State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
JOHN WILLIAM BUCKLEY, II,	)	**Case No. 150213093C**
	)	
Applicant.	)	

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

On November 24, 2015, the Consumer Affairs Division ("Division") submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract producer license to John William Buckley, II. 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. John William Buckley, II ("Buckley") is a Missouri resident with a residential address of 4646 Onondaga Trail, St. Charles, Missouri 63304.

2. On December 29, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received an "Application for Motor Vehicle Extended Service Contract Producer License" from Buckley ("2011 Application").

3. The "Applicant's Certification and Attestation" section of the 2011 Application reads, in relevant part:

> I hereby certify, under penalty of perjury, that all of the information submitted in this application and attachments is true and complete. I am aware 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. Buckley signed the 2011 Application under oath and before a notary.

5. Background Information Question No. 1 of the 2011 Application asks as follows:

> 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 exclude 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 and 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 nolo contentere, 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 was 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. Buckley answered "Yes" to Background Information Question No. 1 and included documentation that showed that he had been convicted of two felonies, as follows:

> a. On September 21, 2001, Buckley pled guilty to the Class C Felony of Possession of a Controlled Substance, in violation of § 195.202, RSMo 2000. Also on September 21, 2001, the court sentenced Buckley to the custody of the Missouri Department of Corrections for a period of four years, with 120 days shock incarceration pursuant to § 559.115, RSMo 2000, with a recommendation for the Institutional Treatment Center within the Department of Corrections. On February 3, 2005, the court revoked Buckley's probation and ordered his four-year sentenced executed. *State v. John W. Buckley, II*, St. Charles Co. Cir. Ct., Case No. 01CR126757-01.

b. On July 20, 2006, Buckley, acting with another, knowingly sold ecstacy, a controlled substance, knowing that it was a controlled substance, in violation of § 195.211, RSMo Supp. 2013. On March 22, 2007, Buckley was charged with the Class B Felony of Sale of a Controlled Substance. On August 3, 2007, upon a jury verdict, the court found Buckley guilty and sentenced him to the custody of the Missouri Department of Corrections for a period of 14 years. Buckley is currently being supervised on parole. *State v. John William Buckley, II*, St. Charles Co. Cir. Ct., Case No. 0611-CR05010-01.

7. Buckley failed, however, to disclose several misdemeanor convictions in response to Background Information Question No. 1 on his 2011 Application. The Division's investigation revealed that Buckley has been convicted of the following misdemeanors:

a. On or about October 25, 2000, Buckley pled guilty to the Class A Misdemeanor of Unlawful Use of Drug Paraphernalia in violation of § 195.233, RSMo 2000. The court sentenced Buckley to 30 days in jail. *State v. John William Buckley*, St. Charles Co. Assoc. Cir. Ct., Case No. CR100-304M.

b. On or about October 25, 2000, Buckley pled guilty to the Class B Misdemeanor of Property Damage in the Second Degree, in violation of § 569.120, RSMo 2000. The court sentenced Buckley to 30 days in jail, to run concurrently with the sentence in Case No. CR100-304M. *State v. John Buckley*, St. Charles Co. Assoc. Cir. Ct., Case No. CR100-1119M.

c. On or about September 20, 2006, Buckley pled guilty to the Class B Misdemeanor of Peace Disturbance, First Offense, in violation of § 574.010, RSMo 2000. The court sentenced Buckley to 15 days in jail. *State v. John W. Buckley*, St. Charles Co. Assoc. Cir. Ct., Case No. 0611-CR03560.

8. On May 1, 2012, the Director issued an order refusing to issue a motor vehicle extended service contract producer license to Buckley under § 385.209.1(5)[1] because he had been convicted of two felonies ("2012 Refusal Order"). *See In re: John W. Buckley*, Case No. 1120305267C, "Order Refusing to Issue Motor Vehicle Extended Service Contract Producer License," issued May 1, 2012 (attached as Exhibit A).

