State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
MATTHEW D. BAYER,	)	**Case No. 120410371C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On April 20, 2012, 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 Matthew D. Bayer. 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. Upon information and belief, Matthew D. Bayer, ("Bayer") is currently a Missouri resident with a residential address of 16 Harris Drive, St. Peters, Missouri 63376.

2. On December 23, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Bayer's Application for Motor Vehicle Extended Service Contract Producer License ("Application").

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

4. Bayer signed the Application in the "Applicant's Certification and Attestation" section.

5. Background Question No. 1 of the Application asks the following:

   Have you ever been convicted of a crime, had a judgment 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 judgment 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 judgment[.]

6. Bayer marked "Yes" to Question No. 1, and included written statements and related court documents for each of the following cases:

   a. On September 13, 1995, Bayer pleaded guilty to Possession of up to 35 Grams Marijuana, a Class A Misdemeanor, in violation of § 195.202.[1] The court imposed monetary fines as punishment. *State of Missouri v. Matthew D. Bayer*, St. Charles Co. Cir. Ct., Case No. 11R019501325.

   b. On October 25, 1999, Bayer pleaded guilty to Burglary – 2nd Degree, a Class C Felony, in violation of § 569.170. The court sentenced Bayer to five (5) years' confinement, but suspended the imposition of the sentence and placed Bayer on supervised probation for five (5) years. On September 25, 2000, Bayer's probation was revoked, he was sentenced to 120 days in the Department of Corrections, and the court suspended the execution of his original sentence. On December 17, 2001, Bayer's probation was revoked again and he was sentenced to fifty-four (54) months confinement in the Department of Corrections. *State of Missouri v. Matthew D. Bayer*, St. Charles Co. Cir. Ct., Case No. 11R019901862-01.

   c. On March 5, 2002, Bayer pleaded guilty to Driving While Intoxicated – Alcohol/Drug Intoxication – Persistent Offender, a Class D Felony, in violation of

[1] All statutory references are to the 2011 Supplement to the Revised Statutes of Missouri unless otherwise noted.

§ 577.010. The court sentenced Bayer to three (3) years' confinement, to run concurrent with the sentence imposed in Case No. 11R019901862-01. *State of Missouri v. Matthew D. Bayer*, St. Charles Co. Cir. Ct., Case No. 01CR128291-01.

d. On March 5, 2002, Bayer pleaded guilty to Assault – 3rd Degree – Pursuant to Subdivisions (1), (2), (4), and (6), a Class A Misdemeanor, in violation of § 565.070. Bayer was sentenced to four (4) months' confinement. *State of Missouri v. Matthew D. Bayer*, St. Charles Co. Assoc. Div., Case No. 11R019903014.

e. On June 27, 2005, Bayer pleaded guilty to Domestic Assault – 3rd Degree – 1st/2nd Offense, a Class A Misdemeanor, in violation of § 565.074. The court sentenced Bayer to thirty (30) days' confinement. *State of Missouri v. Matthew D. Bayer*, St. Charles Co. Cir. Ct., Case No. 04CR130607.

f. On June 27, 2005, Bayer pleaded guilty to Domestic Assault – 3rd Degree – 1st/2nd Offense, a Class A Misdemeanor, in violation of § 565.074. The court sentenced Bayer to thirty (30) days' confinement. *State of Missouri v. Matthew David Bayer*, St. Charles Co. Cir. Ct., Case No. 0511-CR02067.

g. On September 23, 2010, Bayer pleaded guilty to Operated Vehicle on Highway Without Valid License – 3rd and Subsequent Offense, a Class D Felony, in violation of § 302.020. The court sentenced Bayer to five (5) years' confinement, but suspended the imposition of the sentence. The court also placed Bayer on supervised probation for five (5) years. *State of Missouri v. Matthew Bayer,* Lincoln Co. Cir. Ct., Case No. 05L6-CR02014-01.

7. During its investigation, the Department also discovered the following convictions that Bayer failed to disclose in response to Background Question No. 1 on his Application:

a. On June 27, 2005, Bayer pleaded guilty to Passing Bad Check – Less Than $500.00, a Class A Misdemeanor, in violation of § 570.120. The court sentenced Bayer to thirty (30) days' confinement. *State of Missouri v. Matthew David Bayer*, St. Charles Co. Cir. Ct., Case No. 0511-CR03088.

b. On January 1, 2009, Bayer was charged with two counts of Non-Support, both Class A Misdemeanors, both in violation of § 568.040. This case is scheduled for a Disposition Hearing on April 27, 2012. *State of Missouri v. Matthew D. Bayer,* St. Charles Co. Cir. Ct., Case No. 1011-CR05633.

c. On October 19, 2010, Bayer pleaded guilty to Operation of a Vessel While Intoxicated, a Class B Misdemeanor, in violation of § 306.111. The court imposed monetary fines as a penalty. *State of Missouri v. Matthew D. Bayer*, St. Charles Co. Cir. Ct., Case No. 1011-CR04626.

