State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
JESSICA L. MERZ,	)	**Case No. 14-0424417C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On May 13, 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 Jessica L. Merz. 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. Jessica L. Merz ("Merz") is a Missouri resident with a residential address of record of 1325 Sunny Slope, O'Fallon, Missouri, 63366.

2. On December 16, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Merz's Application for Motor Vehicle Extended Service Contract Producer License ("Application").

3. By signing the Application, Merz 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. Merz answered "Yes" to Question No. 1.

6. Merz attached to her Application a letter of explanation in which she disclosed that in 2010 she "sold narcotics to an undercover agent" and was sentenced to 120 days' treatment, to be served in the Vandalia facility of the Missouri Department of Corrections. She also disclosed that she was sentenced to another 120 days to be served concurrently with the first sentence for "allegedly" stealing from Wal-Mart.

7. Merz also attached uncertified court documents showing that on May 20, 2011, Merz pleaded guilty in the St. Charles County Circuit Court to three counts of the Class B Felony of Distribution, Delivery, Manufacture or Production of a Controlled Substance, or Attempt to, or Possession with Intent to Distribute, Deliver, Manufacture or Produce a Controlled Substance, in violation of § 195.211, RSMo. The court sentenced Merz to seven years' imprisonment on each count, to be served concurrently, but suspended execution of the sentence, placed Merz on five years' probation, and ordered Merz to enter an institutional treatment program for 120 days under § 559.115, RSMo. On January 24, 2012, the court ordered Merz released from institutional treatment on supervised probation as of January 28, 2012. Merz remains on probation, which is scheduled to end on January 28, 2017.[1]

8. The Consumer Affairs Division's investigation showed that on December 19, 2011, Merz pleaded guilty in the St. Charles County Circuit Court to the Class A Misdemeanor of Theft/Stealing (Value of Property or Services is Less than $500), in violation of § 570.030, RSMo. The court sentenced Merz to 120 days' incarceration in jail, to be served concurrently with her sentence in Case No. 1011-CR04128-01.[2]

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[1] *State of Missouri v. Jessica Lynn Merz*, St. Charles Co. Cir. Ct., No. 1011-CR04128-01.
[2] *State of Missouri v. Jessica Lynn Merz*, St. Charles Co. Cir. Ct., No. 1111-CR04596.

CONCLUSIONS OF LAW

9. Section 385.209 RSMo, Supp. 2013, 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:
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> * * *
>
> (5) Been convicted of any felony[.]

10. 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.

11. The Director may refuse to issue Merz an MVESC producer license under § 385.209.1(5) because Merz has been convicted of three felonies:

    a. Three counts of the Class B Felony of Distribution, Delivery, Manufacture or Production of a Controlled Substance, or Attempt to, or Possession with Intent to Distribute, Deliver, Manufacture or Produce a Controlled Substance, in violation of § 195.211, RSMo.

12. The Director has considered Merz's history and all of the circumstances surrounding Merz's Application. Granting Merz 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 Merz.

13. This order is in the public interest.

ORDER

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

SO ORDERED.

WITNESS MY HAND THIS 19th **DAY OF** MAY**, 2014.**

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 20th day of May, 2014, a copy of the foregoing Order and Notice was served upon the applicant in this matter by certified mail at the following address:

Jessica L. Merz
1325 Sunny Slope
O'Fallon, Missouri, 63366

Certified No. 7009 3410 0001 9254 7875

Angie Gross

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