State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
Randal J. Greenwalt, Jr.,	)	**Case No. 12-0227239C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On March 12, 2012, 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 Randal J. Greenwalt, Jr. 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. Randal J. Greenwalt, Jr., ("Greenwalt") is a Missouri resident with a residential address of 4 Bruce Dr., Florissant, Missouri 63031.

2. On December 6, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Greenwalt's Application for Motor Vehicle Extended Service Contract Producer License ("Application").

3. The "Applicant's Certification and Attestation" section of the Application, states, in relevant part:

   1. I hereby certify, under penalty of perjury, that all of the information submitted in this application and attachments is true and complete. I am ware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties.

4. Greenwalt signed the Application in the "Applicant's Certification and Attestation" section.

5. 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 excluded 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 is 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[.]

6. Greenwalt marked "Yes" to Question No. 1, and explained in a January 9, 2012 facsimile to the Department, that "Jan. 1990 I was sentenced to 8 yrs. in prison by Judge Corrigain for Sales and Assault 2nd 2190R-00090-01." Greenwalt also submitted a copy of the docket sheet in *State v. Randal J. Greenwalt,* St. Louis Co. Cir. Ct. No. 2190R-00090-01.

7. On July 7, 1989, Greenwalt pled guilty to Sale of Controlled Substance, Schedule I (Marijuana) an unclassified felony in violation of § 195.020. The court suspended the imposition of sentence and placed Greenwalt on probation. The court later revoked his probation and sentenced Greenwalt to eight years' imprisonment. *State v. Randal J. Greenwalt,* St. Louis Co. Cir. Ct. No. 21CCR-588367.

8. On April 19, 1991, Greenwalt pled guilty to Assault Second Degree, a Class C Felony, in violation of § 565.060. The court sentenced Greenwalt to seven years' imprisonment to be served concurrently with the eight years' imprisonment imposed in *State v. Randal J. Greenwalt,* St. Louis Co. Cir. Ct. No. 21CCR-588367. *State v. Randal J. Greenwalt,* St. Louis Co. Cir. Ct. No. 2190CR-00090.

9. Greenwalt failed to disclose in his Application the following convictions responsive to Background Question No. 1:

a. On December 13, 2004, Greenwalt pled guilty to Domestic Assault – 3rd Degree – 1st/2nd Offense, a Class A Misdemeanor, in violation of § 565.074. The court sentenced Greenwalt to ten months in jail but suspended the execution of sentence and placed Greenwalt on probation which was successfully completed on December 13, 2006. *State v. Randall* [sic] *J. Greenwalt,* St. Charles Co. Cir. Ct. No. 04CR125421.

b. On January 24, 2008, Greenwalt pled guilty to Assault 3rd Degree pursuant to subdivisions (1), (2), (4), and (6), a Class A Misdemeanor, in violation of §565.070. The court sentenced Greenwalt to a fine and one year in jail, but suspended the execution of sentence and placed Greenwalt on probation which he successfully completed on January 24, 2010. *State v. Randal J. Greenwalt*, Camden Co. Cir. Ct. No. 07CM-CR01798.

10. Background Question No. 4 of the Application asks, in relevant part: "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?"

11. Greenwalt responded "No" to Background Question No. 4.

12. On May 24, 2010, the St. Charles County Circuit Court entered judgment against Greenwalt as follows:

> [Department of Revenue] hereby certifies that the following assessment of individual income tax, interest, additions to tax, penalties, and fees have been made and become final in the amount of $2605.19. Interest continues to [accrue] as provided by law until the full amount of the tax liability is paid.

Department of Revenue v. Randall [sic] J. Greenwalt, St. Charles Co. Cir. Ct. No. 1011-MC01836.

13. On May 31, 2011, the St. Charles County Circuit Court entered judgment against Greenwalt as follows:

> [Department of Revenue] hereby certifies that the following assessment of individual income tax, interest, additions to tax, penalties, and fees have been made and become final in the amount of $3354.33. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.

Department of Revenue v. Randal J. Greenwalt, St. Charles Co. Cir. Ct. No. 1111-MC03135.

14. Background Question No. 7 of the Application asks the following, in relevant part:

Do you have a child support obligation in arrearage?

If you answer yes:
a) by how many months are in arrearage? ____ months
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?

15. Greenwalt answered that he has a child support obligation in arrearage, the arrearage is for five months, and he is in compliance with any repayment agreement.

16. On December 28, 2011, Greenwalt was charged with the Class D Felony of Non-Support, Total Arrears in Excess of 12 Monthly Payments Due Under Order of Support in violation of § 568.040. According to the Probable Cause Statement, the St. Charles County Circuit Court entered an Order, Judgment and Decree Pursuant to Uniform Parentage Act on August 18, 2004 in [*Greenwalt v. Bruyere*] No. 03FC-125099, whereby Greenwalt was ordered to pay $300 a month in child support. The Probable Cause Statement also states that certified payment records indicate the total arrearage is $23,745.46 as of October 26, 2011, which is in excess of an aggregate of twelve monthly payments due. *State v. Randal Greenwalt, Jr.*, St. Charles Co. Cir. Ct. No. 1111-CR06714.

