State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Stephen P. Ficken,	)	**Case No. 12-0106015C**
Applicant.	)	

ORDER REFUSING TO ISSUE INSURANCE PRODUCER LICENSE

On April 11, 2012, Carolyn H. Kerr, Legal Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue an insurance producer license to Stephen P. Ficken. 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. Stephen P. Ficken ("Ficken") is an individual residing in Missouri.

2. On or about March 8, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Ficken's Uniform Electronic Application for Individual Producer License ("Application").

3. In his Application, Ficken listed his residential, business, and mailing address as 6708 Manchester St., Kansas City, Missouri 64133.

4. Following multiple requests for additional information by the Department's Licensing Section, Ficken's Application was finalized on or about June 30, 2011.

5. In completing the Application, Ficken attested under penalty of perjury to the truthfulness and completeness of the information he provided in the Application, including his answers to the questions in the section relating to the applicant's criminal history ("Background Questions").

6. In the section of Application headed "Background Questions," Background Question No. 1 asks: "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?

7. The Application defines "crime" to include "a misdemeanor, a felony, or a military offense." It goes on to state that the applicant "may exclude misdemeanor traffic citations and misdemeanor convictions or pending *misdemeanor charges* involving driving under the influence (DUI) or driving while intoxicated (DWI)." (Emphasis added.)

8. The Application explains that "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 no contest, or having been given probation, a *suspended sentence*, or a fine." Emphasis added.

9. Ficken answered "Yes" to Background Question No. 1.

10. As part of his Application, Ficken provided the following documents:

a. A letter, dated March 15, 2011 in which he acknowledged "the 2003 charges against me;"

b. A copy of page one of the Information filed in the Circuit Court of Jackson County, Missouri on May 12, 2004, in *State of Missouri v. Stephen P. Ficken*, Case No. 16CR04000048-01;[1] and

c. A copy of the Information filed in the Circuit Court of Jackson County, Missouri on May 12, 2004, in *State of Missouri v. Stephen P. Ficken*, Case No.16CR04000055-01.

11. On or about May 21, 2003, Ficken was charged with three counts of the "Class A Misdemeanor of Violation of Order of Protection," in violation of §§ 455.045, 455.050, and 455.085, RSMo. *State of Missouri v. Stephen P. Ficken*, Case No. 16CR03002847-01.

12. On October 29, 2003, the court in *State of Missouri v. Stephen P. Ficken*, Case No. 16CR03002847-01, entered a Judgment finding Ficken guilty upon his plea of guilty to all three counts of the violation of an adult abuse order, all class A misdemeanors. The court suspended the imposition of sentence and placed Ficken on probation for a period of two years, subject to conditions.

13. On May 12, 2004, Ficken was charged with three counts of the "Class D Felony of Violation of Order of Protection," in violation of §§ 455.045, 455.050, and 455.085, RSMo. *State of Missouri v. Stephen P. Ficken*, Case No. 16CR04000048-01.

14. On July 6, 2004, Ficken pled guilty to the following:

a. Ct. 1 Violation of Order of Protection, a Class D Felony, which occurred on or about December 21, 2003;

b. Ct. 2 Violation of Order of Protection, a Class D Felony, which occurred on or about December 22, 2003; and

c. Ct. 3 Violation of Order of Protection, a Class D Felony, which occurred on or about December 22, 2003.

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[1] The Information filed in *State of Missouri v. Stephen P. Ficken*, Case No. 16CR04000048-01 actually consisted of two pages, but Ficken only provided the first page of that Information to the Department with his Application.

State of Missouri v. Stephen P. Ficken, Case No. 16CR04000048-01.

15. On September 17, 2004, the court in *State of Missouri v. Stephen P. Ficken*, Case No. 16CR04000048-01 entered a Judgment accepting Ficken's guilty plea on all three counts and suspended the imposition of sentence and placed Ficken on probation for a period of five years, subject to conditions. This sentence was to run concurrently with those entered in cases 16CR03002847-01 and 16CR04000055-01.

16. On May 12, 2004, Ficken was also charged with four counts of the "Class D Felony of Violation of Order of Protection," in violation of §§ 455.045, 455.050, and 455.085, RSMo. *State of Missouri v. Stephen P. Ficken*, Case No. 16CR04000055-01.

