



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION

IN RE:)
)
 WILLIAM DAVID FINLEY, JR.,) Case No. 14-0815604C
)
 Applicant.)

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

On September 2, 2014, the Consumer Affairs Division (“Division”) submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract producer license to William David Finley, Jr. 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. William David Finley, Jr. (“Finley”) is a Missouri resident with a residential address of 425 Flowering Magnolia Drive, O’Fallon, Missouri 63366.
2. On December 9, 2013, the Department of Insurance, Financial Institutions and Professional Registration (“Department”) received an Application for Motor Vehicle Extended Service Contract Producer License (“Application”) from Finley.
3. The “Applicant’s Certification and Attestation” section of the Application states, in relevant part, as follows:

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. Finley signed the Applicant’s Certification and Attestation under oath and before a notary public.

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

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 and 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 finding of guilt was made, but imposition or execution of the sentence was suspended (for instance, the defendant was given a suspended imposition of sentence or 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 judgement[.]

6. Finley marked “No” in response to Background Question No. 1 and did not disclose any criminal convictions.

7. The Division investigated and discovered that Finley had various criminal convictions, both felony and misdemeanor, as follows:

- a) On October 29, 2010, Finley pled guilty to the Class D Felony of Driving While Intoxicated, in violation of §§ 577.010 and 577.023, RSMo Supp. 2013.¹ The court sentenced Finley to four years in the Department of Corrections, with execution of the sentence suspended, and five years of probation, to be served consecutively to his sentence in case number 1011-CR03658-01. The court also placed various other requirements on Finley, among them, to complete the Eleventh Circuit in-custody program and 60 days in the St. Charles County Jail. On September 1, 2011, Finley was terminated from the court program, and on March 6, 2012, the court revoked his probation. The court sentenced Finley to

¹ All further references are to RSMo Supp. 2013 unless otherwise indicated.

four years in the Department of Corrections, with a 120-day placement in the Institutional Treatment Program within the Department of Corrections. On April 23, 2014, the court received a probation violation report; the court has set the matter for a disposition hearing on September 23, 2014. *State v. William David Finley, Jr.*, St. Charles Co. Cir. Ct., Case No. 1011-CR01431-01.

b) On October 29, 2010, Finley pled guilty to the Class D Felony of Driving While Intoxicated, in violation of §§ 577.010 and 577.023. The court sentenced Finley to four years in the Department of Corrections, with execution of the sentence suspended, and five years of probation, to be served consecutively to his sentence in case number 1011-CR01431-01. The court also placed various other requirements on Finley, among them, to complete the Eleventh Circuit in-custody program and 60 days in the St. Charles County Jail. On March 6, 2012, the court revoked Finley's probation. The court sentenced Finley to four years in the Department of Corrections, with a 120-day placement in the Institutional Treatment Program within the Department of Corrections. On April 23, 2014, the court received a probation violation report; the court has set the matter for a disposition hearing on September 23, 2014. *State v. William Dave Finley*, St. Charles Co. Cir. Ct., Case No. 1011-CR03658-01.

c) On January 9, 2012, Finley pled guilty to the Class A Misdemeanors of Stealing, in violation of § 570.030, and Fraudulent Use of a Credit or Debit Device, in violation of § 570.130. The court sentenced Finley to 30 days in jail on each count, with credit for time served. *State v. William Dave Finley*, St. Charles Co. Assoc. Cir. Ct., Case No. 1111-CR00377.

8. According to the Information filed in *State v. William Dave Finley*, St. Charles Co. Assoc. Cir. Ct., Case No. 111-CR00377, Finley stole an Access card belonging to an individual named Kayla Jones and he used that Access card to obtain fast food, knowing that the device was stolen. An assistant prosecuting attorney for St. Charles County initiated the court case by filing the Information and the court found Finley guilty upon his plea of guilty.

9. On December 12, 2013, Andrew Engler ("Engler"), Special Investigator with the Division, sent a letter to Finley at the address he provided on his Application, via first class mail through the United States Post Office. Engler inquired regarding Finley's various convictions and why Finley failed to disclose them on his Application. Engler's letter was not returned to the Department as undeliverable.

10. On December 19, 2014, Finley called the Department to check on the status of his Application; he spoke with Engler. Finley indicated that he had not received Engler's letter yet, and asked what Engler's concerns were. Engler explained that the letter inquired about Finley's misdemeanor and felony convictions and why Finley failed to disclose them on his Application. Finley said that he had misunderstood the question

and thought that he could exclude all DWI convictions. Finley further stated that he thought that the misdemeanors had been removed from his record.

