State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
DESMOND JELKS,	)	**Case No. 150930458C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On November 13, 2015, the Consumer Affairs Division, through counsel, submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract producer license to Desmond Jelks. 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 Jelks ("Jelks") is a Missouri resident with a residential address of 808 North Ballas, Des Peres, Missouri 63131.

2. On June 1, 2015, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Jelks's motor vehicle extended service contract producer license application ("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. On May 22, 2015, Jelks signed the "Applicant's Certification and Attestation" section under oath before a notary public.

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

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?

"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.

6. Jelks marked "No" to Background Question No. 1 on his Application.

7. Contrary to Jelks's answer to Background Question No. 1 on his Application, the Consumer Affairs Division's ("Division") investigation revealed the following criminal history that Jelks failed to disclose:

   a. On September 27, 2012, Jelks pled guilty to Possession Of Up To 35 Grams Marijuana, a Class A Misdemeanor, in violation of § 195.202.[1] The court sentenced Jelks to 30 days' incarceration, but suspended execution of the

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

sentence, placed Jelks on two years' probation, and ordered him to pay a $250.00 fine. *State v. Desmond Jelks*, St. Louis City Cir. Ct., Case No. 1122-CR04367.

b. On September 30, 2013, Jelks pled guilty to Assault 3rd Degree, a Class C Misdemeanor, in violation of § 565.070. The court suspended imposition of sentence, placed Jelks on two years' limited supervised probation, and ordered Jelks to have no contact with the victim and to complete anger management class. *State v. Desmond Jelks*, St. Charles Co. Cir. Ct., Case No. 1211-CR06773.

8. On June 4, 2015, Special Investigator Andrew Engler ("Engler") with the Division sent an inquiry letter to Jelks via first class mail at his residential address of record. The inquiry letter requested, in part, a statement explaining the circumstances surrounding his charges and why he failed to disclose them on his application, and requested a certified copy of the Information, Complaint or other charging document in the criminal matter. The inquiry letter further requested a response within twenty days from the postmark of the letter, and warned Jelks that failure to respond could result in the Department refusing to issue him a motor vehicle extended service contract ("MVESC") producer license.

9. The inquiry letter sent by first class mail was not returned as undeliverable, and is therefore presumed received by Jelks.

10. Jelks did not respond to the Division's June 4, 2015 inquiry letter, nor did he demonstrate a reasonable justification for the delay.

11. On June 24, 2015, Special Investigator Engler sent a second inquiry letter to Jelks via first class mail to his residential address of record. The inquiry letter asked for the same information and documentation previously requested in the June 4, 2015 inquiry letter. The inquiry letter requested a response within twenty days, and again warned Jelks that a failure to respond could result in the Department refusing to issue him a MVESC producer license.

12. The June 24, 2015 inquiry letter sent by first class mail was not returned as undeliverable, and is therefore presumed received by Jelks.

13. Jelks did not respond to the Division's June 24, 2015 inquiry letter, nor did he demonstrate a reasonable justification for the delay.

14. It is inferable, and hereby found as fact, that Jelks failed to disclose his criminal history in response to Background Question No. 1 on his Application in order to misrepresent to the Director that he had no criminal history and therefore to improve the likelihood that the Director would approve his Application and issue him a MVESC producer license.

CONCLUSIONS OF LAW

15. 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:
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> * * *
>
> (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[.]

16. 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.

17. "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).

18. The Director has cause to refuse to issue a MVESC producer license to Jelks pursuant to § 385.209.1(2) because Jelks violated a rule of the Director, namely 20 CSR 100-4.100(2)(A), when he failed to timely respond to two written inquiries from the Division and failed to demonstrate reasonable justifications for the delays.

19. Each violation of a rule of the Director is a separate and sufficient cause for refusal pursuant to § 385.209.1(2).

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

20. The Director has cause to refuse to issue a MVESC producer license to Jelks pursuant to § 385.209.1(3) because Jelks attempted to obtain a MVESC producer license through material misrepresentation or fraud when he failed to disclose the following criminal history in response to Background Question No. 1 on his Application:

    a. Possession Of Up To 35 Grams Marijuana, a Class A Misdemeanor. *State v. Desmond Jelks*, St. Louis City Cir. Ct., Case No. 1122-CR04367.

    b. Assault 3rd Degree, a Class C Misdemeanor. *State v. Desmond Jelks*, St. Charles Co. Cir. Ct., Case No. 1211-CR06773.

21. Each instance in which Jelks failed to disclose a criminal conviction or charge in response to Background Question No. 1 is a separate and sufficient cause for refusal pursuant to § 385.209.1(3).

22. The Director has considered Jelks's history and all of the circumstances surrounding Jelks's Application. Granting Jelks 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 Jelks.

23. This order is in the public interest.

ORDER

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

SO ORDERED.

WITNESS MY HAND THIS 25th **DAY OF** November**, 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 25th day of November 2015, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following address:

Desmond Jelks
808 North Ballas
Des Peres, Missouri 63131

Tracking No. 1Z0R15W84297709620

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