17. On July 6, 2004, Ficken pled guilty to the following:

a. Ct. 1 Violation of Order of Protection, a Class D Felony, which occurred on or about November 21, 2003;

b. Ct. 2 Violation of Order of Protection, a Class D Felony, which occurred on or about November 21, 2003;

c. Ct. 3 Violation of Order of Protection, a Class D Felony, which occurred on or about November 22, 2003; and

d. Ct. 4 Violation of Order of Protection, a Class D Felony, which occurred on or about November 22, 2003.

State of Missouri v. Stephen P. Ficken, Case No. 16CR04000055-01.

18. On September 17, 2004, the court in *State of Missouri v. Stephen P. Ficken*, Case No. 16CR04000055-01 entered a Judgment accepting Ficken's guilty plea on all four counts and suspended the imposition of sentence and placed Ficken on probation for a period of five years, subject to conditions. This sentence was to run concurrently with those entered in cases 16CR03002847-01 and 16CR04000048-01.

19. On September 17, 2004, the court in *State of Missouri v. Stephen P. Ficken*, Case No. 16CR03002847-01 revoked Ficken's probation and sentenced him to one year in the Jackson County jail on three counts of the violation of an adult abuse order which had been previously entered against him on October 29, 2003, in *State of Missouri v. Stephen P. Ficken*, Case No. 16CR03002847-01. The court ordered that execution of Ficken's sentence be suspended and placed Ficken on two years' probation with conditions. Ficken's sentence was to run concurrently with those entered in cases 16CR04000048-01 and 16CR04000055-01

20. Section 455.045 RSMo (2000),[2] states, in relevant part as follows:

[2] All statutory references are to RSMo (Supp. 2011) unless otherwise indicated.

Any ex parte order of protection granted pursuant to sections 455.010 to 455.085 shall be to protect the petitioner from abuse or stalking and may include:

(1) Restraining the respondent from abusing, threatening to abuse, molesting, stalking or disturbing the peace of the petitioner;

(2) Restraining the respondent from entering the premises of the dwelling unit of petitioner[;]

* * *

(3) Restraining the respondent from communicating with the petitioner in any manner or through any medium[.]

21. Section 455.050 RSMo (2000), states, in relevant part as follows:

1. Any full or ex parte order of protection granted pursuant to sections 455.010 to 455.085 shall be to protect the petitioner from abuse or stalking and may include:

(1) Temporarily enjoining the respondent from abusing, threatening to abuse, molesting, stalking or disturbing the peace of the petitioner;

(2) Temporarily enjoining the respondent from entering the premises of the dwelling unit of the petitioner[:]

* * *

(3) Temporarily enjoining the respondent from communicating with the petitioner in any manner or through any medium[.]

22. Section 455.085 (2000), states, in relevant part as follows:

7. A violation of the terms and conditions, with regard to abuse, stalking, child custody, communication initiated by the respondent or entrance upon the premises of the petitioner's dwelling unit, of an ex parte order of protection of which the respondent has notice, shall be a class A misdemeanor unless the respondent has previously pleaded guilty to or has been found guilty in any division of the circuit court of violating an ex parte order of protection or a full order of protection within five years of the date of the subsequent violation, in which case the subsequent violation shall be a class D felony....

8. A violation of the terms and conditions, with regard to abuse, stalking, child custody, communication initiated by the respondent or entrance upon the premises of the petitioner's dwelling unit, of a full order of protection shall be a class A misdemeanor, unless the respondent has previously pleaded guilty to or has been found guilty in any division of the circuit court of violating an ex parte

order of protection or a full order of protection within five years of the date of the subsequent violation, in which case the subsequent violation shall be a class D felony[.]

23. On August 9, 2010, a two count Information for a Felony was filed against Ficken in the Circuit Court of Platte County, Missouri, alleging the class D felony of driving while intoxicated, in violation of § 577.010, and the class C misdemeanor of failure to stop, in violation of § 304.351. *State of Missouri v. Stephen P. Ficken*, Case No. 10AE-CR00730-01.

24. The Information filed in *State of Missouri v. Stephen P. Ficken*, Case No. 10AE-CR00730-01 alleged the following:

a. That on or about January 10, 2010, ... [Ficken] operated a motor vehicle while under the influence of alcohol, and on or about June 19, 2010, [Ficken] had pleaded guilty to driving while intoxicated, for events occurring on April 13, 2006, in the Circuit Court of Jackson County, Missouri,... and on or about June 21, 2001, [Ficken] had pleaded guilty to driving while intoxicated, for events occurring on February 22, 2001, in the Circuit Court of Jackson County, Missouri; and

b. That on or about January 10, 2010, ... [Ficken], while operating a motor vehicle at an intersection marked with a stop sign, failed to stop at a clearly marked stop line.

