



**DEPARTMENT OF INSURANCE, FINANCIAL
INSTITUTIONS AND PROFESSIONAL REGISTRATION**

P.O. Box 690, Jefferson City, Mo. 65102-0690

In the Matter of:

DEREK BALLANCE,

Respondent.

)
)
)
)
)

Case No. 172105

CONSENT ORDER

John M. Huff, Director of the Department of Insurance, Financial Institutions and Professional Registration takes up the above matter for consideration and disposition. The Consumer Affairs Division, through counsel Andy Heitmann, and Derek Ballance, have reached a settlement in this matter and have consented to the issuance of this Consent Order.

1. John M. Huff is the duly appointed Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration ("Director" of the "Department"), whose duties, pursuant to Chapters 374, 375, and 385 RSMo,¹ include the supervision, regulation, and discipline of motor vehicle extended service contract producers.

2. The Department's Consumer Affairs Division ("Division") has the duty of conducting investigations into the acts of motor vehicle extended service contract producers under Chapters 374, 375, and 385, and is authorized to investigate and recommend enforcement

¹ All statutory references are to the 2012 version of the Revised Statutes of Missouri unless otherwise noted.

action, including motor vehicle extended service contract producer license application refusal.

3. On May 20, 2009, Derek Ballance ("Ballance") possessed approximately 24.6 grams of marijuana and two digital scales, in violation of § 195.291, RSMo.²

4. On or about May 21, 2010, Ballance pleaded guilty to a Class B Felony of Possession of a Controlled Substance with Intent to Distribute. *State of Missouri v. Derek K. Ballance*, St. Charles Cnty. Cir. Ct., Missouri, No. 0911-CR04613-01.

5. On or about May 21, 2010, the court granted Ballance a suspended imposition of sentence and placed Ballance on probation for a period of five (5) years.

6. Ballance's probation is scheduled to be completed on May 21, 2015.

7. Ballance acknowledges and understands that should he fail to complete the terms of that probation and as a result sentence is imposed, the Director may refuse or seek to discipline Ballance's motor vehicle extended service contract producer license under § 385.209.1(5). *State of Missouri v. Derek K. Ballance*, St. Charles Cnty. Cir. Ct., Missouri, No. 0911-CR04613-01.

8. On July 22, 2008, Ballance entered a vehicle belonging to another and stole two speakers worth about two hundred dollars, in violation of § 570.030, RSMo.³

9. On October 22, 2008, Ballance pleaded guilty to a class A Misdemeanor of Stealing. *State of Missouri v. Derek K. Ballance*, St. Charles Cnty. Cir. Ct., Missouri, No. 0811-CR04755.

10. On October 22, 2008, the court granted Ballance a suspended imposition of sentence and placed Ballance on probation for a period of two (2) years.

11. On July 21, 2010, Ballance confessed and stipulated to violating the terms of his

² This statutory reference is to the version in effect on the date of the offense.

³ This statutory reference is to the version in effect on the date of the offense.

probation. Accordingly, the court revoked Ballance's probation and sentenced Ballance to ninety (90) days of confinement in the St. Charles County Department of Corrections. The court suspended execution of that sentence and granted Ballance a new two-year term of probation, which ended on July 21, 2012

12. On July 21, 2012, Ballance successfully completed that second term of probation.

13. On or about July 5, 2012, Ballance submitted an Application for Motor Vehicle Extended Service Contract Producer License ("Application") to the Department.

14. In the section of the Application headed "Background Information," Question # 1 asks, in part:

Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?

* * *

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 judgment.

15. Ballance answered "Yes" to Background Question # 1.

16. As explanation of his "Yes" answer to Background Question # 1, Ballance attached a statement reading, in its entirety:

Was pulled over for expired plates and had two different bags of weed and was charged with a felony and was placed on probation 3 years ago.

17. Ballance attached to his Application court documents related to the felony Possession of a Controlled Substance with Intent to Distribute charge.

18. Ballance did not disclose his misdemeanor Stealing charge or conviction. Neither did Ballance attach any documentation of his Stealing charge and conviction.

19. Ballance acknowledges and understands that under § 385.209.1(3), the Director may refuse to issue a motor vehicle extended service contract producer license to Ballance because Ballance failed to disclose his Stealing conviction as required by the Application and thereby attempted to obtain a motor vehicle extended service contract producer license through material misrepresentation or fraud.

20. Ballance acknowledges and understands that he has the right to consult counsel at his own expense.

21. This Consent Order is entered pursuant to §§ 374.046 and 385.216. As such, any interested person aggrieved by this Consent Order may request a hearing before the Director or review of this Consent Order in a circuit court under § 374.055. Although under the Department's interpretation of the relevant statutes, review of this Consent Order by the Administrative Hearing Commission is not available, Ballance nevertheless may have the right, under § 621.045, to submit this Consent Order to the Administrative Hearing Commission for a determination that the facts agreed to in this Consent Order constitute grounds to refuse Ballance's license.

22. Ballance stipulates and agrees to waive any waivable rights that he may have to a hearing before the Administrative Hearing Commission, the Director or the Department, and any rights to seek judicial review or other challenge or contest of the terms and conditions of this Consent Order and forever releases and holds harmless the Department, the Director and his agents, and the Consumer Affairs Division from all liability and claims arising out of, pertaining to, or relating to this matter.