CONCLUSIONS OF LAW

17. Section 385.209 RSMo (Supp. 2011) 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:

* * *

(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;

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

18. Section 568.040 RSMo (Supp. 2011) provides, in relevant part:

> 1. A person commits the crime of nonsupport if such person knowingly fails to provide adequate support for his or her spouse; a parent commits the crime of nonsupport if such parent knowingly fails to provide adequate support which such parent is legally obligated to provide for his or her child or stepchild who is not otherwise emancipated by operation of law.
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> * * *
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> 5. Criminal nonsupport is a class A misdemeanor, unless the total arrearage is in excess of an aggregate of twelve monthly payments due under any order of support issued by any court of competent jurisdiction or any authorized administrative agency, in which case it is a class D felony.

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

20. Greenwalt may be refused a motor vehicle extended service contract ("MVESC") producer license pursuant to § 385.209.1(3) for attempting to obtain a license through material misrepresentation or fraud. By signing the Application, Greenwalt certified that all of the information submitted was true and complete. However, Greenwalt provided false information or omitted pertinent or material information. Each of the following instances of material misrepresentation or fraud by Greenwalt on his Application is a separate and sufficient ground for the Director to exercise his discretion to refuse the license:

    a. Greenwalt failed to disclose his conviction for Domestic Assault – 3rd Degree – 1st/2nd Offense, a Class A Misdemeanor in violation of § 565.074. *State v. Randall* [sic] *J. Greenwalt,* St. Charles Co. Cir. Ct. No. 04CR125421.

    b. Greenwalt failed to disclose on his Application his conviction for Assault 3rd Degree pursuant to subdivisions (1), (2), (4), and (6), a Class A Misdemeanor in violation of § 565.070. *State v. Randal J. Greenwalt*, Camden Co. Cir. Ct. No. 07CM-CR01798.

    c. Greenwalt failed to disclose his delinquent tax obligation to the Missouri Department of Revenue in the amount of $2,605.19 for his individual Missouri income tax. *Department of Revenue v. Randall [sic] J. Greenwalt*, St. Charles Co. Cir. Ct. No. 1011-MC01836.

d. Greenwalt failed to disclose his delinquent tax obligation to the Missouri Department of Revenue in the amount of $3,354.33 for his individual Missouri income tax. *Department of Revenue v. Randal J. Greenwalt*, St. Charles Co. Cir. Ct. No. 1111-MC03135.

e. Greenwalt acknowledged on his Application that he was five months in arrearage on his child support and he certified he was compliant with the repayment agreement. Greenwalt failed to disclose that he has been in arrearage of child support for many months and that he is not compliant with the Order, Judgment and Decree Pursuant to Uniform Parentage Act entered on August 18, 2004 in *Greenwalt v. Bruyere*. No. 03FC-125099. *State v. Randal Greenwalt, Jr.*, St. Charles Co. Cir. Ct. No. 1111-CR06714.

Greenwalt's false or omitted information is material because such information would affect the Director's decision to issue a license. Greenwalt is trying to conceal the information in an attempt to induce the Director to rely on Greenwalt's Application to issue a MVESC producer license.

21. Greenwalt may be refused a MVESC producer license pursuant to § 385.209.1(5) because he has been convicted of two felonies:

a. *State v. Randal J. Greenwalt,* St. Louis Co. Cir. Ct. No. 21CCR-588367 (Sale of Controlled Substance, Schedule I (Marijuana) an unclassified felony in violation of § 195.020).

b. *State v. Randal J. Greenwalt,* St. Louis Co. Cir. Ct. No. 2190CR-00090 (Assault Second Degree, a Class C Felony, in violation of § 565.060).

22. Greenwalt may be refused a MVESC producer license under § 385.209(12) because he has failed to comply with an administrative or court order imposing a child support obligation. Specifically, Greenwalt has failed to comply with the Order, Judgment and Decree Pursuant to Uniform Parentage Act entered on August 18, 2004 in *Greenwalt v. Bruyere*, St. Charles Co. Cir. Ct. No. 03FC-125099.

23. Greenwalt may also be refused a MVESC producer license pursuant to § 385.209.1(13) because he failed to comply with an administrative or court order directing payment of state income tax. *Department of Revenue v. Randall [sic] J. Greenwalt*, St. Charles Co. Cir. Ct. No. 1011-MC01836; *Department of Revenue v. Randal J. Greenwalt*, St. Charles Co. Cir. Ct. No. 1111-MC03135.

24. Greenwalt failed to disclose or misrepresented material facts on his Application that would impact his request for licensure; namely, two misdemeanor convictions, his tax non-compliance, and his non-compliance with a child support order. Moreover, Greenwalt's tax and child support non-compliance are separate grounds upon which the Director may refuse to issue Greenwalt a MVESC license. Finally, Greenwalt has been convicted of two felonies.

25. The Director has considered Greenwalt's history and all of the circumstances surrounding his application. Granting Greenwalt a motor vehicle service contract producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion to refuse Greenwalt's motor vehicle extended service contract producer license.

26. The order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service producer license application of **Randal J. Greenwalt, Jr.**, is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 14th DAY OF MARCH, 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 14th day of March, 2012 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:

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