



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION

IN RE:

JENIFER L. SMITH,

Applicant.

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Case No. 207111

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

On February 24, 2014, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract (MVESC) producer license to Jenifer L. Smith. 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. Jenifer L. Smith ("Smith") is a Missouri resident with a residential address of record of 1605 Belleau Creek Road, O'Fallon, Missouri, 63366.
2. On August 23, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Smith's completed Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. By signing the Application, Smith 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 Application 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 judgement[.]

5. Smith answered “Yes” to Question No. 1.
6. Smith attached to her Application a letter of explanation in which she disclosed that she received a charge of Driving While Intoxicated (DWI) based on an incident occurring in December 2010. She described the circumstances of the incident and partially described the court proceedings but failed to indicate the outcome of the case, the court case number, and that the charge was a felony.
7. Smith also attached to her Application an uncertified copy of the Statement of Probable Cause filed on May 22, 2012, by a police officer in the Lincoln County Sheriff’s Office, which described an incident taking place on December 5, 2010, in which the officer pulled over Smith, administered a field sobriety test, arrested Smith for DWI, and administered a Breathalyzer test, which showed that Smith’s blood alcohol concentration was .119 percent. Smith did not attach the charging document or the document showing the resolution of the charges, as required by the Application.
8. Smith did not directly disclose any further criminal history in her Application, but within the Statement of Probable Cause, the filing police officer indicates that Smith had three previous DWI convictions: on June 29, 2004, on August 22, 2007, and on August 1, 2008.
9. Investigation by the Consumer Affairs Division revealed that on November 5, 2012, Smith pleaded guilty in the Circuit Court of Lincoln County to the Class D Felony of DWI – Persistent Offender, in violation of § 577.010, RSMo. The court sentenced Smith to four years’ imprisonment, but suspended execution of the sentence and placed Smith on five years’ probation. That probation remains ongoing.¹

¹ *State of Missouri v. Jenifer L. Smith*, Lincoln Co. Cir. Ct., No. 12L6-CR00578-01.

10. The investigation further revealed that on August 1, 2008, Smith pleaded guilty in the Circuit Court of St. Charles County to the Class D Felony of DWI – Combined Alcohol/Drug Intoxication – Persistent Offender, in violation of § 577.010. The court sentenced Smith to three years' imprisonment, but suspended execution of the sentence and placed Smith on five years' probation. On January 19, 2012, the court revoked Smith's probation and sentenced Smith to three years' imprisonment, but recommended that Smith be placed in a 120-day institutional treatment program. Upon Smith's release from the institutional treatment program, the court placed Smith on five years' probation. That probation remains ongoing.²
11. Background Question No. 4 of the Application asked the following:

Have you been notified by any jurisdiction to which you are applying of any delinquent tax obligation that is not the subject of a repayment agreement?

If you answer yes, identify the jurisdiction(s): _____
12. Smith marked "No" to Background Question No. 4.
13. Smith did not disclose any delinquent tax obligation in her Application.
14. Contrary to Smith's "No" answer to Question No. 4, the Consumer Affairs Division's investigation revealed information indicating that Smith owed a delinquent tax obligation, of which he had been notified:
 - a. On January 31, 2011, the Director of the Missouri Department of Revenue filed a Certificate of Tax Lien – Individual Income Tax in the St. Charles County Circuit Court, certifying that Smith owed \$2,637.88 in delinquent taxes for tax year 2003, interest and penalties, which, upon filing, became the judgment of the court under § 143.902. The judgment remains unsatisfied.³
15. It is inferable, and is hereby found as fact, that Smith falsely answered "No" to Question No. 4 and failed to disclose her delinquent tax obligation in her Application in order to represent to the Director that she had no delinquent tax obligations, and, accordingly, in order to improve the chances that the Director would approve her Application and issue her an MVESC producer license.
16. On August 28, 2013, Consumer Affairs Division investigator Andrew Engler mailed an inquiry letter to Smith noting that she had failed to fully disclose her conviction of the Class D Felony of DWI – Combined Alcohol/Drug Intoxication – Persistent Offender in Case No. 0711-CR07885-01, noting the Certificate of Lien that was filed in Case No. 1111-MC00586, and requesting documentation relating to both of those cases.

² *State of Missouri v. Jenifer L. Smith*, St. Charles Co. Cir. Ct., No. 0711-CR07885-01.

³ *Department of Revenue v. Jenifer Smith*, St. Charles Co. Cir. Ct., No. 1111-MC00586.