[1] All further statutory references are to RSMo Supp. 2013 unless otherwise indicated.

9. The Director is a state regulator of service contracts.

10. Buckley appealed the Director's 2012 Refusal Order to the Administrative Hearing Commission ("Commission").

11. On September 10, 2012, the Commission issued its Decision wherein it found that the Director had cause to refuse to issue a motor vehicle extended service contract producer license to Buckley under § 385.209.1(3), (5), and (12) because Buckley attempted to obtain a license through material misrepresentation or fraud by failing to disclose his misdemeanor convictions on his 2011 Application, because he has been convicted of two felonies, and because he failed to comply with administrative orders imposing child support obligations, resulting in arrearages. Buckley did not appeal the Commission's Decision, and it is now final. *See John W. Buckley, II v. Dir. of Dep't of Ins., Fin. Insts. and Prof'l Reg'n*, No. 12-0970 DI (Mo. Admin. Hrg. Comm'n Sept. 10, 2012) (attached as Exhibit B).

12. On December 10, 2014, the Department received another "Application for Motor Vehicle Extended Service Contract Producer License" from Buckley ("2014 Application").

13. As in the 2011 Application, the 2014 Application provided an "Applicant's Certification and Attestation" section. *See* ¶ 3, *supra*. Buckley signed the 2014 Application under oath and before a notary.

14. Also as in the 2011 Application, the 2014 Application asked for information regarding the applicant's prior criminal history in Background Information Question No 1. *See* ¶ 5, *supra*. Buckley answered "Yes" to Background Information Question No. 1 on the 2014 Application.

15. Buckley provided documentation with his 2014 Application in response to Background Information Question No. 1 evidencing his above-mentioned felony drug convictions and his misdemeanor convictions for unlawful use of drug paraphernalia and property damage in the second degree. Buckley also included documentation showing that on May 16, 2013, the state charged him with three counts of the Class A Misdemeanor of Criminal Non-Support, in violation of § 568.040. *State v. John William Buckley, II*, St. Charles Co. Assoc. Cir. Ct., Case No. 1311-CR02928. But as with his 2011 Application, Buckley failed to disclose his misdemeanor conviction for peace disturbance in *State v. John W. Buckley*, St. Charles Co. Assoc. Cir. Ct., Case No. 0611-CR03560.

16. Background Information Question No. 2 of the 2014 Application asks as follows:

Have you ever been named or involved as a party in an administrative proceeding or action regarding any professional or occupational license or registration, or regarding the lack of such license or registration?

"Involved" means having a license censured, suspended, revoked, canceled, terminated or being assessed a fine, a voluntary forfeiture, a cease and desist order, a prohibition order, a consent order, or being placed on probation. "Involved" also includes the act of surrendering a license to resolve an administrative proceeding or action. "Involved" also means being named as a party to an administrative or arbitration proceeding which is related to a professional or occupational license or is related to the lack of such license. "Involved" also means having a license application denied or the act of withdrawing an application to avoid a denial. You must INCLUDE any business so named because of your actions or because of your capacity as an owner, partner, officer, director, or member or manager of a Limited Liability Company. You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.

If you answer yes, you must attach to this application:
a) a written statement identifying the type of license and explaining the circumstances of each incident,
b) a copy of the Notice of Hearing or other document that states the charges and allegations, and
c) a certified copy of the official document which demonstrates the resolution of the charges and/or a final judgment.

17. Buckley answered "No" to Background Information Question No. 2. On December 29, 2011, though, Buckley contacted the Division by phone and by letter and indicated that he read the question again and realized that he should have answered the question, "Yes."

18. Background Information Question No. 7 of the 2014 Application asks as follows:

Do you currently have or have you had a child support obligation?

