State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
DESMOND LAMAR ANDERSON,	)	**Case No. 141201751C**
	)	
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 Desmond Lamar Anderson'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. Desmond Lamar Anderson ("Anderson") is a Missouri resident with a residential address of 504 San Juan Dr., St. Charles, Missouri 63303.

2. The Department of Insurance, Financial Institutions and Professional Registration ("Department") issued Anderson a motor vehicle extended service contract ("MVESC") producer license (License No. 8197487) on August 20, 2012. That license expired on August 20, 2014.

3. On June 30, 2014, the Department received Anderson's Application for Motor Vehicle Extended Service Contract Producer License Renewal ("Renewal Application").

4. 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.

5. On June 25, 2014, Anderson signed the "Applicant's Certification and Attestation" section of the Renewal Application under oath before a notary public.

6. Background Question No. 4 of the Renewal Application asks, in relevant part:

> Have you failed to pay state or federal income tax, which has not been previously reported to this insurance department?
>
> Have you failed to comply with an administrative or court order directing payment of state or federal income tax, which has not been previously reported to this insurance department?
>
> Answer "Yes" if the answer to either question (or both) is "Yes".

7. Anderson answered "No" to Background Question No. 4 on the Renewal Application.

8. Contrary to Anderson's answer to Background Question No. 4 on his Renewal Application, the Consumer Affairs Division's ("Division") investigation revealed that Anderson had delinquent tax obligations that he had not previously reported to the Department.

9. On June 20, 2014, the St. Charles County Circuit Court entered a judgment against Anderson for unpaid taxes for the 2009, 2010, and 2012 tax filing years as follows:

> The Director of Revenue, under Section 143.902, RSMo, hereby certifies that the following assessment of tax, interest, additions to tax, penalties, and fees have been made and become final [in the amount of $8,804.63]. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.

Department of Revenue v. Desmond L. Anderson, St. Charles Co. Cir. Ct., Case No. 1411-MC03219.

10. On July 10, 2014, Special Investigator Andrew Engler ("Engler") with the Division sent an inquiry letter to Anderson via first class mail asking for the status of Anderson's tax obligations, evidence of a repayment arrangement or a letter of compliance, and a written statement explaining why Anderson failed to disclose his tax obligations. The inquiry letter requested a response by July 30, 2014, and warned Anderson that a failure to respond could result in the Department refusing to issue a MVESC producer license to Anderson.

11. The inquiry letter was not returned as undeliverable, and is therefore presumed received by Anderson.

12. Anderson failed to respond to the Division's July 10, 2014 inquiry letter and failed to demonstrate a reasonable justification for the delay.

13. On August 6, 2014, Engler sent a second inquiry letter to Anderson via first class mail asking for the same information previously requested in the July 10, 2014 inquiry letter. The inquiry letter requested a response by August 26, 2014, and warned Anderson that a failure to respond could result in the Department refusing to issue a MVESC producer license to Anderson.

14. On August 8, 2014, Anderson called Engler and said that he was going to work with the Missouri Department of Revenue to resolve his tax issue and then would send a letter of compliance.

15. On January 13, 2015, after receiving no further communication from Anderson, Engler sent a third inquiry letter to Anderson via first class mail asking Anderson to provide a written statement regarding the current status of his tax lien, evidence of a repayment plan/agreement or a Letter of Compliance, and a written statement explaining why he failed to disclose his tax lien. Engler also asked Anderson to complete and execute the Missouri Department of Revenue Form 8821. The inquiry letter requested a response by February 2, 2015, and warned Anderson that a failure to respond could result in the Department refusing to issue a MVESC producer license to Anderson.

16. The inquiry letter was not returned as undeliverable, and is therefore presumed received by Anderson.

17. Anderson failed to respond to the Division's January 13, 2015 inquiry letter and failed to demonstrate a reasonable justification for the delay.

18. It is inferable, and hereby found as fact, that Anderson failed to disclose his delinquent state income tax obligations on his Renewal Application in order to misrepresent to the Director that he owed no taxes and accordingly, in order to improve the chances that the Director would approve his application and renew his MVESC producer license. This inference is further supported by the fact that despite being given the opportunity to explain his tax delinquencies or show tax compliance, Anderson failed to respond to the Division's inquiries.

CONCLUSIONS OF LAW

19. Section 385.209 RSMo (Supp. 2013) 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:

* * *

(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;

* * *

(13) Failed to comply with any administrative or court order directing payment of state or federal income tax[.]

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

21. "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. 2000) (internal citations omitted).

22. 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.

23. Renewal of Anderson's MVESC producer license may be refused pursuant to § 385.209.1(2) because Anderson violated a rule of the Director, namely 20 CSR 100-4.100 (2)(A), when Anderson failed to respond to two (2) written inquiry letters from the Division and failed to demonstrate reasonable justifications for the delays.

24. Each failure to respond to an inquiry letter is a violation of a rule of the Director, and therefore is a separate and sufficient ground for refusal pursuant to § 385.209.1(2).

25. Renewal of Anderson's MVESC producer license may be refused pursuant to § 385.209.1(3) because Anderson attempted to obtain a license through material misrepresentation or fraud when he falsely answered "No" to Background Question No. 4 and failed to disclose his delinquent Missouri tax obligations in his Renewal Application.

26. Renewal of Anderson's MVESC producer license may be refused pursuant to § 385.209.1(13) because Anderson failed to comply with an administrative or court order directing payment of state income tax. *Department of Revenue v. Desmond L. Anderson*, St. Charles Co. Cir. Ct., Case No. 1411-MC03219.

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

28. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that renewal of **Desmond Lamar Anderson's** motor vehicle extended service contract producer license application is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 15 **DAY OF** MAY **, 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 5th 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:

Desmond Lamar Anderson
504 San Juan Dr.
St. Charles, Missouri 63303

Tracking No. 1Z0R15W84291472600

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