



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION

IN RE:

BENJAMIN T. WILSON,

Applicant.

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Case No. 201115

**ORDER REFUSING TO ISSUE MOTOR VEHICLE
EXTENDED SERVICE CONTRACT PRODUCER LICENSE**

On December 19, 2013, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract (MVESC) producer license to Benjamin T. Wilson. 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. Benjamin T. Wilson ("Wilson") is a Missouri resident with a residential address of record of 1776 Parr Road, Wentzville, Missouri, 63385.
2. On June 7, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Wilson's Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. Background Question No. 1 of the 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) or driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license or 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 is 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[.]
4. Wilson answered “No” to Question No. 1. Wilson did not disclose any criminal history in his Application.
 5. Contrary to Wilson’s “No” answer to Question No. 1, the Consumer Affairs Division’s investigation of Wilson’s Application revealed that Wilson had been convicted of a felony and a misdemeanor:
 - a. On June 15, 2007, Wilson pleaded guilty in the St. Charles County Circuit Court to the Class C Felony of Stealing, in violation of § 570.030.¹ The court suspended the imposition of sentence and placed Wilson on five years’ probation. On March 4, 2009, the court continued Wilson’s probation but ordered him to serve 120 days’ shock incarceration. On May 3, 2012, the court revoked Wilson’s probation and sentenced Wilson to seven years’ imprisonment, but suspended execution of the sentence and placed Wilson on five years’ probation.²
 - b. On November 3, 2008, Wilson pleaded guilty in the St. Charles County Circuit Court to the Class A Misdemeanor of Possession of a Controlled Substance, in violation of § 195.202. The court sentenced Wilson to 90 days’ confinement in county detention, but suspended execution of the sentence and placed Wilson on two years’ probation. On September 29, 2010, the court terminated Wilson’s probation and executed the sentence, crediting Wilson for time served in his shock incarceration in No. 0611-CR07555-01.³
 6. On June 12, 2013, Consumer Affairs Division investigator Karen Crutchfield mailed an inquiry letter to Wilson, requesting an explanation of Wilson’s “No” answer to Background Question No. 1 in light of his convictions in case numbers 0611-CR07555-01 and 0711-CR08028, requesting a detailed explanation of the crime and the circumstances surrounding it, and requesting certified copies of court documents related to the convictions.
 7. Crutchfield mailed the June 12, 2013 letter by first class mail, to Wilson’s address of

¹ References to criminal statutes are to the versions of the Revised Statutes of Missouri under which the relevant judgment was entered.

² *State of Missouri v. Benjamin Thomas Wilson*, St. Charles Co. Cir. Ct., No. 0611-CR07555-01.

³ *State of Missouri v. Benjamin Thomas Wilson*, St. Charles Co. Cir. Ct., No. 0711-CR08028.

record, with sufficient postage attached.

8. The June 12, 2013 letter was not returned as undeliverable.
9. Wilson failed to adequately respond to the June 12, 2013 letter and has not demonstrated any justification for his failure to adequately respond.
10. On July 5, 2013, Crutchfield mailed a second inquiry letter to Wilson, again requesting an explanation of Wilson's "No" answer to Background Question No. 1 in light of his convictions in case numbers 0611-CR07555-01 and 0711-CR08028, requesting a detailed explanation of the crime and the circumstances surrounding it, and requesting certified copies of court documents related to the convictions.
11. Crutchfield mailed the July 5, 2013 letter by first class mail, to Wilson's address of record, with sufficient postage attached.
12. The July 5, 2013 letter was not returned as undeliverable.
13. On July 30, 2013, Crutchfield received an emailed response from Wilson. In it, Wilson apologized for not disclosing his criminal history in his Application, stating that he "misunderstood what was being requested of me and should have asked for an explanation to clarify what was needed."
14. Regarding the Class C Felony Stealing conviction, Wilson's July 30, 2013 emailed response described it as stemming from an incident in which Wilson attempted to forestall a fight between his friends and another person by asking that person to give Wilson \$20.00 to give to Wilson's friends to "diffuse the situation." According to Wilson, after the victim gave him the money, the victim thanked Wilson, and later appeared in court on Wilson's behalf "to try to have the charges against [Wilson] dropped" and "gave a statement that [Wilson] had helped him out of the situation."
15. According to the Amended Information filed in the Class C Felony Stealing case, Wilson "appropriated a wallet by physically taking it from the person of [the victim] . . . without the consent of [the victim] and with the purpose to deprive him thereof."
16. Regarding the Class A Misdemeanor Possession of a Controlled Substance conviction, Wilson's emailed response explained that he was pulled over while driving, the police officer smelled marijuana in the vehicle, searched the vehicle and found "a small bag with some marijuana in it as well as what [Wilson] used to smoke it with."
17. In the July 30, 2013 emailed response, Wilson further stated, in part, verbatim:

I am well aware that I have made bad choices at such a young age, but am simply trying to keep myself on a good path now. I have been through a substance abuse program, and have been sober now for almost a year! I am very proud of that fact, and have a great job opportunity with United Auto Protection. I know that I

have made bad decisions that have cost me greatly. I humbly ask you to give me the chance to improve myself. It would mean a great deal to me to have this job.

