



State of Missouri

**DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION**

IN RE:

JOSPEH DANIEL FERGUSON,

Applicant.

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Case No. 140610494C

**ORDER REFUSING TO RENEW MOTOR VEHICLE
EXTENDED SERVICE CONTRACT PRODUCER LICENSE**

On July 23, 2014, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to renew Joseph Daniel Ferguson’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 Daniel Ferguson, (“Ferguson”) is a Missouri resident with a residential address of 361 Mason Ridge Drive, St. Charles, Missouri 63304.
2. On February 20, 2014, the Department of Insurance, Financial Institutions and Professional Registration (“Department”) received Ferguson’s Application for Motor Vehicle Extended Service Contract Producer License Renewal (“Renewal Application”).
3. 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. Ferguson signed the Renewal Application in the “Applicant’s Certification and Attestation” section and dated his signature “02/10/2014.”

5. Background Question No. 1 of the Renewal Application asks the following, in relevant part:

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 conviction.

“Convicted” includes, but is not limited to, have 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.

6. Ferguson marked “No” to Background Question No. 1.
7. Contrary to Ferguson’s “No” answer to Background Question No. 1, the Consumer Affairs Division’s (“Division”) investigation of Ferguson’s Renewal Application revealed the following felony conviction:
 - a. On February 16, 2013, Ferguson was charged with DWI – Alcohol – Persistent Offender, a Class D Felony, in violation of § 577.010. On February 18, 2014, Ferguson pled guilty. The court sentenced Ferguson to three (3) years’ incarceration, but suspended the execution of sentence and placed Ferguson on supervised probation for five (5) years. *State v. Joseph Daniel Ferguson*, St. Charles Co. Cir. Ct., Case No. 1311-CR04052-01.
8. On March 6, 2014, Special Investigator Andrew Engler (“Engler”), with the Division, mailed an inquiry letter to Ferguson that requested documentation and additional information surrounding Ferguson’s felony conviction. Engler warned Ferguson that a

failure to respond by March 26, 2014 could result in refusal to renew his motor vehicle extended service contract producer ("MVESC") license.

9. The March 6, 2014 inquiry letter was not returned as undeliverable, and therefore is presumed received by Ferguson.
10. Ferguson never responded to the March 6, 2014 inquiry letter and has not demonstrated a reasonable justification for his failure to respond.
11. On April 7, 2014, Engler mailed a second inquiry letter to Ferguson. The letter requested substantially the same information as previously requested and a response by April 27, 2014. Again, the inquiry letter warned Ferguson that failure to respond could result in refusal to renew his MVESC producer license.
12. On April 24, 2014, Engler received a letter from Ferguson in response to the Division's April 7, 2014 inquiry letter that offered the following explanation, in relevant part:
 - a. Ferguson "was taking pain medications and was pulled over. [He] was not drunk."
 - b. Ferguson was not convicted until February of 2014.
 - c. Ferguson believed "this would not play out the way it did."
 - d. Ferguson admitted himself to a treatment center for help with the pain medications.

CONCLUSIONS OF LAW

13. Section 385.209 RSMo (Supp. 2013)¹ 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:

* * *

- (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;

¹ All statutory references are to the RSMo (2000) as updated by the 2013 Supplement, unless otherwise indicated.

(5) Been convicted of a felony[.]

14. Regulation 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.

15. "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 citations omitted).

16. 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.

17. The Director may refuse to renew Ferguson's MVESC producer license pursuant to § 385.209.1(2) because Ferguson failed to adequately respond to an inquiry letter from the Division and failed to provide a reasonable justification for the delay, thereby violating 20 CSR 100-4.100(2)(A), a Department regulation.

18. The Director may refuse to renew Ferguson's MVESC producer license pursuant to § 385.209.1(3) because Ferguson attempted to obtain a license through material misrepresentation or fraud when he failed to disclose his pending felony charge on his Renewal Application. *State v. Joseph Daniel Ferguson*, St. Charles Co. Cir. Ct., Case No. 1311-CR04052-01.

19. The Director may refuse to renew Ferguson's MVESC producer license pursuant to § 385.209.1(5) because he has been convicted of a felony, to wit:

- a. *State v. Joseph Daniel Ferguson*, St. Charles Co. Cir. Ct., Case No. 1311-CR04052-01 (Driving While Intoxicated – Alcohol/Drug Intoxication – Persistent Offender, a Class D felony, in violation of § 577.010).

20. The Director has considered Ferguson's history and all of the circumstances surrounding Ferguson's Renewal Application. Renewing Ferguson's MVESC producer license would

not be in the interest of the public. Accordingly, the Director exercises his discretion to refuse to renew Ferguson's MVESC producer license.

21. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the Motor Vehicle Extended Service Producer License Application of **Joseph Daniel Ferguson** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 25TH DAY OF JULY, 2014.




JOHN M. HUFF
DIRECTOR

NOTICE

TO: Applicant and any unnamed persons aggrieved by this Order:

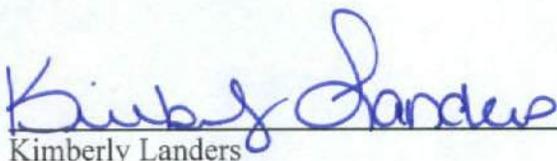
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send 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 28th day of July, 2014 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 Daniel Ferguson
361 Mason Ridge Drive
St. Charles, Missouri 63304

Tracking No. 1Z0R15W84290500287



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