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

c) what is the total amount of your arrearage?
d) are you currently subject to a repayment agreement to cure the arrearage? (If you answer yes, provide documentation showing an approved repayment plan from the appropriate state child support agency.)
e) are you in compliance with said repayment agreement? (If you answer yes, provide documentation showing proof of current payments from the appropriate state child support agency.)
f) 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.)
g) have you ever been convicted of a misdemeanor or felony for failure to pay child support?

19. Buckley answered "Yes" to the questions regarding having a child support obligation and being in arrearage. Buckley indicated that he was eight months in arrearage, "plus back dated support" (capitalization in original omitted). Buckley answered "Yes," that he was subject to a repayment agreement to cure the arrearage and that he was in compliance with it, but he did not attach documentation showing that repayment plan or compliance with it. Buckley answered "No," that he was not the subject of a child support related subpoena or warrant, and "No," that he had not been convicted of a misdemeanor or felony for failing to pay child support.

20. The Division's investigation revealed that Buckley has child support obligations, arrearages, and issues, as follows:

a. On June 20, 2006, the St. Charles County Circuit Court entered an order requiring Buckley to pay $112.00 per month in child support for two children. *State ex rel. Mo. Div. of Child Support Enforcement, et al. v. John William Buckley, II*, St. Charles Co. Cir. Ct., Case No. 0611-MC00638. As of June 27, 2012, Buckley was $2,155.46 in arrears for this child support obligation. *See* Exhibit B. As of December 11, 2014, just after the Department received his 2014 Application, Buckley was $4,836.40 in arrears for this child support obligation. As of October 21, 2015, Buckley was $5,105.82 in arrears for this child support obligation.

b. On November 26, 2007, the St. Charles County Circuit Court entered an order requiring Buckley to pay $1.00 per month in child support for one child. *State ex rel. Mo. Div. of Child Support Enforcement, et al. v. John William Buckley, II*, St. Charles Co. Cir. Ct., Case No. 0711-MC01243. As

of June 27, 2012, Buckley was $310.54 in arrears for this child support obligation. *See* Exhibit B. As of October 21, 2015, Buckley was $640.93 in arrears for this child support obligation.

c. On June 15, 2012, the court entered an order requiring Buckley to pay $50.00 per month in child support for one child. *State ex rel. Mo. Div. of Child Support Enforcement, et al. v. John William Buckley, II*, St. Charles Co. Assoc. Cir. Ct., Case No. 1211-MC04647. As of December 11, 2014, just after the Department received his 2014 Application, Buckley was $462.48 in arrears for this child support obligation. As of October 21, 2015, Buckley was $268.34 in arrears for this child support obligation.

d. On May 16, 2013, the state charged Buckley with three counts of the Class A Misdemeanor of Criminal Non-Support, in violation of § 568.040, based upon failing to provide, without good cause, adequate support for the two children that are the subject of the child support order in *State ex rel. Mo. Div. of Child Support Enforcement, et al. v. John William Buckley, II*, St. Charles Co. Cir. Ct., Case No. 0611-MC00638. *State v. John William Buckley, II*, St. Charles Co. Assoc. Cir. Ct., Case No. 1311-CR02928. The case is currently pending.

CONCLUSIONS OF LAW

21. Section 385.209.1, RSMo Supp. 2013, provides:

> 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:
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> * * *
>
> (3) Obtained or attempted to obtain a license through material misrepresentation or fraud;
>
> * * *
>
> (5) Been convicted of any felony;
>
> * * *

(9) Been refused a license or had a license revoked or suspended by a state or federal regulator of service contracts, financial services, investments, credit, insurance, banking, or finance;

