State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
BRANDY LYNETTE JENKINS,	)	**Case No. 140815601C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On August 22, 2014, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract producer license to Brandy Lynette Jenkins. After reviewing the Petition and the Investigative Report, the Director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Brandy Lynette Jenkins ("Jenkins") is a Missouri resident with a residential address of record of 7491 Blanding, St. Louis, MO 63135.

2. On February 11, 2014, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Jenkins's Application for Motor Vehicle Extended Service Contract Producer License ("Application").

3. The Applicant's Certification and Attestation section of the Application, which Jenkins accepted by her notarized signature, provides, in relevant part:

> 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. Jenkins answered "No" to Background Information Question 33.1 of the Application which asks, in relevant part: "Have you ever been convicted of a crime, had a judgement withheld or deferred, or are you currently charged with committing a crime?"

5. Contrary to Jenkins's sworn representation in her Application, an investigation by the

Consumer Affairs Division ("Division") of the Department revealed that on February 16, 2010, Jenkins had pled guilty to and was convicted of Stealing, a Class A Misdemeanor, in violation of § 570.030, RSMo. (Supp. 2009). The court sentenced Jenkins to two (2) years' imprisonment, but suspended the execution of sentence and placed her on two (2) years' probation. *State v. Brandy L. Jenkins*, St. Louis Co. Cir. Ct., Case No. 09SL-CR06837-01.

6. Special Investigator Andrew P. Engler ("Special Investigator Engler") with the Division mailed an inquiry letter dated February 21, 2014 by first class mail, postage prepaid, to Jenkins ("inquiry letter"). The inquiry letter requested "a statement explaining the circumstances surrounding the conviction and why [Jenkins] failed to disclose it on [her] application… [and] a certified copy of the Information, Complaint, or other charging documents[.]" The inquiry letter further requested a response by March 13, 2014, and warned that "[f]ailure to respond could result in a refusal to issue [Jenkins a] MVESC license."

7. The inquiry letter was mailed to the address in paragraph 1, which Jenkins provided on her Application. The United States Postal Service did not return the inquiry letter to the Division as undeliverable.

8. Jenkins did not respond to the inquiry letter by March 13, 2014, nor did she demonstrate a reasonable justification for the delay.

9. Special Investigator Engler mailed a follow-up inquiry letter dated March 18, 2014 by first class mail, postage prepaid, to Jenkins ("follow-up inquiry letter"). The follow-up inquiry letter contained substantially the same information as the inquiry letter, but additionally made reference to the inquiry letter and the response time specified therein. The follow-up inquiry letter requested a reply by April 7, 2014 and warned that "[f]ailure to respond could result in a refusal to issue [Jenkins a] MVESC license."

10. The follow-up inquiry letter was mailed to the address Jenkins provided on her Application. The United States Postal Service did not return the follow-up inquiry letter to the Division as undeliverable.

11. Jenkins never responded to the follow-up inquiry letter or demonstrated a reasonable justification for the delay.

CONCLUSIONS OF LAW

12. Section 385.209.1, RSMo. (Supp. 2013)[1] provides, in relevant part:

[1] All statutory references are to the 2000 Missouri Revised Statutes, as updated by the 2013 RSMo. Supplement, unless otherwise noted.

> 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) Violated any provision in sections 385.200 to 385.220, or violated any rule, subpoena, or order of the director; [or]
>
> (3) Obtained or attempted to obtain a license through material misrepresentation or fraud[.]

13. Title 20 CSR 100-4.100(2)(A) provides, 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.

14. "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. E.D. 2000) (internal citation omitted).

15. 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 motor vehicle extended service contract ("MVESC") producer license, but to protect the public.

16. The Director may refuse to issue Jenkins a MVESC producer license under § 385.209.1(2) because Jenkins failed to respond to the inquiry letter and follow-up inquiry letter from the Division and failed to provide reasonable justification for the delays, thereby twice violating 20 CSR 100-4.100(2)(A), a Department regulation.

17. Each instance in which Jenkins failed to respond adequately to the inquiry letter or follow-up inquiry letter is a violation of 20 CSR 100-4.100(2)(A), and each violation of a Department regulation constitutes a separate and sufficient cause for refusal under § 385.209.1(2).

18. The Director may refuse to issue Jenkins a MVESC producer license under

§ 385.209.1(3) because Jenkins attempted to obtain a MVESC producer license through material misrepresentation or fraud when she falsely answered "No" to Background Information Question 33.1 of her Application in order to misrepresent to the Director that she had no criminal history, in particular a conviction for stealing, and, accordingly, to improve the chance that the Director would approve her Application and issue Jenkins a MVESC producer license.

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

20. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Brandy Lynette Jenkins** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 29th **DAY OF** AUGUST**, 2014.**

JOHN M. HUFF
DIRECTOR

NOTICE

TO: Applicant and any unnamed persons aggrieved by this Order:

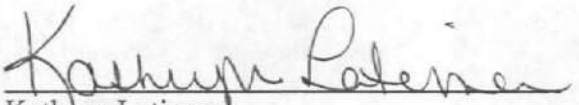
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send 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 2nd day of September, 2014, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required service, at the following address:

Brandy Lynette Jenkins
7491 Blanding Drive
Ferguson, Missouri 63135-3447

No. 1Z0R15W84293714292



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