State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
JOHN A. CONLON,	)	**Case No. 14-0424416C**
	)	
Applicant.	)	

ORDER REFUSING TO RENEW MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On June 24, 2014, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to renew the motor vehicle extended service contract (MVESC) producer license of John A. Conlon. 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. John A. Conlon ("Conlon") is a Missouri resident with a residential address of record of 1009 N. 5th Street, St. Charles, Missouri, 63301.

2. On December 28, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Conlon's Application for Motor Vehicle Extended Service Contract Producer License ("2011 Application").

3. By signing the 2011 Application, Conlon attested and certified that "all of the information submitted in this application and attachments is true and complete."

4. Background Question No. 1 of the 2011 Application asked 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 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 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

5. Conlon answered "No" to Background Question No. 1 of the 2011 Application and did not disclose any criminal history or pending criminal charges in the 2011 Application.

6. On January 1, 2012, the Director issued an MVESC individual producer license to Conlon. That license expired on January 1, 2014.

7. On December 13, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Conlon's Application for Motor Vehicle Extended Service Contract Producer License Renewal ("2013 Application").

8. By signing the 2013 Application, Conlon attested and certified that "all of the information submitted in this application and attachments is true and complete."

9. Background Question No. 1 of the 2013 Application asked:

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: involving 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.

10. Conlon answered "No" to Background Question No. 1 of the 2013 Application and failed to disclose any criminal history in the 2013 Application.

11. At no time prior to December 13, 2013, when Conlon filed his 2013 Application, did Conlon report any criminal charges or convictions to the Department.

12. Contrary to Conlon's "No" answer to Background Question No. 1, at the time he submitted his 2013 Application Conlon had been convicted of five felonies, none of which he had reported to the Department:

    a. On May 21, 2013, Conlon pleaded guilty in the St. Charles County Circuit Court to the Class C Felony of DWI – Alcohol – Aggravated Offender, in violation of § 577.010, RSMo. The court sentenced Conlon to three years' imprisonment, but suspended execution of the sentence and placed Conlon on five years' probation with conditions including a 60-day work release in the St. Charles County Jail followed by 60 days' house arrest. On May 14, 2014, the court entered an Order and Judgment for Graduation from Court Program.[1]

    b. Also on May 21, 2013, but in a separate case, Conlon pleaded guilty in the St. Charles County Circuit Court to the Class C Felony of DWI – Alcohol – Aggravated Offender, in violation of § 577.010;[2]

    c. In that same case, on May 21, 2013, Conlon also pleaded guilty to the Class C Felony of Possession of a Controlled Substance Except 35 Grams or Less of Marijuana, in violation of § 195.202;[3]

    d. In that same case, on May 21, 2013, Conlon also pleaded guilty to the Class D Felony of Leaving the Scene of a Motor Vehicle Accident—Injury, Property

[1] *State of Missouri v. John A. Conlon*, St. Charles Co. Cir. Ct., No. 1111-CR05961-01.
[2] *State of Missouri v. John A. Conlon*, St. Charles Co. Cir. Ct., No. 1311-CR01824.
[3] *Id.*

Damage or Second Offense, in violation of § 577.060;[4]

e. On each count, the court sentenced Conlon to five years' imprisonment but suspended the execution of each sentence and placed Conlon on five years' supervised probation with conditions;[5] and

f. On June 18, 2013, Conlon pleaded guilty in the St. Charles County Circuit Court to the Class C Felony of DWI—Alcohol—Aggravated Offender, in violation of § 577.010. The court sentenced Conlon to five years' imprisonment, to be served concurrently with the sentence in Case No. 1311-CR01824 and consecutively to the sentence in Case No. 1111-CR05961. The court suspended execution of the sentence and placed Conlon on five years' probation with conditions.[6]

13. On December 30, 2013, in response to an inquiry from the Consumer Affairs Division concerning his failure to disclose his convictions in Case No. No. 1111-CR05961-01, Conlon faxed a letter to the Consumer Affairs Division stating, in relevant part:

> I misinterpreted the question about "crime conviction" on the application. I thought that since I had not been arrested since the previous license approval date, that I could mark "no".

14. Contrary to Conlon's statement in his December 30, 2013 letter, Background Question No. 1 of the 2013 Application is plain and clear in asking whether the applicant has "*ever been convicted* of a crime … which has not been previously *reported* to this insurance department[.]" (emphasis added). Conlon has never reported any of his convictions to the Department.

15. It is inferable, and hereby found as fact, that Conlon falsely answered "No" to Background Question No. 1 on the 2013 Application and failed to disclose each of the following convictions, none of which had been previously reported to the Department, in each instance in order to falsely represent to the Director that he had no criminal history, and, accordingly, to improve the chances that the Director would approve his 2013 Application and renew his MVESC producer license:

a. The Class C Felony of DWI – Alcohol – Aggravated Offender, in violation of § 577.010, RSMo;[7]

b. The Class C Felony of DWI – Alcohol – Aggravated Offender, in violation of § 577.010;[8]

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[4] *Id.*
[5] *Id.*
[6] *State of Missouri v. John A. Conlon*, St. Charles Co. Cir. Ct., No. 1311-CR03151.
[7] *State of Missouri v. John A. Conlon*, St. Charles Co. Cir. Ct., No. 1111-CR05961-01.
[8] *State of Missouri v. John A. Conlon*, St. Charles Co. Cir. Ct., No. 1311-CR01824.

c. The Class C Felony of Possession of a Controlled Substance Except 35 Grams or Less of Marijuana, in violation of § 195.202;[9]

d. The Class D Felony of Leaving the Scene of a Motor Vehicle Accident—Injury, Property Damage or Second Offense, in violation of § 577.060;[10] and

e. The Class C Felony of DWI—Alcohol—Aggravated Offender, in violation of § 577.010.[11]

16. Both *State of Missouri v. John A. Conlon*, St. Charles Co. Cir. Ct., No. 1311-CR01824, and *State of Missouri v. John A. Conlon*, St. Charles Co. Cir. Ct., No. 1311-CR03151, were felony proceedings initiated by the State of Missouri for violations of Missouri law by Conlon. Conlon, who was licensed as an MVESC producer at all relevant times, failed to report either felony proceeding to the Director within thirty days of the initial pretrial hearing date or arraignment, in that he never reported either felony proceeding to the Director.