* * *

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

22. The Director may refuse to issue a motor vehicle extended service contract ("MVESC") producer license to Buckley under § 385.209.1(3) because Buckley attempted to obtain a license through material misrepresentation or fraud. In his 2011 Application, in response to Background Question No. 1, Buckley failed to disclose his misdemeanor conviction for peace disturbance. *State v. John W. Buckley*, St. Charles Co. Assoc. Cir. Ct, Case No. 0611-CR03560. Buckley appealed the order denying his 2011 Application, but the Commission found that the Director had cause to refuse Buckley's 2011 Application on this and other grounds. *John W. Buckley, II v. Dir. of Dep't of Ins., Fin. Insts. and Prof'l Reg'n*, No. 12-0970 DI (Mo. Admin. Hrg. Comm'n Sept. 10, 2012). Buckley did not appeal the Commission's Decision, and that Decision is now final. Buckley is collaterally estopped from challenging the Commission's Decision or the grounds that formed the basis for the Director's cause. *Andes v. Paden, Welch, Martin & Albano, P.C.*, 897 S.W.2d 19, 21 (Mo. App. W.D. 1995); *King Gen. Contractors, Inc. v. Reorganized Church of Jesus Christ of Latter Day Saints*, 821 S.W.2d 495, 500 (Mo. banc 1991); *St. Louis Metropolitan Towing v. Director of Revenue*, 450 S.W.3d 303, 307 (Mo. App. W.D. 2014).

23. The Director may refuse to issue an MVESC producer license to Buckley under § 385.209.1(3) because Buckley attempted to obtain a license through material misrepresentation or fraud. In his 2014 Application, as with his 2011 Application, Buckley failed to disclose his misdemeanor conviction for peace disturbance. *State v. John W. Buckley*, St. Charles Co. Assoc. Cir. Ct, Case No. 0611-CR03560.

24. Each attempt to obtain a license through material misrepresentation or fraud constitutes a separate and sufficient ground under § 385.209.1(3) for the Director to refuse to issue Buckley an MVESC producer license.

25. The Director may refuse to issue an MVESC producer license to Buckley under § 385.209.1(5) because Buckley has been convicted of two felonies, possession of a controlled substance and sale of a controlled substance. *State v. John W. Buckley, II*, St. Charles Co. Cir. Ct., Case No. 01CR126757-01; *State v. John*

William Buckley, II, St. Charles Co. Cir. Ct., Case No. 0611-CR05010-01.

26. Each felony constitutes a separate and sufficient ground under § 385.209.1(5) for the Director to refuse to issue Buckley an MVESC producer license.

27. The Director may refuse to issue an MVESC producer license to Buckley under § 385.209.1(9) because Buckley has previously been refused a license by a state regulator of service contracts. On May 1, 2012, the Director refused to issue an MVESC producer license to Buckley pursuant to § 385.209.1(5). *See* Exhibit A.

28. The Director may refuse to issue an MVESC producer license to Buckley under § 385.209.1(12) because Buckley failed to comply with an administrative or court order imposing a child support obligation. In June 2012, after he filed his 2011 Application, Buckley owed $2,466.00 in child support arrearages in two cases. *See* Exhibit B. Buckley's failure to pay his child support resulted, in part, in the Director denying Buckley's 2011 Application for an MVESC producer license. *See* Exhibit A. The Commission, in its Decision, likewise found that Buckley's failure to comply with an administrative or court order imposing a child support obligation properly formed part of the Director's cause to refuse. *See* Exhibit B. Buckley did not appeal the Commission's Decision, which is now final, and he is collaterally estopped from challenging it or the grounds asserted therein. *Andes*, 897 S.W.2d at 21; *King Gen. Contractors,* 821 S.W.2d at 500; *St. Louis Metropolitan Towing*, 450 S.W.3d at 307.

