State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
JACOB RICHARD GEISER,	)	**Case No. 160518282C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On September 16, 2016, the Consumer Affairs Division submitted a Petition to the Director alleging cause to refuse to issue a motor vehicle extended service contract producer license to Jacob Richard Geiser. 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. Jacob Richard Geiser ("Geiser") is a Missouri resident with a residential and mailing address of 5028 Clayridge Drive, Apartment 200, St. Louis, Missouri, 63129.

2. On November 20, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Geiser's Application for Motor Vehicle Extended Service Contract Producer License ("2013 Application").

3. The "Applicant's Certification and Attestation" section of the 2013 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. On October 21, 2013, Geiser signed the "Applicant's Certification and Attestation" section of the 2013 Application under oath before a notary public.

5. Background Question No. 1 of the 2013 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 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 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[.]

6. Geiser answered "Yes" in response to Background Question No. 1 of the 2013 Application.

7. Along with his application, Geiser submitted a letter and an Order of Probation disclosing that he pled guilty to Attempted Possession of a Controlled Substance, a Class C Felony in violation of § 195.202, RSMo. [1] *State v. Jacob R. Geiser*, Cape Girardeau Co. Cir. Ct., Case No. 12CG-CR01809-01. On April 15, 2013, Geiser signed an Order of Probation acknowledging that the court suspended imposition of sentence and ordered he complete five years' supervised probation. *Id.*[2]

8. Although Geiser disclosed his Suspended Imposition of Sentence for a Felony, Geiser failed to disclose the following misdemeanor criminal convictions in response to Background Question No. 1 on his 2013 Application:

   a. On October 22, 2007, Geiser pled guilty to Littering, a Class A Misdemeanor in violation of § 577.070, RSMo. *State v. Jacob R. Geiser*, Jefferson Co. Cir. Ct., Case No. 07JE-CR02738. The court sentenced Geiser pay a fine of $500.00. *Id.*

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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.

[2] Attachments to Geiser's 2013 Application included a Felony Registration change of address form and an Order of Probation from the case of *State v. Jacob R. Geiser*, Cape Girardeau Co. Cir. Ct., Case No. 12CG-CR01809-01. Other than the documents attached to his 2013 Application, no record of this matter exists.

b. On January 13, 2009, Geiser pled guilty to Littering, a Class A Misdemeanor in violation of 577.070, RSMo. *State v. Jacob R. Geiser,* Jefferson Co. Cir. Ct., Case No. 08JE-CR03185. The court sentenced Geiser to pay a fine of $500.00. *Id.*

c. On January 11, 2012, Geiser pled guilty to Possession of Up to 35 Grams of Marijuana, a Class A Misdemeanor, in violation of § 195.202, RSMo. *State v. Jacob R. Geiser*, St. Genevieve Co. Cir. Ct., Case No. 11SG-CR00662. The court sentenced Geiser to pay a fine of $200.00. *Id.*

9. Relying on Geiser's response to Background Question No. 1 on his 2013 Application, the Department issued Geiser a motor vehicle extended service contract ("MVESC") producer license (License No. 8307966) on November 27, 2013. Geiser's license expired on November 26, 2015.

10. On November 30, 2015, the Department received Geiser's Application for Motor Vehicle Extended Service Contract Producer License Renewal ("2015 Application").

11. The "Applicant's Certification and Attestation" section of the 2015 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.

12. On December 7, 2015, Geiser signed the "Applicant's Certification and Attestation" section of the 2015 Application under oath before a notary public.

13. Background Question No. 1 of the 2015 Application asked 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.

14. Geiser answered "No" in response to Background Question No. 1 of the 2015 Application.

15. Contrary to Geiser's response to Background Question No. 1 on his 2015 Application, an investigation conducted by the Consumer Affairs Division ("Division") of the Department, revealed that on October 8, 2015, Geiser had been charged by Information with Possession of a Controlled Substance, a Class A Misdemeanor, in violation of § 195.202, RSMo, and Unlawful Use of Drug Paraphernalia, a Class A Misdemeanor, in violation of § 195.233, RSMo. *State v. Jacob Richard Geiser*, Crawford Co. Cir. Ct., Case No. 15CF-CR01190.[3]

16. Geiser also failed to disclose in response to Background Question No. 1 of his 2015 Application the same criminal cases Geiser failed to disclose on his 2013 Application. *State v. Jacob R. Geiser*, Jefferson Co. Cir. Ct., Case No. 07JE-CR02738; *State v. Jacob R. Geiser,* Jefferson Co. Cir. Ct., Case No. 08JE-CR03185; *State v. Jacob R. Geiser*, St. Genevieve Co. Cir. Ct., Case No. 11SG-CR00662.

