FINAL ORDER EFFECTIVE 05-27-16

State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
ANTHONY ELIQUE ALBRITTON,	)	**Case No. 150821409C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On March 1, 2016, the Consumer Affairs Division submitted a Petition to the Director alleging cause to refuse to issue a motor vehicle extended service contract producer license to Anthony Elique Albritton. 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. Anthony Elique Albritton ("Albritton") is a Missouri resident with a residential address of record of 10807 White, Kansas City, Missouri 64134.

2. On November 14, 2014, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Albritton's Application for Motor Vehicle Extended Service Contract Producer License ("Application").

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.
>
> * * *
>
> 5. I further certify, under penalty of perjury, that a) I have no child support obligation, b) I have a child support obligation and I am currently in

compliance with that obligation, or c) I have a child support obligation that is in arrears, I am in compliance with a repayment plan to cure the arrears, and I have provided all information and documentation requested in Background Information Question 36.7.

4. On November 11, 2014, Albritton signed the "Applicant's Certification and Attestation" section of the Application under oath before a notary public.

5. Background Information Question No. 36.1 of the Application asked:

> Have you ever been convicted of a crime, had a judgment withheld or deferred, received a suspended imposition of sentence ("SIS") or suspended execution of sentence ("SES"), or are you currently charged with committing a crime?
>
> "Crime" includes a misdemeanor, felony, or a military offense. You may exclude any of the following if they are/were misdemeanor traffic citations or misdemeanors: driving under the influence (DUI), driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license. You may also exclude misdemeanor juvenile convictions.
>
> "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, having entered an Alford Plea, or having been given probation, a suspended sentence, or a fine.
>
> "Had a judgment withheld or deferred" includes circumstances in which a guilty plea was entered and/or a 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 a suspended execution of sentence – sometimes called an "SIS" or "SES").
>
> Unless excluded by the language above, you must disclose convictions that have been expunged.
>
> If you answer yes, you must attach to this application:
> a) a written statement explaining the circumstances of each incident,
> b) a certified copy of the charging document, and
> c) a certified copy of the official document which demonstrates the resolution of the charges or any final judgment.

6. Albritton answered "yes" in response to Background Information Question No. 36.1 on his Application.

7. Albritton submitted a letter explaining his response to Background Question No. 36.1. The letter stated, verbatim, in relevant part:

> I was convicted of Poss. of Maj. in 1995

8. An investigation conducted by the Consumer Affairs Division ("Division"), discovered the following criminal history:

   a. On June 19, 1996, Albritton pled guilty to Possession of Controlled Substance, a Class C Felony in violation of § 195.202, RSMo.[1] The court sentenced Albritton to three (3) years' incarceration but suspended the execution of his sentence, ordering three (3) years' probation. *State of Missouri v. Anthony E. Albritton*, Jackson Co. Cir. Ct., Missouri, CR95-6617.

   b. On April 26, 1996, Albritton pled guilty to Possession of Marijuana, (>5lbs - 50lbs), a Second Degree Felony. On April 23, 1998, the court sentenced Albritton to three (3) years' incarceration. *State of Texas v. Anthony Elique Albritton*, Denton Co. Dist. Ct., Texas, F-95-1321-D.

   c. On January 8, 1998, Albritton pled guilty and was convicted of Controlled Substance Crime in the Fifth Degree in violation of Minnesota Statutes, § 152.025 Subd. 2(1), and Subd. 3(b), a Felony. On March 27, 1998, the court sentenced Albritton to thirteen (13) months' incarceration but stayed the execution of his sentence, ordering one (1) year probation. *State of Minnesota v. Anthony Elique Albritton*, Freeborn Co. Dist. Ct., Minnesota, 24-K7-97-000499.

   d. On May 27, 1998, Albritton pled guilty to Assault, a Class A Misdemeanor. On May 28, 1998, the court sentenced Albritton to ninety (90) days' incarceration. *The State of Texas v. Anthony Albritton*, Dallas Co. Crim. Ct., Texas, MA-9628216-L.

   e. On December 17, 1999, Albritton pled guilty/no contest to Possession of Marijuana with Intent to Distribute, a Felony pursuant to 63 O.S. § 2-401. On February 18, 2000, the court sentenced Albritton to ten (10) years' incarceration. *State of Oklahoma v. Anthony Elique Albritton*, Noble Co. Dist. Ct., Oklahoma, CF-95-7B.

