FINAL ORDER
EFFECTIVE
04-04-16

State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
DWAYNE KURTIS HOUSTON,	)	**Case No. 151230667C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On February 26, 2016, the Consumer Affairs Division, submitted a Petition to the Director alleging cause to refuse to issue a motor vehicle extended service contract producer license to Dwayne Kurtis Houston. 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. Dwayne Kurtis Houston ("Houston") is a Missouri resident with a residential and mailing address of 6817 Etzel, St. Louis, Missouri 63130.

2. On September 8, 2015, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Houston's 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. Houston 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. Houston answered "No" in response to Background Question No. 4.

7. Contrary to Houston's response, during its investigation, the Consumer Affairs Division ("Division") discovered the following delinquent state income tax obligations that Houston failed to disclose on his Application:

   a. On June 20, 2014, the St. Louis County Circuit Court entered a judgment against Houston for unpaid income taxes for the 2011 and 2012 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 $1,875.15]. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.
>
> *Department of Revenue v. Dwayne K. Houston*, St. Louis Co. Cir. Ct., Case No. 14SL-MC08010.

8. On September 11, 2015, after reviewing Houston's Application and his delinquent tax obligations, Special Investigator Andrew Engler of the Division sent an inquiry letter to Houston. The inquiry letter requested that Houston provide a payment plan or a letter of compliance from the Department of Revenue. The inquiry letter further requested a response within twenty (20) days, and warned Houston 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 September 11, 2015 inquiry letter to the Division as undeliverable, and therefore it is presumed received by Houston.

10. Houston failed to provide a written response to the Division's September 11, 2015 inquiry letter, and failed to demonstrate a reasonable justification for the delay.

11. On October 1, 2015, after receiving no response from Houston, Special Investigator Andrew Engler of the Division sent a second inquiry letter to Houston. The inquiry letter requested the same documentation requested in the September 11, 2015 inquiry letter. The inquiry letter further requested a response within twenty (20) days, and again warned Houston that a failure to respond could result in the Department refusing to issue him a MVESC producer license.

12. The United States Postal Service did not return the October 1, 2015 inquiry letter to the Division as undeliverable, and therefore it is presumed received by Houston.

13. Houston failed to provide a written response to the Division's October 1, 2015 inquiry letter, and failed to demonstrate a reasonable justification for the delay.

14. It is inferable, and hereby found as fact, that Houston failed to disclose his delinquent tax obligations on his Application in order to misrepresent his tax compliance to the Director, and accordingly, in order to improve the chances that the Director would approve his Application and issue him a MVESC producer license.

CONCLUSIONS OF LAW

15. 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[.]

16. 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.

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 may refuse to issue a MVESC producer license to Houston pursuant to § 385.209.1(2) because Houston failed to respond to two (2) inquiry letters from the Division and failed to provide a reasonable justification for the delays, thereby twice violating 20 CSR 100-4.100(2)(A), a rule of the Director.

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

20. The Director may refuse to issue a MVESC producer license to Houston pursuant to § 385.209.1(3) because Houston 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. Judgment in the amount of $1,875.15 for unpaid taxes for the 2011 and 2012 filing years. *Department of Revenue v. Dwayne K. Houston*, St. Louis Co. Cir. Ct., Case No. 14SL-MC08010.

21. The Director may refuse to issue a MVESC producer license to Houston pursuant to § 385.209.1(13) because Houston failed to comply with an administrative or court order directing payment of state income tax:

    b. Judgment in the amount of $1,875.15 for unpaid taxes for the 2011 and 2012 filing years. *Department of Revenue v. Dwayne K. Houston*, St. Louis Co. Cir. Ct., Case No. 14SL-MC08010.

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

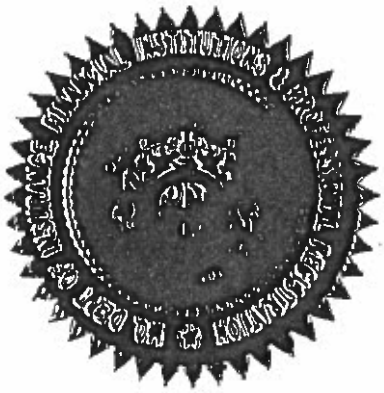
23. This Order is in the public interest.

ORDER

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

SO ORDERED.

WITNESS MY HAND THIS 1st **DAY OF** March, **2016.**



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 1st day of March, 2016, 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:

Dwayne Kurtis Houston
6817 Etzel
St. Louis, Missouri 63130

Tracking No. 1Z0R15W84298376676

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