everything else is going to get in.

PHILLIPS: Did you make any objections to live witnesses being called at the TC?

LAWYER: No.

HANKINSON: Should the testimony have been allowed about the current financial condition, that is, the financial condition 21-months after the time that the bail bond board made its decision?

LAWYER: I don't think that there is - the testimony concerning Blackwood concerned the forfeitures that the judgements which were admitted in evidence were from 1991 and 1992. So those were the things that were considered. I think the reason the court was considering whether there had been any change is because equitably the court wanted to see the character of this agent at issue, because the board's reason for denying was because these 1991 - 1992 forfeitures had not been paid. And they were still not paid at time of trial.

HANKINSON: Again, this goes back to my earlier question about the scope of what's being reviewed. As I understand your argument, because of this 2-year rigid renewal continuity scheme that the legislature has set up anything with respect to events that occurred after the time the bail bond board made its decision wouldn't be relevant in the TC's decision would it?

LAWYER: No. Anything that was new as to evidence - in other words, as to whether their decision was correct anything new that would pertain to the decision they made at the time, true. But the way the evidence is presented is wholly different.

HANKINSON: I understand it's presented differently. But I'm trying to understand what would be the body of evidence that would be relevant to the issues before the TC. And your view is that new information would not be. Only information that could have been available to the bail bond...

LAWYER: Anything that would have been relevant to the board's decision at the time it made its decision.