23. Each signatory to this Consent Order certifies by signing that he or she is fully authorized, in his or her own capacity, or by the named party he or she represents, to accept the

terms and provisions of this Consent Order in their entirety, and agrees, in his or her personal or representational capacity, to be bound by the terms of this Consent Order.

Conclusions of Law

24. The actions admitted by Ballance may be grounds to refuse his Missouri motor vehicle extended service contract producer license application pursuant to § 385.209.1(3).

25. The Director may impose orders in the public interest under §§ 374.046 and 385.216.

26. The terms set forth in this Consent Order are an appropriate disposition of this matter and entry of this Consent Order is in the public interest.

ORDER

IT IS ORDERED that the Department will issue a motor vehicle extended service contract producer license to Derek Ballance subject to the conditions set forth herein.

IT IS ORDERED that Derek Ballance shall respond to all inquiries and consumer complaints forwarded or otherwise communicated to him by the Department or a consumer within five business days of receipt. Ballance shall report in writing all consumer complaints, both written and oral, to the Consumer Affairs Division of the Department, within five business days of receipt. If a complaint was not communicated to Ballance by the Department, Ballance shall send the Department a copy of the complaint and Ballance's response to the consumer within five business days of receipt.

IT IS ORDERED that Derek Ballance shall maintain full compliance with all court orders and other requirements relating to *State of Missouri v. Derek K. Ballance*, St. Charles Cnty. Cir. Ct., Missouri, No. 0911-CR04613-01. Ballance shall sign and submit a Statement of Compliance to the Director within 30 days of his completion of probation. Should Ballance fail to

successfully complete probation, Ballance shall notify the Consumer Affairs Division within five business days of the dismissal from or revocation of probation and notify the Consumer Affairs Division of the consequences of such failure, dismissal, or revocation.

IT IS ORDERED that Derek Ballance shall execute and submit any necessary documents to provide the Department access to Ballance's probation and court records, including access to any chemical test results.

IT IS ORDERED that Derek Ballance shall report to the Consumer Affairs Division any and all of the following incidents involving Ballance: probation violation, probation revocation, arrest, citation, guilty plea, nolo contendere plea, finding of guilt, or conviction concerning a felony or misdemeanor. Ballance shall report all such incidents to the Consumer Affairs Division within five business days of their occurrence.

IT IS ORDERED that for five years subsequent to the date of this executed Consent Order, Derek Ballance will voluntarily surrender his license to the Department within 30 days of Ballance's failure to successfully complete the probation associated with *State of Missouri v. Derek K. Ballance*, St. Charles Cnty. Cir. Ct., Missouri, No. 0911-CR04613-01.

IT IS ORDERED that for five years subsequent to the date of this executed Consent Order, Derek Ballance will voluntarily surrender his license to the Department within five business days of Ballance's entry of a guilty plea, nolo contendere plea, finding of guilt or conviction for a felony, regardless of whether sentence is imposed, suspended, or executed.

IT IS ORDERED that Derek Ballance shall report to the Consumer Affairs Division any administrative action undertaken or initiated against Ballance in another jurisdiction or by another governmental agency in this state within five business days after Ballance receives notification of the initiation of such administrative action.

IT IS ORDERED that Derek Ballance shall report to the Consumer Affairs Division any violation of or failure to comply with the laws set forth in Chapters 374, 375, or 385 within five business days of such violation or failure to comply.

IT IS ORDERED that if Derek Ballance maintains his motor vehicle extended service contract producer license beyond the initial term and complies with the terms of this Consent Order, including successful completion of probation, Ballance may apply to renew his license and the Director shall consider the renewal application in accordance with Chapters 374, 375, and 385 without regard to Ballance's attempt in submitting his 2012 Application to obtain a motor vehicle extended service contract producer license through misrepresentation or fraud.

IT IS ORDERED that the Director may pursue additional legal remedies, as determined appropriate by the Director, and without limitation, as authorized by Chapters 374, 375, and 385 including remedies for violation of, or failure to comply with, the terms of this Consent Order.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 1 DAY OF March, 2012.

 3-12-13
JOHN M. HUFF
Director, Missouri Department of Insurance,
Financial Institutions and Professional
Registration

CONSENT AND WAIVER OF HEARING

The undersigned persons understand and acknowledge that Derek Ballance may have a right to a hearing, but that Derek Ballance has waived the hearing and consented to the issuance of this Consent Order.



Derek Ballance
3814 Chardonay Court
St. Charles, Missouri 63304
Respondent

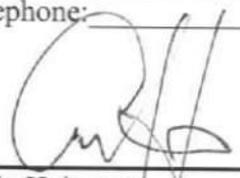
3-1-13

Date

Counsel for Respondent

Name: _____
Missouri Bar No. _____
Address: _____

Telephone: _____



Andy Heitmann
Consumer Affairs Division Counsel
Missouri Bar No. 60679
Department of Insurance, Financial
Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: (573) 751-1922
Facsimile: (573) 522-3630

Date

3/5/13

Date