29. The Director may refuse to issue an MVESC producer license to Buckley under § 385.209.1(12) because Buckley failed to comply with an administrative or court order imposing a child support obligation. As of October 21, 2015, Buckley owed a total of $6,015.09 in child support, in three separate cases. *State ex rel. Mo. Div. of Child Support Enforcement, et al. v. John William Buckley, II*, St. Charles Co. Cir. Ct, Case No. 0611-MC00638; *State ex rel. Mo. Div. of Child Support Enforcement, et al. v. John William Buckley, II*, St. Charles Co. Cir Ct., Case No. 07110MC01243; *State ex rel. Mo. Div. of Child Support Enforcement, et al. v. John William Buckley, II*, St. Charles Co. Cir Ct., Case No. 1211-MC04647. Buckley has also been charged with misdemeanor non-support for failure to provide adequate support for two of his children without good cause. *State v. John William Buckley, II*, St. Charles Co. Assoc. Cir. Ct., Case No. 1311-CR02928.

30. Each failure to comply with an administrative or court order imposing a child support obligation constitutes a separate and sufficient ground for the Director to refuse to issue Buckley an MVESC producer license under § 385.209.1(12).

31. The above-described instances are grounds upon which the Director may refuse to issue Buckley an MVESC producer license. Twice, Buckley has failed to disclose his full misdemeanor criminal history, in his 2011 Application and in his 2014 Application. Also twice, Buckley has been convicted of a felony. Consequently, in 2012, the Director, a state regulator of service contracts, refused to issue an MVESC producer license to Buckley. Finally, both in 2012 and now, Buckley has unsatisfied child support obligations and arrearages that show his failure to comply with an administrative or court order imposing a child support obligation.

32. The Director has considered Buckley's history and all of the circumstances surrounding Buckley's 2014 Application. Issuing an MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion to refuse to issue Buckley an MVESC producer license.

33. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the MVESC producer license Application of **John William Buckley, II** is hereby **REFUSED.**

SO ORDERED.

WITNESS MY HAND THIS 25th **DAY OF** November**, 2015.**

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 25th day of November, 2015, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, with signature required, at the following address:

John William Buckley, II
4646 Onondaga Trail
St. Charles, Missouri 63304

Tracking No. 1Z0R15W84298438037

Kathryn Latimer, Paralegal
Missouri Department of Insurance, Financial
Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: 573.751.2619
Facsimile: 573.526.5492
Email: kathryn.latimer@insurance.mo.gov

EXHIBIT
A

State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
John W. Buckley,	)	**Case No. 120305267C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On May 1, 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 John W. Buckley. After reviewing the Petition, the Investigative Memo, and the entirety of the file, the Director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. John W. Buckley, ("Buckley") is a Missouri resident with a residential address of 4646 Onondaga Trail, St. Charles, Missouri 63304.

2. On or about September 21, 2001, Buckley pleaded guilty to a C Felony of Possession of a Controlled Substance, in violation of § 195.202 RSMo. On or about September 21, 2001, the court sentenced Buckley to the custody of the Missouri Department of Corrections for a period of four years, with 120 days shock incarceration pursuant to § 559.115, followed by probation beginning on or about April 3, 2002. On or about February 3, 2005, the court revoked Buckley's probation and reinstated his four-year sentence. *State v. John W. Buckley, II*, St. Charles Co. Cir. Ct., Case No. 01CR126757-01.

3. On or about July 20, 2006, Buckley knowingly sold ecstacy, a controlled substance, knowing that it was a controlled substance, in violation of §§ 195.211, 562.036, and 562.041. On March 22, 2007, Buckley was charged with the B Felony of Sale of a Controlled Substance. On or about August 3, 2007, the court found Buckley guilty and sentenced Buckley to the custody of the Missouri Department of Corrections for a period of 14 years. Buckley was incarcerated for four years. On June 25, 2010, the court placed Buckley on parole, which he is actively serving and scheduled to complete in July 2020. *State v. John William Buckley*, St. Charles Co. Cir. Ct., Case No. 0611-CR05010-01.

4. On December 29, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Buckley's Application for Motor Vehicle Extended Service Contract Producer License ("Application").

CONCLUSIONS OF LAW

5. 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:
>
> * * *
>
> (5) Been convicted of any felony[.]

6. 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.

