State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Derrick Green,	)	Case No. 10-1213748C
	)	
Applicant.	)	

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On or about July 15, 2011, Kristen E. Paulsmeyer, Enforcement Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue an insurance producer license of Derrick Green. 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 summary order:

FINDINGS OF FACT

1. Derrick Green ("Green") is an individual residing in Missouri.

2. On or about July 19, 2010, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Green's electronic insurance producer application ("Application") which was supplemented by Green on July 21, 2010.

3. In his Application, Green listed his residential, business and mailing address as 8705 NE 110th St., Kansas City, Missouri, 64157.

4. Green previously provided an address of 4911 Millridge Street, Shawnee, Kansas, 66226-9752 to the Kansas Insurance Department on an application dated June 22, 2010.

5. Background Question No. 1 of the Application asks whether the applicant has ever been convicted of a crime, had a judgment withheld or deferred or is currently charged with committing a crime.

6. Green answered "Yes" to Question No. 1.

7. The Application contains the following instruction:

> For background Question 1, you must send the following to the state you are applying to: 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 judgment.

8. In response, Green stated the following, in part:

> I was charged with Felony DUI in Oct of 2009. It was/is my 3rd DUI in my life time. I got my 1st in 1992 (1st year of college), I did have that one expunged from my record, but due to the State of KS revising DUI laws, all DUI's are 'lifetime counts'. My 2nd DUI was in 2002.
>
> Back in October '09 I was at a nightclub with friends and they did not want to leave early. My wife was pregnant & needed me home. I decided to take my friend [sic] truck home, on the way I stopped at IHOP for food & instead of taking the long way around the parking lot I went out the way I came in & did a uturn at a light. There was not a sign stating 'NO U-TURN' at this light but the police saw that and pulled me over. In the vehicle, unknown to me & NOT on my person was a handgun, that I later found out once I was processed & posted bond a few hours later.
>
> Initially I was charged w/4 charges:
> 1) DUI – 3rd offense
> 2) Carry Concealed Firearm
> 3) Refusal of Preliminary Breath Test
> 4) Speeding.
>
> The Firearm/handgun charge was dropped and I plead [sic] guilty to; DUI, Speeding & RPBT. While waiting on The State to give my lawyer the dashcam DVD from the incident I was put on house arrest. The state took so long that I actually did my sentencing time before I got sentenced & The Judge accepted my plea agreement. I was on house arrest from JAN '10 - APR '10. Case was not set for sentencing until June '10.

Enclosed I have attached my signed PLEA AGREEMENT and KBT case information for the 3rd DUI. I make no excuses it was my fault to decide to drive, but the handgun was not mine, nor did I have any knowledge of it being in the vehicle. I am on probation, which will be reduced next month & my probation officer will request I get off early as long as I continue to do what I have been doing. I also was not 'wasted' drunk, just impaired enough by law to be charged.

9. In January 2010, in *State of Kansas v. Derrick Vincent Green*, Case No. 10CR0112, Green was charged by Complaint in the District Court of Johnson County, Kansas, with the following:

   a. Count I – On or about October 18, 2009 in Olathe, Johnson County, Kansas, Green unlawfully and feloniously operated or attempted to operate a vehicle while under the influence of alcohol to a degree that rendered him incapable of safely driving a vehicle and Green had two or more convictions for driving under the influence of alcohol or drugs, a non-grid, non-person felony in violation of K.S.A. 8-1567 (driving while under the influence of alcohol);

   b. Count II – On or about October 18, 2009 in Olathe, Johnson County, Kansas, Green did then and there unlawfully, knowingly and willfully possess a firearm, to wit: semi-automatic handgun, a class A non-person misdemeanor, in violation of K.S.A. 21-4201 and K.S.A. 21-4502(1)(a) (possession of a weapon);

   c. Count III – On or about October 18, 2009 in Olathe, Johnson County, Kansas, Green unlawfully refused a preliminary breath test screening for alcohol concentration, in violation of K.S.A. 8-1012 (refuse a preliminary breath test);

   d. Count IV – On or about October 18, 2009, in Olathe, Johnson County, Kansas, Green drove a vehicle at a speed greater than reasonable and prudent under the conditions having regard to the actual hazards then existing in violation of K.S.A. 8-1557.

10. On or about April 8, 2010, in the Johnson County District Court, Green pleaded guilty to Count I, Felony Driving Under the Influence, Count III, Refuse Preliminary Breath Test, and Count IV, Unsafe Speed for Prevailing Conditions. *State v. Derrick Green*, Case No. 10CR112.

11. In June 2010, the Johnson County District Court sentenced Green to the

following in *State v. Derrick Green*, Case No. 10CR112:

a. Count I, Felony Driving Under the Influence – 12 months in jail with probation being granted after serving 15 days in jail and 75 days house arrest, 12 months probation, $1500 fine, ignition interlock and court costs;

b. Count III, Refuse Preliminary Breath Test - $90 fine;

c. Count IV, Unsafe Speed for Prevailing Conditions - $60 fine.

