



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

MATTHEW W. MCCREARY,

Applicant.

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Case No. 200778

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On December 19, 2013, 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 Matthew W. McCreary. 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. Matthew W. McCreary ("McCreary") is a Missouri resident with a residential address of record of 54 Haverford Court, St. Peters, Missouri, 63376.
2. On June 10, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received McCreary's Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. By signing the Application, McCreary attested and certified that "all of the information submitted in this application and attachments is true and complete."
4. 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[.]

- 5. McCreary marked "No" to Question No. 1.
- 6. McCreary did not disclose any criminal history in the Application.
- 7. Contrary to McCreary's "No" answer to Background Question No. 1, McCreary has been convicted of five misdemeanors:
 - a. On February 2, 2009, McCreary pleaded guilty in the Salt Lake City, Utah Circuit Court to the Class A Misdemeanor of Attempted Identity Fraud, in violation of Utah Code Ann. § 76-6-1102, and the Class A Misdemeanor Theft by Deception, More than \$300, Less than \$1000, in violation of Utah Code Ann. § 76-6-405. The court sentenced McCreary to 365 days in jail, but suspended execution of the sentence and placed McCreary on probation for 18 months.¹
 - b. Also on February 2, 2009, McCreary pleaded guilty in the Salt Lake City, Utah Circuit Court to the Class A Misdemeanor of Theft by Deception, More than \$300, Less than \$1000, in violation of Utah Code Ann. § 76-6-405. The court sentenced McCreary to 365 days in jail, but suspended execution of the sentence and placed McCreary on probation for 18 months and ordered McCreary to pay \$1,500 in restitution and a \$1,000 fine.²
 - c. On September 14, 2009, McCreary pleaded guilty in the Salt Lake City, Utah Circuit Court to the Class A Misdemeanor of Identity Fraud Utah Code Ann. § 76-6-1102 and the Class A Misdemeanor of Making a False Credit Report, in violation of Utah Code Ann. § 76-6-517. The court sentenced McCreary to one year in jail on each count, to be served concurrently, but suspended execution of the sentence and placed McCreary on probation for 24 months

¹ *State of Utah v. Matthew Wayne McCreary*, Salt Lake City, Utah Cir. Ct., No. 081907772.

² *State of Utah v. Matthew Wayne McCreary*, Salt Lake City, Utah Cir. Ct., No. 081908138.

and ordered McCreary to pay \$1,250.38 in restitution and to complete 40 hours of community service.³

8. It is inferable, and is hereby found as fact, that McCreary falsely answered "No" to Question No. 1, and failed to disclose in his Application his convictions of the Class A Misdemeanors of Attempted Identity Fraud, Theft by Deception and Making a False Credit Report, in order to misrepresent to the Director that he had no criminal history, and, accordingly, in order to improve the chances that the Director would approve his Application and issue him an MVEESC producer license.
9. According to the Information filed in No. 081907772, McCreary, while working at a payday loan business used the personal information of a customer of the business to secure a fraudulent loan in the amount of \$1,500, paying himself directly out of the cash register. The case was initiated by a district attorney in the state of Utah, and on both counts the court found McCreary guilty upon his plea of guilty.⁴
10. According to the Information filed in No. 081908138, McCreary purported to return a computer in a box to a Best Buy store in exchange for a refund of \$1,500, but the box contained a textbook instead of a computer.⁵
11. According to the Information filed in No. 091903553, McCreary used the social security number of his former roommate to obtain two store credit cards and used the cards to charge \$1,250 worth of merchandise. The case was initiated by a district attorney in the state of Utah, and on both counts the court found McCreary guilty upon his plea of guilty.⁶
12. McCreary's use of personal information to secure a fraudulent loan from a payday loan business involved the use of financial services, credit, banking, and/or finance and occurred during the course of doing business.
13. McCreary's theft by deceit in purporting to return a computer to a Best Buy store in exchange for a refund of \$1,500 occurred during the course of doing business.
14. McCreary's use of another's social security number to obtain store credit cards involved the use of financial services, credit, banking, and/or finance and occurred during the course of doing business.
15. On June 25, 2013, Consumer Affairs Division investigator Julie Hesser mailed McCreary a written inquiry, noting McCreary's "No" answer to Background Question No. 1, as well as the existence of criminal history McCreary should have disclosed in his Application, and requiring McCreary to submit a written statement explaining the circumstances of

³ *State of Utah v. Matthew Wayne McCreary*, Salt Lake City, Utah Cir. Ct., No. 091903553.

