State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
DENNIS PATRICK NOLTING,	)	**Case No. 150518290C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On July 16, 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 Dennis Patrick Nolting. 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. Dennis Patrick Nolting ("Nolting") is a Missouri resident with a residential and mailing address of 161 Steamboat Lane, Ballwin, Missouri 63011. Nolting also has a business address of 3000 Little Hills Expressway, Suite 101, St. Charles, Missouri 63301.[1]

2. On February 9, 2015, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Nolting'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.

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[1] 3000 Little Hills Expressway, Suite 101, St. Charles, Missouri 63301 is the business address of Dealership Warranties Inc., dba as National Vehicle Protection Services. *See* ¶ 7, *infra*.

4. Nolting accepted the "Applicant's Certification and Attestation" section by signing the Application under oath and before a notary public.

5. Employment History Question No. 35 of the Application requests the following, in relevant part:

> Account for all time for the past five years. List all employment experience starting with your current employer and working back five years.

6. In response to Employment History Question No. 35, Nolting admits he has been working in "Sales" for National Vehicle Protection Services, Inc. of St. Charles, Missouri, since February 2015.

7. Dealership Warranties, Inc., dba National Vehicle Protection Services, Inc., is licensed by the Department as a motor vehicle extended service contract business entity producer, License Number 8160344, to sell, offer, negotiate, or solicit motor vehicle extended service contracts.

8. Based upon his Application, Nolting, since February 2015, engaged in selling, offering, negotiating, or soliciting motor vehicle extended service contracts with consumers, in or from this state, without a motor vehicle extended service contract ("MVESC") producer license.

9. At no time since January 1, 2012,[2] has the Director issued a MVESC producer license to Nolting to sell, offer, negotiate, or solicit motor vehicle extended service contracts with consumers.

10. 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.),

[2] Under SB 132, the licensing and general requirements to be an MVESC producer became effective on January 1, 2012. *See* §§ 385.206, 385.209 RSMo (Supp. 2013).

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.).

11. Nolting answered "No" in response to Background Question No. 4.

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

    a. On May 29, 2012, the St. Charles County Circuit Court entered a judgment against Nolting for unpaid income taxes for the 2008 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 $1,871.24]. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.

    Department of Revenue v. Dennis P. Nolting, St. Charles Co. Cir. Ct., Case No. 1211-MC03930.

    b. On July 7, 2014, the St. Charles County Circuit Court entered a judgment against Nolting 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 $6,059.03]. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.

    Department of Revenue v. Dennis P. Nolting, St. Charles Co. Cir. Ct., Case No. 14SL-MC09146.

13. On February 13, 2015, after reviewing Nolting's Application and his delinquent tax obligations, Special Investigator Andrew Engler of the Division sent an inquiry letter to Nolting via first class mail. Said inquiry letter requested additional documentation and information about Nolting's delinquent tax obligations. The inquiry letter further requested a response by March 5, 2015, and warned Nolting that a failure to respond could result in the Department refusing to issue him a MVESC producer license.

14. The United States Postal Service did not return the February 13, 2015 inquiry letter to the Division as undeliverable, and therefore it is presumed received by Nolting.

15. Nolting failed to provide a written response to the Division's February 13, 2015 inquiry letter, and failed to demonstrate a reasonable justification for the delay.

16. On March 9, 2015, Special Investigator Engler sent a second inquiry letter to Nolting via first class mail asking for the same information previously requested in the February 13, 2015 inquiry letter. The inquiry letter requested a response by March 29, 2015, and warned Nolting that a failure to respond could result in the Department refusing to issue a MVESC producer license to Nolting.

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

18. Nolting failed to provide a written response to the Division's March 9, 2015 inquiry letter, and failed to demonstrate a reasonable justification for the delay.

19. It is inferable, and hereby found as fact, that Nolting sold, offered, negotiated, and solicited motor vehicle extended service contracts with consumers without an MVESC producer license.

20. It is inferable, and hereby found as fact, that Nolting 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 accordingly, in order 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, Nolting failed to respond to the Division's inquiries.

CONCLUSIONS OF LAW

21. Section 385.209 RSMo (Supp. 2013)[3] 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:
>
> * * *
>
> (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;

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

* * *

(11) Unlawfully acted as a producer without a license;

* * *

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

22. Section 385.206 RSMo provides, in part:

1. It is unlawful for any person in or from this state to sell, offer, negotiate, or solicit a motor vehicle extended service contract with a consumer, other than the following:

* * *

(6) A business entity producer or individual producer licensed under section 385.207[.]

23. Section 385.207 RSMo provides, in part:

* * *

3. An individual, prior to selling, offering, negotiating, or soliciting a motor vehicle extended service contract with a consumer under subdivision (6) of subsection 1 of section 385.206, shall apply for and obtain licensure with the director as an individual producer in accordance with this section.

* * *

6. A producer license issued under this section, if not renewed by the director by its expiration date, shall terminate on its expiration date and shall not after that date authorize its holder under sections 385.200 to 385.220 to sell, offer, negotiate, or solicit motor vehicle extended service contracts.

24. 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.

25. "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).

26. 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.

27. The Director may refuse to issue a MVESC producer license to Nolting under § 385.209.1(2) because Nolting violated a provision in sections 385.200 to 385.220, namely § 385.206.1(6), when he unlawfully, in or from this state, sold, offered, negotiated, or solicited motor vehicle extended service contracts with a consumer since February 2015, during his employment with National Vehicle Protection Services, Inc.

28. The Director may refuse to issue a MVESC producer license to Nolting under § 385.209.1(2) because Nolting twice violated a rule of the Director, namely 20 CSR 100-4.100(2)(A), when he failed to adequately respond to two (2) inquiry letters from the Division and failed to provide a reasonable justification for the delays.

29. Each violation of a provision found in sections 385.200 to 385.220, or a violation of a rule of the Director, is a separate and sufficient cause for refusal under § 385.209.1(2).

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

    a. *Department of Revenue v. Dennis P. Nolting*, St. Charles Co. Cir. Ct., Case No. 1211-MC03930 (Certified Tax Lien in the amount of $1,871.24 for unpaid taxes for the 2008 filing year);

    b. *Department of Revenue v. Dennis P. Nolting*, St. Charles Co. Cir. Ct., Case No. 14SL-MC09146 (Certified Tax Lien in the amount of $6,059.03 for unpaid taxes for the 2011 and 2012 filing years).

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

32. The Director may refuse to issue a MVESC producer license to Nolting under § 385.209.1(11) because Nolting unlawfully acted as a producer without a license when he, in or from this state, sold, offered, negotiated, or solicited a motor vehicle extended service contract with a consumer during his employment for National Vehicle Protection Services, Inc.

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

a. *Department of Revenue v. Dennis P. Nolting*, St. Charles Co. Cir. Ct., Case No. 1211-MC03930 (Certified Tax Lien in the amount of $1,871.24 for unpaid taxes for the 2008 filing year);

b. *Department of Revenue v. Dennis P. Nolting*, St. Charles Co. Cir. Ct., Case No. 14SL-MC09146 (Certified Tax Lien in the amount of $6,059.03 for unpaid taxes for the 2011 and 2012 filing years).

34. 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).

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

36. This Order refusing to issue a MVESC producer license to Nolting is in the public interest.

ORDER

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

SO ORDERED.

WITNESS MY HAND THIS 23RD **DAY OF** JULY, **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 23rd day of July, 2015, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by United Parcel Service, signature required, at the following address:

Dennis Patrick Nolting
161 Steamboat Lane
Ballwin, Missouri 63011

Track No. 1Z0R15W84295012662

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