State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
DELMAR L. WALLER,	)	**Case No. 204395**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On June 24, 2014, 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 Delmar L. Waller. 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. Delmar L. Waller ("Waller") is a Missouri resident with a residential address of record of 2579 Trojan Circle, Troy, Missouri, 63379.

2. On September 4, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Waller's Application for Motor Vehicle Extended Service Contract Producer License ("Application").

3. By signing the Application, Waller attested and certified that "all of the information submitted in this application and attachments is true and complete."

4. 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 was 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

5. Waller answered "Yes" to Question No. 1 and in an attached written explanation and court documents disclosed that he had received a suspended imposition of sentence for a Class C Misdemeanor:

a. On February 23, 2005, Waller pleaded guilty in the Circuit Court of Warren County to the Class C Misdemeanor of Sexual Misconduct in the Third Degree, in violation of § 566.095, RSMo. The court suspended the imposition of sentence and placed Waller on two years' probation, further ordering a psychological evaluation and two days' shock incarceration. On September 5, 2006, the court continued Waller's probation due to one or more violations, and Waller completed his probation on September 5, 2008.[1]

6. In his written explanation, Waller stated, in relevant part, verbatim:

> 1 charge of sexual misconduct 3rd Degree Misdemeanor 2004 or 2005
> was arguing with (now) ex-wife and a third-party came into the picture and started cussing me out. Told her to go ---- herself and to do a few other things out of anger.
> Was charged of sexual misconduct 3rd Degree Misdemeanor which is making a sexual comment or gesture that is unwanted!

7. Waller failed to disclose on his Application that he had been convicted in Florida of six more misdemeanors:

a. On May 3, 2000, Waller pleaded nolo contendere in the County Court of Duval County, Florida, to the First Degree Misdemeanor of Battery/Domestic, in violation of Fla. Stat. § 784.03. The court sentenced Waller to nine months of probation, but after Waller violated his probation the court sentenced Waller to sixty days county jail, with credit for thirty days.[2]

---

[1] *State of Missouri v. Delmar L. Waller*, Warren Co. Cir. Ct., No. 04A8-CR01324.
[2] *State of Florida v. Delmar Lavern Waller*, Co. Ct. of Duval Co., Fla., No. 2000-MM-024385.

b. On January 8, 2001, Waller pleaded nolo contendere in the County Court of Duval County, Florida, to the First Degree Misdemeanor of Battery/Domestic, in violation of Fla. Stat. § 784.03. The court adjudged Waller guilty and placed Waller on probation. On September 4, 2001, Waller admitted to violating his parole and the court sentenced Waller to sixty days in county jail, with credit for thirty days.[3]

c. On August 23, 2001, Waller pleaded nolo contendere in the County Court of Duval County, Florida, to the Second Degree Misdemeanor of Petit Theft, in violation of Fla. Stat. § 812.014. The court adjudged Waller guilty and sentenced Waller to a term of one to two months in county jail.[4]

d. Also on August 23, 2001, Waller pleaded nolo contendere in the County Court of Duval County, Florida to the First Degree Misdemeanor of Battery/Domestic, in violation of Fla. Stat. § 784.03. The court adjudged Waller guilty and sentenced Waller to sixty days in county jail, with credit for thirty days served.[5]

e. Also on August 23, 2001, Waller pleaded nolo contendere in the County Court of Duval County, Florida to the First Degree Misdemeanor of Worthless Check – Obtaining Property Less than $150.00, in violation of Fla. Stat. § 832.05. The court adjudged Waller guilty and sentenced Waller to two months in county jail.[6]

f. Also on August 23, 2001, Waller pleaded nolo contendere in the County Court of Duval County, Florida to the First Degree Misdemeanor of Worthless Check – Obtaining Property Less than $150.00, in violation of Fla. Stat. § 832.05. The court adjudged Waller guilty and sentenced Waller to sixty days in county jail.[7]

8. On September 10, 2013, Consumer Affairs Division investigator Andrew Engler mailed Waller a written inquiry, noting his failure to disclose his Florida criminal cases and requesting an explanation of the circumstances surrounding the cases and copies of court documents.

9. On December 5, 2013, the Department received Waller's written response, in which Waller stated, in relevant part, verbatim:

> As discussed in our phone conversation in the month of October, I didn't realize that this was a requirement for disclosure as it had been over a decade since it had happened.