18. Wilson did not attach copies of any of the requested certified copies of court documents related to the conviction Crutchfield requested in her June 12, 2013 and July 5, 2013 written inquiries.
19. After receiving Wilson's July 30, 2013 emailed response, Crutchfield spoke to Wilson by phone and reminded Wilson that in order to adequately respond to her written inquiries he needed to provide the requested certified copies of court documents related to his convictions.
20. On August 22, 2013, Crutchfield followed up the July 30, 2013 phone call with another written inquiry, in which Crutchfield reminded Wilson that he had not yet adequately responded to her written inquiries, and in which she again requested the certified copies of court documents related to the convictions, reminded Wilson that he also had the opportunity to submit any other additional information he felt would help demonstrate that he should receive a license, and warned Wilson that "this is your last chance. If I do not receive the certified documents and/or additional information from you by September 11, 2013, I will recommend refusal based in part on your failure to adequately respond to an inquiry from the Division of Consumer Affairs."
21. Crutchfield mailed the August 22, 2013 letter by first class mail, to Wilson's address of record, with sufficient postage attached.
22. The August 22, 2013 letter was not returned as undeliverable.
23. Wilson never responded to the August 22, 2013 letter and has not demonstrated any justification for his failure to respond.
24. Wilson never provided Crutchfield with any certified copies of any court documents related to his convictions. Wilson has not demonstrated any reasonable justification for his failure to ever provide the requested certified copies of court documents related to his convictions.
25. Wilson's explanation that he answered "No" to Question No. 1 and failed to disclose his convictions of the Class C Felony of Stealing and the Class A Misdemeanor of Possession of a Controlled Substance in his Application because he "misunderstood what was being requested" is not credible. The language of Question No. 1 is clear in calling for a "Yes" answer based on Wilson's criminal history. As Wilson himself admits, if he had any doubt about how to respond to the question, he could have contacted the Department for assistance.
26. It is inferable, and is hereby found as fact, that Wilson falsely answered "No" to Question No. 1 and failed to disclose his convictions of the Class C Felony of Stealing and the Class A Misdemeanor of Possession of a Controlled Substance in his Application in order

to misrepresent to the Director that he had no criminal history, and, accordingly, in order to improve the chances that the Director would approve his Application and issue him an MVESC producer license.

CONCLUSIONS OF LAW

27. Section 385.209 RSMo, Supp. 2012, 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:

* * *

(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[.]

28. Regulation 20 CSR 100-4.100(2) states:

(2) Except as required under subsection (2)(B)—

(A) 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.

(B) This rule shall not apply to any other statute or regulation which requires a different time period for a person to respond to an inquiry by the department. If another statute or regulation requires a shorter response time, the shorter response time shall be met. This regulation operates only in the absence of any other applicable laws.

29. Regulation 20 CSR 100-4.010(1)(A) defines "adequate response," including for purposes of 20 CSR 100-4.100(2), as (emphasis added):

[A] written response answering **each inquiry** with reasonable specificity. A person's acknowledgment of the division's inquiry is not an adequate response.

30. 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 producer license, but to protect the public.
31. The Director may refuse to issue an MVESC producer license to Wilson under § 385.209.1(5) because Wilson has been convicted of a felony:
 - a. The Class C Felony of Stealing, in violation of § 570.030.⁴
32. The Director also may refuse to issue an MVESC producer license to Wilson under § 385.209.1(3) because Wilson attempted to obtain an MVESC producer license through material misrepresentation or fraud. Wilson falsely answered "No" to Question No. 1 and failed to disclose his convictions of the Class C Felony of Stealing and the Class A Misdemeanor of Possession of a Controlled Substance in his Application in order to misrepresent to the Director that he had no criminal history, and, accordingly, in order to improve the chances that the Director would approve his Application and issue him an MVESC producer license.
33. The Director also may refuse to issue an MVESC producer license to Wilson under § 385.209.1(2) because Wilson violated a rule of the Director, in that he failed to adequately respond to three written inquiries from the Consumer Affairs Division—mailed on June 12, 2013, July 5, 2013, and August 22, 2013—without demonstrating reasonable justification for any of his failures to adequately respond, each time thereby violating regulation 20 CSR 100-4.100(2), which is a rule of the Director. Although Wilson made a partial response to the July 5, 2013 written inquiry by emailing a written response on July 30, 2013, he failed to provide any certified copies of any court documents related to his convictions, as requested in the July 5, 2013 written inquiry as well as in the June 12, 2013 and August 22, 2013 written inquiries.
34. The Director has considered Wilson's history and all of the circumstances surrounding Wilson's Application. Granting Wilson an 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 Wilson.

⁴ *State of Missouri v. Benjamin Thomas Wilson*, St. Charles Co. Cir. Ct., No. 0611-CR07555-01.

35. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Benjamin T. Wilson** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 27th DAY OF DECEMBER, 2013.



A handwritten signature in black ink, appearing to read "John M. Huff", is written over a horizontal line.

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 30th day of December, 2013, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by regular and certified mail at the following addresses:

Benjamin T. Wilson
1776 Parr Road
Wentzville, Missouri 63385

Certified No. 7009 3410 0001 9254 6724



Angie Gross
Senior Office Support Assistant
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