25. On or about November 10, 2011, the court entered a Judgment against Ficken in *State of Missouri v. Stephen P. Ficken*, Case No. 10AE-CR00730-01, finding Ficken guilty of "Dwi – Alcohol," a class B misdemeanor, in violation of § 577.010, and "Failure to Register Mtr Veh," a class B misdemeanor, in violation of § 301.020, based on Ficken's guilty pleas to those counts. The court suspended the imposition of sentence on the first count, placing Ficken on supervised probation for two years, and imposed a monetary fine for the second count. It also required Ficken to perform 40 hours of community service and successfully complete a Substance Abuse Traffic Offender Program (SATOP) and Victim Impact Panel.

26. Section 577.010, states, in relevant part, as follows:

1. A person commits the crime of "driving while intoxicated" if he operates a motor vehicle while in an intoxicated or drugged condition.

2. Driving while intoxicated is for the first offense, a class B misdemeanor. No person convicted of or pleading guilty to the offense of driving while intoxicated shall be granted a suspended imposition of sentence for such offense, unless such person shall be placed on probation for a minimum of two years.

3. Notwithstanding the provisions of subsection 2 of this section, in a circuit where a DWI court or docket created under section 478.007 or other court-ordered treatment program is available, no person who operated a motor vehicle

with fifteen-hundredths of one percent or more by weight of alcohol in such person's blood shall be granted a suspended imposition of sentence unless the individual participates and successfully completes a program under such DWI court or docket or other court-ordered treatment program.

27. Section 301.020 states, in pertinent part, as follows:

1. Every owner of a motor vehicle or trailer, which shall be operated or driven upon the highways of this state, except as herein otherwise expressly provided, shall annually file, by mail or otherwise, in the office of the director of revenue, an application for registration on a blank to be furnished by the director of revenue…

* * *

6. Anyone who fails to comply with the requirements of this section shall be guilty of a class B misdemeanor.

28. Ficken did not disclose the pending felony DWI charge filed against him on August 9, 2010. Those charges were still pending as of March 8, 2011, when he submitted his Application.

29. In the section of Application headed "Background Questions," Background Question No. 4 asks: "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?"

30. Ficken answered "No" to Background Question No. 4.

31. On or about December 14, 2009, the Missouri Department of Revenue, Taxation Division ("Department of Revenue"), filed a Certificate of Tax Lien – Individual Income Tax against Ficken in the Circuit Court of Jackson County, Missouri, alleging a total tax liability balance due of $652.67. The court entered judgment against Ficken on the same day, finding that Ficken owed $652.67 in past due taxes. *Director of Revenue v. Stephen P. Ficken*, Case No. 0916-MC04722.

32. According to Department of Revenue records, as of November 7, 2011, Ficken owes a total of $812.03 for tax years 2006, 2007, 2008, and 2010. Ficken has not entered into a repayment plan or agreement with the Department of Revenue regarding this tax lien.

33. Ficken did not disclose the tax lien Judgment entered against him on September 14, 2009, when he submitted his Application to the Department in March 2011.

34. Ficken made incomplete statements on his Application for the purpose of misleading the Department into granting him an insurance producer license in Missouri.

CONCLUSIONS OF LAW

35. Section 375.141 provides, in part:

1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

* * *

(1) Intentionally providing materially incorrect, misleading, incomplete or untrue information in the license application;

* * *

(3) Obtaining or attempting to obtain a license through material misrepresentation or fraud;

* * *

(6) Having been convicted of a felony or crime involving moral turpitude;

* * *

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

36. A crime involving "moral turpitude" is a crime involving "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything 'done contrary to justice, honesty, modesty, and good morals'." *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985).

37. In *Brehe v. Missouri Dept. of Elementary & Secondary Education*, the Missouri Court of Appeals referred to three categories of crimes, the categories being drawn from 21 Am.Jur.2d. Criminal Law § 22 (1998):

(1) crimes that necessarily involve moral turpitude (referred to in *Brehe* as "category 1" crimes);

(2) crimes "so obviously petty that conviction carries no suggestion of moral turpitude" ("category 2" crimes); and

(3) crimes that "may be saturated with moral turpitude," yet do not involve it necessarily ("category 3" crimes)

See Brehe v. Missouri Dept. of Elementary & Secondary Education, 213 S.W.3d 720, 725 (Mo. App. 2007).

