State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
JAY RYAN GUZMAN,	)	**Case No. 160621323C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On November 4, 2016, the Consumer Affairs Division, through counsel, submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract producer license to Jay Ryan Guzman. 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. Jay Ryan Guzman ("Guzman") is a Texas resident with a residential and mailing address of record of 600 Harrisdale Avenue, River Oaks, Texas 76114 and a business address of record of 3100 West 7th Street, Fort Worth, Texas 76107.

2. On February 2, 2016, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Guzman's 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:

> 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. Guzman 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:

> 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. Guzman answered "No" in response to Background Question No. 1.

7. Contrary to Guzman's response to Background Question No. 1 of the Application, an investigation by Special Investigator Andrew Engler ("Special Investigator Engler") of the Consumer Affairs Division ("Division") of the Department revealed that:

a. On August 12, 2010, Guzman pled nolo contendere to, and was convicted of, Theft, a Class B Misdemeanor, in violation of Texas Penal Code Section 31.03. The court sentenced Guzman to forty-five (45) days' incarceration. *Texas v. Jay Ryan Guzman*, Dallas Co. Crim. Ct., Case No. MB1031344 G.

8. Background Question No. 7 of the Application asks:

> Do you currently have or have you had a child support obligation?
>
> If you answer yes:
> a) are you in arrearage?
> b) by how many months are you in arrearage? ____months
> c) what is the total amount of your arrearage?_____
> d) are you currently subject to a repayment agreement to cure the arrearage? (If you answer yes, provide documentation showing an approved repayment plan from the appropriate state child support agency.)
> e) are you in compliance with said repayment agreement? (If you answer yes, provide documentation showing proof of current payments from the appropriate state child support agency.)
> f) are you the subject of a child support related subpoena/warrant? (If you answer yes, provide documentation showing proof of current payments or an approved repayment plan from the appropriate state child support agency.)
> g) have you ever been convicted of a misdemeanor or felony for failure to pay child support?

9. In response to Background Question No. 7 of the Application, Guzman disclosed that he has a child support obligation in arrearage, that he is fifty-two (52) months in arrears, and that his arrearage totals $31,000.00. Guzman further responded that he is not subject to a repayment agreement, is not the subject of a child support related subpoena or warrant, and has not been convicted of a misdemeanor or felony for failure to pay child support.

10. On February 8, 2016, Special Investigator Engler sent an inquiry letter to Guzman at his residential and mailing address of record by first class mail via the United States Postal Service. Said inquiry letter requested a statement from Guzman explaining his failure to disclose his conviction, the circumstances surrounding that conviction, and certified court records. Additionally, the inquiry letter requested that Guzman provide his child support payment history. The inquiry letter further requested a response within twenty (20) days and warned Guzman that a failure to respond could result in the Department refusing to issue him a motor vehicle extended service contract ("MVESC") producer license.

11. The United States Postal Service did not return the February 8, 2016 inquiry letter to the Division as undeliverable, and therefore it is presumed received by Guzman.

12. Guzman failed to respond to the Division's February 8, 2016 inquiry letter and failed to demonstrate a reasonable justification for the delay.

13. On March 1, 2016, Special Investigator Engler sent a second inquiry letter to Guzman at his residential and mailing address of record by first class mail via the United States Postal Service. Said inquiry letter requested the same information and documentation previously requested in the February 8, 2016 inquiry letter. The inquiry letter further requested a response within twenty (20) days, and again warned Guzman that a failure to respond could result in the Department refusing to issue him a MVESC producer license.

14. The United States Postal Service did not return the March 1, 2016 inquiry letter to the Division as undeliverable, and therefore it is presumed received by Guzman.

15. Guzman failed to respond to the Division's March 1, 2016 inquiry letter and failed to demonstrate a reasonable justification for the delay.

16. It is inferable, and hereby found as fact, that Guzman falsely answered "No" to Background Question No. 1 in order to misrepresent to the Director that he had no criminal history and, accordingly, in order to improve the chances the Director would approve his Application and issue him a MVESC producer license.

CONCLUSIONS OF LAW

17. Section 385.209 RSMo[1] provides, 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:
>
> * * *
>
> (2) Violated any provision in sections 385.200 to 385.220, or violated any rule, subpoena, or order of the director;

[1] All civil statutory references are to the Revised Statutes of Missouri (2000) as updated by the 2013 Supplement.

> (3) Obtained or attempted to obtain a license through material misrepresentation or fraud; [or]
>
> * * *
>
> (12) Failed to comply with an administrative or court order imposing a child support obligation[.]

18. Title 20 CSR 100-4.100(2)(A) provides, in relevant part:

> 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.

19. "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. E.D. 2000) (internal citation omitted).

20. The Director may refuse to issue a MVESC producer license to Guzman pursuant to § 385.209.1(2) because Guzman twice violated a rule of the Director, namely 20 CSR 100-4.100(2)(A), in that Guzman failed to respond to two (2) written inquiries from the Division and failed to demonstrate reasonable justification for the delays.

21. Each violation of a rule of the Director is a separate and sufficient ground for refusal pursuant to § 385.209.1(2).

22. The Director may refuse to issue Guzman a MVESC producer license pursuant to § 385.209.1(3) because Guzman attempted to obtain a MVESC producer license through material misrepresentation or fraud when he falsely answered "No" to Background Question No. 1 and failed to disclose his conviction for Theft, a Class B Misdemeanor. *Texas v. Jay Ryan Guzman*, Dallas Co. Crim. Ct., Case No. MB1031344 G.

23. The Director may refuse to issue Guzman a MVESC producer license pursuant to § 385.209.1(12) because, as evidenced by his sworn representations on his Application, Guzman has failed to comply with an administrative or court order imposing a child support obligation and is at least fifty-two (52) months in arrears and owes at least $31,000.00.

24. The Director has considered Guzman's history and all of the circumstances surrounding Guzman's Application. Granting Guzman a MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion to refuse to issue a MVESC producer license to Guzman.

25. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that **Jay Ryan Guzman's** motor vehicle extended service contract producer license application is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 4th DAY OF NOVEMBER, 2016.

JOHN M. HUFF, Director
Missouri Department of Insurance, Financial Institutions and Professional Registration

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 7th day of November 2016, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following address:

Jay Ryan Guzman
600 Harrisdale Avenue
River Oaks, Texas 76114

Tracking No. 1Z0R15W84291957775

Kathryn Latimer, Paralegal
Missouri Department of Insurance, Financial
Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: 573.751.6515
Facsimile: 573.526.5492
Email: kathryn.latimer@insurance.mo.gov