11. Engler told Finley that he needed to provide certified documents for his convictions and a written statement as to each one, explaining the circumstances surrounding the offenses. Finley indicated that he would provide the documents to Engler. To date, however, Finley has not done so.
12. It is inferable, and is hereby found as fact, that Finley falsely answered "No" to Background Question No. 1, and failed to disclose in his Application his convictions of the Class D Felony of Driving While Intoxicated and the Class A Misdemeanors of Stealing and Fraudulent Use of a Credit or Debit Device, 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.

CONCLUSIONS OF LAW

13. Section 385.209.1 provides, in relevant part:

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:

* * *

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

* * *

(5) Been convicted of any felony;

* * *

(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[.]

14. 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 motor vehicle extended service contract (“MVESC”) producer licenses, but to protect the public.
15. The Director may refuse to issue an MVESC producer license to Finley under § 385.209.1(3) because Finley attempted to obtain a license through material misrepresentation or fraud. In his Application, Finley answered “No” in response to Background Question No. 1 regarding criminal convictions. But the Division’s investigation revealed that Finley had several convictions, both felony and misdemeanor. In particular, Finley has been convicted twice of the Class D Felony of Driving While Intoxicated in violation of §§ 570.010 and 577.023. *State v. William David Finley, Jr.*, St. Charles Co. Cir. Ct., Case No. 1011-CR01431-01 and *State v. William Dave Finley*, St. Charles Co. Cir. Ct., Case No. 1011-CR03658-01. Finley has also been convicted of two Class A Misdemeanors – Stealing, in violation of § 570.030 and Fraudulent Use of a Credit or Debit Device, in violation of § 570.130. *State v. William Dave Finley*, St. Charles Co. Assoc. Cir. Ct., Case No. 1111-CR00377.
16. The failure to disclose each conviction constitutes a separate and sufficient ground for the Director to refuse to issue an MVESC producer license to Finley.
17. The Director may refuse to issue an MVESC producer license to Finley under § 385.209.1(5) because he has been twice convicted of a felony, specifically, the Class D Felony of Driving While Intoxicated. *State v. William David Finley, Jr.*, St. Charles Co. Cir. Ct., Case No. 1011-CR01431-01 and *State v. William Dave Finley*, St. Charles Co. Cir. Ct., Case No. 1011-CR03658-01.
18. Each felony conviction constitutes a separate and sufficient ground for the Director to refuse to issue an MVESC producer license to Finley.
19. The Director may refuse to issue an MVESC producer license to Finley under § 385.209.1(7) because Finley has been found in violation of law by a court of competent jurisdiction in an action instituted by an officer of the state of Missouri in matters involving financial services, credit, banking or finance. Finley’s use of a stolen Access card involved the use of financial services, credit, banking or finance. An assistant prosecuting attorney for St. Charles County initiated the case when she filed the Information and the court found Finley guilty upon his plea of guilty. *State v. William Dave Finley*, St. Charles Co. Assoc. Cir. Ct., Case No. 111-CR00377.
20. The above-described instances are grounds upon which the Director may refuse to issue an MVESC producer license to Finley. Finley has two felony convictions and two misdemeanor convictions – all of which he failed to disclose on his Application.

Finley told Engler that he was confused about the Application question and thought he could omit his DWI convictions. Even granting such alleged confusion regarding the Application's relatively straightforward language, Finley did not disclose his misdemeanor Stealing and Fraudulent Use convictions. Finley maintained to Engler that he thought that those misdemeanors were not on his record, but there is no reasonable basis for Finley to hold such a belief – he did jail time on both counts. Moreover, the felony convictions, by themselves, disqualify Finley from holding an MVESC producer license. Finally, Finley's conviction of the Class A Misdemeanor of Fraudulent Use of a Credit or Debit Device occurred in a court of competent jurisdiction and was instituted by a St. Charles County assistant prosecuting attorney – an officer of the state of Missouri. The crime involved financial services, credit, banking or finance and the court found Finley guilty upon his plea of guilty.

21. The Director has considered Finley's history and all of the circumstances surrounding Finley's Application. Granting Finley an MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion to refuse to issue an MVESC producer license to Finley.
22. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the MVESC producer license application of William David Finley, Jr., is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 10th DAY OF SEPTEMBER, 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 10th day of September, 2014, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, with signature required, at the following address:

William David Finley, Jr.
425 Flowering Magnolia Drive
O'Fallon, Missouri 63366

Tracking No. 1Z0R15W84297217205



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