State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
DANIEL DAVID GABRIEL,	)	**Case No. 150324224C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On June 25, 2015, 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 Daniel David Gabriel. After reviewing the Petition, and the Investigative Report, the Director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Daniel David Gabriel ("Gabriel") is a Missouri resident with a residential and mailing address of 3555 Ridgewood Drive, St. Charles, Missouri 63303.

2. On January 5, 2015, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Gabriel's completed 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. Gabriel accepted the "Applicant's Certification and Attestation" section by signing the Application under oath and before a notary public.

5. Background Question No. 4 of the Application asks the following:

Have you failed to pay state or federal income tax?

Have you failed to comply with an administrative or court order directing payment of state or federal income tax?

Answer "Yes" if the answer to either question (or both) is "Yes."

If you answer yes, you must attach to this application:
a) a written statement explaining the circumstances of each administrative court order,
b) copies of all relevant documents (i.e. demand letter from the Department of Revenue or Internal Revenue Service, etc.),
c) a certified copy of each administrative court order, judgment, and/or lien, and
d) a certified copy of the official document which demonstrates the resolution of the tax delinquency (i.e. tax compliance letter, etc.).

6. Gabriel answered "No" in response to Background Question No. 4.

7. During its investigation, the Consumer Affairs Division ("Division") discovered the following delinquent state income tax obligations that Gabriel failed to disclose on his Application:

a. On June 13, 2011, the St. Charles County Circuit Court entered a judgment against Gabriel and Carol A. Gabriel for unpaid income taxes for the 2004, 2006, and 2007 filing years as follows:

> [Department 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 $6,009.13]. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.

Department of Revenue v. Daniel D. Gabriel, et al., St. Charles Co. Cir. Ct., Case No. 1111-MC03358.

b. On February 6, 2012, the St. Charles County Circuit Court entered a judgment against Gabriel and Carol A. Gabriel for unpaid income taxes for the 2010 filing year as follows:

> [Department 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 $1,315.31]. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.

Department of Revenue v. Daniel D. Gabriel, et al., St. Charles Co. Cir. Ct., Case No. 1211-MC00929.

8. On March 25, 2015, after reviewing Gabriel's Application and his delinquent tax obligations, Special Investigator Andrew Engler of the Division sent an inquiry letter to Gabriel. Said inquiry letter requested additional documentation and information about Gabriel's delinquent tax obligations. The inquiry letter further requested a response by April 14, 2015, and warned Gabriel that a failure to respond could result in the Department refusing to issue him a motor vehicle extended service contract ("MVESC") producer license.

9. The United States Postal Service did not return the March 25, 2015 inquiry letter to the Division as undeliverable, and therefore it is presumed received by Gabriel.

10. Gabriel failed to provide a written response to the Division's March 25, 2015 inquiry letter, and failed to demonstrate a reasonable justification for the delay.

11. It is inferable, and hereby found as fact, that Gabriel failed to disclose his delinquent state income tax obligations on his Application in order to misrepresent to the Director that he owed no taxes and to improve the chances that the Director would approve his application for 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, Gabriel failed to respond to the Division's inquiry letter.

CONCLUSIONS OF LAW

12. Section 385.209 RSMo (Supp. 2013)[1] 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; [or]

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

* * *

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

13. Title 20 CSR 100-4.100(2)(A) Required Response to Inquiries by the Consumer Affairs Division provides:

> 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.

14. "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).

15. 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 MVESC producer license, but to protect the public.

16. The Director may refuse to issue a MVESC producer license to Gabriel under § 385.209.1(2) because Gabriel failed to adequately respond to an inquiry letter from the Division and failed to provide a reasonable justification for the delay, thereby violating 20 CSR 100-4.100(2)(A), a rule of the Director.

17. The Director may refuse to issue a MVESC producer license to Gabriel under § 385.209.1(3) because Gabriel attempted to obtain a MVESC producer license through material misrepresentation or fraud in that he failed to disclose the following delinquent tax obligations in response to Background Question No. 4 on his Application:

    a. *Department of Revenue v. Daniel D. Gabriel, et al.*, St. Charles Co. Cir. Ct., Case No. 1111-MC03358 (Certified Tax Lien in the amount of $6,009.13 for unpaid taxes for the 2004, 2006, and 2007 filing years);

    b. *Department of Revenue v. Daniel D. Gabriel, et al.*, St. Charles Co. Cir. Ct., Case No. 1211-MC00929 (Certified Tax Lien in the amount of $1,315.31 for unpaid taxes for the 2010 filing year).

18. Each attempt to obtain a license through material misrepresentation or fraud is a separate and sufficient cause for refusal under § 385.209.1(3).

19. The Director may refuse to issue a MVESC producer license to Gabriel under § 385.209.1(13) because Gabriel has failed to comply with two (2) administrative or court orders directing payment of state income tax:

    a. *Department of Revenue v. Daniel D. Gabriel, et al.*, St. Charles Co. Cir. Ct., Case No. 1111-MC03358 (Certified Tax Lien in the amount of $6,009.13 for unpaid taxes for the 2004, 2006, and 2007 filing years);

    b. *Department of Revenue v. Daniel D. Gabriel, et al.*, St. Charles Co. Cir. Ct., Case No. 1211-MC00929 (Certified Tax Lien in the amount of $1,315.31 for unpaid taxes for the 2010 filing year).

20. Each failure to comply with an administrative or court order directing payment of state income tax is a separate and sufficient cause for refusal under § 385.209.1(13).

21. Issuing a MVESC producer license to Gabriel would not be in the public's interest. In addition to his failure to respond to a Division inquiry letter, Gabriel failed to disclose his delinquent tax obligations in Case Nos. 1111-MC03358 and 1211-MC00929.

22. The Director has considered Gabriel's history and all of the circumstances surrounding Gabriel's Application. Granting Gabriel a MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue a MVESC producer license to Gabriel.

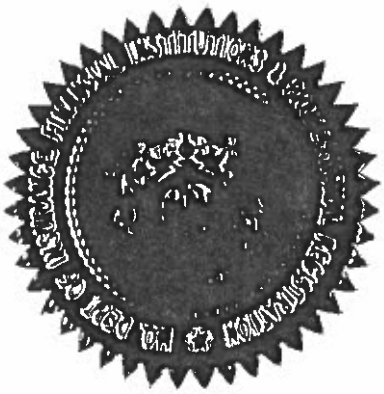
23. This Order is in the public interest.

ORDER

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

SO ORDERED.

WITNESS MY HAND THIS 25 **DAY OF** June, **2015.**



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 26th day of June, 2015, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by United Parcel Service, signature required, to the following address:

Daniel David Gabriel
3555 Ridgewood Dr.
St. Charles, Missouri 63303

Tracking No. 1Z0R15W84293464768

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