



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

GERALD D. SIMMONS,

Applicant.

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Case No. 194349

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On September 10, 2013, 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 Gerald D. Simmons. 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. Gerald D. Simmons ("Simmons") is a Missouri resident with a residential address of record of 46 Rolling Hills, Black Jack, Missouri, 63033.
2. On April 15, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Simmons's Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. Background Question No. 1 of the Application asks, in relevant part:

Have you ever been convicted of a crime, had a judgement withheld or deferred, or are you currently charged with committing a crime?
4. Simmons marked "Yes" to Question No. 1.
5. Simmons attached to his Application court records showing that he was convicted in the St. Louis County Circuit Court of three felonies:
 - a. On June 2, 2000, Simmons pleaded guilty to Robbery in the Second Degree, a Class B Felony in violation of § 569.030, RSMo. The court sentenced Simmons to five (5) years' incarceration, but suspended execution of the sentence after 120 days' shock incarceration and granted Simmons five (5) years' probation. The

court revoked Simmons's probation on July 25, 2002.¹

- b. Also on June 2, 2000, Simmons pleaded guilty to a second count of Robbery in the Second Degree, a Class B Felony in violation of § 569.030, RSMo. On this count, as well, the court sentenced Simmons to five (5) years' incarceration (concurrent with the sentence in case number 2100R-00677-01), suspended execution of the sentence and granted five (5) years' probation. The court revoked the probation on July 25, 2002.²
 - c. On February 5, 2009, Simmons pleaded guilty to Criminal Non-Support, a Class D Felony in violation of § 568.040, RSMo. The court suspended imposition of sentence and placed Simmons on five (5) years' probation. On June 29, 2010, the court revoked Simmons's probation and imposed a sentence of one (1) year's incarceration.³
6. Simmons also attached to his Application two brief written paragraphs of explanation concerning his criminal history, in which he took no meaningful responsibility for the actions underlying his convictions.
 7. Background Question No. 7 of the Application asks the following:
 7. Do you have a child support obligation in arrearage?

If you answer yes:
 - a) by how many months are you in arrearage?
 - b) are you currently subject to and in compliance with any repayment agreement?
 - c) are you the subject of a child support related subpoena/warrant? (If you answer yes, provide documentation showing proof of current payments or an approved repayment plan from the appropriate state child support agency.)
 8. Simmons answered "Yes" to Background Question No. 7 and indicated that he was "16" months in arrearage.
 9. Except for statements in his written explanation seeking to excuse his failure to pay the obligation that resulted in his conviction for felony Criminal Non-Support, Simmons did not disclose anything further about his child support payment history or arrearages.
 10. Investigation revealed that at the time he submitted his Application, Simmons owed total arrearages of \$ 23,462.71 on the child support obligation for which he was convicted of Criminal Non-Support in 2010. At the current court-ordered rate of \$ 450 per month, that amount represents approximately fifty-two (52) months of arrearage. At the original court-ordered rate of \$ 300 per month, that amount represents approximately seventy-eight (78) months of arrearage.

¹ *State of Missouri v. Gerald D. Simmons*, St. Louis Co. Cir. Ct., No. 2100R-00677-01.

² *State of Missouri v. Gerald D. Simmons*, St. Louis Co. Cir. Ct., No. 2100R-00680-01.

³ *State of Missouri v. Gerald D. Simmons*, St. Louis Co. Cir. Ct., No. 08SL-CR02444-01.

11. Courts have imposed child support obligations upon Simmons in at least four (4) separate orders:
 - a. On December 9, 2003, the St. Louis City Circuit Court ordered Simmons to pay \$ 117 per month in child support;⁴
 - b. On October 21, 2005, the St. Louis County Circuit Court ordered Simmons to pay \$ 300 per month in child support;⁵
 - c. On February 5, 2009, the St. Louis County Circuit Court, on the same day that it sentenced Simmons for felony Criminal Non-Support, also issued a "Supplemental Sentence – Non Support Case," in which the court ordered Simmons to pay \$ 450 per month in child support (\$ 300 per month as originally ordered in *State ex rel. Gerald Deandre Simmons*, St. Louis Co. Cir. Ct., No. 2105FC-10131, plus \$ 150 per month for arrearages);⁶
 - d. On October 20, 2011, the St. Louis County Circuit Court ordered Simmons to pay \$ 50 per month in child support.⁷
12. Since at least March 2011, Simmons has made only sporadic payments on his three child support obligations, none for a full court-ordered amount. Simmons has made no child support payments at all since December 2011.
13. As of the date of his Application, Simmons owed a total of \$ 10,554.82 in arrearages in *Scruggs v. Simmons*, St. Louis City Cir. Ct., No. 22037-03281, and *State of Missouri Department of Social Services, Family Support Division, et al. v. Gerald Deandre Simmons*, St. Louis Co. Cir. Ct., No. 11SL-DR07047, bringing his total for all child support arrearages to \$ 34,007.53.

