State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
JORDAN RAPHAEL MASSEY,	)	**Case No. 151119513C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On February 10, 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 Jordan Raphael Massey. 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. Jordan Raphael Massey ("Massey") is a Missouri resident with a residential and mailing address of 3511 Ridgewood Dr., St. Charles, Missouri 63303.

2. On December 13, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Massey's Application for Motor Vehicle Extended Service Contract Producer License ("2011 Application").

3. The "Applicant's Certification and Attestation" section of the 2011 Application states, in relevant part:

   > 1. I hereby certify that, under penalty of perjury, 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. Massey signed the "Applicant's Certification and Attestation" section of the 2011 Application under oath before a notary public.

5. Background Question No. 1 of the 2011 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. Massey answered "No" in response to Background Question No. 1 of the 2011 Application.

7. Background Question No. 4 of the 2011 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?

8. Massey answered "No" in response to Background Question No. 4 of the 2011 Application.

9. Relying on Massey's responses to Background Questions No. 1 and No. 4 on his 2011 Application, the Department issued Massey a motor vehicle extended service contract ("MVESC") producer license (License No. 8057300) on January 1, 2012. That license expired on December 31, 2013.

10. On September 9, 2015, the Department received Massey's Application for Motor Vehicle Extended Service Contract Producer License ("2015 Application").

11. The "Applicant's Certification and Attestation" section of the 2015 Application states, in relevant part:

1. I hereby certify that, under penalty of perjury, 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. Massey 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?
>
> "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. Massey answered "No" in response to Background Question No. 1 of the 2015 Application.

15. Contrary to Massey's responses to Background Question No. 1 on his 2011 Application and his 2015 Application, an investigation conducted by the Consumer Affairs Division ("Division") of the Department, revealed that on June 10, 2010, Massey pled guilty to Possession of Marijuana, a Class A Misdemeanor, in violation of § 195.202, RSMo.[1] The court suspended imposition of sentence and ordered Massey to serve two (2) years' supervised probation. *State v. Jordan R. Massey*, St. Charles Co. Cir. Ct., Case No. 0911-CR04069.

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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.

16. Background Question No. 4 of the 2015 Application asks the following:

> Have you failed to pay state or federal income tax?
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> Have you failed to comply with an administrative or court order directing the payment of state or federal income tax?
>
> Answer "Yes" if the answer to either question (or both) is "Yes."
>
> If you answer yes, you must attach to this application:
> a) a written statement explaining the circumstance of each administrative or court order,
> b) copies of all relevant documents (i.e. demand letter from the Department of Revenue or Internal Revenue Service, etc.),
> c) a certified copy of each administrative or court order, judgment, and/or lien, and
> d) a certified copy of the official document which demonstrates the resolution of the tax delinquency (i.e. tax compliance letter, etc.).

17. Massey answered "No" in response to Background Question No. 4 of his 2015 Application.

18. Contrary to Massey's response to Background Question No. 4 of his 2011 Application and his 2015 Application, an investigation conducted by the Division discovered that on August 15, 2011, the St. Charles County Circuit Court entered a judgement against Massey for unpaid state income taxes for the 2007 filing year. The judgment states as follows:

> [Department] of Revenue, under Section 143.902, RSMo, hereby certifies that the following assessment of tax, interest, additions to tax, penalties, and fees have been made and become final [in the amount of $1,260.30]. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.
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> *Dep't of Revenue v. Jordan R. Massey, et al.*, St. Charles Co. Cir. Ct., Case No. 1111-MC04746.

19. On September 11, 2015, Special Investigator Andrew Engler ("Engler") with the Division, sent an inquiry letter to Massey at his residential and mailing address, by first class mail, asking for a statement explaining the circumstances surrounding his criminal charge and why he failed to disclose it on his application as well as a certified copy of the Information, Complaint, Judgment or other charging documents. Engler also requested that Massey provide a copy of a payment plan or letter of compliance from the Department of Revenue. The inquiry letter further cited 20 CSR 100-4.100, informed Massey that his response was due within twenty days, and warned that failure to respond could result in a refusal to issue Massey an MVESC license.

20. The United States Postal Service did not return the September 11, 2015 inquiry letter to the Division, and therefore it is presumed received by Massey.

21. Massey failed to provide a response to the Division's September 11, 2015 inquiry letter within twenty days, and failed to demonstrate a reasonable justification for the delay.

22. After receiving no response to his September 11, 2015 inquiry letter, on October 1, 2015, Engler sent a second inquiry letter to Massey at his residential and mailing address of record by first class mail, requesting the same information and documents requested in the September 11, 2015 inquiry letter. The second inquiry letter again cited 20 CSR 100-4.100, informed Massey that his response was due within twenty days, and that failure to respond could result in a refusal to issue Massey an MVESC license.

