

State of Missouri

**DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION**

IN RE:

David Anthony Dillard,

Applicant.

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Case No. 141020691C

**ORDER REFUSING TO ISSUE MOTOR VEHICLE
EXTENDED SERVICE CONTRACT PRODUCER LICENSE**

On December 29, 2014, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract producer license to David Anthony Dillard. 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 order:

FINDINGS OF FACT

1. David Anthony Dillard ("Dillard") is a Missouri resident with a residential address of 4324 Miletus Dr., Florissant, Missouri, 63033.
2. On February 4, 2014, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Dillard's Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. The "Attestation" section of the Application, states, in relevant part:
 1. I hereby certify, under penalty of perjury, that all of the information 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. Dillard accepted the "Attestation" section by signing the Application under oath before a notary public.
5. Background Question No. 4 of the Application asks, in relevant part: "Have you been notified by any jurisdiction to which you are applying of any delinquent tax obligation

that is not the subject of a repayment agreement?"

6. Dillard answered "No" in response to Background Question No. 4.
7. Contrary to Dillard's "No" answer to Background Question No. 4, the Consumer Affairs Division's ("Division") investigation revealed information indicating that Dillard had delinquent tax obligations to the State of Missouri from tax year 2007.
8. On April 2, 2012, the St. Louis County Circuit Court entered a judgment against Dillard upon the Department of Revenue's filing of a Certificate of Tax Lien, under § 143.902, for \$689.00 in unpaid taxes for tax year 2007. *Department of Revenue v. David A. Dillard*, St. Louis Co. Cir. Ct., 12SL-MC06670. The tax judgment remains unsatisfied.
9. Background Question No. 7 of the Application asks the following:

Do you have a child support obligation in arrearage?

If you answer yes:
(a) by how many months are you in arrearage? _____ months
(b) are you currently subject to and in compliance with any repayment agreement?
(c) are you the subject of a child support related subpoena/warrant? (If you answer yes, provide documentation showing proof of current payments or an approved repayment plan from the appropriate state child support agency.)
10. In response to Background Question No. 7, Dillard answered "No" that he does not have a child support obligation, but also made a note that stated verbatim: "The case has been dropped but it may show up on record can provide proof." (Triple underline appears in original.)
11. Contrary to his response, as of December 27, 2014:
 - a. Dillard is \$5,103.40 in arrears on the child support obligation ordered in *Beth Turner v. David Dillard*, Jefferson Co. Cir. Ct., Nos. 23CVAOF18408 and 23CVAOF18408-01 (Administrative Case No. 00149464; and
 - b. Dillard is \$20,553.90 in arrears child support obligation ordered in *State ex rel. Beth Neil v. Dillard*, St Louis Co. Cir. Ct., Case No. 2106FC-009394.
12. After reviewing Dillard's Application, Special Investigator Andrew Engler ("Special Investigator Engler") sent an inquiry letter to Dillard dated February 7, 2014. Said letter requested that Dillard provide the "current status of the lien along with evidence of a repayment arrangement and payment history." The letter further requested a response by February 27, 2014, and warned Dillard that a failure to respond could result in the Department refusing to issue him a motor vehicle extended service contract ("MVESC") producer license.

13. The United States Postal Service did not return the February 7, 2014 inquiry letter to the Division, and therefore it is presumed delivered.
14. Dillard failed to provide a written response to the Division's February 7, 2014 inquiry letter by February 27, 2014, and failed to demonstrate a reasonable justification for the delay.
15. On March 5, 2014, Special Investigator Engler sent a second inquiry letter to Dillard requesting the same information previously requested in the February 7, 2014 inquiry letter. The letter further requested a response by March 25, 2014, and warned Dillard that a failure to respond could result in the Department refusing to issue him a MVESC producer license.
16. The United States Postal Service did not return the March 5, 2014 inquiry letter to the Division, and therefore it is presumed delivered.
17. Dillard failed to respond to the Division's March 5, 2014 inquiry letter by March 25, 2014, and failed to demonstrate a reasonable justification for the delay.
18. Although Dillard stated on his Application that his child support case has been dropped but it may show up on his record but that he "can provide proof," when offered the opportunity by Special Investigator Engler, Dillard did not provide any further explanation or documentation to support his statement or his "No" response to Background Question No. 7.
19. It is inferable, and hereby found as fact, that Dillard failed to disclose his child support obligation and tax obligation on his Application in order to misrepresent to the Director that he had no child support or tax obligations, and accordingly, in order to improve the chances that the Director would approve his Application and issue him an MVESC producer license.

