State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
DANIEL SHANE TOLBERT,	)	**Case No. 140827642C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On October 27, 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 Daniel Shane Tolbert. After reviewing the Petition, 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. Daniel Shane Tolbert ("Tolbert") is a Missouri resident with a residential address of record of #11 Clarence Court, Winfield, MO 63389.

2. On June 5, 2014, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Tolbert's Application for Motor Vehicle Extended Service Contract Producer License ("Application").

3. Tolbert disclosed a criminal history on his Application.

4. On February 22, 2001, Tolbert pled guilty to and was convicted of Possession of Drug Paraphernalia with Intent to Deliver or Sell It, a Class D Felony, in violation of § 195.235, RSMo. (Supp. 1999). The court sentenced Tolbert to five years' incarceration, but suspended execution of the sentence and ordered Tolbert to serve five years' supervised probation. On May 9, 2002, the court revoked Tolbert's probation and executed its original sentence. On December 30, 2003, the court granted Tolbert another five year term of probation, but on March 8, 2007 revoked it and executed its original sentence. *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 00CR155574.

5. On February 22, 2001, Tolbert also pled guilty to and was convicted of Possession of a Controlled Substance Except 35 Grams or Less of Marijuana, a Class C Felony, in violation of § 195.202, RSMo. (Supp. 1998). The court sentenced Tolbert to four years' incarceration, to be served concurrently with the sentence imposed in *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 00CR155574, but suspended execution of the sentence and ordered Tolbert to serve five years' supervised probation. On May 9, 2002, the court revoked Tolbert's probation and executed its original sentence. On December 30, 2003, the court granted Tolbert another five year term of probation, but on March 8, 2007 revoked it and executed its original sentence. *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 00CR155577.

6. On May 9, 2002, Tolbert pled guilty to and was convicted of Distribution, Delivery, and/or Sale of a Controlled Substance, a Class B Felony, in violation of § 195.211, RSMo. (Supp. 2000), and Possession of a Controlled Substance Except 35 Grams or Less of Marijuana, a Class C Felony, in violation of § 195.202, RSMo. (Supp. 2000). The court sentenced Tolbert to ten years' incarceration and seven years' incarceration on the respective counts, to run concurrently and be served concurrently with the sentences imposed in *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 00CR155574 and *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 00CR155577. On December 30, 2003, the court granted Tolbert a five year term of probation, but on March 8, 2007 revoked it and executed its original sentence. *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 02CR155269.

7. On May 9, 2002, Tolbert also pled guilty to and was convicted of Distribution, Delivery, and/or Sale of a Controlled Substance, a Class B Felony, in violation of § 195.211, RSMo. (Supp. 2000). The court sentenced Tolbert to ten years' incarceration, to be served concurrently with the sentences imposed in *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 00CR155574 and *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 00CR155577. On December 30, 2003, the court granted Tolbert a five year term of probation, but on March 8, 2007 revoked it and executed its original sentence. *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 02CR155270.

8. On May 9, 2002, Tolbert also pled guilty to and was convicted of Distribution, Delivery, and/or Sale of a Controlled Substance, a Class B Felony, in violation of § 195.211, RSMo. (Supp. 2000). The court sentenced Tolbert to ten years' incarceration, to be served concurrently with the sentences imposed in *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 00CR155574 and *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 00CR155577. On December 30, 2003, the court granted Tolbert a five year term of probation, but on March 8, 2007 revoked it and executed its original sentence. *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 02CR155271.

9. On May 15, 2007, Tolbert pled guilty to and was convicted of Possession of a

Controlled Substance Except 35 Grams or Less of Marijuana, a Class C Felony, in violation of § 195.202, RSMo. (Supp. 2005). The court sentenced Tolbert to five years' incarceration, to be served concurrently with the sentences imposed in *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 00CR155574, *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 00CR155577, *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 02CR155269, *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 02CR155270, and *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 02CR155271. *State v. Daniel Shane Tolbert*, St. Charles Co. Cir. Ct., Case No. 0611-CR07420-01.