---

[3] *State of Florida v. Delmar L. Waller*, Co. Ct. of Duval Co., Fla., No. 2000-MM-048053.
[4] *State of Florida v. Delmar Lavern Waller*, Co. Ct. of Duval Co., Fla., No. 2001-MM-025032.
[5] *State of Florida v. Delmar Waller*, Co. Ct. of Duval Co., Fla., No. 2001-MM-023951.
[6] *State of Florida v. Delmar L. Waller*, Co. Ct. of Duval Co., Fla., No. 2001-MM-032454.
[7] *State of Florida v. Delmar L. Waller*, Co. Ct. of Duval Co., Fla., No. 2001-MM-009621.

10. Waller's explanation is not credible. Background Question No. 1 plainly asks if the applicant has "ever been" convicted of a crime.

11. It is inferable, and hereby found as fact, that Waller failed to disclose his three convictions in Florida of the First Degree Misdemeanor of Battery/Domestic, his two convictions of the First Degree Misdemeanor of Worthless Check – Obtaining Property Less than $150.00, and his conviction of the Second Degree Misdemeanor of Petit Theft, in order to falsely minimize to the Director the extent of his criminal history and, accordingly, to improve the chances that the Director would approve his Application and issue him an MVESC producer license.

12. Waller also failed to disclose that he had been convicted of a Class A Misdemeanor in Missouri:

    a. On November 12, 2009, Waller pleaded guilty in the Montgomery County Circuit Court to the Class A Misdemeanor of Failure to Return Leased or Rented Property – Value Less than $500, in violation of § 578.150, RSMo. The court sentenced Waller to pay a $25.00 fine.[8]

13. On May 19, 2014, Engler mailed Waller an inquiry to Waller noting that Waller pleaded guilty to the Class A Misdemeanor of Failure to Return Leased or Rented Property – Value Less than $500 and asking for a statement explaining the circumstances surrounding the charge and why he failed to disclose it in his application, as well as requesting that Waller provide a copy of the charging document in the case.

14. Engler mailed the May 19, 2014 inquiry by first class mail, with sufficient postage attached, to Waller at his address of record.

15. The May 19, 2014 inquiry was not returned as undeliverable.

16. Waller failed to respond to the May 19, 2014 inquiry and did not demonstrate any justification for his failure to respond.

17. It is inferable, and hereby found as fact, that Waller failed to disclose his conviction of the Class A Misdemeanor of Failure to Return Leased or Rented Property – Value Less than $500, in order to falsely minimize to the Director the extent of his criminal history and, accordingly, to improve the chances that the Director would approve his Application and issue him an MVESC producer license.

---

[8] *State of Missouri v. Delmar L. Waller*, Montgomery Co. Cir. Ct., No. 09A1-CR00057.

CONCLUSIONS OF LAW

18. Section 385.209 RSMo, Supp. 2013, 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[.]

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

> (2) Except as required under subsection (2)(B)—
>
> (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.

20. 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.

21. The Director may refuse to issue an MVESC producer license to Waller under § 385.209.1(3) because Waller failed to disclose six Florida misdemeanor convictions in order to falsely minimize to the Director the extent of his criminal history and, accordingly, to improve the chances that the Director would approve his Application and

issue him an MVESC producer license:

a. Three convictions in Florida of the First Degree Misdemeanor of Battery/Domestic;

b. Two convictions of the First Degree Misdemeanor of Worthless Check – Obtaining Property Less than $150.00; and

c. The Second Degree Misdemeanor of Petit Theft.

22. The Director also may refuse to issue an MVESC producer license to Waller under § 385.209.1(3) because Waller failed to disclose his Missouri conviction of the Class A Misdemeanor of Failure to Return Leased or Rented Property – Value Less than $500, in order to falsely minimize to the Director the extent of his criminal history and, accordingly, to improve the chances that the Director would approve his Application and issue him an MVESC producer license.

23. The Director also may refuse to issue an MVESC producer license to Waller under § 385.209.1(2) because Waller violated a rule of the Director, in that he failed to timely and adequately respond to the May 19, 2014 inquiry from the Consumer Affairs division, which failure violated 20 CSR 100-4.100, which is a rule of the Director.

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

25. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Delmar L. Waller** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 26th **DAY OF** June **, 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 30th day of June, 2014, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by regular and certified mail at the following addresses:

Delmar L. Waller
2579 Trojan Circle
Troy, Missouri 63379

Certified No. 7009 3410 0001 9254 8100

Angie Gross

Angie Gross
Senior Office Support Assistant
Investigations Section
Missouri Department of Insurance, Financial Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: 573.751.1922
Facsimile: 573.522.3630
Email: angie.gross@insurance.mo.gov