12. On or about August 5, 2010, the Division of Consumer Affairs ("Division") sent Green written correspondence to the email address provided on the Missouri Application informing Green that he may either withdraw his Application or must provide court certified copies of the charging documents, judgment and sentence. Green responded to the Division's correspondence but failed to withdraw his Application or provide the requested documents.

13. On or about November 12, 2010, the Division sent Green written correspondence to the email address provided on his Missouri Application informing Green that the Division has not received a signed withdrawal or court certified documents as requested. Green failed to respond to the Division's November 12, 2010 correspondence and failed to provide the requested documents.

14. By letter dated May 19, 2011, United State Mail, postage prepaid, the Division sent Green written correspondence to the address provided on the Missouri Application requesting Green sign the withdrawal forms or provide the requested certified documents.

15. The May 19, 2011 correspondence was not returned to the Department as undeliverable.

16. Green failed to respond to the Division's May 19, 2011 correspondence or contact the Division in any other way to demonstrate a reasonable justification for the delayed response.

CONCLUSIONS OF LAW

17. Section 375.141 RSMo (Supp. 2010) 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:

* * *

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

* * *

(6) Having been convicted of a felony or crime involving moral turpitude[.]

18. Title 20 CSR 100-4.100(2)(A) Required Response to Inquiries by the Consumer Affairs Division provides:

> (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.

19. K.S.A. 8-1567, states in part:

> (a) No person shall operate or attempt to operate any vehicle within this state while:
> (1) The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .08 or more;
> (2) the alcohol concentration in the person's blood or breath, as measured within two hours of the time of operating or attempting to operate a vehicle, is .08 or more;
> (3) under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;
> (4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or

(5) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.
(b) No person shall operate or attempt to operate any vehicle within this state if the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.
(c) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.

* * *

(f) (1) On the third conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than $1,500 nor more than $2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this paragraph may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment.

20. K.S.A. 8-1012 states:

(a) Any person who operates or attempts to operate a vehicle within this state is deemed to have given consent to submit to a preliminary screening test of the person's breath subject to the provisions set out in subsection (b).
(b) A law enforcement officer may request a person who is operating or attempting to operate a vehicle within this state to submit to a preliminary screening test of the person's breath to determine the alcohol concentration of the person's breath if the officer has reasonable suspicion to believe the person has been operating or attempting to operate a vehicle while under the influence of alcohol or drugs or both alcohol and drugs.

(c) At the time the test is requested, the person shall be given oral notice that: (1) There is no right to consult with an attorney regarding whether to submit to testing; (2) refusal to submit to testing is a traffic infraction; and (3) further testing may be required after the preliminary screening test. Failure to provide the notice shall not be an issue or defense in any action. The law enforcement officer then shall request the person to submit to the test.

(d) Refusal to take and complete the test as requested is a traffic infraction. If the person submits to the test, the results shall be used for the purpose of assisting law enforcement officers in determining whether an arrest should be made and whether to request the tests authorized by K.S.A. 8-1001 and amendments thereto. A law enforcement officer may arrest a person based in whole or in part upon the results of a preliminary screening test. Such results shall not be admissible in any civil or criminal action concerning the operation of or attempted operation of a vehicle except to aid the court or hearing officer in determining a challenge to the validity of the arrest or the validity of the request to submit to a test pursuant to K.S.A. 8-1001 and amendments thereto. Following the preliminary screening test, additional tests may be requested pursuant to K.S.A. 8-1001 and amendments thereto.

21. K.S.A. 8-1557 states:

> No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

22. A guilty plea is an admission to the underlying facts charged. *See, Thurman v. State*, 263 S.W.3d 744, 752 (Mo. App. E.D. 2008).

23. 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. E.D. 1984).

24. The Director may refuse to issue an insurance producer license to Green pursuant to § 375.141.1(6), RSMo (Supp. 2010) because Green was convicted of a felony in that Green pleaded guilty to the felony, Driving Under the Influence. *State v. Derrick Green*, Case No. 10CR112.

25. The Director may refuse to issue an insurance producer license to Green pursuant to § 375.141.1(2), RSMo (Supp. 2010) because Green violated the insurance regulations of Missouri by failing to respond to Division inquiries within 20 days or demonstrate a reasonable justification for his delayed response as required by 20 CSR 100-4.100(2)(A), which is cause to discipline under § 375.141.1(2).

26. Green pleaded guilty to the felony, Driving Under the Influence and failed to respond to a Division inquiry within 20 days or demonstrate a reasonable justification for his delayed response as required by regulation. For all of the reasons given in this Petition, the Director has considered Green's history and all of the circumstances surrounding Green's Application and exercises his discretion in summarily refusing Green's insurance producer license.

27. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the insurance producer license of Derrick Green is hereby summarily REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 18th DAY OF JULY, 2011.

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 19th day of July, 2011, a copy of the foregoing Notice and Order was served upon the Applicant in this matter by certified mail to:

Derrick Green
8705 NE 110th Street
Kansas City, MO 64157
70093410000193492709

Derrick Green
4911 Millridge Street
Shawnee, KS 66226-9752
70093410000193492716

Kathryn Randolph

Kathryn Randolph, Paralegal