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

   a. *State v. John W. Buckley, II*, St. Charles Co. Cir. Ct., Case No. 01CR126757-01 (Possession of a Controlled Substance, a Class C Felony, in violation of § 195.202); and

   b. *State v. John William Buckley*, St. Charles Co. Cir. Ct., Case No. 0611-CR05010-01 (Sale of a Controlled Substance, a Class B Felony, in violation of §§ 195.211, 562.036, and 562.041.

8. Buckley has been convicted of two felonies. Granting Buckley a MVESC producer license would not be in the interest of the public. The Director has considered Buckley's history and all of the circumstances surrounding Buckley's Application and exercises his discretion to refuse Buckley's MVESC producer license.

9. This Order in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service producer license application of **John W. Buckley** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 1ST DAY OF MAY, 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 2nd day of May, 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:

John W. Buckley
4646 Onondaga Trail
St. Charles, Missouri 63304

Certified No. 7009 3410 0001 9349 2822

Kathryn Randolph
Paralegal
Missouri Department of Insurance, Financial
Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: 573.751.2619
Facsimile: 573.526.5492
Email: kathryn.randolph@insurance.mo.gov

Before the
Administrative Hearing Commission
State of Missouri

EXHIBIT
B

JOHN W. BUCKLEY, II,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 12-0970 DI
	)	
DIRECTOR OF DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION,	)	
	)	
Respondent.	)	

DECISION

We uphold the decision of the Director of the Department of Insurance, Financial Institutions and Professional Registration (the "Director" and the "Department") denying John W. Buckley, II's ("Buckley") application for a license as a Motor Vehicle Extended Service Contract Producer ("the application") because of misrepresentations on his application, felony convictions, and failure to comply with two administrative or court orders imposing child support obligations.

Procedure

Buckley filed a complaint on June 5, 2012, challenging the Director's denial of his application. The Director filed an answer and motion for summary decision on June 28, 201; we denied the Director's motion, which alleged the complaint was untimely. The Director filed a second motion for summary decision, with suggestions in support, on August 10, 2012. We gave

Buckley until August 27 to respond to the second motion for summary decision, but he did not do so.

Under our Regulation 1 CSR 15-3.446(6), we may decide this case without a hearing if the Director establishes facts Buckley does not genuinely dispute and entitle the Director to a favorable decision. Facts may be established by admissible evidence such as a stipulation, pleading of the adverse party, discovery responses of the adverse party, affidavits, or any other evidence admissible under law.[1] The Director's motion is accompanied by extensive documentary evidence, including certified court records and business records. Therefore, we make our findings of fact from the undisputed evidence the Director submitted in support of his motion.

Findings of Fact

1. On December 29, 2011, the Department received Buckley's application.

2. The application contains an "Applicant's Certification and Attestation" section which provides, in relevant part:

> I hereby certify, under penalty of perjury, that all of the information submitted in this application and attachments is true and complete. I am aware 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.

3. Buckley signed the application in the "Applicant's Certification and Attestation."

4. Background Question #1 of the application asked:

> Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?
>
> "Crime" includes a misdemeanor, felony or a military offense. You may exclude misdemeanor traffic citations or convictions involving driving under the influence (DUI) or driving while

[1]Regulation 1 CSR 15-3.446(6)(B).

intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license and 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 judgment withheld or deferred" includes circumstances in which a guilty plea was entered and/or a finding of guilt was 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 judgment[.]

