



State of Missouri

**DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION**

IN RE:)	
)	
DAVID PATRICK GRATTAN,)	Case No. 140815603C
)	
Applicant.)	

**ORDER REFUSING TO ISSUE
MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE**

On August 22, 2014, 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 David Patrick Grattan. 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. David Patrick Grattan ("Grattan") is a Missouri resident with a residential address of record of 112 Old Oaks Dr, Ballwin, MO 63011.
2. On May 13, 2014, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Grattan's Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. The Applicant's Certification and Attestation section of the Application, which Grattan accepted by his notarized signature, provides, 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. I further certify, under penalty of perjury, that a) I have no

outstanding state or federal income tax obligations, or b) I have an outstanding state or federal income tax obligation and I have provided all information and documentation requested in Background Information Question 36.4.

4. Grattan answered "No" to Background Information Question 36.4 of the Application which asks:

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 or 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 or 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. a tax compliance letter, etc.).
5. Contrary to Grattan's sworn representation in his Application, Special Investigator Andrew P. Engler ("Special Investigator Engler"), with the Consumer Affairs Division ("Division") of the Department, discovered that on November 4, 2013, the St. Louis County Circuit Court entered a judgment against Grattan for unpaid Missouri income tax for the 2008, 2010, and 2011 tax years as follows:

The Director of Revenue, under Section 143.902, RSMo, hereby certifies that the [\$1,072.66] assessment of tax, interest, additions to tax, penalties, and fees have been made and become final. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.

Dep't of Revenue v. David P. Grattan et al., St. Louis Co. Cir. Ct., Case No. 13SL-MC11782. The judgment remains unsatisfied.

6. Special Investigator Engler mailed an inquiry letter dated May 15, 2014 by first class mail, postage prepaid, to Grattan ("inquiry letter"). The inquiry letter requested "the current status of the lien along with evidence of a repayment arrangement or a letter

of compliance from the Missouri Department of Revenue.” The inquiry letter further requested a response by June 4, 2014, and warned that “[f]ailure to respond could result in a refusal to issue [Grattan a] MVESC license.”

7. The inquiry letter was mailed to the address in paragraph 1, which Grattan provided on his Application. The United States Postal Service did not return the inquiry letter to the Division as undeliverable.
8. Grattan did not respond to the inquiry letter by June 4, 2014, nor did he demonstrate a reasonable justification for the delay.
9. Special Investigator Engler mailed a follow-up inquiry letter dated June 5, 2014 by first class mail, postage prepaid, to Grattan (“follow-up inquiry letter”). The follow-up inquiry letter contained substantially the same information as the inquiry letter, but additionally made reference to the inquiry letter and the response time specified therein. The follow-up inquiry letter requested a reply by June 25, 2014 and warned that “[f]ailure to respond could result in a refusal to issue [Grattan a] MVESC license.”
10. The follow-up inquiry letter was mailed to the address Grattan provided on his Application. The United States Postal Service did not return the follow-up inquiry letter to the Division as undeliverable.
11. Grattan never responded to the follow-up inquiry letter, nor did he demonstrate a reasonable justification for the delay.

CONCLUSIONS OF LAW

12. Section 385.209.1, RSMo. (Supp. 2013)¹ provides, in relevant part:

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:

* * *

¹ All statutory references are to the 2000 Missouri Revised Statutes, as updated by the 2013 RSMo. Supplement, unless otherwise noted.

(2) Violated any provision in sections 385.200 to 385.220, or violated any rule, subpoena, or order of the director; [or]

(3) Obtained or attempted to obtain a license through material misrepresentation or fraud; [or]

* * *

(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) provides, 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.

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. E.D. 2000) (internal citation 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 motor vehicle extended service contract ("MVESC") producer license, but to protect the public.
16. The Director may refuse to issue Grattan a MVESC producer license under § 385.209.1(2) because Grattan failed to respond to the inquiry letter and follow-up inquiry letter from the Division and failed to provide reasonable justification for the delays, thereby twice violating 20 CSR 100-4.100(2)(A), a Department regulation.
17. Each instance in which Grattan failed to respond adequately to the inquiry letter or follow-up inquiry letter is a violation of 20 CSR 100-4.100(2)(A), and each violation of a Department regulation constitutes a separate and sufficient cause for refusal under § 385.209.1(2).
18. The Director may refuse to issue Grattan a MVESC producer license under § 385.209.1(3) because Grattan attempted to obtain a MVESC producer license

through material misrepresentation or fraud when he falsely answered "No" to Background Information Question 36.4 of his Application in order to misrepresent to the Director that he had no delinquent tax obligations and, accordingly, to improve the chance that the Director would approve his Application and issue Grattan a MVESC producer license.

19. The Director may refuse to issue Grattan a MVESC producer license under § 385.209.1(13) because Grattan has failed to comply with an administrative or court order directing payment of state income tax. *Dep't of Revenue v. David P. Grattan et al.*, St. Louis Co. Cir. Ct., Case No. 13SL-MC11782.
20. The Director has considered Grattan's history and all of the circumstances surrounding Grattan's Application. Issuing Grattan a MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue Grattan a MVESC producer license.
21. This order is in the public interest.

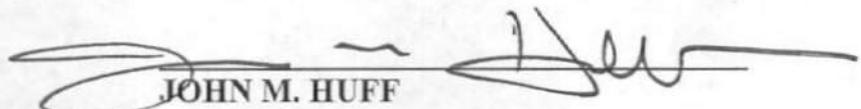
ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **David Patrick Grattan** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 29th DAY OF August, 2014.




JOHN M. HUFF
DIRECTOR

NOTICE

TO: Applicant and any unnamed persons aggrieved by this Order:

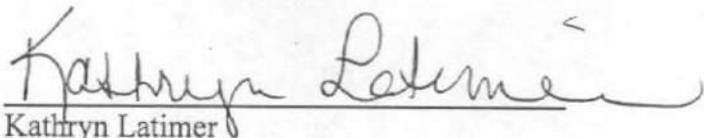
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send 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 2nd day of September, 2014, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required service, at the following address:

David Patrick Grattan
112 Old Oaks Drive
Ballwin, Missouri 63011-2705

No. 1Z0R15W84293690488



Kathryn Latimer
Paralegal
Missouri Department of Insurance, Financial
Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: (573) 751-6515
Facsimile: (573) 526-5492
Email: Kathryn.Latimer@insurance.mo.gov