⁴ *State of Utah v. Matthew Wayne McCreary*, Salt Lake City, Utah Cir. Ct., No. 081907772.

⁵ *State of Utah v. Matthew Wayne McCreary*, Salt Lake City, Utah Cir. Ct., No. 081908138.

⁶ *State of Utah v. Matthew Wayne McCreary*, Salt Lake City, Utah Cir. Ct., No. 091903553.

each incident and explaining why McCreary failed to disclose his criminal history in his Application.

16. Hesser mailed the June 25, 2013 letter by first class mail, to McCreary's address of record, with sufficient postage attached.
17. The June 25, 2013 letter was not returned as undeliverable.
18. McCreary never responded to the June 25, 2013 letter and has not demonstrated any justification for his failure to respond.
19. On July 10, 2013, Consumer Affairs Division investigator Julie Hesser mailed McCreary a second written inquiry, again noting McCreary's "No" answer to Background Question No. 1, as well as the existence of criminal history McCreary should have disclosed in his Application, and again requiring McCreary to submit a written statement explaining the circumstances of each incident and explaining why McCreary failed to disclose his criminal history in his Application.
20. Hesser mailed the July 10, 2013 letter by first class mail, to McCreary's address of record, with sufficient postage attached.
21. The July 10, 2013 letter was not returned as undeliverable.
22. McCreary never responded to the July 10, 2013 letter and has not demonstrated any justification for his failure to respond.
23. On August 14, 2013, Consumer Affairs Division investigator Julie Hesser mailed McCreary a third written inquiry, again noting McCreary's "No" answer to Background Question No. 1, as well as the existence of criminal history McCreary should have disclosed in his Application, and again requiring McCreary to submit a written statement explaining the circumstances of each incident and explaining why McCreary failed to disclose his criminal history in his Application.
24. Hesser mailed the August 14, 2013 letter by first class mail, to McCreary's address of record, with sufficient postage attached.
25. The August 14, 2013 letter was not returned as undeliverable.
26. McCreary never responded to the August 14, 2013 letter and has not demonstrated any justification for his failure to respond.

CONCLUSIONS OF LAW

27. Section 385.209 RSMo, Supp. 2012, 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:

* * *

- (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;

* * *

- (6) Used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere; [or]

- (7) Been found in violation of law by a court of competent jurisdiction in an action instituted by any officer of any state or the United States in any matter involving motor vehicle extended service contracts, financial services, investments, credit, insurance, banking, or finance[.]

28. 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.