8. Background Question No. 7 of the Application asks the following:

Do you have a child support obligation in arrearage?

If you answer yes:
(a) By how many months are you in arrearage?
(b) Are you currently subject to and in compliance with any repayment agreement?
(c) Are you the subject of a child support related subpoena/warrant? (If you answer yes, provided documentation showing proof of current payments or an approved repayment plan from the appropriate state child support agency.).

9. In response to Background Question No. 7, Bayer answered that he does have a child support obligation in arrearage, that he is currently subject to and in compliance of a repayment agreement, and that he is not subject to a child support related subpoena/warrant. Bayer did not disclose the number of months he is in arrearage and did not disclose his pending charges for two counts of Non-Support in Case No. 1011-CR05633. This matter is scheduled for a Disposition Hearing at 9:00 a.m. on Friday, April 27, 2012. *State of Missouri v. Matthew D. Bayer,* St. Charles Co. Cir. Ct., Case No. 1011-CR05633.

CONCLUSIONS OF LAW

10. 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:

* * *

(3) Obtained or attempted to obtain a license through material misrepresentation or fraud;

* * *

(5) Been convicted of any felony;

* * *

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

11. 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.

12. Bayer may be refused a Motor Vehicle Extended Service Contract producer License pursuant to § 385.209.1(3) because he attempted to obtain a license through material misrepresentation or fraud when he did not disclose the following convictions and pending charges on his application:

    a. *State of Missouri v. Matthew David Bayer*, St. Charles Co. Cir. Ct., Case No. 0511-CR03088 (Passing Bad Check – Less Than $500.00, a Class A Misdemeanor, in violation of § 570.120).

    b. *State of Missouri v. Matthew D. Bayer,* St. Charles Co. Cir. Ct., Case No. 1011-CR05633 (Pending charges for Two Counts of Non-Support, both Class A Misdemeanors, both in violation of § 568.040).

    c. *State of Missouri v. Matthew D. Bayer*, St. Charles Co. Cir. Ct., Case No. 1011-CR04626 (Operation of a Vessel While Intoxicated, a Class B Misdemeanor, in violation of § 306.111).

13. Bayer may be refused a Motor Vehicle Extended Service Contract Producer License pursuant to § 385.209.1(5) because he has been convicted of three felonies:

    a. *State of Missouri v. Matthew D. Bayer*, St. Charles Co. Cir. Ct., Case No. 11R019901862-01 (Burglary – 2nd Degree, a Class C Felony, in violation of § 569.170).

    b. *State of Missouri v. Matthew D. Bayer*, St. Charles Co. Cir. Ct., Case No. 01CR128291-01 (Driving While Intoxicated – Alcohol/Drug Intoxication – Persistent Offender, a Class D Felony, in violation of § 577.010).

    c. *State of Missouri v. Matthew Bayer,* Lincoln Co. Cir. Ct., Case No. 05L6-CR02014-01 (Operated Vehicle on Highway Without Valid License – 3rd and Subsequent Offense, a Class D Felony, in violation of § 302.020).

14. Bayer may be refused a Motor Vehicle Extended Service Contract Producer License pursuant to § 385.209.1(12) because he failed to comply with an administrative or court order imposing a child support obligation and currently has a pending case, Case No. 1011-CR05633, in which Bayer is being charged with two counts of Non-Support, both Class A Misdemeanors, both in violation of § 568.040. *State of Missouri v. Matthew D. Bayer,* St. Charles Co. Cir. Ct., Case No. 1011-CR05633.

15. The Director has considered Bayer's history and all of the circumstances surrounding Bayer's Application. Granting Bayer a Motor Vehicle Extended Service Contract Producer License would not be in the interest of the public. Accordingly, the Director exercises his discretion to refuse Bayer's Motor Vehicle Extended Service Contract Producer License.

16. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the Motor Vehicle Extended Service Producer License Application of **Matthew D. Bayer** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 23RD **DAY OF** APRIL**, 2012.**

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 25th day of April, 2012 a copy of the foregoing Order and Notice was served upon the Applicant in this matter by regular and certified mail at the following address:

Matthew D. Bayer
16 Harris Drive
St. Peters, MO 63376

Certified No. 7009 3410 0001 8931 3025

Kathryn Randolph

Kathryn Randolph
Paralegal
Missouri Department of Insurance, Financial
Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: 573.751.2619
Facsimile: 573.526.5492
Email: kathryn.randolph@insurance.mo.gov