



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION

IN RE:

FRANK C. CAFFERY,

Applicant.

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Case No. 202434

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

On March 7, 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 Frank C. Caffery. After reviewing the Petition, the 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. Frank C. Caffery ("Caffery") is a Missouri resident with a residential address of record of 8531 West Shore Drive, Hillsboro, Missouri, 63050.
2. On July 5, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Caffery's completed Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. Background Question No. 4 of the Application asked the following:

Have you been notified by any jurisdiction to which you are applying of any delinquent tax obligation that is not the subject of a repayment agreement?

If you answer yes, identify the jurisdiction(s): _____
4. Caffery marked "No" to Background Question No. 4.
5. Caffery did not disclose any delinquent tax obligation in his Application.
6. Contrary to Caffery's "No" answer to Question No. 4, the Consumer Affairs Division's investigation revealed information indicating that Caffery owed a delinquent tax

applicants for a motor vehicle extended service contract producer license, but to protect the public.

20. The Director may refuse to issue Caffery an MVESC producer license pursuant to § 385.209.1(13) because Caffery failed to comply with an administrative and court order directing payment of state income tax. The Certificate of Tax Lien – Individual Income Tax, filed on October 23, 2011 by the Director of Revenue in *Department of Revenue v. Frank C. Caffery*, Jefferson Co. Cir. Ct., No. 11JE-MC02601, which became the judgment of the court upon its filing, remains unsatisfied.
21. The Director also may refuse to issue Caffery an MVESC producer license under § 385.209.1(3) because Caffery falsely answered no to Question No. 4 and failed to disclose his delinquent tax obligation in his Application, in order to represent to the Director that he had no delinquent tax obligations, and, accordingly, in order to improve the chances that the Director would approve his Application and issue him an MVESC producer license.
22. The Director also may refuse to issue Caffery an MVESC producer license under § 385.209.1(2) because Caffery violated a rule of the Director, in that Caffery failed to respond to two written inquiries from the Consumer Affairs Division—on July 31, 2013, and September 6, 2013—without demonstrating reasonable justification for either of his failures to respond, each time thereby violating regulation 20 CSR 100-4.100(2), which is a rule of the Director.
23. The Director has considered Caffery's history and all of the circumstances surrounding Caffery's Application. Granting Caffery an MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue an MVESC producer license to Caffery.
24. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Frank C. Caffery** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 10th DAY OF MARCH, 2014.




JOHN M. HUFF
DIRECTOR

obligation, of which he had been notified:

- a. On October 13, 2011, the Director of the Missouri Department of Revenue filed a Certificate of Tax Lien – Individual Income Tax in the Jefferson County Circuit Court, certifying that Caffery owed \$3,370.61 in delinquent taxes, interest and fees, which, upon filing, became the judgment of the court under § 143.902. The judgment remains unsatisfied.¹
7. It is inferable, and is hereby found as fact, that Caffery falsely answered no to Question No. 4 and failed to disclose his delinquent tax obligation in his Application, in order to represent to the Director that he had no delinquent tax obligations, and, accordingly, in order to improve the chances that the Director would approve his Application and issue him an MVEESC producer license.
8. On July 31, 2013, Consumer Affairs Division investigator Andrew Engler mailed an inquiry letter to Caffery requesting information about the current status of his Missouri state tax lien and a copy of any repayment schedule.
9. Engler mailed the July 31, 2013 letter by first class mail to Caffery's address of record, with sufficient postage attached.
10. The July 31, 2013 letter was not returned as undeliverable.
11. Caffery never responded to the July 31, 2013 letter and has not demonstrated any justification for his failure to respond.
12. On September 6, 2013, Engler mailed a second inquiry letter to Caffery, again requesting an explanation of his "No" answer to Background Question No. 4, and again requesting a copy of any repayment schedule.
13. Engler mailed the September 6, 2013 letter by first class mail to Caffery's address of record, with sufficient postage attached.
14. The September 6, 2013 letter was not returned as undeliverable.
15. Caffery never responded to the September 6, 2013 letter and has not demonstrated any justification for his failure to respond.
16. On February 11, 2014, the Missouri Department of Revenue provided an affidavit showing that, as of that date, Caffery owed \$3,162.64 in delinquent Missouri state income taxes, with interest updated to February 28, 2014.

¹ *Department of Revenue v. Franklin C. Caffery*, Jefferson Co. Cir. Ct., No. 11JE-MC02601.

CONCLUSIONS OF LAW

17. 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:

* * *

(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;

* * *

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

18. 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.

19. 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

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 12th day of March, 2014, a copy of the foregoing Order and Notice was served upon the applicant in this matter by certified mail at the following address:

Frank C. Caffery
8531 West Shore Drive
Hillsboro, Missouri 63050

Certified No. 7009 3410 0001 9254 7196



Angie Gross

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