



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

DONALD J. LEE,

Applicant.

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Case No. 169584

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On March 8, 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 Donald J. Lee. 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. Donald J. Lee, ("Lee") is a Missouri resident with a residential address of record of 2 Cunningham Court, St. Charles, Missouri, 63301.
2. On January 20, 2012, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Lee's incomplete Application for Motor Vehicle Extended Service Contract Producer License ("Application"). On January 25, 2012, the Department's Licensing section requested additional work history information. On May 11, 2012, the Department received Lee's re-submitted Application with additional work history information.
3. The "Applicant's Certification and 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. Lee signed the Application in the "Applicant's Certification and Attestation" section

under oath before a notary.

5. Background Question No. 1 of the Application asks the following:

Have you ever been convicted of a crime, had a judgement withheld or deferred, or are you currently charged with committing a crime?

“Crime” includes a misdemeanor, felony or a military offense. You may exclude misdemeanor traffic citations or convictions involving driving under the influence (DUI) or driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license or juvenile offenses. “Convicted” includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere, or having been given probation, a suspended sentence or a fine.

“Had a judgement withheld or deferred” includes circumstances in which a guilty plea was entered and/or a finding of guilt is made, but imposition or execution of the sentence was suspended (for instance, the defendant was given a suspended imposition of sentence or a suspended execution of sentence—sometimes called an “SIS” or “SES”).

If you answer yes, you must attach to this application:

- a) a written statement explaining the circumstances of each incident,
- b) a copy of the charging document, and
- c) a copy of the official document which demonstrates the resolution of the charges or any final judgment[.]

6. Lee marked “No” to Question No. 1.

7. Background Question No. 7 of the Application asks the following:

7. Do you have a child support obligation in arrearage?

If you answer yes:

- a) by how many months are you in arrearage?
- 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.)

8. Lee answered “Yes” to Background Question No. 7 and indicated that he was three (3) months in arrearage.

9. Contrary to Lee’s “No” answer to Background Question No. 1, subsequent investigation revealed that on January 24, 2008, Lee pled guilty in the Circuit Court of St. Charles County to two Class B Felony counts of Distribution, Delivery, Manufacture or

Production of a Controlled Substance. *State v. Donald J. Lee*, St. Charles Co. Cir. Ct., No. 0611-CR03580-01. Lee was given a suspended imposition of sentence and five years' probation.

10. The Department's investigation also revealed that Lee had failed to comply with an April 11, 2008 order by the Director of the Family Support Division of the Missouri Department of Social Services to pay \$363 per month in child support.
11. Contrary to Lee's statement on his Application that he was only three (3) months in arrearage on that child support obligation, as of the date of his Application Lee owed \$10,447.72—approximately twenty-nine (29) months of arrearage.
12. On May 22, 2012, Department investigator Karen Crutchfield sent an inquiry letter to Lee, requesting explanation of the discrepancies between Lee's answers to Background Questions 1 and 7 and the facts discovered through investigation. Crutchfield sent the letter by regular mail to Lee's address of record, with sufficient postage attached.
13. Lee did not respond to Crutchfield's May 22, 2012 letter, nor did he demonstrate any reasonable justification for his failure to respond.
14. On June 14, 2012, Crutchfield sent a second inquiry letter to Lee, again requesting explanation of his answers to Background Questions 1 and 7 on his Application. Crutchfield sent the letter by regular mail to Lee's address of record, with sufficient postage attached.
15. Lee did not respond to Crutchfield's June 14, 2012 letter, nor did he demonstrate any reasonable justification for his failure to respond. To date, Lee has offered no explanation for his answers to Background Questions 1 and 7 on his Application.
16. As of the date the Director received the Petition from the Consumer Affairs Division, a D felony charge of Criminal Non-Support for Total Arrears in Excess of 12 Monthly Payments Due in child support was pending against Lee in the Circuit Court of St. Louis County. *State v. Donald J. Lee II*, St. Louis Co. Cir. Ct., 12SC-CR11715-01.

CONCLUSIONS OF LAW

17. Section 385.209 RSMo, Supp. 2012,¹ provides, in 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:

¹ Statutory references are to the 2012 version of the Revised Statutes of Missouri unless otherwise noted.

* * *

(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 [.]

18. Regulation 20 CSR 100-4.100(2) states:

(2) Except as required under subsection (2)(B)—

(A) 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.

(B) This rule shall not apply to any other statute or regulation which requires a different time period for a person to respond to an inquiry by the department. If another statute or regulation requires a shorter response time, the shorter response time shall be met. This regulation operates only in the absence of any other applicable laws.

19. 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.

20. Lee may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(12) because he has failed to comply with an administrative child support obligation, in that as of the date of his Application he was approximately twenty-nine (29) months in arrearage on a child support obligation ordered by the Director of the Family Support Division of the Missouri Department of Social Services. Lee is also currently being prosecuted in the Circuit Court of St. Louis County for his failure to

fulfill his child support obligation.

21. Lee may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(3) because he attempted to obtain a license through material misrepresentation or fraud. A guilty plea to a felony is a highly memorable event, which in Lee's case occurred a little less than four years before he submitted his Application with the response to Background Question No. 1 of the Application that he had not been convicted of a crime or had a judgment withheld or deferred. Background Question No. 1 of the Application clearly defined "convicted" and judgments "withheld or deferred" to include a suspended imposition of sentence. Additionally, the difference between three months of child support arrearage and twenty-nine months of child support arrearage is great, so that a misstatement of that magnitude is unlikely to be accidental. It is inferable that Lee intentionally misrepresented both of these items in an effort to improve his chances of being granted a license.
22. Lee may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(2) because he twice failed to respond to an inquiry from the Department's Division of Consumer Affairs. Lee's failures to respond violated 20 CSR 100-4.100(2), a rule of the Director.
23. The Director has considered Lee's history and all of the circumstances surrounding Lee's Application. Granting Lee a motor vehicle extended service contract producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue a motor vehicle extended service contract producer license to Lee.
24. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Donald J. Lee** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 12TH DAY OF MARCH, 2013.




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 14 day of March, 2013, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by regular and certified mail at the following address:

Donald J. Lee
2 Cunningham Court
St. Charles, Missouri 63301

Certified No. 7009341000019254 4805


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