17. Engler mailed the August 28, 2013 letter by first class mail to Smith's address of record, with sufficient postage attached.
18. The August 28, 2013 letter was not returned as undeliverable.
19. Smith never responded to the August 28, 2013 letter and has not demonstrated any justification for her failure to respond.
20. On September 17, 2013, Engler mailed a second inquiry letter to Smith, again noting that she had failed to fully disclose her conviction of the Class D Felony of DWI – Combined Alcohol/Drug Intoxication – Persistent Offender in Case No. 0711-CR07885-01, noting the Certificate of Lien that was filed in Case No. 1111-MC00586, and requesting documentation relating to both of those cases.
21. Engler mailed the September 17, 2013 letter by first class mail to Smith's address of record, with sufficient postage attached.
22. The September 17, 2013 letter was not returned as undeliverable.
23. Smith never responded to the September 17, 2013 letter and has not demonstrated any justification for her failure to respond.
24. On October 22, 2013, Engler mailed a third inquiry letter to Smith, again noting that she had failed to fully disclose her conviction of the Class D Felony of DWI – Combined Alcohol/Drug Intoxication – Persistent Offender in Case No. 0711-CR07885-01, noting the Certificate of Lien that was filed in Case No. 1111-MC00586, and requesting documentation relating to both of those cases.
25. Engler mailed the October 22, 2013 letter by first class mail to Smith's address of record, with sufficient postage attached.
26. The October 22, 2013 letter was not returned as undeliverable.
27. Smith never responded to the October 22, 2013 letter and has not demonstrated any justification for her failure to respond.
28. On December 5, 2013, the Missouri Department of Revenue provided an affidavit showing that, as of that date, Smith owed \$2,806.20 in delinquent Missouri state income taxes for tax year 2003, with interest updated to December 31, 2013.

CONCLUSIONS OF LAW

29. 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;

* * *

(13) Failed to comply with any administrative or court order directing payment of state or federal income tax[.]

30. 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.

31. 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.
32. The Director may refuse to issue Smith an MVESC producer license under § 385.209.1(5) because Smith has been convicted of two felonies:
 - a. The Class D Felony of DWI – Combined Alcohol/Drug Intoxication – Persistent Offender, in violation of § 577.010; and
 - b. The Class D Felony of DWI – Persistent Offender, in violation of § 577.010, RSMo.
33. The Director also may refuse to issue Smith an MVESC producer license pursuant to § 385.209.1(13) because Smith failed to comply with an administrative or court order directing payment of state income tax. The Certificate of Tax Lien – Individual Income Tax, filed on January 31, 2011 by the Director of Revenue in *Department of Revenue v. Jenifer Smith, St. Charles Co. Cir. Ct., No. 1111-MC00586*, which became the judgment of the court upon its filing, remains unsatisfied.
34. The Director also may refuse to issue an MVESC producer license to Smith under § 385.209.1(3) because Smith falsely answered “No” to Question No. 4 and failed to disclose her delinquent tax obligation in her Application in order to represent to the Director that she had no delinquent tax obligations, and, accordingly, in order to improve the chances that the Director would approve her Application and issue her an MVESC producer license
35. The Director also may refuse to issue Smith an MVESC producer license under § 385.209.1(2) because Smith violated a rule of the Director, in that Smith failed to respond to three written inquiries from the Consumer Affairs Division—on August 28, 2013, September 17, 2013, and October 22, 2013—without demonstrating reasonable justification for any of her failures to respond, each time thereby violating regulation 20 CSR 100-4.100(2), which is a rule of the Director.
36. The Director has considered Smith’s history and all of the circumstances surrounding Smith’s Application. Granting Smith an MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue an MVESC producer license to Smith.

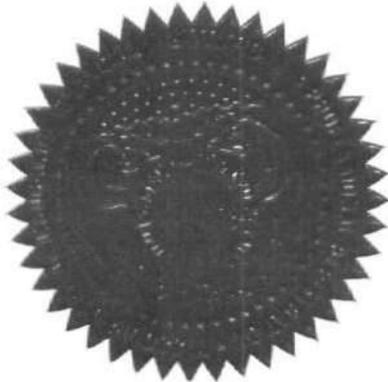
37. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Jenifer L. Smith** is hereby **REFUSED**.

SO ORDERED.

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



A handwritten signature in black ink, appearing to read "John M. Huff", written over a horizontal line.

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 February, 2014, a copy of the foregoing Order and Notice was served upon the applicant in this matter by certified mail at the following address:

Jenifer L. Smith
1605 Belleau Creek Road
O'Fallon, Missouri 63366

Certified No. 7009 3410 0001 9254 7103

Angie Gross

Angie Gross

Investigations Section

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