FINAL ORDER EFFECTIVE 03-21-16

State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
DAVID ANTHONY DILLARD,	)	**Case No. 150923435C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On February 4, 2016, the Consumer Affairs Division, through counsel, submitted a Petition to the Director alleging cause to refuse to issue a motor vehicle extended service contract producer license to David Anthony Dillard. 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. David Anthony Dillard ("Dillard") is a Missouri resident with a residential and mailing address of record of 9642 Midland Blvd, Overland, Missouri 63114.

2. On February 4, 2014, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Dillard's Application for Motor Vehicle Extended Service Contract Producer License ("2014 Application").

3. On December 29, 2014, the Director of the Department issued an Order Refusing to Issue Motor Vehicle Extended Service Contract Producer License ("2014 Refusal Order") to Dillard. The Director found that grounds existed to refuse Dillard's 2014 Application pursuant to § 385.209.1(2), (3), (12) and (13) RSMo[1] as follows:

   a. Section 385.209.1(2) because Dillard failed to adequately respond to two inquiry letters from the Consumer Affairs Division ("Division") dated February 7, 2014 and March 5, 2014 without demonstrating a reasonable justification for

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

the delays, each time thereby violating 20 CSR 100-4.100(2)(A), which is a rule of the Director.

b. Section 385.209.1(3) because Dillard attempted to obtain a motor vehicle extended service contract ("MVESC") producer license through material misrepresentation or fraud when he failed to disclose his outstanding tax obligation on his 2014 Application. *Department of Revenue v. David A. Dillard*, St. Louis Co. Cir. Ct., No. 12SL-MC06670.

c. Section 385.209.1(3) because Dillard attempted to obtain an MVESC producer license through material misrepresentation or fraud when he stated on his 2014 Application that "the case has been dropped" when in fact he owed over $20,000.00 in child support arrears.

d. Section 385.209.1(12) because Dillard failed to comply with administrative or court orders imposing child support obligations. *State ex rel. Beth Neil v. David Dillard*, St. Louis Co. Cir. Ct., Case No. 2106FC-009394; *Beth Turner v. David Dillard*, Jefferson Co. Cir. Ct., Case Nos. 23CVAOF18408 and 23CVAOF18408-01 (Administrative Case No. 00149464).

e. Section 385.209.1(13) because Dillard failed to comply with an administrative or court order directing payment of state income taxes. *Department of Revenue v. David A. Dillard*, St. Louis Co. Cir. Ct., Case No. 12SL-MC06670.

In re: David Anthony Dillard, Order Refusing to Issue Motor Vehicle Extended Service Contract Producer License, Case No. 141020691C (December 29, 2014).

4. The 2014 Refusal Order included a Notice that provided instructions regarding filing a complaint with the Administrative Hearing Commission of Missouri ("Commission") within 30 days. *Id.*

5. On December 30, 2014, the Department served Dillard with the 2014 Refusal Order at his residential address of record by United Parcel Service, signature required and electronically tracked.[2]

6. Dillard did not file a complaint with the Commission.

7. On February 27, 2015, the Department received Dillard's completed Application for Motor Vehicle Extended Service Contract Producer License ("2015 Application").

[2] The Department served Dillard the 2014 Refusal Order at the same address Dillard listed on his 2014 Application (paragraph 2, *supra*). This is also the address to which the Division sent its inquiry letters that were never returned as undeliverable (paragraph 3a, *supra*).

8. The "Applicant's Certification and Attestation" section of the 2015 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.

9. Dillard signed the 2015 Application in the "Applicant's Certification and Attestation" section under oath and before a notary public.

10. Background Question No. 2 of the 2015 Application asks:

> Have you ever been named or involved as a party in an administrative proceeding or action regarding any professional or occupational license or registration, or regarding the lack of such license or registration?
>
> "Involved" means having a license censured, suspended, revoked, canceled, terminated or being assessed a fine, a voluntary forfeiture, a cease and desist order, a prohibition order, a consent order, or being placed on probation. "Involved" also includes the act of surrendering a license to resolve an administrative proceeding or action. "Involved" also means being named as a party to an administrative or arbitration proceeding which is related to a professional or occupational license or is related to the lack of such license. "Involved" also means having a license application denied or the act of withdrawing an application to avoid a denial. You must INCLUDE any business so named because of your actions or because of your capacity as an owner, partner, officer, director, or member or manager of a Limited Liability Company. You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.
>
> If you answer yes, you must attach to this application:
> a) a written statement identifying the type of license and explaining the circumstances of each incident,
> b) a copy of the Notice of Hearing or other document that states the charges and allegations, and
> c) a certified copy of the official document which demonstrates the resolution of the charges and/or a final judgment.

11. Dillard answered "No" to Background Question No. 2.

12. Contrary to Dillard's answer to Background Question No. 2 on his 2015 Application, on December 29, 2014, the Director of the Department issued an Order Refusing to Issue Motor Vehicle Extended Service Contract Producer License (previously introduced as "2014 Refusal Order") that refused Dillard's 2014 Application. *In re: David Anthony Dillard*, Order Refusing to Issue Motor Vehicle Extended Service Contract Producer License, Case No. 141020691C (December 29, 2014).

13. During its investigation, the Division also confirmed Dillard's unsatisfied delinquent tax obligation:

    a. On or about April 2, 2012, the St. Louis County Circuit Court entered a judgment against Dillard for unpaid taxes for the 2007 filing year as follows:

    > [Department] of Revenue under Section 143.902, RSMo, hereby certifies that the following assessment of individual income tax, interest, additions to tax, penalties, and fees have been made and become final [in the amount of $809.85]. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.