23. The United States Postal Service did not return the October 1, 2015 inquiry letter to the Division, and therefore it is presumed received by Massey.

24. Massey failed to provide a response to the Division's October 1, 2015 inquiry letter within twenty days, and failed to demonstrate a reasonable justification for the delay.

25. It is inferable, and hereby found as fact, that Massey did not disclose his criminal history on his 2011 and 2015 Applications in order to misrepresent to the Director that he had never had a judgment withheld or deferred and consequently to improve the chances that the Director would approve his 2011 and 2015 Applications and issue him an MVESC producer license.

26. It is also inferable, and hereby found as fact, that Massey did not disclose that he failed to pay state income taxes in the filing year of 2007, in order to misrepresent to the Director that he has never failed to pay his state income tax or failed to comply with an administrative or court order directing payment of state income tax and consequently improve the chances that the Director would approve his 2011 and 2015 Applications and issue him an MVESC producer license.

27. The Employment History section of the 2011 Application requests the following information:

> Account for all time for the past five years. Give all employment experience starting with your current employer working back five years. Include full and part-time work, self-employment, military service, unemployment and full-time education.

28. Massey's response to the Employment History section of the 2011 Application indicated that he was then employed at AA Auto Protection in Trevose, Pennsylvania, as a "Sales Manager." Massey's response also indicated that he had been employed at AA Auto Protection since March, 2010.

29. Massey's 2011 Application listed his home and mailing address as 14 Brookshire Creek Ct., Wentzville, Missouri, 63385.

30. The Employment History section of the 2015 Application requests the following information:

> Account for all time for the past five years. List all employment experience starting with your current employer working back five years. Include full and part-time work, self-employment, military service, unemployment and full-time education.

31. Massey's response to the employment History section of his 2015 application indicated that he had been employed at AA Auto Protection in Trevose, Pennsylvania in "sales" from February 2009 to August 2015. Massey's response also indicated that he was employed in "sales" at Safe Guard Auto in St. Charles, Missouri beginning in September 2015.

32. Based upon information and belief, AA Auto Protection sells, offers, negotiates, or solicit motor vehicle extended service contracts.

33. Based upon information and belief, AA Auto Protection offers some sales employees the ability to work from remote locations.

34. "Versa LLC DBA Safe Guard Auto" is an MVESC business entity producer licensed by the Department to sell, offer, negotiate, or solicit motor vehicle extended service contracts (License No. 8264050).

35. Massey's 2015 Application listed his home and mailing address as 3511 Ridgewood Dr., St. Charles, Missouri, 63303.

36. Massey's MVESC producer license (License No. 8057300) expired on December 31, 2013.

37. It is inferable, and hereby found as fact, that Massey's employment at Safe Guard Auto and AA Auto Protection occurred in or from this state.

38. It is also inferable, and hereby found as fact, that Massey knew throughout his employment in "sales" at AA Auto Protection and Safe Guard Auto that a license was required in order to sell, offer, negotiate, or solicit motor vehicle extended service contracts in or from the state of Missouri.

39. It is further inferable, and hereby found as fact, that during Massey's employment in "sales" at either Safe Guard Auto or AA Auto Protection, Massey, in or from this state, sold, offered, negotiated, or solicited a motor vehicle extended service contract with a consumer after the expiration of his license on December 31, 2013.

CONCLUSIONS OF LAW

40. Section 385.209[2] 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;
>
> (3) Obtained or attempted to obtain a license through material misrepresentation or fraud;
>
> * * *
>
> (11) Unlawfully acted as a producer without a license; [or]
>
> * * *
>
> (13) Failed to comply with any administrative or court order directing payment of state or federal income tax[.]

41. Section 385.206 provides, in relevant part:

> 1. It is unlawful for any person in or from this state to sell, offer, negotiate, or solicit a motor vehicle extended service contract with a consumer, other than the following:
>
> * * *
>
> (6) A business entity producer or individual producer licensed under section 385.207[.]

42. Section 385.207 provides, in relevant part:

* * *

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

> 3. An individual, prior to selling, offering, negotiating, or soliciting a motor vehicle extended service contract with a consumer under subdivision (6) of subsection 1 of section 385.206, shall apply for and obtain licensure with the director as an individual producer in accordance with this section.
>
> * * *
>
> 6. A producer license issued under this section, if not renewed by the director by its expiration date, shall terminate on its expiration date and shall not after that date authorize its holder under sections 385.200 to 385.220 to sell, offer, negotiate, or solicit motor vehicle extended service contracts.

43. 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.