5. Buckley marked "Yes" to Question #1 and disclosed the following felony convictions:

a. On or about September 21, 2001, Buckley pleaded guilty to the Class C Felony of Possession of a Controlled Substance, in violation of § 195.202 RSMo 2000. The court sentenced Buckley to the custody of the Missouri Department of Corrections for a period of four years, with 120 days shock incarceration followed by probation beginning on or about April 3, 2002. On or about February 3, 2005, the court revoked Buckley's probation and reinstated his four-year sentence. *State v. John W. Buckley, II*, St. Charles Co. Cir. Ct., Case No. 01CR126757-01.
b. On or about August 3, 2007, upon a jury verdict, the court found Buckley guilty of Class B Felony of Sale of a Controlled Substance, in violation of § 195.211 RSMo (Supp. 2003), and sentenced him to the custody of the Missouri Department of Corrections for a period of 14 years. On June 25, 2010, the court placed Buckley on parole, which he is actively serving and scheduled to complete in July 2020. *State v. John William Buckley II*, St. Charles Co. Cir. Ct., Case No. 0611-CR05010-01.

6. Buckley failed to disclose in his Application the following criminal matters in response to Question #1:

a. On or about October 25, 2000, Buckley pled guilty to Class A Misdemeanor Unlawful Use of Drug Paraphernalia in violation of § 195.233. The court sentenced Buckley to 30 days' incarceration in jail. *State v. John W. Buckley*, St. Charles Co. Cir. Ct., Case No. CR100-304M.
b. On or about October 25, 2000, Buckley pled guilty to Class B Misdemeanor Property Damage in the 2nd degree, in violation of § 569.120. The court sentenced Buckley to 30 days' incarceration in jail to run concurrently with the above-referenced Case No. CR100-340M. *State v. John W. Buckley*, St. Charles Co. Cir. Ct., Case No. CR100-1119M.
c. On or about September 20, 2006, Buckley pled guilty to Class B Misdemeanor Peace Disturbance, First Offense, in violation of § 574.010. The court sentenced Buckley to 15 days' incarceration in jail. *State v. John W. Buckley*, St. Charles Co. Cir. Ct., Case No. 0611-CR03560.

7. On June 20, 2006, the St. Charles County Circuit Court entered an administrative order requiring Buckley to pay $112.00 per month child support in the case *State of Missouri v. John William Buckley, II*, Case No. 0611-MC00638. As of June 27, 2012, Buckley was $2155.46 in arrears in his child support obligation.

9. On November 26, 2007, Buckley was ordered to pay $1.00 per month child support in an administrative order entered by the St. Charles County Circuit Court in the case *State of Missouri v. John William Buckley II*, Case No. 0711-MC01243. As of June 27, 2012, Buckley was $310.54 in arrears in this child support obligation.

10. On May 1, 2012, the Director issued an order refusing to issue to Buckley a motor vehicle extended service contract producer license, based on his finding there was cause to refuse the license.

11. On June 5, 2012, Buckley filed a complaint with this Commission requesting a hearing on the Director's refusal to issue him a license.

Conclusions of Law

We have jurisdiction over the case.[2] As noted above, our Regulation 1 CSR 15-3.446(6) provides that we may decide this case without a hearing if the Director establishes facts Buckley does not dispute and entitle the Director to a favorable decision.[3] When deciding a motion for summary decision, the facts and the inferences from those facts are viewed in the light most favorable to the non-moving party. The burden is on the movant to establish both the absence of a genuine issue of material fact and that it is entitled to a favorable determination as a matter law.[4]

The Director maintains his refusal to issue a license to Buckley is established by § 385.209.1(3), (5) and (12), which state in pertinent part:

> 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:
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> * * *
>
> (3) Obtained or attempted to obtain a license through material misrepresentation or fraud;
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> * * *
>
> (5) Been convicted of any felony;
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> * * *
>
> (12) Failed to comply with an administrative or court order imposing a child support obligation[.]

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[2]Section 621.045. Statutory references, unless otherwise noted, are to RSMo Supp. 2011.
[3]*ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 380-82 (Mo. banc 1993).
[4]*Id.* at 376.

