



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

JOSHUA CHARLES GIVENS,

Applicant.

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Case No. 150213087C

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On March 23, 2015, 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 Joshua Charles Givens. 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. Joshua Charles Givens ("Givens") is a Missouri resident with a residential and mailing address of record of 3 Southbridge Court, St. Peters, Missouri 63376.
2. On July 31, 2014, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Givens' completed Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. The "Applicant's Certification and Attestation" section of the 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. Givens accepted the "Applicant's Certification and Attestation" section by signing the Application before a notary public.

5. Background Question No. 1 of the 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?

“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.

6. Givens answered “NO” in response to Background Question No. 1.

7. During its investigation, the Consumer Affairs Division (“Division”) discovered that Givens had six (6) felony charges and one (1) misdemeanor charge pending at the time of his Application:

- a. On May 5, 2014, Givens was indicted with six (6) counts of Possession of a Controlled Substance, all Class C Felonies in violation of § 195.202. On August 6, 2014, Givens pled guilty to all six counts. The court suspended imposition of Givens’ sentences and placed him on four (4) years’ supervised probation for each

count to be served concurrently. The court further ordered Givens to complete the REACT Program,¹ to submit to random blood and urine testing, and to maintain fulltime employment. On March 4, 2015, the court suspended Givens' probation due to multiple probation violations and issued a warrant for Givens' arrest. *State v. Joshua C. Givens*, St. Louis City Cir. Ct., Case No. 1222-CR03082-01.

- b. On May 5, 2014, Givens was indicted with Unlawful Use of Drug Paraphernalia, a Class A Misdemeanor, in violation of § 195.233. On August 6, 2014, Givens pled guilty. The court suspended imposition of Givens' sentence and placed him on unsupervised probation for two (2) years to be served concurrently with the probation on the six (6) Class C Felonies. On March 4, 2015, the court suspended Givens' probation due to multiple probation violations and issued a warrant for Givens' arrest. *Id.*
8. After reviewing Givens' Application and criminal record, Special Investigator Andrew Engler ("Special Investigator Engler") of the Division sent an inquiry letter to Givens dated August 8, 2014. Said letter requested additional documentation and information about Givens' criminal background. The letter further requested a response by August 28, 2014 and warned Givens that a failure to respond could result in a refusal of his Application.
9. The United States Postal Service did not return the August 8, 2014 inquiry letter to the Division, and therefore, it is presumed received.
10. Givens failed to provide a written response to the Division's August 8, 2014 inquiry letter by August 28, 2014 and failed to demonstrate a reasonable justification for the delay.
11. Special Investigator Engler sent another inquiry letter to Givens dated August 29, 2014. Said letter requested additional documentation and information about Givens' criminal background. The letter further requested a response by September 18, 2014 and warned Givens that a failure to respond could result in refusal of his Application.
12. The United States Postal Service did not return the August 29, 2014 inquiry letter to the Division, and therefore, it is presumed received.
13. Givens failed to provide a written response to the Division's August 29, 2014 inquiry letter by September 18, 2014 and failed to demonstrate a reasonable justification for the delay.
14. It is inferable, and hereby found as fact, that Givens failed to disclose his seven (7) pending charges in response to Background Question No. 1 in his Application to

¹ The Required Educational Assessment and Community Treatment ("REACT") Program evaluates whether criminals convicted of certain drug offenses are suitable for substance abuse or mental health treatment and provides such treatment if appropriate.

misrepresent to the Director that he had no criminal history and to improve the likelihood that the Director would issue him a motor vehicle extended service contract (“MVESC”) producer license.

CONCLUSIONS OF LAW

15. Section 385.209 RSMo (Supp. 2013)² 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[.]

16. 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.

17. There is a “presum[ption] that a document duly mailed has been received by the addressee.” *Johnson v. March*, 376 S.W.3d 26, 31 (Mo. Ct. App. 2012) (internal citations omitted).

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 MVESC producer license but to protect the public.

² All statutory references are to RSMo (2000) as updated by RSMo (Supp. 2013) unless otherwise noted.

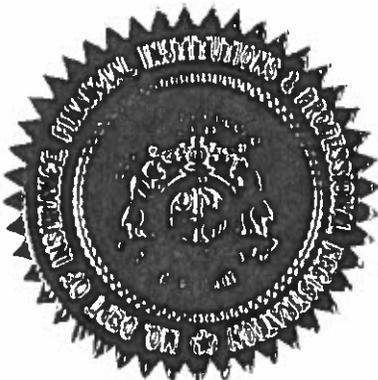
19. The Director may refuse to issue a MVESC producer license to Givens under § 385.209.1(2) because Givens failed to adequately respond to two inquiry letters from the Division and failed to provide reasonable justifications for the delays, thereby twice violating 20 CSR 100-4.100(2)(A), a department regulation.
20. Each violation of a rule of the Director is a separate and sufficient ground for refusal under § 385.209.1(2).
21. The Director may refuse to issue a MVESC producer license to Givens under § 385.209.1(3) because Givens attempted to obtain a MVESC producer license through material misrepresentation or fraud when he failed to disclose his seven (7) pending charges in response to Background Question No. 1 on his Application.
22. Each attempt to obtain a MVESC producer license through material misrepresentation or fraud is a separate and sufficient ground for refusal under § 385.209.1(3).
23. The Director has considered Givens' history and all of the circumstances surrounding Givens' Application. Issuing Givens a MVESC producer license is not in the public interest. Accordingly, the Director exercises his discretion and refuses to issue a MVESC producer license to Givens.
24. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Joshua Charles Givens** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 25th DAY OF MARCH, 2015.




JOHN M. HUFF
DIRECTOR

NOTICE

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

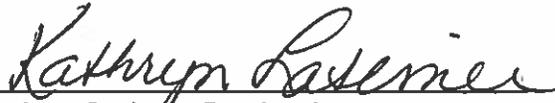
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send 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 26th day of March, 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:

Joshua Charles Givens
3 Southbridge Court
St. Peters, Missouri 63376

Tracking No. 1Z0R15W84292041234



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