10. On September 7, 2010, Tolbert pled guilty to, and on March 8, 2011 was convicted of, two counts of Possession of a Controlled Substance Except 35 Grams or Less of Marijuana, both Class C Felonies, both in violation of § 195.202, RSMo. (Supp. 2008). The court sentenced Tolbert to five years' incarceration for each count, to be served concurrently with one another and with the sentences imposed in *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 10BB-CR00192-01. *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 09BB-CR00631-01.

11. On September 7, 2010, Tolbert also pled guilty to, and on March 8, 2011 was convicted of, Tampering with Physical Evidence in a Felony Prosecution, a Class D Felony, in violation of § 575.100, RSMo. (Supp. 2009), and Possession of a Controlled Substance Except 35 Grams or Less of Marijuana, a Class C Felony, in violation of § 195.202, RSMo. (Supp. 2009). The court sentenced Tolbert to four years' incarceration and five years' incarceration on the respective counts, to be served concurrently with one another and with the sentences imposed in *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 09BB-CR00631-01. *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 10BB-CR00192-01.

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:
>
> * * *
>
> (5) Been convicted of any felony[.]

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

13. 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.

14. The Director may refuse to issue Tolbert a MVESC producer license under § 385.209.1(5) because Tolbert has been convicted of eleven felonies, specifically:

    a. Possession of Drug Paraphernalia with Intent to Deliver or Sell It, a Class D Felony, in violation of § 195.235, RSMo. (Supp. 1999). *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 00CR155574;

    b. Possession of a Controlled Substance Except 35 Grams or Less of Marijuana, a Class C Felony, in violation of § 195.202, RSMo. (Supp. 1998). *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 00CR155577;

    c. Distribution, Delivery, and/or Sale of a Controlled Substance, a Class B Felony, in violation of § 195.211, RSMo. (Supp. 2000). *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 02CR155269;

    d. Possession of a Controlled Substance Except 35 Grams or Less of Marijuana, a Class C Felony, in violation of § 195.202, RSMo. (Supp. 2000). *Id.*;

    e. Distribution, Delivery, and/or Sale of a Controlled Substance, a Class B Felony, in violation of § 195.211, RSMo. (Supp. 2000). *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 02CR155270;

    f. Distribution, Delivery, and/or Sale of a Controlled Substance, a Class B Felony, in violation of § 195.211, RSMo. (Supp. 2000). *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 02CR155271;

    g. Possession of a Controlled Substance Except 35 Grams or Less of Marijuana, a Class C Felony, in violation of § 195.202, RSMo. (Supp. 2005). *State v. Daniel Shane Tolbert*, St. Charles Co. Cir. Ct., Case No. 0611-CR07420-01;

    h. Possession of a Controlled Substance Except 35 Grams or Less of Marijuana, a Class C Felony, in violation of § 195.202, RSMo. (Supp. 2008). *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 09BB-CR00631-01;

i. Possession of a Controlled Substance Except 35 Grams or Less of Marijuana, a Class C Felony, in violation of § 195.202, RSMo. (Supp. 2008). *Id.*;

j. Tampering with Physical Evidence in a Felony Prosecution, a Class D Felony, in violation of § 575.100, RSMo. (Supp. 2009). *State v. Daniel S. Tolbert*, Warren Co. Cir. Ct., Case No. 10BB-CR00192-01; and

k. Possession of a Controlled Substance Except 35 Grams or Less of Marijuana, a Class C Felony, in violation of § 195.202, RSMo. (Supp. 2009). *Id.*

15. Each of Tolbert's felony convictions constitutes a separate and sufficient cause for refusal to issue Tolbert a MVESC producer license pursuant to § 385.209.1(5).

16. The Director has considered Tolbert's history and all of the circumstances surrounding Tolbert's Application. Issuing Tolbert a MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue Tolbert a MVESC producer license.

17. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Daniel Shane Tolbert** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 30th **DAY OF** October, **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 31st day of October, 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:

Daniel Shane Tolbert
11 Clarence Court
Winfield, Missouri 63389-3642

No. 1Z0R15W84295425403

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