CONCLUSIONS OF LAW

17. Section 385.209 RSMo, Supp. 2013, 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:
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> * * *
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> (2) Violated any provision in sections 385.200 to 385.220, or violated any rule, subpoena, or order of the director;
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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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[9] *Id.*
[10] *Id.*
[11] *State of Missouri v. John A. Conlon*, St. Charles Co. Cir. Ct., No. 1311-CR03151.

7. Within thirty days of the initial pretrial hearing date or arraignment, a producer shall report to the director any felony proceeding initiated by any state or the United States for any violation of law by the producer. The report shall include a copy of the indictment or information filed, the order resulting from the hearing and any other relevant legal documents.

18. 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.

19. The Director may refuse to renew Conlon's MVESC producer license to under § 385.209.1(5) because Conlon has been convicted of the following felonies, with each felony conviction providing a separate and sufficient ground for refusal to renew:

    a. The Class C Felony of DWI – Alcohol – Aggravated Offender, in violation of § 577.010;[12]

    b. The Class C Felony of DWI – Alcohol – Aggravated Offender, in violation of § 577.010;[13]

    c. The Class C Felony of Possession of a Controlled Substance Except 35 Grams or Less of Marijuana, in violation of § 195.202;[14] and

    d. The Class D Felony of Leaving the Scene of a Motor Vehicle Accident—Injury, Property Damage or Second Offense, in violation of § 577.060;[15] and

    e. The Class C Felony of DWI—Alcohol—Aggravated Offender, in violation of § 577.010.[16]

20. The Director also may refuse to renew Conlon's MVESC producer license to Conlon under § 385.209.1(3) because Conlon attempted to obtain an MVESC producer license through material misrepresentation or fraud when he falsely answered "No" to Background Question No. 1 on the 2013 Application and failed to disclose each of the following convictions, none of which had been previously reported to the Department, in each instance in order to falsely represent to the Director that he had no criminal history and, accordingly, to improve the chances that the Director would approve his 2013 Application and renew his MVESC producer license:

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[12] *State of Missouri v. John A. Conlon*, St. Charles Co. Cir. Ct., No. 1111-CR05961-01.
[13] *State of Missouri v. John A. Conlon*, St. Charles Co. Cir. Ct., No. 1311-CR01824.
[14] *Id.*
[15] *Id.*
[16] *State of Missouri v. John A. Conlon*, St. Charles Co. Cir. Ct., No. 1311-CR03151.

a. The Class C Felony of DWI – Alcohol – Aggravated Offender, in violation of § 577.010, RSMo;[17]

b. The Class C Felony of DWI – Alcohol – Aggravated Offender, in violation of § 577.010;[18]

c. The Class C Felony of Possession of a Controlled Substance Except 35 Grams or Less of Marijuana, in violation of § 195.202;[19]

d. The Class D Felony of Leaving the Scene of a Motor Vehicle Accident—Injury, Property Damage or Second Offense, in violation of § 577.060;[20] and

e. The Class C Felony of DWI—Alcohol—Aggravated Offender, in violation of § 577.010.[21]

21. The Director also may refuse to renew Conlon's MVESC producer license under § 385.209.1(2) because Conlon twice violated § 385.209.7 when as a licensed producer he failed to report to the Director within thirty days of the initial pretrial hearing date or arraignment either of the following felony proceedings initiated by the State of Missouri for violations of Missouri law by Conlon:

a. *State of Missouri v. John A. Conlon*, St. Charles Co. Cir. Ct., No. 1311-CR01824; and

b. *State of Missouri v. John A. Conlon*, St. Charles Co. Cir. Ct., No. 1311-CR03151.

22. The Director has considered Conlon's history and all of the circumstances surrounding Conlon's Application. Conlon has an extensive history of felony convictions. Conlon not only failed to disclose these convictions as required in his application, but also failed to report the felony proceedings as required of MVESC producers by statute. By these failures Conlon has demonstrated disrespect not only for the law, but also for the regulator of his license and his responsibilities as a licensed producer. Granting Conlon an MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue a MVESC producer license to Conlon.

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[17] *State of Missouri v. John A. Conlon*, St. Charles Co. Cir. Ct., No. 1111-CR05961-01.
[18] *State of Missouri v. John A. Conlon*, St. Charles Co. Cir. Ct., No. 1311-CR01824.
[19] *Id.*
[20] *Id.*
[21] *State of Missouri v. John A. Conlon*, St. Charles Co. Cir. Ct., No. 1311-CR03151.

23. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license renewal application of **John A. Conlon** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 26th **DAY OF** June, **2014.**

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 30th day of June, 2014, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by certified mail at the following addresses:

John A. Conlon
1009 N. 5th Street
St. Charles, Missouri 63301

Certified No. 7009 3410 0001 9254 8094

Angie Gross

Angie Gross
Senior Office Support Assistant
Investigations Section
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