State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
BRANDON J. CARTER,	)	**Case No. 150706357C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On October 22, 2015, 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 Brandon J. Carter. 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. Brandon J. Carter ("Carter") is a Missouri resident with a residential address of record of 7050 Julian Ave, St. Louis, Missouri 63130.

2. On August 13, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Carter's Application for Motor Vehicle Extended Service Contract Producer License ("2013 Application").

3. On March 3, 2014, the Director of the Department issued an Order Refusing to Issue Motor Vehicle Extended Service Contract Producer License ("2014 Refusal Order") to Carter. The Director found that grounds existed to refuse Carter's 2013 Application pursuant to § 385.209.1(2), (3), (5) and (12) RSMo (Supp. 2013)[1] as follows:

    a. Section 385.209.1(2) because Carter failed to adequately respond to three inquiries from the Consumer Affairs Division on August 21, 2013, September 10, 2013, and September 24, 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.

    b. Section 385.209.1(3) because Carter attempted to obtain a motor vehicle extended service contract ("MVESC") producer license through material misrepresentation or fraud when he falsely answered "No" to Background Question No. 1 and failed

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

to disclose his conviction of the Class C Felony of Stealing (Over $500) and his suspended imposition of sentence for the Class C Felony of Forgery.

c. Section 385.209.1(3) because Carter attempted to obtain a MVESC producer license through material misrepresentation or fraud when he falsely indicated in his Application that he owed only four months' worth of child support arrearages and that he was in compliance with a child support payment agreement.

d. Section 385.209.1(5) because Carter has been convicted of a felony: the Class C Felony of Stealing (over $500), in violation of § 570.030 RSMo.[2]

e. Section 385.209.1(12) because Carter has failed to comply with administrative and court orders imposing child support obligations, and as of the date of his application, Carter owed a total of $32,295.77 in arrearages on three separate child support obligations.

In re: Brandon Carter, Order Refusing to Issue Motor Vehicle Extended Service Contract Producer License, Case No. 203322 (March 3, 2014).

4. The 2014 Refusal Order included a Notice that provided instructions regarding filing a complaint with the Administrative Hearing Commission of Missouri ("Commission") within 30 days. *Id.*

5. On March 4, 2014, the Department served Carter with the 2014 Refusal Order via certified mail.

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

7. On March 27, 2015, the Department received Carter's 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.

* * *

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

5. I further certify, under penalty of perjury, that a) I have no child support obligation, b) I have a child support obligation that 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.

9. Carter signed the 2015 Application in the "Applicant's Certification and Attestation" section under oath and before a notary public.

10. During its investigation, the Consumer Affairs Division ("Division") of the Department discovered that the social security number Carter provided on his 2015 Application, 319-11-XXXX, does not match the social security number he provided on his 2013 Application, 498-66-XXXX.

11. During its investigation, the Division further discovered that the birthdates Carter provided on his 2015 Application and 2013 Application differed.

12. 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.

13. Carter marked "No" to Background Question No. 1.

14. Contrary to Carter's answer to Background Question No. 1 on his 2015 Application, the Division's investigation revealed the following criminal history that Carter failed to disclose:

a. On January 16, 2015, Carter pled guilty to two counts of Passing Bad Check - $500 or More - No Account/Insufficient Funds, a Class C Felony, in violation of § 570.120. The court sentenced Carter to seven years' incarceration on both counts, but suspended execution of both sentences and ordered Carter to serve 30 days' shock incarceration and 60 days' house arrest, and placed Carter on five years' supervised probation. *State v. Brandon J. Carter*, St. Louis Co. Cir. Ct., Case No. 13SL-CR12835-01.

b. On September 12, 2014, Carter pled guilty to Criminal Non-Support, a Class A Misdemeanor, in violation of § 568.040. The court suspended imposition of sentence, placed Carter on two years' supervised probation, and ordered Carter to pay $50.00 a month for the support of his child. *State v. Brandon J. Carter*, St. Louis Co. Cir. Ct., Case No. 13SL-CR12679-01.

c. On January 24, 2013, Carter pled guilty to Theft/Stealing (Value of Property or Services is $500 or More but Less than $25,000), a Class C Felony, in violation of § 570.030. The court sentenced Carter to five years' incarceration, but suspended execution of the sentence and ordered Carter to serve 120 days' home detention and five years' supervised probation. *State v. Brandon J. Carter*, St. Louis Co. Cir. Ct., Case No. 12SL-CR00550-01.

d. On June 24, 2011, Carter pled guilty to Forgery, a Class C Felony, in violation of § 570.090. The court suspended imposition of sentence, placed Carter on five years' supervised probation, and ordered Carter to pay $4,379.19 in restitution. *State v. Brandon J. Carter*, St. Louis Co. Cir. Ct., Case No. 08SL-CR00809-01.

