State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
BEVERLY DENISE BRUCE,	)	**Case No. 150601315C**
	)	
Renewal Applicant.	)	

ORDER REFUSING TO RENEW MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On July 17, 2015, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to renew Beverly Denise Bruce's motor vehicle extended service contract producer license. 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. Beverly Denise Bruce[1] ("Bruce") is a Missouri resident with a residential address of 3756 Maquam, St. Charles, Missouri 63301 and a business address of 2544 Highway K, O'Fallon, Missouri 63368.[2]

2. On September 27, 2012, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Bruce's Application for Motor Vehicle Extended Service Contract Producer License ("2012 Application").

3. The "Applicant's Certification and Attestation" section of the 2012 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.

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[1] Also known as: Beverly Elliott, Beverly Moses, and Beverly Wallace.

[2] 2544 Highway K, O'Fallon, Missouri 63368 is the business address of AutoAssure, LLC. *See* ¶ 13, *infra*.

4. Bruce accepted the "Applicant's Certification and Attestation" section by signing the 2012 Application under oath and before a notary public.

5. Background Question No. 1 of the 2012 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), 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 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").

   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. Bruce answered "No" in response to Background Question No. 1 on her 2012 Application.

7. Relying on Bruce's representation on her 2012 Application, the Department issued Bruce a motor vehicle extended service contract ("MVESC") producer license (License No. 8230287) on October 1, 2012.

8. Bruce's MVESC producer license expired on September 30, 2014.

9. On February 18, 2015, the Department received Bruce's Application for Motor Vehicle Extended Service Contract Producer License Renewal ("Renewal Application").

10. The "Applicant's Certification and Attestation" section of the Renewal 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.

11. Bruce accepted the "Applicant's Certification and Attestation" section by signing the Renewal Application under oath and before a notary public.

12. Employment History Question No. 35 of the Renewal Application requests the following, in relevant part:

    Account for all time for the past five years. List all employment experience starting with your current employer working back five years.

13. In response to Employment History Question No. 35, Bruce indicated that she was employed as a "Sales Specialist" at AutoAssure, LLC in O'Fallon, Missouri from July, 2014 through the date she signed her Renewal Application, February 5, 2015.

14. AutoAssure, LLC, in O'Fallon, Missouri, is a MVESC business entity producer licensed by the Department to sell, offer, negotiate, or solicit motor vehicle extended service contracts.

15. Bruce held the position of "Sales Specialist" at AutoAssure, LLC with an expired MVESC producer license from October 1, 2014 until at least February 5, 2015.

16. Background Question No. 1 of the Renewal Application asks the following:

    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, which has not been previously reported to this insurance department?

    "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.

17. Bruce answered "No" in response to Background Question No. 1 on her Renewal Application.

18. During its investigation, the Consumer Affairs Division ("Division") of the Department discovered the following criminal history that Bruce failed to disclose on her 2012 Application and her Renewal Application:

    a. On January 7, 2008, Bruce pled guilty to Peace Disturbance, a Class B Misdemeanor, in violation of § 574.010 RSMo.[3] The court sentenced Bruce to pay a fine of $200.00. *State v. Beverly Elliott*, Warren Co. Cir. Ct., Case No. 07BB-CR01350.

    b. On March 11, 2011, Bruce pled guilty to DWI – Alcohol – Persistent Offender, a Class D Felony, in violation of § 577.010 RSMo. The court sentenced Bruce to three (3) years' incarceration, but suspended the execution of sentence and placed her on supervised probation for five (5) years. *State v. Beverly Denise Elliott*, St. Charles Co. Cir. Ct., Case No. 1011-CR05984-01.

19. After reviewing Bruce's Renewal Application and her criminal record, Special Investigator Andrew Engler of the Division sent an inquiry letter to Bruce dated March 25, 2015. This inquiry letter requested additional documentation and information about Bruce's criminal history and her failure to disclose it on her applications.

20. In response to Special Investigator Engler's inquiry letter, Bruce sent a letter that stated verbatim, in part:

> I was reading the question as asking if I did not report to your insurance dept. any convictions or crimes that had not been previously reported. I was renewing my license so I had reported my convictions on my previous application. So I apologize that I misunderstood it. I did report it on my previous application as far as the felony DWI's.

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

> As far as the peace disturbance, as I recall that was a domestic situation with my current boyfriend at the time which was reduced to a peace disturbance.
>
> Please accept this as not understanding the question there would be no reason that I would not disclose any information. Like I said I thought this was just a renewal and the information was already on file and revealed at that time.

21. Bruce's explanation that she had already disclosed her misdemeanor and felony convictions is not supported by her 2012 Application. On her 2012 Application, Bruce marked "no" in response to Background Question No. 1, indicating that she had not "been convicted of a crime." When Bruce submitted her 2012 Application she had been convicted of a misdemeanor Peace Disturbance and a felony DWI.

22. It is inferable, and hereby found as fact, that Bruce failed to disclose her criminal record on her 2012 Application and Renewal Application in order to misrepresent to the Director that she had no criminal history, and accordingly, in order to improve the chances that the Director would issue and renew her MVESC producer license.

23. It is further inferable, and hereby found as fact, that Bruce sold, offered, negotiated, or solicited motor vehicle extended service contracts to consumers without an MVESC producer license between the dates of October 1, 2014 and at least February 5, 2015.

