State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
DARRYL LEWIS, JR.,	)	**Case No. 197272**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On November 12, 2013, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract (MVESC) producer license to Darryl Lewis, Jr. 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. Darryl Lewis, Jr. ("Lewis") is a Missouri resident with a residential address of record of 1210 Park Ashwood Drive, Apartment K, St. Charles, Missouri, 63304.

2. On March 14, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Lewis's completed Application for Motor Vehicle Extended Service Contract Producer License ("Application").

3. Background Question No. 1 of the Application asks the following:

   Have you ever been convicted of a crime, had a judgement withheld or deferred, or are you currently charged with committing a crime?

   "Crime" includes a misdemeanor, felony or a military offense. You may exclude misdemeanor traffic citations or convictions involving driving under the influence (DUI) or driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license or juvenile offenses. "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, or having been given probation, a suspended sentence or a fine.

   "Had a judgement withheld or deferred" includes circumstances in which a guilty plea was entered and/or a finding of guilt is 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").

If you answer yes, you must attach to this application:
a) a written statement explaining the circumstances of each incident,
b) a copy of the charging document, and
c) a copy of the official document which demonstrates the resolution of the charges or any final judgement[.]

4. Lewis answered "Yes" to Question No. 1.

5. Lewis attached uncertified court documents to his Application, which, along with subsequent investigation by the Consumer Affairs Division, revealed that on May 24, 2010, Lewis pleaded guilty in the St. Louis County Circuit Court to the Class B Felony of Trafficking in Drugs in the Second Degree, a violation of § 195.223.[1] The court suspended the imposition of sentence and placed Lewis on five years' probation.[2]

6. Lewis also attached to his Application a written statement concerning his criminal background, in which he acknowledged his felony and the suspended imposition of sentence, but did not explain the circumstances surrounding it. He added that "at the time I was young and made poor choices, but I'm no longer that person. I'm responsible and my judgement is clear."

7. Further investigation by the Consumer Affairs Division revealed that on March 7, 2013, Lewis was charged in the St. Louis City Circuit Court with the Class C Felony of Possession of a Controlled Substance Except 35 Grams or Less of Marijuana and the Class A Misdemeanor of Possession of Up to 35 Grams of Marijuana, both in violation of § 195.202. On August 26, 2013, Lewis pleaded guilty to both charges. For the Possession of Up to 35 Grams of Marijuana count, the court sentenced Lewis to 120 days' shock incarceration. The court suspended execution of the sentence and placed Lewis on two years' probation. For the Possession of a Controlled Substance Except 35 Grams or Less of Marijuana count, the court sentenced Lewis to five years' imprisonment. The court suspended execution of the sentence and placed Lewis on three years' probation.[3]

8. The conduct giving rise to the charges in Case No. 1322-CR00237-01 took place in November 2012 and, according to the Probable Cause Statement and the Complaint, the felony count was based on Lewis's possession of cocaine and marijuana.[4]

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[1] All references to criminal statutes are to the version of the Revised Statutes of Missouri under which the defendant was charged and/or under which the defendant pleaded guilty.
[2] *State of Missouri v. Darryl Lewis, Jr.*, St. Louis Co. Cir. Ct., No. 09SL-CR00063-01.
[3] *State of Missouri v. Darryl Lewis*, St. Louis City Cir. Ct., No. 1322-CR00237-01.
[4] *Id.*

9. On September 13, 2013, the St. Louis County Circuit Court revoked Lewis's probation in Case No. 09SL-CR00063-01 and sentenced Lewis to 120 days' shock incarceration and five years' imprisonment, to be served concurrently with the sentences in Case No. 1322-CR00237-01.[5]

10. On March 20, 2013, Consumer Affairs Division investigator Julie Hesser mailed a written inquiry to Lewis, requesting an explanation for the charges then pending against Lewis in the St. Louis City Circuit Court in Case No. 1322-CR00237-01 and for Lewis's failure to disclose that pending charge in his Application. Hesser mailed the inquiry to the address provided by Lewis in his Application, but it was returned as undeliverable. After contacting Lewis by phone, Hesser updated the address to add "Apartment K."