Section 385.209.1(3) - Use of Material Misrepresentation to Obtain, or Attempt to Obtain License

The Director contends Buckley attempted to obtain a license through material misrepresentation or fraud by failing to disclose three misdemeanor convictions in response to Question #1 on the application. We agree. By signing the "Certification and Attestation" section of the application, Buckley certified its accuracy and completeness under penalty of perjury, yet he made the material omission of three misdemeanor convictions that he was required to disclose.

A misrepresentation is a falsehood or untruth made with the intent of deceit rather than inadvertent mistake.[5] To "deceive" is "to cause to accept as true or valid what is false or invalid."[6] Given the lengthy explanation in the application of what information must be disclosed, and that the applicant is required to expressly acknowledge that his application is complete and accurate in all respects, Buckley's omissions were no inadvertent mistake. We cannot imagine he "forgot" being incarcerated twice in the county jail and neglected to report the incidents on his application. Rather, the evidence indicates Buckley chose to misrepresent the full extent of his criminal history in order to gain the Director's favorable consideration of his application. Such conduct is the basis for denial of a license under § 385.209.1(3).

Section 385.209.1(5) – Felony Convictions

The Director argues Buckley's felony convictions are further grounds for denial of licensure. Buckley's application discloses he was twice convicted of felonies in the state of Missouri; the Director supplements this admission with copies of the certified court records in both cases. We find cause exists under § 385.209.1(5) to deny Buckley a license.

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[5] *Hernandez v. State Bd. of Regis'n for Healing Arts*, 936 S.W.2d 894, 899 n.3 (Mo. App., W.D. 1997).
[6] MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 321 (11th ed. 2004).

Section 385.209.1(12) – Failure to Comply with

Administrative Orders Imposing Child Support Obligation

The Director contends Buckley may be denied a license because he failed to comply with two administrative or court orders imposing a child support obligation. As evidence, the Director points to certified records of the Missouri Division of Child Support Enforcement that reflect past due child support payment obligations arising from two orders entered by the St. Charles County Circuit Court. While the balances show arrearages as of June 27, 2012, Buckley presented no evidence of payment to satisfy these obligations. Arrearages would not exist but for Buckley's failure to comply with the court orders. Accordingly, we find cause exists to deny Buckley a license pursuant to § 385.209.1(12).

Director's Discretion to Deny License under § 385.209.1

For the reasons stated above, grounds exist to deny Buckley's application. But § 385.209.1 does not *require* the Director to deny licensure if such grounds are established, but instead provides he "may" do so. "May" means an option, not a mandate.[7] The appeal in most applicant cases vests in this Commission the same degree of discretion as the agency has, and we need not exercise it in the same way.[8] However, § 385.209.2 provides, in relevant part:

> In the event that the action by the director is not to renew or to deny an application for a license, the director shall notify the applicant or licensee in writing and advise the applicant or licensee of the reason for the denial or nonrenewal. Appeal of the nonrenewal or denial of the application for a license shall be made pursuant to the provisions of chapter 621. Notwithstanding section 621.120, the director shall retain discretion in refusing a license or renewal and such discretion shall not transfer to the administrative hearing commission.

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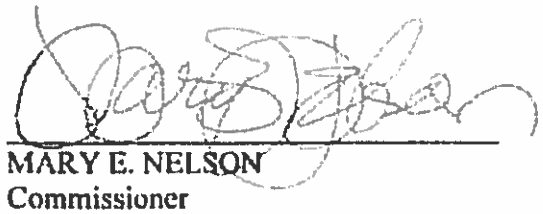
[7] *S.J.V. ex rel. Blank v. Voshage*, 860 S.W.2d 802, 804 (Mo. App., E.D. 1993).
[8] *State Bd. of Regis'n for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo. App., K.C.D. 1974).

Once cause for refusal is established, the Director's discretion must be upheld. Having found cause for denial of Buckley's license under § 385.209.1(3), (5) and (12), we must uphold the Director's decision.

Summary

Cause exists to deny Buckley's application.

SO ORDERED on September 10, 2012.



MARY E. NELSON
Commissioner