29. 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.
30. The Director may refuse to issue an MVESC producer license to McCreary under § 385.209.1(3) because McCreary attempted to obtain an MVESC producer license through material misrepresentation or fraud. McCreary falsely answered "No" to Question No. 1, and failed to disclose in his Application his convictions of the Class A Misdemeanors of Attempted Identity Fraud, Theft by Deception and Making a False Credit Report, in order to misrepresent to the Director that he had no criminal history, and, accordingly, in order to improve the chances that the Director would approve his Application and issue him an MVESC producer license.
31. The Director also may refuse to issue an MVESC producer license to McCreary under § 385.209.1(7) because McCreary has been found in violation of law by a court of competent jurisdiction in two actions instituted by officers of the state of Utah in matters involving financial services, credit, banking, and/or finance:
 - a. McCreary's use of personal information to secure a fraudulent loan from a payday loan business involved the use of financial services, credit, banking, and/or finance. The case was initiated by a district attorney in the state of Utah, and on both counts the court found McCreary guilty upon his plea of guilty.⁷
 - b. McCreary's use of another's social security number to obtain store credit cards involved the use of financial services, credit, banking, and/or finance and occurred during the course of doing business. The case was initiated by a district attorney in the state of Utah, and on both counts the court found McCreary guilty upon his plea of guilty.⁸
32. The Director also may refuse to issue an MVESC producer license to McCreary under § 385.209.1(6) because McCreary used fraudulent and dishonest practices, and demonstrated untrustworthiness and financial irresponsibility in the conduct of business in this state or elsewhere. McCreary dishonestly and untrustworthily used a customer's personal information to secure a fraudulent loan from the business at which he worked, which is, further, a financially irresponsible act. McCreary committed these acts in the course of doing business as an employee of the payday loan business.
33. The Director also may refuse to issue an MVESC producer license to McCreary under § 385.209.1(6) because McCreary used fraudulent and dishonest practices, and

⁷ *State of Utah v. Matthew Wayne McCreary*, Salt Lake City, Utah Cir. Ct., No. 081907772.

⁸ *State of Utah v. Matthew Wayne McCreary*, Salt Lake City, Utah Cir. Ct., No. 091903553.

demonstrated untrustworthiness and financial irresponsibility in the conduct of business in this state or elsewhere. McCreary dishonestly, fraudulently and untrustworthily purported to return a computer to a Best Buy store in exchange for a refund of \$1,500, placing a textbook in the box instead of a computer, which is, further, a financially irresponsible act. McCreary committed these acts in the course of doing business, in that the acts were integral to his purported refund transaction with the Best Buy store.

34. The Director also may refuse to issue an MVESC producer license to McCreary under § 385.209.1(6) because McCreary used fraudulent and dishonest practices, and demonstrated untrustworthiness and financial irresponsibility in the conduct of business in this state or elsewhere. McCreary dishonestly, fraudulently and untrustworthily used another's social security number to obtain store credit cards and used the cards to charge \$1,250 worth of merchandise, which are, further, financially irresponsible acts. McCreary committed these acts in the course of doing business, in that the acts were integral to his fraudulent transaction of applying for and obtaining the cards from each creditor issuing the cards, and his use of the charge cards was integral to his transaction(s) of purchasing the merchandise from one or more businesses.
35. The Director also may refuse to issue an MVESC producer license to McCreary under § 385.209.1(2) because McCreary violated a rule of the Director, in that he failed to adequately respond to three written inquiries from the Consumer Affairs Division—on June 25, 2013, July 10, 2013, and August 14, 2013—without demonstrating reasonable justification for any of his failures to respond, each time thereby violating regulation 20 CSR 100-4.100(2), which is a rule of the Director.
36. Refusal of McCreary's MVESC producer license is appropriate under any of the above-cited provisions, and all are bases for this Order. In particular, the facts underlying McCreary's criminal history strongly indicate that granting McCreary an MVESC producer license would unacceptably threaten the interest of the public. McCreary repeatedly took advantage of opportunities to appropriate and misuse the personal information of others—including a customer of one of his employers—for fraudulent purposes. MVESC producers are often entrusted with access to personal and financial information of consumers, potentially leaving consumers vulnerable to precisely the sorts of abuses that McCreary has proven willing to commit.
37. The Director has considered McCreary's history and all of the circumstances surrounding McCreary's Application. Granting McCreary an MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue an MVESC producer license to McCreary.

39. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Matthew W. McCreary** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 27TH DAY OF DECEMBER, 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 30th day of December, 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 addresses:

Matthew W. McCreary
54 Haverford Court
St. Peters, Missouri 63376

Certified No. 7009 3410 0001 9255 0752



Angie Gross
Senior Office Support Assistant
Agent Investigation Section
Missouri Department of Insurance, Financial
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