15. 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 license 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 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.

16. Carter answered "No" to Background Question No. 2.

17. Contrary to Carter's answer to Background Question No. 2 on his 2015 Application, on March 3, 2014, the Director of the Department issued a Refusal Order to Carter after finding that grounds existed to refuse Carter's 2013 Application pursuant to § 385.209.1(2), (3), (5) and (12). *In re: Brandon Carter*, Order Refusing to Issue Motor Vehicle Extended Service Contract Producer License, Case No. 203322 (March 3, 2014) ("2014 Refusal Order").

18. Background Question No. 7 of the 2015 Application asks:

Do you have a child support obligation in arrearage?

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 subject to 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?

19. Carter answered "No" to Background Question No. 7.

20. Contrary to Carter's answer to Background Question No. 7 on his 2015 Application, the Division discovered three child support obligations in arrearage that Carter failed to disclose.

21. As of the date of his 2015 Application, Carter owed a total of $39,523.70 in arrears on his three separate child support obligations:

    a. Carter owed $49.65 in child support arrears to T.H. as of March 2015 when the Department received Carter's 2015 Application. Carter is obligated to pay $50.00 per month in child support. As of October 2015, Carter owed $397.21 in arrears. *State of Missouri, Div. of Child Support Enforcement v. Brandon J. Carter,* St. Louis Co. Cir. Ct., Case No. 2105FC-01395.

    b. Carter owed $21,197.11 in child support arrears to L.T. as of March 2015 when the Department received Carter's 2015 Application. Carter is obligated to pay $228.00 per month in child support. As of October 2015, Carter owed $21,862.70 in arrears. *State of Missouri, Family Support Div. v. Brandon J. Carter,* St. Louis Co. Cir. Ct., Case No. 0722-FC00696.

    c. Carter owed $18,276.94 in child support arrears to L.R. as of March 2015 when the Department received Carter's 2015 Application. Carter is obligated to pay $269.00 per month in child support. As of October 2015, Carter owed $19,872.33 in arrears. *State of Missouri, Div. of Family Services v. Brandon J. Carter,* St. Louis Co. Cir. Ct., Case No. 08SL-DR04925.

22. It is inferable, and hereby found as fact, that Carter failed to disclose his criminal history in response to Background Question No. 1 on his 2015 Application to misrepresent to the Director that he had no criminal history and to improve the likelihood that the Director would issue him a MVESC producer license.

23. It is inferable, and hereby found as fact, that Carter failed to disclose his three child support obligations and their arrearages in response to Background Question No. 7 on his 2015 Application to misrepresent to the Director that he had no child support obligations and to improve the likelihood that the Director would issue him a MVESC producer license.

24. Each of these inferences are further supported by the fact that Carter previously attempted to obtain a MVESC producer license through material misrepresentation or

fraud by failing to fully and truthfully disclose his criminal background and his history of failure to pay child support. *In re: Brandon Carter*, Order Refusing to Issue Motor Vehicle Extended Service Contract Producer License, Case No. 203322 (March 3, 2014).

25. It is also inferable, and hereby found as fact, that Carter listed an incorrect social security number and incorrect birthdate on his 2015 Application to misrepresent his identity to the Director in an attempt to conceal his criminal history and child support arrearages and therefore increase the likelihood that the Director would issue him a MVESC producer license.

26. It is further inferable, and hereby found as fact, that Carter failed to disclose the 2014 Refusal Order in response to Background Question No. 2 on his 2015 Application and intended to materially misrepresent his identity to the Director in order to convince the Director that he was a new applicant without the history of a previous refusal by the Director.

