State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
AMBER MICHELLE WALLACE,	)	**Case No. 151209581C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On April 20, 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 Amber Michelle Wallace. 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. Amber Michelle Wallace ("Wallace") is a Missouri resident with a residential address of 1108 Mendoza Drive, St. Peters, Missouri 63376.

2. On January 3, 2012, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Wallace's Application for Motor Vehicle Extended Service Contract Producer License ("2012 Application").

3. On April 23, 2012, the Director of the Department issued an Order Refusing to Issue Motor Vehicle Extended Service Contract Producer License ("2012 Refusal Order") to Wallace. The Director found that grounds existed to refuse Wallace's 2012 Application pursuant to:

   a. Section 385.209.1(5)[1] because Wallace has been convicted of a felony: Forgery, a Class C Felony. *State v. Amber Michelle Wallace*, St. Charles Co. Cir. Ct., Case No. 0611-CR02294-01.

   In re: Amber M. Wallace, Order Refusing to Issue Motor Vehicle Extended Service Contract Producer License, Case No. 120313290C (April 23, 2012).

[1] All civil statutory references are to the Revised Statutes of Missouri (2000) as updated by the 2013 Supplement unless otherwise noted.

4. The 2012 Refusal Order included a Notice that provided instructions regarding filing a complaint with the Administrative Hearing Commission of Missouri ("Commission") within thirty (30) days. *Id.*

5. On April 24, 2012, the Department served Wallace with the 2012 Refusal Order via first class and certified mail. *Id.*

6. Wallace did not file a complaint with the Commission.

7. On October 2, 2015, the Department received Wallace's second Application for Motor Vehicle Extended Service Contract Producer License ("2015 Application").

8. The "Applicant's Certification and Attestation" section of the 2015 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.

9. Wallace accepted the "Applicant's Certification and Attestation" section by signing the 2015 Application under oath and before a notary public.

10. Background Question No. 1 of the 2015 Application asks:

> 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.

11. Wallace marked "Yes" to Background Question No. 1 on her 2015 Application and attached court records which revealed:

a. On May 1, 2006, Wallace pled guilty to Forgery, a Class C Felony, in violation of § 570.090.[2] The court suspended the imposition of sentence and ordered Wallace to complete five (5) years' probation. On December 12, 2011, the court revoked Wallace's probation, sentenced her to three (3) years' incarceration, but suspended the execution of sentence and ordered Wallace to complete three (3) years' supervised probation. On October 2, 2013, the court revoked Wallace's probation again and sentenced her to three (3) years' incarceration. *State v. Amber Michelle Wallace*, St. Charles Co. Cir. Ct., Case No. 0611-CR02294-01.

b. On November 4, 2013, Wallace pled guilty to and was convicted of Driving While Intoxicated – Persistent Offender, a Class D Felony, in violation of § 577.010. The court sentenced Wallace to three (3) years' incarceration, to be served concurrent with the sentence entered in case number 0611-CR02294-01. *State v. Amber Michelle Wallace*, St. Charles Co. Cir. Ct., Case No. 1311-CR03022-01.

12. Background Question No. 2 of the 2015 Application asks:

Have you ever been named or involved as a party in an administrative proceeding or action regarding any professional or occupational license or registration, or regarding the lack of such a licenses or registration?

"Involved" means having a license censured, suspended, revoked, canceled, terminated or being assessed a fine, a voluntary forfeiture, a cease and desist order, a prohibition order, a consent order, or being placed on probation. "Involved" also includes the act of surrendering a

[2] All criminal statutory references are to those contained in the version of the Revised Statutes of Missouri under which the court rendered judgment.

license to resolve an administrative proceeding or action. "Involved" also means being named as a party to an administrative or arbitration proceeding which is related to a professional or occupational license or is related to the lack of such license. "Involved" also means having a license application denied or the act of withdrawing an application to avoid a denial. You must INCLUDE any business so named because of your actions or because of your capacity as an owner, partner, officer, director, or member or manager of a Limited Liability Company. You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.

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

a) a written statement identifying the type of license and explaining the circumstances of each incident,
b) a copy of the Notice of Hearing or other document that states the charges and allegations, and
c) a certified copy of the official document which demonstrates the resolution of the charges and/or a final judgment.

13. Wallace answered "No" to Background Question No. 2 on her 2015 Application.

14. Contrary to Wallace's answer to Background Question No. 2 on her 2015 Application, on April 23, 2012, the Director issued an Order Refusing to Issue Motor Vehicle Extended Service Contract Producer License (previously introduced as "2012 Refusal Order") that refused Wallace's 2012 Application. *In re: Amber M. Wallace*, Order Refusing to Issue Motor Vehicle Extended Service Contract Producer License, Case No. 120313290C (April 23, 2012).

15. It is inferable, and hereby found as fact, that Wallace failed to disclose the 2012 Refusal Order in an attempt to convince the Director that she is a new applicant without a prior refusal, and therefore improve the chances that the Director would approve her 2015 Application and issue her a motor vehicle extended service contract ("MVESC") producer license.

CONCLUSIONS OF LAW

16. Section 385.209 states, 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:

* * *

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

* * *

> (5) Been convicted of any felony; [or]

* * *

> (9) Been refused a license or had a license revoked or suspended by a state regulator of service contracts, financial services, investments, credit, insurance, banking, or finance[.]

17. Collateral estoppel "is used to preclude the relitigation of an issue that already has been decided in a different cause of action." *Brown v. Carnahan*, 370 S.W.3d 637, 658 (Mo. banc 2012) (citation omitted).

18. The Director may refuse to issue a MVESC producer license to Wallace pursuant to § 385.209.1(3) because Wallace attempted to obtain a license through material misrepresentation or fraud when she failed to disclose the 2012 Refusal Order in response to Background Question No. 2 on her 2015 Application.

19. The Director may refuse to issue a MVESC producer license to Wallace pursuant to § 385.209.1(5) because, as found in the 2012 Refusal Order, Wallace has been convicted of a felony:

    a. Forgery, a Class C Felony. *State v. Amber Michelle Wallace*, St. Charles Co. Cir. Ct., Case No. 0611-CR02294-01.

20. The Director may refuse to issue a MVESC producer license to Wallace pursuant to § 385.209.1(5) because Wallace has been convicted of two (2) felonies:

    a. Forgery, a Class C Felony. *State v. Amber Michelle Wallace*, St. Charles Co. Cir. Ct., Case No. 0611-CR02294-01.

    b. Driving While Intoxicated – Persistent Offender, a Class D Felony. *State v. Amber Michelle Wallace*, St. Charles Co. Cir. Ct., Case No. 1311-CR03022-01.

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

22. The Director may refuse to issue a MVESC producer license to Wallace pursuant to § 385.209.1(9) because Wallace has been refused a license by a state regulator (the Director) of service contracts:

a. *In re: Amber M. Wallace*, Order Refusing to Issue Motor Vehicle Extended Service Contract Producer License, Case No. 120313290C (April 23, 2012) ("2012 Refusal Order").

23. The Director has considered Wallace's history and all of the circumstances surrounding Wallace's Application. Granting Wallace a MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue a MVESC producer license to Wallace.

24. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that **Amber Michelle Wallace's** application for a motor vehicle extended service contract producer license is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 20th **DAY OF** APRIL**, 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 21st day of April, 2016, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following address:

Amber Michelle Wallace
1108 Mendoza Drive
St. Peters, Missouri 63376

Tracking No. 1Z0R15W84299063752

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