44. Title 20 CSR 100-4.100(2)(A) is a rule of the Director.

45. Section 143.902.1(2) provides, in relevant part:

> If any taxpayer fails to pay any tax, interest, additions to tax or penalties imposed by this chapter when due and the assessment for which has become final, the director may file ... [a] certificate of lien specifying the amount of the tax, interest, additions to tax and penalties due and the name of the liable taxpayer. ... From the time of the filing of the certificate of lien or certificate of delinquency with the clerk of the circuit court, the amount of the tax, interest, additions to tax and penalties specified therein shall have the full force and effect of a default judgment of the circuit court until satisfied.

46. "[A] default judgment for nonpayment of state income taxes [is] a 'court order directing payment of state ... income tax[]' ... under § 385.209.1(13)." *Greenwalt v. Director, Dep't of Ins., Fin. Insts. & Prof'l Reg.*, No. 12-0566 DI (Mo. Admin. Hrg. Comm'n July 9, 2012).

47. "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).

48. The Director may refuse to issue Massey an MVESC producer license pursuant to § 385.209.1(1) because Massey 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 Massey answered "No" to Background Question No. 1 on his 2011 Application and Massey failed to disclose that he had a judgment withheld or deferred. *State v. Jordan R. Massey*, St. Charles Co. Cir. Ct., Case No. 0911-CR04069.

49. The Director may refuse to issue Massey an MVESC producer license pursuant to § 385.209.1(1) because Massey 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 Massey answered "No" to Background Question No. 4 on his 2011 Application and Massey failed to disclose a delinquent state income tax obligation for the 2007 filing year. *Dep't of Revenue v. Jordan R. Massey, et al.,* St. Charles Co. Cir. Ct., Case No. 1111-MC04746.

50. The Director may refuse to issue Massey an MVESC producer license pursuant to § 385.209.1(3) because Massey obtained a license through material misrepresentation or fraud when he received a license after he failed to disclose on his 2011 Application that he had a judgment withheld or deferred after pleading guilty to Possession of Marijuana. *State v. Jordan R. Massey*, St. Charles Co. Cir. Ct., Case No. 0911-CR04069.

51. The Director may refuse to issue Massey an MVESC producer license pursuant to § 385.209.1(3) because Massey obtained a license through material misrepresentation or fraud when he received a license after he failed to disclose on his 2011 Application that he had a delinquent state income tax obligation for the 2007 filing year. *Dep't of Revenue v. Jordan R. Massey, et al.,* St. Charles Co. Cir. Ct., Case No. 1111-MC04746.

52. The Director may refuse to issue Massey an MVESC producer license pursuant to § 385.209.1(3) because Massey attempted to obtain a license through material misrepresentation or fraud when he failed to disclose on his 2015 Application that he had a judgment withheld or deferred after pleading guilty to Possession of Marijuana. *State v. Jordan R. Massey*, St. Charles Co. Cir. Ct., Case No. 0911-CR04069.

53. The Director may refuse to issue Massey an MVESC producer license pursuant to § 385.209.1(3) because Massey attempted to obtain a license through material misrepresentation or fraud when he failed to disclose on his 2015 Application that he failed to pay state income tax for the 2007 filing year or that he had failed to comply with an administrative or court order directing payment of state income tax. *Dep't of Revenue v. Jordan Massey, et al.*, St. Charles Co. Cir. Ct., Case No. 1111-MC04746.

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

55. The Director may refuse to issue Massey an MVESC producer license pursuant to § 385.209.1(2) because Massey 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.

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

57. The Director may refuse to issue Massey an MVESC producer license pursuant to § 385.209.1(2) because Massey violated a provision in §§ 385.200 to 385.220, namely §385.206.1(6), when he, in or from this state, unlawfully, sold, offered, negotiated, or solicited a motor vehicle extended service contract with a consumer during his employment at either Safe Guard Auto or AA Auto Protection after the expiration of his license on December 31, 2013.

58. Each instance in which Massey violated a provision in §§ 385.200 to 385.200 constitutes a separate and sufficient ground for refusal pursuant to § 385.209.1(2).

59. The Director may refuse to issue Massey an MVESC producer license pursuant to § 385.209.1(11) because Massey unlawfully acted as a producer without a license when he sold, offered, negotiated, or solicited motor vehicle extended service contracts with consumers after the expiration of his license on December 31, 2013.

60. The Director may refuse to issue Massey an MVESC producer license pursuant to § 385.209.1(13) because Massey failed to comply with an administrative or court order directing payment of state income tax for the 2007 filing year. *Dep't of Revenue v. Jordan Massey, et al.*, St. Charles Co. Cir. Ct., Case No. 1111-MC04746.

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

62. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that **Jordan Raphael Massey's** Motor Vehicle Extended Service Contract producer license application of is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 16th **DAY OF** FEBRUARY**, 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 16th day of February, 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:

Jordan Raphael Massey
3511 Ridgewood Dr.
St. Charles, Missouri 63303

Tracking No. 1Z0R15W84298324883

Kathryn Latimer
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