17. On January 5, 2016, Special Investigator Andrew Engler ("Engler") with the Division, sent an inquiry letter to Geiser at his residential mailing address, by first class mail, requesting an explanation regarding the circumstances surrounding his pending criminal charges and previous misdemeanor convictions and inquiring why he failed to disclose them on his 2013 and 2015 Applications. Special investigator Engler requested certified records related to the pending misdemeanor prosecution

[3] Geiser pled guilty on June 10, 2016. The court suspended imposition of sentence and ordered Geiser complete one year supervised probation and pay fines and court costs totaling $406.50.

and his prior misdemeanor convictions. The inquiry letter further cited 20 CSR 100-4.100, informed Geiser that his response was due within twenty days, and warned that failure to respond could result in a refusal to issue Geiser an MVESC license.

18. The United States Postal Service did not return the January 5, 2016, inquiry letter to the Division, and therefore it is presumed received by Geiser.

19. Geiser failed to provide a response to the Division's January 5, 2016, inquiry letter within twenty days or any time thereafter and failed to demonstrate a reasonable justification for the delay.

20. After receiving no response to his January 5, 2016, inquiry letter, on February 1, 2016, Engler sent a second inquiry letter to Geiser at his residential mailing address, by first class mail, requesting the same information and documents requested in the January 5, 2016 inquiry letter. The second inquiry letter again cited 20 CSR 100-4.100, informed Geiser that his response was due within twenty days, and that failure to respond could result in a refusal to issue Geiser an MVESC license.

21. The United States Postal Service did not return the February 1, 2016, inquiry letter to the Division, and therefore it is presumed received by Geiser.

22. Geiser failed to provide a response to the Division's February 1, 2016, inquiry letter within twenty days or any time thereafter and failed to demonstrate a reasonable justification for the delay.

23. It is inferable, and hereby found as fact, that Geiser did not disclose his convictions for Littering and Possession of Up to 35 Grams of Marijuana on his 2013 Application in order to misrepresent to the Director that his criminal history was limited to a single charge for Attempted Possession of a Controlled Substance (Marijuana), for which he received a Suspended Imposition of Sentence.

24. It is also inferable, and hereby found as fact, that Geiser did not disclose his convictions for Littering and Possession of Up to 35 Grams of Marijuana on his 2015 Application in order to misrepresent to the Director that his 2013 Application was complete and free from fraud, and that his criminal history was limited to a single charge for Attempted Possession of a Controlled Substance (Marijuana), for which he received a suspended imposition of sentence, all for the purpose of inducing improving the chances that the department would issue him an MVESC license.

25. It is further inferable, and hereby found as fact, that Geiser did not disclose that he had been charged with Unlawful Use of Drug Paraphernalia in response to Background Question No. 1 of his 2015 Application in order to misrepresent to the Director that he was not currently charged with committing a crime and improve the chances that the Director would renew his MVESC License.

CONCLUSIONS OF LAW

26. Section 385.209[4] states, 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; [or]
>
> (3) Obtained or attempted to obtain a license through material misrepresentation or fraud[.]

27. Title 20 CSR 100-4.100(2)(A) Required Response to Inquiries by the Consumer Affairs Division, provides:

> 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 citations omitted).