CONCLUSIONS OF LAW

14. 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:

⁴ *Scruggs v. Simmons*, St. Louis City Cir. Ct., No. 22037-03281.

⁵ *State ex rel. Gerald Deandre Simmons*, St. Louis Co. Cir. Ct., No. 2105FC-10131.

⁶ *State of Missouri v. Gerald D. Simmons*, St. Louis Co. Cir. Ct., No. 08SL-CR02444-01.

⁷ *State of Missouri Department of Social Services, Family Support Division, et al. v. Gerald Deandre Simmons*, St. Louis Co. Cir. Ct., No. 11SL-DR07047.

* * *

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

* * *

(5) Been convicted of any felony;

* * *

(12) Failed to comply with an administrative or court order imposing a child support obligation[.]

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 producer license, but to protect the public.
16. Simmons may be refused an MVESC producer license pursuant to § 385.209.1(5) because he has been convicted of three felonies:
 - a. *State of Missouri v. Gerald D. Simmons*, St. Louis Co. Cir. Ct., No. 2100R-00677-01 (Robbery in the Second Degree, a Class B Felony in violation of § 569.030, RSMo);
 - b. *State of Missouri v. Gerald D. Simmons*, St. Louis Co. Cir. Ct., No. 2100R-00680-01 (Robbery in the Second Degree, a Class B Felony in violation of § 569.030, RSMo);
 - c. *State of Missouri v. Gerald D. Simmons*, St. Louis Co. Cir. Ct., No. 08SL-CR02444-01 (Criminal Non-Support, a Class D Felony in violation of § 568.040, RSMo).
17. Simmons also may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(12) because he has failed to comply with four (4) court orders imposing child support obligations:
 - a. Simmons has failed to comply with the St. Louis City Circuit Court's December 9, 2003 order imposing a child support obligation in *Scruggs v. Simmons*, St. Louis City Cir. Ct., No. 22037-03281;
 - b. Simmons was convicted of felony Criminal Non-Support as a result of failing to comply with his legal child support obligations in each of six (6) individual months within the period between January 1, 2007, and December 31, 2007,

as ordered on October 21, 2005 by the St. Louis County Circuit Court in *State ex rel. Gerald Deandre Simmons*, St. Louis Co. Cir. Ct., No. 2105FC-10131;

- c. Simmons has failed to comply with the St. Louis County Circuit Court's February 5, 2009 order imposing a child support obligation in *State of Missouri v. Gerald D. Simmons*, St. Louis Co. Cir. Ct., No. 08SL-CR02444-01;
 - d. Simmons has failed to comply with the St. Louis County Circuit Court's October 20, 2011 order imposing a child support obligation in *State of Missouri Department of Social Services, Family Support Division, et al. v. Gerald Deandre Simmons*, St. Louis Co. Cir. Ct., No. 11SL-DR07047.
18. The Director also may refuse to issue Simmons an MVESC producer license under § 385.209.1(3) because Simmons attempted to obtain a license through material misrepresentation or fraud, in that Simmons, in order to improve the likelihood that the Director would approve his Application and issue him an MVESC license, misrepresented the full extent of his child support arrearages when he:
- a. Failed to provide any documentation or information concerning his arrearages in *Scruggs v. Simmons*, St. Louis City Cir. Ct., No. 22037-03281, and *State of Missouri Department of Social Services, Family Support Division, et al. v. Gerald Deandre Simmons*, St. Louis Co. Cir. Ct., No. 11SL-DR07047; and
 - b. Grossly understated the amount of arrearages he owed overall, stating on his Application that he owed sixteen (16) months in arrearages, when in fact his arrearage in *State of Missouri v. Gerald D. Simmons*, St. Louis Co. Cir. Ct., No. 08SL-CR02444-01, alone, represented a minimum of fifty-two (52) months of arrearage, and he owed an additional \$ 10,554.82 in arrearages on his other two obligations as well.
19. The Director has considered Simmons's history and all of the circumstances surrounding Simmons's Application. Granting Simmons a motor vehicle extended service contract producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue a motor vehicle extended service contract producer license to Simmons.
20. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Gerald D. Simmons** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 17TH DAY OF SEPTEMBER, 2013.




JOHN M. HUFF
DIRECTOR

NOTICE

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

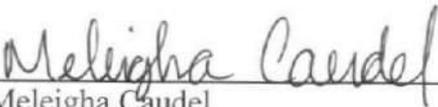
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send 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 10th day of September, 2013, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by regular and certified mail at the following address:

Gerald D. Simmons
46 Rolling Hills
Black Jack, Missouri, 63033

Certified No. 7009 3410 0001 9255 0073



Meleigha Caudel

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