STATE OF MISSOURI

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
CLAUDE DATRELL VIVERETTE,	)	**Case No. 141201752C**
	)	
Renewal Applicant.	)	

ORDER REFUSING TO RENEW MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On April 27, 2015, the Consumer Affairs Division, through counsel Tammy S. Kearns, submitted a Petition to the Director alleging cause for refusing to renew Claude Datrell Viverette'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. Claude Datrell Viverette ("Viverette") is a Missouri resident with a residential address of 9544 Theodosia Avenue, Overland, Missouri 63114.

2. On March 29, 2012, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Viverette's Application for Motor Vehicle Extended Service Contract Producer License ("Initial Application").

3. The "Applicant's Certification and Attestation" section of the Initial 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. Viverette signed the "Applicant's Certification and Attestation" section of the Initial Application under oath before a notary public.

5. Background Question No. 1 of the Initial 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 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 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.

6. Viverette answered "No" to Background Question No. 1 on the Initial Application.

7. Relying on Viverette's representations on his Initial Application, the Department issued Viverette a motor vehicle extended service contract ("MVESC") producer license (License No. 8136084) on April 4, 2012. That license expired on April 4, 2014.

8. On April 8, 2014, the Department received Viverette's Application for Motor Vehicle Extended Service Contract Producer License Renewal ("Renewal Application").

9. 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.

10. Viverette signed the "Applicant's Certification and Attestation" section of the Renewal Application under oath before a notary public.

11. 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.

12. Viverette answered "No" to Background Question No. 1 on the Renewal Application.

13. Contrary to Viverette's "No" answers to Background Question No. 1 on his Initial Application and Renewal Application, the Consumer Affairs Division's ("Division") investigation revealed the following criminal offenses that Viverette failed to disclose:

    a. On December 12, 2007, Viverette pled guilty to Possession of a Controlled

Substance, a Class A Misdemeanor, in violation of § 195.202 RSMo.[1] The court ordered Viverette to pay a fine of $250.00. *State v. Claude D. Viverette*, St. Charles Co. Cir. Ct., Case No. 0711-CR07251.

b. On October 7, 2011, Viverette pled guilty to Attempted Unlawful Use of a Weapon, a Class A Misdemeanor, in violation of § 571.030. The court suspended imposition of sentence and ordered Viverette to complete two years supervised probation. *State v. Claude D. Viverette*, St. Louis Co. Cir. Ct., Case No. 10SL-CR09805-01.

14. Since submitting his Renewal Application, Viverette has been charged with a felony. On May 7, 2014, the St. Louis County Prosecutor filed a Complaint that charged Viverette with Receiving Stolen Property, a Class C Felony, in violation of § 570.080. On July 25, 2014, the court issued a warrant for Viverette as a fugitive, which remains unsatisfied. Disposition of this case is still pending. *State v. Claude D. Viverette*, St. Louis Co. Cir. Ct., Case No. 14SL-CR04804.

15. It is inferable, and hereby found as fact, that Viverette falsely answered "No" to Background Question No. 1 and failed to disclose his criminal history on his Initial Application and Renewal 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 renew his MVESC producer license.

CONCLUSIONS OF LAW

16. Section 385.209 RSMo (Supp. 2013)[2] provides, in relevant 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, as of the effective date of the license, was incomplete in any material respect or contained incorrect, misleading, or untrue information;
>
> * * *

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

[2] All statutory references are to the Revised Statutes of Missouri (2000) as updated by the 2013 Supplement unless otherwise noted.

(3) Obtained or attempted to obtain a license through material misrepresentation or fraud[.]

17. 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.

18. Renewal of Viverette's MVESC producer license may be refused pursuant to § 385.209.1(1) because Viverette 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 a material respect or contained incorrect, misleading, or untrue information. Viverette's failure to disclose his misdemeanor conviction and misdemeanor suspended sentence in response to Background Question No. 1 on his Initial Application constitutes incorrect, misleading and untrue information, and rendered his Application incomplete in material respects.

19. Renewal of Viverette's MVESC producer license may be refused pursuant § 385.209.1(3) because Viverette obtained a license through material misrepresentation or fraud when Viverette failed to disclose his criminal history on his Initial Application:

    a. Possession of a Controlled Substance, a Class A Misdemeanor, in violation of § 195.202. *State v. Claude D. Viverette*, St. Charles Co. Cir. Ct., Case No. 0711-CR07251.

    b. Suspended imposition of sentence for Attempted Unlawful Use of a Weapon, a Class A Misdemeanor, in violation of § 571.030. *State v. Claude D. Viverette*, St. Louis Co. Cir. Ct., Case No. 10SL-CR09805-01.

20. Renewal of Viverette's MVESC producer license may be refused pursuant to § 385.209.1(3) because Viverette attempted to obtain a MVESC producer license through material misrepresentation or fraud when Viverette failed to disclose his criminal history on his Renewal Application:

    a. Possession of a Controlled Substance, a Class A Misdemeanor, in violation of § 195.202. *State v. Claude D. Viverette*, St. Charles Co. Cir. Ct., Case No. 0711-CR07251.

    b. Suspended imposition of sentence for Attempted Unlawful Use of a Weapon, a Class A Misdemeanor, in violation of § 571.030. *State v. Claude D. Viverette*, St. Louis Co. Cir. Ct., Case No. 10SL-CR09805-01.

21. Each instance in which Viverette obtained or attempted to obtain a MVESC producer

license through material misrepresentation or fraud is a separate and sufficient ground for the Director to refuse to renew Viverette's MVESC producer license pursuant to § 385.209.1(3).

22. The Director has considered Viverette's history and all of the circumstances surrounding Viverette's Renewal Application. Renewing Viverette's MVESC producer license would not be in the public interest. Accordingly, the Director exercises his discretion to refuse to renew Viverette's MVESC producer license.

23. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that renewal of **Claude Datrell Viverette's** motor vehicle extended service contract producer license application is hereby **REFUSED.**

SO ORDERED.

WITNESS MY HAND THIS 27 **DAY OF** April **, 2015.**

JOHN M. HUFF, Director
Missouri Department of Insurance, Financial Institutions and Professional Registration

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 28th day of April, 2015, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following addresses:

Claude Datrell Viverette
9544 Theodosia Avenue
Overland, Missouri 63114

Tracking No. 1Z0R15W84299574174

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