



State of Missouri

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

IN RE:

JOSEPH M. FOUQUET,

Applicant.

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Case No. 201225

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

On December 14, 2013, 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 Joseph M. Fouquet. 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. Joseph M. Fouquet ("Fouquet") is a Missouri resident with a residential address of record of 702 Marina Drive, St. Charles, Missouri, 63301.
2. On May 15, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Fouquet's Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. By signing the Application, Fouquet 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 Applications 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 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 judgment[.]

5. Fouquet marked “No” to Question No. 1.
6. Fouquet did not disclose any criminal history in the Application.
7. The Consumer Affairs Division’s investigation into the Applications revealed that, contrary to Fouquet’s “No” answer to Background Question No. 1, Fouquet has been convicted of three felonies and two misdemeanors:
 - a. On May 11, 1998, Fouquet pleaded guilty in the District Court of Atchison County, Kansas, to three counts of Aggravated Battery, a severity level 7 person Felony, in violation of K.S.A. 21-3414(a)(1)(c) and to one count of the Class A Misdemeanor of Endangering a Child, in violation of K.S.A. 21-3606(1)(b). The court sentenced Fouquet to one year of imprisonment on each felony count, and to 365 days in county jail on the misdemeanor count, all to run concurrently, but placed Fouquet on two years’ probation.¹
 - b. On August 26, 2009, Fouquet pleaded guilty in the Dekalb County Circuit Court to the Class A Misdemeanor of Possession of an Unloaded Firearm/Projectile Weapon While Intoxicated, in violation of § 571.030, RSMo. The court suspended imposition of sentence and placed Fouquet on two years’ probation. On November 25, 2009, the court revoked Fouquet’s probation, sentenced Fouquet to one year’s incarceration in county jail, suspended execution of the sentence, placed Fouquet on two years’ probation and ordered Fouquet to serve twenty days’ shock incarceration. On December 17, 2010, the court revoked Fouquet’s probation and executed the sentence. On October 20, 2011, Fouquet was paroled.²
8. It is inferable, and is hereby found as fact, that Fouquet falsely answered “No” to Question No. 1, and failed to disclose in his Application his convictions of three counts

¹ *State of Missouri v. Joseph M. Fouquet*, Dekalb Co. Cir. Ct., No. 09K4-CR00049-01.

² *State of Kansas v. Joe Fouquet*, Dist. Ct. of Atchison Co., Kansas, No. KS003015J.

of Felony Aggravated Battery, the Class A Misdemeanor of Endangering a Child and the Class A Misdemeanor of Possession of an Unloaded Firearm/Projectile Weapon While Intoxicated, in order to misrepresent to the Director that he had no criminal history, and, accordingly, in order to improve the chances that the Director would approve his Application and issue him an MVESC producer license.

9. On May 23, 2013, Consumer Affairs Division investigator Dennis Fitzpatrick mailed Fouquet a written inquiry, noting Fouquet's "No" answer to Background Question No. 1, as well as the criminal history he should have disclosed in his Application, and requiring Fouquet to submit a written statement explaining the circumstances of each incident.
10. Fitzpatrick mailed the May 23, 2013 letter by first class mail, to Fouquet's address of record, with sufficient postage attached.
11. The May 23, 2013 letter was not returned as undeliverable.
12. Fouquet never responded to the May 23, 2013 letter and has not demonstrated any justification for his failure to respond.
13. On June 14, 2013, Consumer Affairs Division investigator Dennis Fitzpatrick mailed Fouquet a second written inquiry, again noting Fouquet's "No" answer to Background Question No. 1, as well as the criminal history he should have disclosed in his Application, and again requiring Fouquet to submit a written statement explaining the circumstances of each incident.
14. Fitzpatrick mailed the June 14, 2013 letter by first class mail, to Fouquet's address of record, with sufficient postage attached.
15. The June 14, 2013 letter was not returned as undeliverable.
16. Fouquet never responded to the June 14, 2013 letter and has not demonstrated any justification for his failure to respond.
17. On July 3, 2013, Consumer Affairs Division investigator Dennis Fitzpatrick mailed Fouquet a third written inquiry, again noting Fouquet's "No" answer to Background Question No. 1, as well as the criminal history he should have disclosed in his Application, and again requiring Fouquet to submit a written statement explaining the circumstances of each incident.
18. Fitzpatrick mailed the July 3, 2013 letter by first class mail, to Fouquet's address of record, with sufficient postage attached.
19. The July 3, 2013 letter was not returned as undeliverable.
20. Fouquet never responded to the July 3, 2013 letter and has not demonstrated any justification for his failure to respond.

CONCLUSIONS OF LAW

21. Section 385.209 RSMo, Supp. 2012, 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;

* * *

(5) Been convicted of any felony[.]

22. Regulation 20 CSR 100-4.100(2) states:

(2) Except as required under subsection (2)(B)—

(A) 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.

(B) This rule shall not apply to any other statute or regulation which requires a different time period for a person to respond to an inquiry by the department. If another statute or regulation requires a shorter response time, the shorter response time shall be met. This regulation operates only in the absence of any other applicable laws.

23. 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.

24. The Director may refuse to issue an MVESC producer license to Fouquet under § 385.209.1(5) because Fouquet has been convicted of three felonies:
 - a. Three counts of Aggravated Battery, a severity level 7 person felony, in violation of K.S.A. 21-3414(a)(1)(c).
25. The Director also may refuse to issue an MVESC producer license to Fouquet pursuant to § 385.209.1(3) because Fouquet attempted to obtain an MVESC producer license through material misrepresentation or fraud. Fouquet falsely answered “No” to Question No. 1 of the Application and failed to disclose in his Application his convictions of three counts of felony Aggravated Battery, the Class A Misdemeanor of Endangering a Child and the Class A Misdemeanor of Possession of an Unloaded Firearm/Projectile Weapon While Intoxicated, in order to misrepresent to the Director that he had no criminal history, and, accordingly, in order to improve the chances that the Director would approve his Application and issue him an MVESC producer license.
26. The Director also may refuse to issue an MVESC producer license to Fouquet under § 385.209.1(2) because Fouquet violated a rule of the Director, in that he failed to adequately respond to three separate written inquiries from the Consumer Affairs Division—mailed by first class mail on May 23, 2013, June 14, 2013 and July 3, 2013—without demonstrating reasonable justification for his failure to respond, thereby violating regulation 20 CSR 100-4.100(2), which is a rule of the Director.
27. The Director has considered Fouquet’s history and all of the circumstances surrounding Fouquet’s Application. Granting Fouquet a motor vehicle extended service contract producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue a motor vehicle extended service contract producer license to Fouquet.

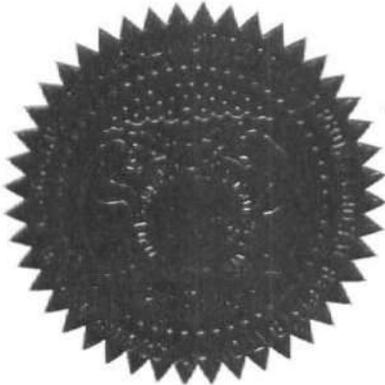
28. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Joseph M. Fouquet** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 27th DAY OF DECEMBER, 2013.




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 December, 2013, 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:

James R. Fouquet
702 Marina Drive
St. Charles, Missouri 63301

Certified No. 7009 3410 0001 9254 6731



Angie Gross
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