   f. On May 28, 2009, Albritton pled guilty to Stalking Enhanced, a Second Degree Felony in violation of Texas Penal Code § 42.072. On October 17, 2012, the court found Albritton guilty of Stalking, a Third Degree Felony, and sentenced Albritton to two (2) years' incarceration. *State of Texas v. Anthony Elique Albritton*, Dallas Co. Dist. Ct., Texas, F-0840517-M.

   g. On August 6, 2012, Albritton pled guilty to Possession of Up To 35 Grams Marijuana, a Class A Misdemeanor in violation of § 195.202 RSMo. The court sentenced Albritton to seven (7) days' incarceration. *State of Missouri v. Anthony E. Albritton*, Clay Co. Cir. Ct., Missouri, 12CY-CR03006.

9. It is inferable, and hereby found as fact, that Albritton failed to disclose the full extent of his criminal history in his letter explaining his response to Background Question No. 36.1 of the Application in order to misrepresent to the Director that his criminal history was limited to a single possession of marijuana offense in 1995, and consequently improve

[1] All criminal statutory references are to the version of the statute under which the court rendered its judgment.

the chances that the Director would approve his Application and issue him a motor vehicle extended service contract ("MVESC") producer license.

10. Background Information Question No. 36.4 of the Application asked:

> Have you failed to pay state or federal income tax?
>
> Have you failed to comply with an administrative or court order directing payment of state or federal income tax?
>
> Answer "Yes" if the answer to either question (or both) is "Yes."
>
> If you answer yes, you must attach to this application:
>
> a) a written statement explaining the circumstances of each administrative or court order,
> b) copies of all relevant documents (i.e. demand letter from the Department of Revenue or Internal Revenue Service, etc.),
> c) a certified copy of each administrative or court order, judgment, and/or lien, and
> d) a certified copy of the official document which demonstrates the resolution of the tax delinquency (i.e. tax compliance letter, etc.).

11. Albritton answered "yes" in response to Background Information Question No. 36.4 on his Application.

12. Albritton submitted a letter explaining his response to Background Question No. 36.4. The letter stated, verbatim, in relevant part:

> I hired a tax company to do my taxes in 2010 they failed to file my state tax. I have been in contact and lidigation [*sic*] with Mo. Revenue, I will call Mo Revenue on Nov. 12 to finalize[.]

13. During its investigation, the Division discovered that on January 24, 2014, the Jackson County Circuit Court entered a judgment against Albritton for unpaid state income tax for the 2009 filing year as follows:

> The Director of Revenue, under Section 143.902, RSMo, hereby certifies that the following assessment of tax, interest, additions to tax, penalties, and fees have been made and become final [in the amount of $1,002.30]. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.
>
> *Dep't of Revenue v. Anthony E. Albritton*, Jackson Co. Cir. Ct., Missouri, Case No. 1416-MC01854.

14. Albritton did not submit any documentation showing that the delinquency for the 2009 filing year has been satisfied or that he is in compliance with a payment plan.

15. Background Information Question No. 36.7 of the Application asked:

Do you currently have or have you had a child support obligation?

If you answer yes:

a) are you in arrearage?
b) by how many months are you in arrearage? _____months
c) what is the total amount of your arrearage? _____
d) are you currently subject to a repayment agreement to cure the arrearage? (if you answer yes, provide documentation showing an approved repayment plan from the appropriate state child support agency.)
e) are you in compliance with said repayment agreement? (If you answer yes, provide documentation showing proof of current payments from the appropriate state child support agency.)
f) 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.)
g) have you ever been convicted of a misdemeanor or felony for failure to pay child support?

16. Albritton answered "yes" in response to Background Information Question No. 36.7. Albritton responded to subpart "b)" by indicating that he was 12 months in arrears as of November 11, 2014, the date he certified the Application.

17. Albritton did not respond to subparts "a)," or "c)" through "g)" of Background Information Question No. 36.7.

18. During its investigation, the Division discovered that Albritton is subject to two (2) child support orders:

a. Albritton was ordered to pay $194.00 per month for the support of T. A. beginning January 1, 2013. The order specifies that "all payments of support, whether for current child support or the above granted judgments, shall be made to the Kansas Payment Center." *State of Kansas ex rel. Secretary Dep't for Children and Families, et al. v. Anthony Albritton,* Wyandotte Co. Dist. Ct., Kansas, Case No. WY12DM001934.

b. Albritton was ordered to pay $385.00 per month for the support of E. A. beginning November 1, 2006. *In the interest of E. T. A.*, Dallas Co. Dist. Ct., Texas, Cause No. 06163284.

