State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
JOSEPH LEE BUIE III,	)	**Case No. 150721366C**
	)	
Renewal Applicant.	)	

ORDER REFUSING TO RENEW MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On September 21, 2015, the Consumer Affairs Division, through counsel Tammy S. Kearns, submitted a Petition to the Director alleging cause for refusing to renew Joseph Lee Buie III's motor vehicle extended service contract producer license. 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. Joseph Lee Buie III ("Buie") is a Missouri resident with a residential address of 9844 Omega Drive, St. Louis, Missouri 63136.

2. On September 11, 2012, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Buie's Application for Motor Vehicle Extended Service Contract Producer License ("Initial Application").

3. The "Applicant's Certification and Attestation" section of the Initial 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 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. Buie signed the "Applicant's Certification and Attestation" section of the Initial Application under oath before a notary public.

5. Background Question No. 1 of the Initial 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 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 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 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. Buie answered "No" to Background Question No. 1 on the Initial Application.

7. Relying on Buie's representations on his Initial Application, the Department issued Buie a motor vehicle extended service contract ("MVESC") producer license (License No. 8215787) on September 13, 2012. That license expired on September 13, 2014.

8. On February 13, 2015, the Department received Buie's Application for Motor Vehicle Extended Service Contract Producer License Renewal ("Renewal Application").

9. The "Applicant's Certification and Attestation" section of the Renewal 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 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. I further certify, under penalty of perjury, that a) I have no outstanding state or

federal income tax obligations, or b) I have an outstanding state or federal income tax obligation and I have provided all information and documentation requested in Background Information Question 36.4.

10. Buie signed the "Applicant's Certification and Attestation" section of the Renewal Application under oath before a notary public.

11. Background Question No. 1 of the Renewal Application asks the following:

Have you ever been convicted of a crime, had a judgment withheld or deferred, received a suspended imposition of sentence ("SIS") or suspended execution of sentence ("SES"), or are you currently charged with committing a crime, which has not been previously reported to this insurance department?

"Crime" includes a misdemeanor, felony, or a military offense. You may exclude any of the following if they are/were misdemeanor traffic citations or misdemeanors: driving under the influence (DUI), driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license. You may also exclude misdemeanor juvenile convictions.

"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, having entered an Alford Plea, 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").

Unless excluded by the language above, you must disclose convictions that have been expunged.

If you answer yes, you must attach to this application:
a) a written statement explaining the circumstances of each incident,
b) a certified copy of the charging document, and
c) a certified copy of the official document which demonstrates the resolution of the charges or any final judgment.

12. Buie answered "No" to Background Question No. 1 on the Renewal Application.

13. Contrary to Buie's "No" answers to Background Question No. 1 on his Initial Application and Renewal Application, the Consumer Affairs Division's ("Division") investigation revealed the following criminal offenses that Buie failed to disclose:

a. On December 9, 2009, Buie pled guilty to Possession Of Up To 35 Grams Marijuana, a Class A Misdemeanor, in violation of § 195.202 RSMo.[1] The court suspended imposition of sentence and ordered Buie to complete two years of supervised probation. *State v. Joseph Lee Buie III*, Ste. Genevieve Co. Cir. Ct., Case No. 09D8-CR00842.

b. On May 13, 2011, Buie pled guilty to Theft/Stealing (Value Of Property Or Services Is $500 Or More But Less Than $25,000), a Class C Felony, in violation of § 570.030 RSMo. The court suspended imposition of sentence and ordered Buie to complete five years' supervised probation, complete eighty hours' community service, and pay restitution of $9,976.20. *State v. Joseph L. Buie III*, St. Louis Co. Cir. Ct., Case No. 10SL-CR03122-01.

14. Background Question No. 4 of the Renewal Application asks, in relevant part:

Have you failed to pay state or federal income tax, which has not been previously reported to this insurance department?

Have you failed to comply with an administrative or court order directing payment of state or federal income tax, which has not been previously reported to this insurance department?