29. The Director may refuse to issue Geiser an MVESC producer license pursuant to § 385.209.1(1) because Geiser 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 contained incorrect, misleading, or untrue information in that Geiser failed to disclose the following misdemeanor convictions in response to Background Question No. 1 on his 2013 Application:

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[4] All statutory references are to the Revised Statues of Missouri (2000) as updated by the 2013 Supplement, unless otherwise indicated.

a. On October 22, 2007, Geiser pled guilty to Littering, a Class A Misdemeanor in violation of § 577.070, RSMo. *State v. Jacob R. Geiser*, Jefferson Co. Cir. Ct., Case No. 07JE-CR02738.

b. On January 13, 2009, Geiser pled guilty to Littering, a Class A Misdemeanor in violation of 577.070, RSMo. *State v. Jacob R. Geiser,* Jefferson Co. Cir. Ct., Case No. 08JE-CR03185.

c. On January 11, 2012, Geiser pled guilty to Possession of Up to 35 Grams of Marijuana, a Class A Misdemeanor in violation of § 195.202, RSMo. *State v. Jacob R. Geiser*, St. Genevieve Co. Cir. Ct., Case No. 11SG-CR00662.

30. The Director may refuse to issue Geiser an MVESC producer license pursuant to § 385.209.1(3) because Geiser obtained a license through material misrepresentation or fraud when he failed to disclose the following in response to Background Question No. 1 of his 2013 Application:

a. On October 22, 2007, Geiser pled guilty to Littering, a Class A Misdemeanor in violation of § 577.070, RSMo. *State v. Jacob R. Geiser*, Jefferson Co. Cir. Ct., Case No. 07JE-CR02738.

b. On January 13, 2009, Geiser pled guilty to Littering, a Class A Misdemeanor in violation of 577.070, RSMo. *State v. Jacob R. Geiser,* Jefferson Co. Cir. Ct., Case No. 08JE-CR03185.

c. On January 11, 2012, Geiser pled guilty to Possession of Up to 35 Grams of Marijuana, a Class A Misdemeanor in violation of § 195.202, RSMo. *State v. Jacob R. Geiser*, St. Genevieve Co. Cir. Ct., Case No. 11SG-CR00662.

31. The Director may refuse to issue Geiser an MVESC producer license pursuant to § 385.209.1(3) because Geiser attempted to obtain a license through material misrepresentation or fraud when he failed to disclose the following in response to Background Question No. 1 of his 2015 Application:

a. On October 22, 2007, Geiser pled guilty to Littering, a Class A Misdemeanor in violation of § 577.070, RSMo. *State v. Jacob R. Geiser*, Jefferson Co. Cir. Ct., Case No. 07JE-CR02738.

b. On January 13, 2009, Geiser pled guilty to Littering, a Class A Misdemeanor in violation of 577.070, RSMo. *State v. Jacob R. Geiser,* Jefferson Co. Cir. Ct., Case No. 08JE-CR03185.

c. On January 11, 2012, Geiser pled guilty to Possession of Up to 35 Grams of Marijuana, a Class A Misdemeanor in violation of § 195.202, RSMo. *State v. Jacob R. Geiser*, St. Genevieve Co. Cir. Ct., Case No. 11SG-CR00662.

d. On October 8, 2015, Geiser had been charged with Possession of a Controlled Substance, a Class A Misdemeanor, in violation of § 195.202, RSMo, and Unlawful Use of Drug Paraphernalia, a Class A Misdemeanor, in violation of § 195.233, RSMo. *State v. Jacob Richard Geiser*, Crawford Co. Cir. Ct., Case No. 15CF-CR01190.

32. Each instance in which Geiser obtained or attempted to obtain a license through material misrepresentation or fraud constitutes separate and sufficient ground for refusal pursuant to § 385.209.1(3).

33. The Director may refuse to issue Geiser an MVESC producer license pursuant to § 385.209.1(2) because Geiser violated a rule of the Director, namely 20 CSR 100-4.100(2)(A), when he failed to respond to two inquiry letters from the Division and failed to provide a reasonable justification for the delay.

34. Each instance in which Geiser violated any rule of the Director constitutes a separate and sufficient ground for refusal pursuant to § 385.209.1(2).

35. The Director has considered Geiser's history and all of the circumstances surrounding Geiser's 2015 Application, and exercised his discretion to refuse to issue Geiser an MVESC producer license.

36. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that **Jacob Richard Geiser's** Motor Vehicle Extended Service Contract producer license application of is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 20th **DAY OF** September**, 2016.**

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 21st day of September, 2016, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, to the following address:

Jacob Geiser
5028 Clayridge Drive,
Apartment 200,
St. Louis, Missouri, 63129

Tracking No. 1Z0R15W84290316736

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