19. Albritton did not submit any statement explaining his partial answer to Background Information Question No 36.7. Nor did Albritton provide any documentation indicating that he is in compliance with the administrative or court orders imposing child support obligations or that he has entered into a payment plan to cure his arrears.

20. As of January 7, 2016, the Wyandotte County District Court and the Kansas Payment Center had no record of any payments made in satisfaction of *State of Kansas ex rel. Secretary Dep't for Children and Families, et al. v. Anthony Albritton,* Wyandotte Co. Dist. Ct., Kansas, Case No. WY12DM001934.

21. Special Investigator Andrew Engler ("Engler"), sent an inquiry letter dated December 1, 2014 to Albritton's address of record on his application. This inquiry letter requested Albritton provide a statement explaining the circumstances surrounding his past criminal charges and convictions and that Albritton provide certified copies of court documents relating to each criminal matter. This inquiry letter cited 20 CSR 100-4.100 and informed Albritton "[f]ailure to respond could result in refusal to issue you a MVESC license."

22. The United States Postal Service did not return the December 1, 2014 inquiry letter to the Division as undeliverable, and therefore it is presumed received by Albritton.

23. Albritton failed to provide a written response to the Division's December 1, 2014 inquiry letter and failed to demonstrate a reasonable justification for the delay.

24. Engler sent another inquiry letter to Albritton, dated December 24, 2014. This inquiry letter requested Albritton provide a statement explaining the circumstances surrounding his past criminal charges and convictions and that Albritton provide certified copies of court documents relating to each criminal matter. This Inquiry again cited 20 CSR 100-4.100 and informed Albritton, "[f]ailure to respond could result in a refusal to issue your MVESC license."

25. The United States Postal Service did not return the December 24, 2014 inquiry letter to the Division as undeliverable, and therefore it is presumed received by Albritton.

26. Albritton failed to provide a written response to the Division's December 24, 2014 inquiry letter and failed to demonstrate a reasonable justification for the delay.

CONCLUSIONS OF LAW

27. Section 385.209[2] 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] All civil statutory references are to the Revised Statutes of Missouri (2000) as updated by the 2013 Supplement, unless otherwise indicated.

(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;

* * *

(5) Been convicted of any felony;

* * *

(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[.]

28. 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.

29. Section 143.902.1(2) provides, in relevant part:

> If any taxpayer fails to pay any tax, interest, additions to tax or penalties imposed by this chapter when due and the assessment for which has become final, the director may file ... [a] certificate of lien specifying the amount of the tax, interest, additions to tax and penalties due and the name of the liable taxpayer. ... From the time of the filing of the certificate of lien or certificate of delinquency with the clerk of the circuit court, the amount of the tax, interest, additions to tax and penalties specified therein shall have the full force and effect of a default judgment of the circuit court until satisfied.

30. "[A] default judgment for nonpayment of state income taxes [is] a 'court order directing payment of state ... income tax[]' ... under § 385.209.1(13)." *Greenwalt v. Director, Dep't of Ins., Fin. Insts. & Prof'l Reg.*, No. 12-0566 DI (Mo. Admin. Hrg. Comm'n July 9, 2012).

31. "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).

32. The Director may refuse to issue an MVESC producer license to Albritton pursuant to § 385.209.1(2) because Albritton failed to respond to two inquiries from the Division without demonstrating reasonable justification for his failure to respond, thereby violating 20 CSR 100-4.100(2), a rule of the Director.

33. Each instance in which Albritton violated a rule of the Director is a separate and sufficient cause for refusal pursuant to § 385.209.1(2).

34. The Director may refuse to issue an MVESC producer license to Albritton pursuant to § 385.209.1(3) because Albritton attempted to obtain an MVESC producer license through material misrepresentation or fraud when he failed to fully disclose the following criminal history:

    a. Possession of Marijuana, (>5lbs - 50lbs), a Second Degree Felony. *State of Texas v. Anthony Elique Albritton*, Denton Co. Dist. Ct., Texas, F-95-1321-D.

    b. Controlled Substance Crime in the Fifth Degree, a Felony. *State of Minnesota v. Anthony Elique Albritton*, Freeborn Co. Dist. Ct., Minnesota, 24-K7-97-000499.

    c. Assault, a Class A Misdemeanor. *The State of Texas v. Anthony Albritton*, Dallas Co. Crim. Ct., Texas, MA-9628216-L.

    d. Possession of Marijuana with Intent to Distribute, a Felony. *State of Oklahoma v. Anthony Elique Albritton*, Noble Co. Dist. Ct., Oklahoma, CF-95-7B.

    e. Stalking, a Third Degree Felony. *State of Texas v. Anthony Elique Albritton*, Dallas Co. Dist. Ct., Texas, F-0840517-M.

    f. Possession of Up To 35 Grams Marijuana, a Class A Misdemeanor. *State of Missouri v. Anthony E. Albritton*, Clay Co. Cir. Ct., Missouri, 12CY-CR03006.