    Department of Revenue v. David A. Dillard, St. Louis Co. Cir. Ct., Case No. 12SL-MC06670.

14. It is inferable, and hereby found as fact, that Dillard failed to disclose the 2014 Refusal Order in response to Background Question No. 2 on his 2015 Application to convince the Director that he was a new applicant without the history of a previous refusal by the Director.

CONCLUSIONS OF LAW

15. Section 385.209 states, 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;

* * *

(9) Been refused a license or had a license revoked or suspended by a state regulator of service contracts, financial services, investments, credit, insurance, banking, or finance;

* * *

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

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

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

> 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.

17. Title 20 CSR 100-4.100(2)(A) is a rule of the Director.

18. Collateral estoppel "is used to preclude the relitigation of an issue that already has been decided in a different cause of action." *Brown v. Carnahan*, 370 S.W.3d 637, 658 (Mo. banc 2012) (citation omitted).

19. The Director may refuse to issue a MVESC producer license to Dillard pursuant to § 385.209.1(2) because, as found in the 2014 Refusal Order, Dillard failed to respond to two inquiries from the Division dated February 7, 2014 and March 5, 2014, without demonstrating a reasonable justification for the delays, each time thereby violating 20 CSR 100-4.100(2)(A), which is a rule of the Director. *In re: David Anthony Dillard*, Order Refusing to Issue Motor Vehicle Extended Service Contract Producer License, Case No. 141020691C (December 29, 2014).

20. The Director may refuse to issue a MVESC producer license to Dillard pursuant to

§ 385.209.1(3) because, as found in the 2014 Refusal Order, Dillard attempted to obtain a MVESC producer license through material misrepresentation or fraud when he failed to disclose his outstanding tax obligation on his 2014 Application. *Id.*

21. The Director may refuse to issue a MVESC producer license to Dillard pursuant to § 385.209.1(3) because, as found in the 2014 Refusal Order, Dillard attempted to obtain an MVESC producer license through material misrepresentation or fraud when he stated on his 2014 Application that "the case has been dropped" when in fact he owed over $20,000.00 in child support arrears. *Id.*

22. The Director may refuse to issue a MVESC producer license to Dillard pursuant to § 385.209.1(12) because, as found in the 2014 Refusal Order, Dillard failed to comply with administrative or court orders imposing child support obligations. *Id.*

23. The Director may refuse to issue a MVESC producer license to Dillard pursuant to § 385.209.1(13) because, as found in the 2014 Refusal Order, Dillard failed to comply with an administrative or court order directing payment of state income taxes. *Id.*

24. The Director may refuse to issue a MVESC producer license to Dillard pursuant to § 385.209.1(3) because Dillard attempted to obtain a MVESC producer license through material misrepresentation or fraud when he falsely answered "No" to Background Question No. 2 on his 2015 Application and failed to disclose the 2014 Refusal Order. *Id.*

25. The Director may refuse to issue a MVESC producer license to Dillard under § 385.209.1(9) because Dillard has been refused a license by a state regulator (the Director) of service contracts. *Id.*

26. The Director may refuse to issue a MVESC producer license to Dillard pursuant to § 385.209.1(13) because Dillard failed to comply with an administrative or court order directing payment of state income tax. *Department of Revenue v. David A. Dillard*, St. Louis Co. Cir. Ct., 12SL-MC06670.

27. Since Dillard did not appeal the 2014 Refusal Order, he is precluded from relitigation of the 2014 Refusal Order which included findings of fact that Dillard violated a rule of the Director when he failed to respond to two inquiry letters; attempted to obtain a MVESC producer license through material misrepresentation or fraud when he failed to disclose his tax obligation and misrepresented the status of his child support obligations; failed to comply with an administrative or court order imposing child support obligations; and failed to comply with an administrative or court order directing payment of state income tax.

28. The Director has considered Dillard's history and all of the circumstances surrounding Dillard's 2015 Application. Granting Dillard a MVESC producer license

would not be in the interest of the public. Accordingly, the Director exercises his discretion to refuse to issue a MVESC producer license to Dillard.

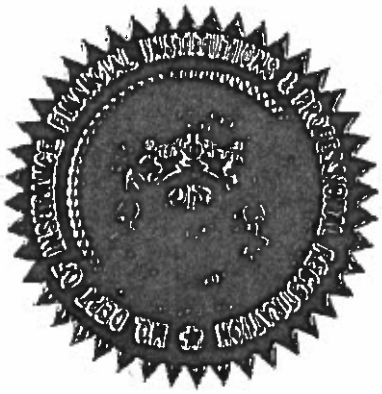
29. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that **David Anthony Dillard's** motor vehicle extended service contract producer license application is hereby **REFUSED.**

SO ORDERED.

WITNESS MY HAND THIS 4th DAY OF FEBRUARY, 2016.



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 February 2016, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following address:

David Anthony Dillard
9642 Midland Blvd.
Overland, Missouri 63114

Tracking No. 1Z0R15W84299726858

Kathryn Latimer

Kathryn Latimer, Paralegal
Missouri Department of Insurance, Financial Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: 573.751.2619
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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February 2016, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following address:

David Anthony Dillard
4324 Miletus Dr.
Florissant, Missouri 63033

Tracking No. 1Z0R15W84298752474

Kathryn Latimer

Kathryn Latimer, Paralegal
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David Anthony Dillard
9642 Midland Blvd.
St. Louis, MO 63114

Certified No. 7012 3460 0002 8615 0492

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