Answer "Yes" if the answer to either question (or both) is "Yes."

15. Buie answered "No" to Background Question No. 4 on the Renewal Application.

16. Contrary to Buie's answer to Background Question No. 4 on his Renewal Application, the Division's investigation revealed that Buie has a delinquent tax obligation that he had not previously reported to the Department.

17. On October 29, 2012, the St. Louis County Circuit Court entered a judgment against Buie for unpaid state income tax for the 2009 tax filing year as follows:

> The Director of Revenue, under Section 143.902, RSMo, hereby certifies that the following assessment of tax, interest, additions to tax, penalties, and fees have been made and become final [in the amount of $3,207.30]. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.

Department of Revenue v. Joseph L. Buie, St. Louis Co. Cir. Ct., Case No. 12SL-MC14458.

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[1] All references to criminal statutes are to those contained in the version of the Revised Statutes of Missouri under which the court rendered judgment.

18. On February 19, 2015, Special Investigator Andrew Engler ("Engler") with the Division sent an inquiry letter to Buie via first class mail asking for the status of Buie's tax obligation and evidence of a repayment arrangement or a letter of compliance. The inquiry letter also asked Buie to explain the circumstances surrounding his criminal charges, why he failed to disclose them on his Renewal Application, and to provide court records documenting the charges. The inquiry letter requested a response by March 11, 2015, and warned Buie that a failure to respond could result in the refusal of Buie's MVESC producer license.

19. The February 19, 2015 inquiry letter was not returned as undeliverable, and is therefore presumed received by Buie.

20. Buie failed to respond to the Division's February 19, 2015 inquiry letter and failed to demonstrate a reasonable justification for the delay.

21. On March 11, 2015, Engler sent a second inquiry letter to Buie via first class mail asking for the same information previously requested in the February 19, 2015 inquiry letter. The inquiry letter requested a response by March 31, 2015, and warned Buie that a failure to respond could result in the refusal of Buie's MVESC producer license.

22. The March 11, 2015 inquiry letter was not returned as undeliverable, and is therefore presumed received by Buie.

23. Buie failed to respond to the Division's March 11, 2015 inquiry letter and failed to demonstrate a reasonable justification for the delay.

24. It is inferable, and hereby found as fact, that Buie falsely answered "No" to Background Question No. 1 and failed to disclose his criminal history on his Initial Application and Renewal Application in order to misrepresent to the Director that he had no criminal history, and accordingly, in order to improve the chance that the Director would renew his MVESC producer license.

25. It is inferable, and hereby found as fact, that Buie failed to disclose his delinquent state income tax obligation on his Renewal Application in order to misrepresent to the Director that he owed no income taxes and accordingly, in order to improve the chance that the Director would renew his MVESC producer license.

CONCLUSIONS OF LAW

26. Section 385.209 RSMo (Supp. 2013)[2] provides, in relevant 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:
>
> (1) Filed an application for license in this state within the previous ten years, which, as of the effective date of the license, was incomplete in any material respect or contained incorrect, misleading, or untrue information;
>
> (2) Violated any provision in sections 385.200 to 385.220, or violated any rule, subpoena, or order of the director;
>
> (3) Obtained or attempted to obtain a license through material misrepresentation or fraud;
>
> * * *
>
> (13) Failed to comply with any administrative or court order directing payment of state or federal income tax[.]

27. Title 20 CSR 100-4.100(2)(A) states:

> 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.

28. "There is a presumption that a letter duly mailed has been received by the addressee." *Clear v. Missouri Coordinating Bd. for Higher Educ.*, 23 S.W. 3d 896, 900 (Mo. App. 2000) (internal citation omitted).