CONCLUSIONS OF LAW

27. Section 385.209 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:
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> * * *
>
> (2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;
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> (3) Obtained or attempted to obtain a license through material misrepresentation or fraud;
>
> * * *
>
> (5) Been convicted of any felony;
>
> * * *
>
> (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;

* * *

> (12) Failed to comply with an administrative or court order imposing a child support obligation[.]

28. Title 20 CSR 100-4.100(2)(A) states, in relevant part:

> 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. 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).

30. The Director may refuse to issue a MVESC producer license to Carter pursuant to § 385.209.1(2) because, as found in the 2014 Refusal Order, Carter failed to respond to three inquiries from the Division on August 21, 2013, September 10, 2013, and September 24, 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. *In re: Brandon Carter*, Order Refusing to Issue Motor Vehicle Extended Service Contract Producer License, Case No. 203322 (March 3, 2014).

31. The Director may refuse to issue a MVESC producer license to Carter pursuant to § 385.209.1(3) because, as found in the 2014 Refusal Order, Carter attempted to obtain a MVESC producer license through material misrepresentation or fraud when he falsely answered "No" to Background Question No. 1 on his 2013 Application and failed to disclose his conviction of the Class C Felony of Stealing (Over $500) and his suspended imposition of sentence for the Class C Felony of Forgery. *Id.*

32. The Director may refuse to issue a MVESC producer license to Carter pursuant to § 385.209.1(3) because, as found in the 2014 Refusal Order, Carter attempted to obtain a MVESC producer license through material misrepresentation or fraud when he falsely indicated in his 2013 Application that he owed only four months' worth of child support arrearages and that he was in compliance with a child support payment agreement. *Id.*

33. The Director may refuse to issue a MVESC producer license to Carter pursuant to § 385.209.1(5) because, as found in the 2014 Refusal Order, Carter has been convicted of a felony: the Class C Felony of Stealing (over $500), in violation of § 570.030. *Id.*

34. The Director may refuse to issue a MVESC producer license to Carter pursuant to

§ 385.209.1(12) because, as found in the 2014 Refusal Order, Carter failed to comply with administrative and court orders imposing child support obligations, and as of the date of his 2013 Application, Carter owed a total of $32,295.77 in arrearages on three separate child support obligations. *Id.*

35. The Director may refuse to issue a MVESC producer license to Carter pursuant to § 385.209.1(3) because Carter attempted to obtain a MVESC producer license through material misrepresentation or fraud when he provided an incorrect social security number and incorrect birthdate on his 2015 Application.

36. The Director may refuse to issue a MVESC producer license to Carter pursuant to § 385.209.1(3) because Carter attempted to obtain a MVESC producer license through material misrepresentation or fraud when he falsely answered "No" to Background Question No. 1 on his 2015 Application and failed to disclose the following criminal history:

    a. Passing Bad Check - $500 or More - No Account/Insufficient Funds, a Class C Felony. *State v. Brandon J. Carter*, St. Louis Co. Cir. Ct., Case No. 13SL-CR12835.

    b. Passing Bad Check - $500 or More - No Account/Insufficient Funds, a Class C Felony. *Id.*

    c. Criminal Non-Support, a Class A Misdemeanor (Suspended Imposition of Sentence). *State v. Brandon J. Carter*, St. Louis Co. Cir. Ct., Case No. 13SL-CR12679-01.

    d. Theft/Stealing (Value of Property or Services is $500 or More but Less than $25,000), a Class C Felony. *State v. Brandon J. Carter*, St. Louis Co. Cir. Ct., Case No. 12SL-CR00550-01.

    e. Forgery, a Class C Felony (Suspended Imposition of Sentence). *State v. Brandon J. Carter*, St. Louis Co. Cir. Ct., Case No. 08SL-CR00809-01.

37. The Director may refuse to issue a MVESC producer license to Carter pursuant to § 385.209.1(3) because Carter attempted to obtain a MVESC producer license through material misrepresentation or fraud when he falsely answered "No" to Background Question No. 2 on his 2015 Application and failed to disclose the 2014 Refusal Order. *In re: Brandon Carter*, Order Refusing to Issue Motor Vehicle Extended Service Contract Producer License, Case No. 203322 (March 3, 2014).