35. The Director may refuse to issue an MVESC producer license to Albritton pursuant to § 385.209.1(5) because Albritton has been convicted of five felonies:

    a. Stalking, a Third Degree Felony. *State of Texas v. Anthony Elique Albritton*, Dallas Co. Dist. Ct., Texas, F-0840517-M.

    b. Controlled Substance Crime in the Fifth Degree, a Felony. *State of Minnesota v. Anthony Elique Albritton*, Freeborn Co. Dist. Ct., Minnesota, 24-K7-97-000499.

    c. Possession of Marijuana with Intent to Distribute, a Felony. *State of Oklahoma v. Anthony Elique Albritton*, Noble Co. Dist. Ct., Oklahoma, CF-95-7B.

    d. Possession of Controlled Substance, a Class C Felony. *State of Missouri v. Anthony E. Albritton*, Jackson Co. Cir. Ct., Missouri, CR95-6617.

    e. Possession of Marijuana, (>5lbs - 50lbs), a Second Degree Felony. *State of Texas v. Anthony Elique Albritton*, Denton Co. Dist. Ct., Texas, F-95-1321-D.

36. Each felony conviction is a separate and sufficient cause for refusal pursuant to § 385.209.1(5).

37. The Director may refuse to issue an MVESC producer license to Albritton pursuant to § 385.209.1(12) because Albritton failed to comply with one or more administrative or court orders imposing child support obligations:

    a. *State of Kansas ex rel. Secretary Dep't for Children and Families, et al. v. Anthony Albritton,* Wyandotte Co. Dist. Ct., Kansas, Case No. WY12DM001934.

    b. Upon information and belief, *In the interest of E. T. A.*, Dallas Co. Dist. Ct., Texas, Cause No. 06163284.

38. Each failure to comply with an administrative or court order imposing a child support obligation is a separate and sufficient cause for refusal pursuant to § 385.209.1(12).

39. The Director may refuse to issue an MVESC producer license to Albritton pursuant to § 385.209.1(13) because Albritton failed to comply with an administrative or court order directing payment of Missouri state income tax for the 2009 filing year. *Dep't of Revenue v. Anthony E. Albritton*, Jackson Co. Cir. Ct., Case No. 1416-MC01854.

40. The Director has considered Albritton's history and all of the circumstances surrounding his Application, and exercises his discretion to refuse to issue Albritton an MVESC producer license.

41. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that **Anthony Elique Albritton's** Motor Vehicle Extended Service Contract Producer License Application is hereby **REFUSED.**

SO ORDERED.

WITNESS MY HAND THIS 7th **DAY OF** March, **2016.**

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 8th day of March, 2016, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, Signature required, to the following address:

Anthony Elique Albritton
10807 White
Kansas City, Missouri 64134

Tracking No. 1Z0R15W84297491990

Kathryn Latimer
Paralegal
Missouri Department of Insurance, Financial
Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: 573.751.6515
Facsimile: 573.526.5492
Email: kathryn.latimer@insurance.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March, 2016, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by USPS, certified mail, to the following address:

Anthony Elique Albritton
10807 White
Kansas City, Missouri 64134

Certified No. 7012 3460 0002 8615 0515

Kathryn Latimer
Paralegal
Missouri Department of Insurance, Financial Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: 573.751.6515
Facsimile: 573.526.5492
Email: kathryn.latimer@insurance.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of April, 2016, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by USPS, certified mail, to the following address:

Anthony Elique Albritton
10807 White
Kansas City, Missouri 64134

Certified No. 7012 3460 0002 8615 0614

Kathryn Latimer
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Facsimile: 573.526.5492
Email: kathryn.latimer@insurance.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 2016, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by USPS, first class mail, to the following address:

Anthony Elique Albritton
10807 White
Kansas City, Missouri 64134

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