CONCLUSIONS OF LAW

20. Section 385.209 RSMo (Supp. 2014) provides, in relevant part:
 1. The director may suspend, revoke, refuse to issue, or refuse to renew a registration or license under sections 385.200 to 385.220 for any of the following causes, if the applicant or licensee or the applicant's or licensee's subsidiaries or affiliated entities acting on behalf of the applicant or licensee in connection with the applicant's or licensee's motor vehicle extended service contract program has:

* * *

- (2) Violated any provision in sections 385.200 to 385.220, or violated any rule, subpoena, or order of the director;

* * *

(3) Obtained or attempted to obtain a license through material misrepresentation or fraud;

* * *

(12) Failed to comply with an administrative or court order imposing a child support obligation; [or]

(13) Failed to comply with any administrative or court order directing payment of state or federal income tax[.]

21. Title 20 CSR 100-4.100(2)(A), Required Response to Inquiries by the Consumer Affairs Division, provides:

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.

22. "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. 2000) (internal citations omitted).

23. Just as the principal purpose of § 375.141, the insurance producer disciplinary statute, is not to punish licensees or applicants, but to protect the public, *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo. App. E.D. 1984), the purpose of § 385.209 is not to punish applicants for a motor vehicle extended service contract producer license, but to protect the public.

24. The Director may refuse to issue an MVESC producer license to Dillard under § 385.209.1(2) because Dillard failed to adequately respond to two inquiry letters from the Division and failed to provide a reasonable justification for the delay, thereby twice violating 20 CSR 100-4.100(2)(A), a department regulation.

25. Each violation of a department regulation is a separate and sufficient case for refusal pursuant to § 385.209.1(2).

26. The Director may refuse to issue an MVESC producer license to Dillard under § 385.209.1(3) because Dillard attempted to obtain an MVESC producer license through material misrepresentation or fraud by failing to disclose his outstanding tax obligation on his Application. *Department of Revenue v. David A. Dillard*, St. Louis Co. Cir. Ct., No. 12SL-MC06670.

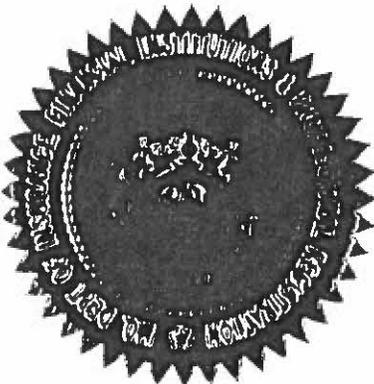
27. The Director may refuse to issue an MVESC producer license to Dillard under § 385.209.1(3) because Dillard attempted to obtain an MVESC producer license by stating on his Application that “the case has been dropped”, when in fact he owes over \$20,000.00 in child support arrears.
28. Each attempt to obtain an MVESC producer license through material misrepresentation or fraud is a separate and sufficient case for refusal pursuant to § 385.209.1(3).
29. Dillard may also be refused an MVESC producer license pursuant to § 385.209.1(12) because he failed to comply with administrative or court orders imposing child support obligations. *State ex rel. Beth Neil v. David Dillard*, St. Louis Co. Cir. Ct., No. 2106FC-009394; *Beth Turner v. David Dillard*, Jefferson Co. Cir. Ct., Nos. 23CVAOF18408 and 23CVAOF18408-01 (Administrative Case No. 00149464).
30. The Director may refuse to issue Dillard an MVESC producer license pursuant to § 385.209.1(13) because Dillard failed to comply with an administrative or court order directing payment of state income taxes. *Department of Revenue v. David A. Dillard*, St. Louis Co. Cir. Ct., No. 12SL-MC06670.
31. The Director has considered Dillard’s history and all of the circumstances surrounding his Application. Issuing Dillard an MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue Dillard an MVESC producer license.
32. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service producer license application of David Anthony Dillard is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 29th DAY OF DECEMBER, 2014.




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 30th day of December, 2014 a copy of the foregoing Order and Notice was served upon the Renewal Applicant by UPS, signature required, at the following address:

David Anthony Dillard
4324 Miletus Dr.
Florissant, MO 63033

Tracking No. 1Z0R15W84290233067



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