11. On April 11, 2013, Hesser mailed an inquiry letter to Lewis at the updated address provided by Lewis, again requesting an explanation for the charges then pending against Lewis in the St. Louis City Circuit Court in Case No. 1322-CR00237-01 and for Lewis's failure to disclose that pending charge in his Application.

12. Hesser mailed the April 11, 2013 letter by first class mail, to Lewis's updated address of record, with sufficient postage attached.

13. The April 11, 2013 letter was not returned as undeliverable.

14. Lewis never responded to the April 11, 2013 letter and has not demonstrated any justification for his failure to respond.

15. On May 14, 2013, Hesser mailed a second inquiry letter to Lewis at his updated address, again requesting an explanation for the charges then pending against Lewis in the St. Louis City Circuit Court in Case No. 1322-CR00237-01 and for Lewis's failure to disclose that pending charge in his Application.

16. Hesser mailed the May 14, 2013 letter by first class mail, to Lewis's updated address of record, with sufficient postage attached.

17. The May 14, 2013 letter was not returned as undeliverable.

18. Lewis never responded to the May 14, 2013 letter and has not demonstrated any justification for his failure to respond.

19. On June 27, 2013, Hesser mailed a third inquiry letter to Lewis at his updated address, again requesting an explanation for the charges then pending against Lewis in the St. Louis City Circuit Court in Case No. 1322-CR00237-01 and for Lewis's failure to disclose that pending charge in his Application.

20. Hesser mailed the June 27, 2013 letter by first class mail, to Lewis's updated address of

[5] *State of Missouri v. Darryl Lewis, Jr.*, St. Louis Co. Cir. Ct., No. 09SL-CR00063-01.

record, with sufficient postage attached.

21. The June 27, 2013 letter was not returned as undeliverable.

22. Lewis never responded to the June 27, 2013 letter and has not demonstrated any justification for his failure to respond.

CONCLUSIONS OF LAW

23. Section 385.209 RSMo, Supp. 2012, provides, in 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;
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> * * *
>
> (5) Been convicted of any felony[.]

24. Regulation 20 CSR 100-4.100(2) states:

> (2) Except as required under subsection (2)(B)—
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> > (A) 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.
> >
> > (B) This rule shall not apply to any other statute or regulation which requires a different time period for a person to respond to an inquiry by the department. If another statute or regulation requires a shorter response time, the shorter response time shall be met. This regulation operates only in the absence of any other applicable laws.

25. 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.

26. The Director may refuse to issue an MVESC producer license to Lewis under § 385.209.1(5) because Lewis has been convicted of two felonies:

    a. The Class B Felony of Trafficking in Drugs in the Second Degree, a violation of § 195.223.[6]

    b. The Class C Felony of Possession of a Controlled Substance Except 35 Grams or Less of Marijuana, a violation of § 195.202.[7]

27. The Director may refuse to issue an MVESC producer license to Lewis under § 385.209.1(2) because Lewis violated a rule of the Director, in that he failed to adequately respond to three written inquiries from the Consumer Affairs Division—on April 11, 2013, May 14, 2013 and June 27, 2013—without demonstrating reasonable justification for any of his failures to respond, each time thereby violating regulation 20 CSR 100-4.100(2), which is a rule of the Director. Each of Lewis's failures to respond to Consumer Affairs Division inquiries is a violation of a rule of the Director and a separate and sufficient ground upon which to refuse to issue an MVESC producer license to Lewis.

28. The Director has considered Lewis's history and all of the circumstances surrounding Lewis's Application. Granting Lewis an 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 Lewis.

29. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Darryl Lewis, Jr.** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 19th **DAY OF** NOVEMBER**, 2013.**

JOHN M. HUFF
DIRECTOR

[6] *State of Missouri v. Darryl Lewis, Jr.*, St. Louis Co. Cir. Ct., No. 09SL-CR00063-01
[7] *State of Missouri v. Darryl Lewis*, St. Louis City Cir. Ct., No. 1322-CR00237-01.

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 21st day of November, 2013, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by regular and certified mail at the following address:

Darryl Lewis, Jr.
1210 Park Ashwood Drive, Apartment K
St. Charles, Missouri 63304

Certified No. 7009 3410 0001 9255 0516

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