38. The Director may refuse to issue a MVESC producer license to Carter pursuant to § 385.209.1(3) because Carter attempted to obtain a MVESC producer license through material misrepresentation or fraud when he falsely answered "No" to Background Question No. 7 on his 2015 Application and failed to disclose his child support arrearages:

a. *State of Missouri, Div. of Child Support Enforcement v. Brandon J. Carter,* St. Louis Co. Cir. Ct., Case No. 2105FC-01395 (Arrearage of $49.65 when the Department received Carter's 2015 Application; Arrearage of $397.21 as of October 2015).

b. *State of Missouri, Family Support Div. v. Brandon J. Carter,* St. Louis Co. Cir. Ct., Case No. 0722-FC00696 (Arrearage of $21,197.11 when the Department received Carter's 2015 Application; Arrearage of $21,862.70 as of October 2015).

c. *State of Missouri, Div. of Family Services v. Brandon J. Carter,* St. Louis Co. Cir. Ct., Case No. 08SL-DR04925 (Arrearage of $18,276.94 when the Department received Carter's 2015 Application; Arrearage of $19,872.33 as of October 2015).

39. Each attempt to obtain a MVESC producer license through material misrepresentation or fraud is a separate and sufficient ground for refusal pursuant to § 385.209.1(3).

40. The Director may refuse to issue a MVESC producer license to Carter pursuant to § 385.209.1(5) because Carter has been convicted of three felonies:

a. Passing Bad Check - $500 or More - No Account/Insufficient Funds, a Class C Felony. *State v. Brandon J. Carter*, St. Louis Co. Cir. Ct., Case No. 13SL-CR12835.

b. Passing Bad Check - $500 or More - No Account/Insufficient Funds, a Class C Felony. *Id.*

c. Theft/Stealing (Value of Property or Services is $500 or More but Less than $25,000), a Class C Felony. *State v. Brandon J. Carter*, St. Louis Co. Cir. Ct., Case No. 12SL-CR00550-01.

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

42. The Director may refuse to issue a MVESC producer license to Carter under § 385.209.1(9) because Carter has been refused a license by a state regulator (the Director) of service contracts. *In re: Brandon J. Carter*, Order Refusing to Issue a Motor Vehicle Extended Service Contract Producer License, DIFP Case No. 203322 (March 3, 2014).

43. The Director may refuse to issue a MVESC producer license to Carter pursuant to § 385.209.1(12) because Carter failed to comply with three administrative or court orders imposing child support obligations:

a. *State of Missouri, Div. of Child Support Enforcement v. Brandon J. Carter,* St. Louis Co. Cir. Ct., Case No. 2105FC-01395 (Arrearage of $49.65 when the Department received Carter's 2015 Application; Arrearage of $397.21 as of

October 2015).

b. *State of Missouri, Family Support Div. v. Brandon J. Carter,* St. Louis Co. Cir. Ct., Case No. 0722-FC00696 (Arrearage of $21,197.11 when the Department received Carter's 2015 Application; Arrearage of $21,862.70 as of October 2015).

c. *State of Missouri, Div. of Family Services v. Brandon J. Carter,* St. Louis Co. Cir. Ct., Case No. 08SL-DR04925 (Arrearage of $18,276.94 when the Department received Carter's 2015 Application; Arrearage of $19,872.33 as of October 2015).

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

45. Since Carter did not appeal the 2014 Refusal Order, he is precluded from relitigating the 2014 Refusal Order which included findings of fact that Carter violated a rule of the Director when he failed to respond to three inquiries; attempted to obtain a MVESC producer license through material misrepresentation or fraud when he failed to disclose his felony conviction, felony suspended sentence, and the full extent of his child support arrearage; had been convicted of a felony; and failed to comply with three administrative or court orders imposing child support obligations.

46. The Director has considered Carter's history and all of the circumstances surrounding Carter's 2015 Application. Granting Carter 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 Carter.

47. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that **Brandon J. Carter's** motor vehicle extended service contract producer license application hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 23rd **DAY OF** October**, 2015.**

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 26th day of October 2015, a copy of the foregoing Order and Notice was served upon the Applicant by UPS, signature required, at the following address:

Brandon J. Carter
7050 Julian Ave
St. Louis, MO 63130

Tracking No. 1Z0R15W84298485852

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