29. Renewal of Buie's MVESC producer license may be refused pursuant to § 385.209.1(1) because Buie filed an application for license in this state within the previous ten years which, as of the effective date of the license, was incomplete in a material respect or

[2] All civil statutory references are to the Revised Statutes of Missouri (2000) as updated by the 2013 Supplement unless otherwise noted.

contained incorrect, misleading, or untrue information. Buie's failure to disclose his misdemeanor and felony suspended sentences in response to Background Question No. 1 on his Initial Application constitutes incorrect, misleading and untrue information, and rendered his Initial Application incomplete in material respects. *State v. Joseph Lee Buie III*, Ste. Genevieve Co. Cir. Ct., Case No. 09D8-CR00842; *State v. Joseph L. Buie III*, St. Louis Co. Cir. Ct., Case No. 10SL-CR03122-01.

30. Renewal of Buie's MVESC producer license may be refused pursuant to § 385.209.1(2) because Buie violated a rule of the Director, namely 20 CSR 100-4.100(2)(A), when Buie failed to respond to two written inquiry letters from the Division and failed to demonstrate reasonable justifications for the delays.

31. Each failure to respond to an inquiry letter is a violation of a rule of the Director, and therefore is a separate and sufficient ground for refusal pursuant to § 385.209.1(2).

32. Renewal of Buie's MVESC producer license may be refused pursuant to § 385.209.1(3) because Buie obtained a license through material misrepresentation or fraud when he falsely answered "No" to Background Question No. 1 and failed to disclose his misdemeanor and felony suspended sentences on his Initial Application. *State v. Joseph Lee Buie III*, Ste. Genevieve Co. Cir. Ct., Case No. 09D8-CR00842; *State v. Joseph L. Buie III*, St. Louis Co. Cir. Ct., Case No. 10SL-CR03122-01.

33. Renewal of Buie's MVESC producer license may be refused pursuant to § 385.209.1(3) because Buie attempted to obtain a license through material misrepresentation or fraud when he falsely answered "No" to Background Question No. 1 and failed to disclose his misdemeanor and felony suspended sentences on his Renewal Application. *Id.*

34. Renewal of Buie's MVESC producer license may be refused pursuant to § 385.209.1(3) because Buie attempted to obtain a license through material misrepresentation or fraud when he falsely answered "No" to Background Question No. 4 and failed to disclose his delinquent Missouri income tax obligation on his Renewal Application. *Department of Revenue v. Joseph L. Buie*, St. Louis Co. Cir. Ct., Case No. 12SL-MC14458.

35. Each instance in which Buie obtained or attempted to obtain a license through material misrepresentation or fraud is a separate and sufficient cause for refusal pursuant to § 385.209.1(3).

36. Renewal of Buie's MVESC producer license may be refused pursuant to § 385.209.1(13) because Buie failed to comply with an administrative or court order directing payment of state income tax. *Department of Revenue v. Joseph L. Buie*, St. Louis Co. Cir. Ct., Case No. 12SL-MC14458.

37. The Director has considered Buie's history and all of the circumstances surrounding Buie's Renewal Application, and exercises his discretion to refuse to renew Buie's MVESC producer license.

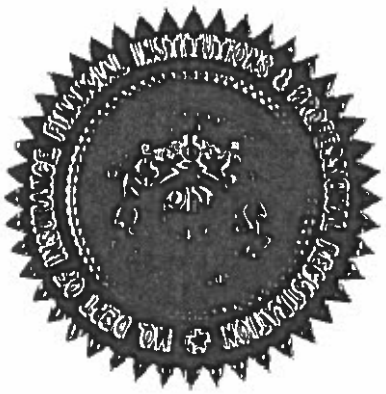
38. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that renewal of **Joseph Lee Buie III's** motor vehicle extended service contract producer license is hereby **REFUSED.**

SO ORDERED.

WITNESS MY HAND THIS 22ND **DAY OF** SEPTEMBER**, 2015.**



JOHN M. HUFF, Director
Missouri Department of Insurance, Financial Institutions and Professional Registration

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 23rd day of September, 2015, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following address:

Joseph Lee Buie III
9844 Omega Drive
St. Louis, Missouri 63136

Tracking No. 1Z0R15W84295675607

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