CONCLUSIONS OF LAW

24. Section 385.209 RSMo (Supp. 2013)[4] states, in pertinent 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:
>
> > (1) Filed an application for license in this state within the previous ten years, which, as of the effective date of the license, was incomplete in any material respect or contained incorrect, misleading, or untrue information;
> >
> > (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;

[4] All statutory references are to the Revised Statues of Missouri (2000) as updated by the 2013 Supplement, unless otherwise indicated.

* * *

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

* * *

(11) Unlawfully acted as a producer without a license[.]

25. Section 385.206 provides, in part:

1. It is unlawful for any person in or from this state to sell, offer, negotiate, or solicit a motor vehicle extended service contract with a consumer, other than the following:

* * *

(6) A business entity producer or individual producer licensed under section 385.207[.]

26. Section 385.207 provides, in part:

* * *

3. An individual, prior to selling, offering, negotiating, or soliciting a motor vehicle extended service contract with a consumer under subdivision (6) of subsection 1 of section 385.206, shall apply for and obtain licensure with the director as an individual producer in accordance with this section.

* * *

6. A producer license issued under this section, if not renewed by the director by its expiration date, shall terminate on its expiration date and shall not after that date authorize its holder under sections 385.200 to 385.220 to sell, offer, negotiate, or solicit motor vehicle extended service contracts.

27. 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 MVESC producer license, but to protect the public.

28. The Director may refuse to renew Bruce's MVESC producer license pursuant to § 385.209.1(1) because Bruce filed an application for a license in this state within the previous ten years which, as of the effective date of the license, contained incorrect and misleading information in that Bruce failed to disclose the following misdemeanor and felony convictions in response to Background Question No. 1 on her 2012 Application:

a. Peace Disturbance, a Class B Misdemeanor, in violation of § 574.010 RSMo. *State v. Beverly Elliott*, Warren Co. Cir. Ct., Case No. 07BB-CR01350.

b. DWI – Alcohol – Persistent Offender, a Class D Felony, in violation of § 577.010 RSMo. *State v. Beverly Denise Elliott*, St. Charles Co. Cir. Ct., Case No. 1011-CR05984-01.

29. The Director may refuse to renew Bruce's MVESC producer license pursuant to § 385.209.1(2) because Bruce violated a provision in §§ 385.200 to 385.220, namely § 385.206.1(6), when she, in or from this state, unlawfully, sold, offered, negotiated, or solicited a motor vehicle extended service contract with a consumer during her employment with AutoAssure, LLC, between the dates of October 1, 2014 and at least February 5, 2015.

30. The Director may refuse to renew Bruce's MVESC producer license pursuant to § 385.209.1(3) because Bruce obtained a license through material misrepresentation or fraud when she failed to disclose the following misdemeanor and felony convictions on her 2012 Application:

a. Peace Disturbance, a Class B Misdemeanor, in violation of § 574.010 RSMo. *State v. Beverly Elliott*, Warren Co. Cir. Ct., Case No. 07BB-CR01350.

b. DWI – Alcohol – Persistent Offender, a Class D Felony, in violation of § 577.010 RSMo. *State v. Beverly Denise Elliott*, St. Charles Co. Cir. Ct., Case No. 1011-CR05984-01.

31. The Director may refuse to renew Bruce's MVESC producer license pursuant to § 385.209.1(3) because Bruce attempted to obtain a license through material misrepresentation or fraud when she failed to disclose the following misdemeanor and felony convictions on her Renewal Application:

a. Peace Disturbance, a Class B Misdemeanor, in violation of § 574.010 RSMo. *State v. Beverly Elliott*, Warren Co. Cir. Ct., Case No. 07BB-CR01350.

b. DWI – Alcohol – Persistent Offender, a Class D Felony, in violation of § 577.010 RSMo. *State v. Beverly Denise Elliott*, St. Charles Co. Cir. Ct., Case No. 1011-CR05984-01.

32. Each instance in which Bruce obtained or attempted to obtain a license through material misrepresentation or fraud is a separate and sufficient ground for refusal pursuant to § 385.209.1(3).

33. The Director may refuse to renew Bruce's MVESC producer license pursuant to § 385.209.1(5) because Bruce has been convicted of one (1) felony:

a. DWI – Alcohol – Persistent Offender, a Class D Felony, in violation of § 577.010

RSMo. *State v. Beverly Denise Elliott*, St. Charles Co. Cir. Ct., Case No. 1011-CR05984-01.

34. The Director may refuse to renew Bruce's MVESC producer license pursuant to § 385.209.1(11) because Bruce unlawfully acted as a producer without a license when she sold, offered, negotiated, or solicited a motor vehicle extended service contract with a consumer during her employment as a "Sales Specialist" at AutoAssure, LLC in O'Fallon, Missouri, specifically between the dates of October 1, 2014 and February 5, 2015.

35. The Director has considered Bruce's history and all of the circumstances surrounding her Application. Granting Bruce 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 Bruce.

36. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that **Beverly Denise Bruce's** motor vehicle extended service contract producer license application of is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 20th **DAY OF** July, **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 21st day of July, 2015, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by United Parcel Service, signature required, to the following address:

Beverly Denise Bruce
3756 Maquam
St. Charles, Missouri 63301

Tracking No. 1Z0R15W84296251009

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