38. Category 1 crimes require only a showing of a conviction or guilty plea. *Id.*

39. Category 3 crimes require consideration of "the related factual circumstances" of the offense to determine whether moral turpitude is involved. *Id.*

40. The offense of violating an order of protection is a Category 3 crime, which requires consideration of "the related factual circumstances" of the offense to determine whether moral turpitude is involved. *Brehe*, 213 S.W.3d at 725. The determination of whether it constitutes a crime of moral turpitude rests "on the elements of the charged offense." *Id.*, at 728.

41. A plea of guilty to a criminal charge is admissible as an admission against penal interest in any subsequent proceeding against the one who made it, for it is a solemn confession of the truth of the charge, though it is not conclusive and may be explained. *Pruiett v. Wilform*, 477 S.W.2d 76, 80 (Mo. 1972). "A licensee's guilty plea may lead to collateral estoppel, a doctrine that precludes a licensee from denying charges against him." *Stanton*, Mo. Admin. No. 05-1661BN.

42. The dictionary definition of "material" is "having real importance or great consequences[.]" MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 765 (11th ed. 2004). *Missouri Broad of Cosmetology and Barber Examiners v. Yolanda Cuellar*, No. 08-0750 CB (Mo. Admin. Hrg. Comm'n, December 31, 2008).

43. "A misrepresentation is a falsehood or untruth made with the intent of deceit rather than inadvertent mistake." *State Bd. of Cosmetology v. Eddings-Schapeler*, No. 05-0288 CS (Mo. Admin. Hrg. Comm'n, June 29, 2006), citing *Hernandez v. State Bd. of Regis'n for Healing Arts*, 936 S.W.2d 894, 899 n.3 (Mo.App. W.D. 1997).

44. The principal purpose of § 375.141 RSMo is not to punish licensees or applicants, but to protect the public. *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo. App. 1984).

CAUSE FOR ORDER REFUSING TO ISSUE INDIVIDUAL PRODUCER LICENSE

45. The Director may refuse to issue an insurance producer license to Ficken pursuant to § 375.141.1(1) because he intentionally provided materially incorrect, misleading incomplete or untrue information in his Application, for the following reasons:

a. Ficken intentionally provided materially incorrect, misleading, incomplete or untrue information in his Application when he failed to include information about the felony DWI charges pending against him when he submitted his Application to the Department in March 2011; and

b. Ficken intentionally provided materially incorrect, misleading, incomplete or untrue information in his Application when he failed to include information about the tax lien Judgment entered against him on September 14, 2009, when he submitted his Application to the Department in March 2011.

46. The Director may refuse to issue an insurance producer license to Ficken pursuant to § 375.141.1(3) because he attempted to obtain a license through material misrepresentation or fraud, for the following reasons:

a. Ficken intentionally provided materially incorrect, misleading, incomplete or untrue information in his Application when he failed to include information about the felony DWI charges pending against him when he submitted his Application to the Department in March 2011; and

b. Ficken intentionally provided materially incorrect, misleading, incomplete or untrue information in his Application when he failed to include information about the tax lien Judgment entered against him on September 14, 2009, when he submitted his Application to the Department in March 2011.

47. The Director may refuse to issue an insurance producer license to Ficken pursuant to § 375.141.1(6) because he was convicted of felonies and misdemeanors for violating orders of protection entered against him. Such crimes can be characterized as crimes of moral turpitude.

48. The Director may refuse to issue an insurance producer license to Ficken pursuant to § 375.141.1(14) because he has failed to comply with an administrative or court order directing payment of state income tax, in that Ficken continues to owe $812.03 of that payment obligation.

49. Therefore, in applying his discretion, the Director has considered all of the facts and circumstances surrounding each of the enumerated disqualifying events and exercises his discretion in refusing to grant Ficken a Missouri insurance producer license.

50. The requested order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the insurance producer license of STEPHEN P. FICKEN is hereby REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 14TH DAY OF APRIL, 2012.

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 11th day of April, 2012, a copy of the foregoing notice and order was served upon Stephen P. Ficken in this matter by U.S. mail, postage pre-paid and by certified mail at the following address:

Stephen P. Ficken
6708 Manchester St.
Kansas City, Missouri 64133

Certified Mail # 7009 3410 0001 8931 2929

Kathryn Randolph

Kathryn Randolph
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