State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
JONATHAN TYLER LUBS,	)	**Case No. 140815600C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On November 20, 2014, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract producer license to Jonathan Tyler Lubs. 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. Jonathan Tyler Lubs ("Lubs") is a Missouri resident with a residential address of 301 Roanoke Drive, Warrenton, Missouri 63383.

2. On January 13, 2014, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Lubs' 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. Lubs accepted the "Applicant's Certification and Attestation" section by signing the Application under oath and 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 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").

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. Lubs answered "No" in response to Background Question No. 1.

7. During its investigation, the Consumer Affairs Division ("Division") discovered the following conviction and pending charge that Lubs failed to disclose on his Application:

   a. On June 7, 2011, Lubs pled guilty to one (1) count of Theft/Stealing, a Class A Misdemeanor, in violation of § 570.030 RSMo. The court sentenced Lubs to one (1) year incarceration, but suspended the execution of sentence and placed Lubs on supervised probation for two (2) years. *State v. Jonathan T. Lubs*, Warren Co. Cir. Ct., Case No. 11BB-CR00008-01.

   b. On November 27, 2013, Lubs was charged with one (1) count of Possession of Up to 35 Grams of Marijuana, a Class A Misdemeanor, in violation of § 195.202 RSMo. On April 28, 2014, Lubs pled guilty and the court fined him $200.00. *State v. Jonathan T. Lubs*, St. Charles Co. Cir. Ct., Case No. 1311-CR07026.

8. After reviewing Lubs' Application and his criminal record, Special Investigator Andrew Engler of the Division sent an inquiry letter to Lubs dated January 17, 2014. Said inquiry letter requested an explanation for Lubs' failure to disclose his criminal history as well as documentation about Lubs' criminal history. The inquiry letter further requested a response by February 6, 2014, and warned Lubs that a failure to respond could result in the Department refusing to issue him a motor vehicle extended service contract ("MVESC") producer license.

9. On January 21, 2014, Lubs called Special Investigator Engler in response to the January 17, 2014 inquiry letter. In an attempt to mislead Special Investigator Engler, Lubs informed Special Investigator Engler that the charge for Possession of Up to 35 Grams of Marijuana had been dismissed.

10. Also in the January 21, 2014 telephone conversation, Lubs attempted to mislead Special Investigator Engler by misrepresenting the facts underlying his Theft/Stealing conviction when he stated that a friend stole from a store and was in a car with Lubs. Lubs alleged that all the occupants of the car were charged with the crime.

11. Contrary to Lubs' explanation regarding the Theft/Stealing conviction, the court records reveal that the Theft/Stealing conviction occurred as a result of Lubs stealing a television from United Parcel Service.

12. On May 1, 2014, Lubs called Special Investigator Engler a second time, and in an attempt to mislead Special Investigator Engler, restated that the charge for Possession of Up to 35 Grams of Marijuana had been dismissed. Lubs also stated that he would provide all the documentation requested by Special Investigator Engler.

13. Contrary to his May 1, 2014 statements to Special Investigator Engler, Lubs appeared before the St. Charles County Circuit Court on April 28, 2014, only two (2) days before his call to Special Investigator Engler. Lubs pled guilty to one (1) count of Possession of Up to 35 Grams of Marijuana, a Class A Misdemeanor, in violation of § 195.202 RSMo.[1]

14. Lubs failed to provide an adequate response to the Division's January 17, 2014 inquiry letter when he failed to provide the requested documentation regarding his criminal history and when he twice misrepresented his criminal history to Special Investigator Engler. Lubs also failed to demonstrate a reasonable justification for the delay.

15. It is inferable, and is hereby found as fact, that Lubs failed to disclose his conviction and pending charge on his Application in order to misrepresent to the Director that he had no criminal history, and accordingly, in order to improve the chances that the Director would approve his Application and issue him a MVESC producer license.

---

[1] *State v. Jonathan T. Lubs*, St. Charles Co. Cir. Ct., Case No. 1311-CR07026.

16. It is inferable, and is hereby found as fact, that Lubs misrepresented his criminal history to Special Investigator Engler in order to misrepresent to the Director that he was the victim of circumstance in regards to his Theft/Stealing conviction and that the Possession of Up to 35 Grams of Marijuana charge had been dismissed, and accordingly, in order to improve the chances that the Director would approve his Application and issue him a MVESC producer license.

CONCLUSIONS OF LAW

17. Section 385.209 RSMo (Supp. 2014)[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; [or]
>
> (3) Obtained or attempted to obtain a license through material misrepresentation or fraud[.]

18. 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.

19. 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.

20. The Director may refuse to issue a MVESC producer license to Lubs under § 385.209.1(2) because Lubs failed to adequately respond to an inquiry letter from the

[2] All statutory references are to the Revised Statutes of Missouri (2000) as updated by the 2014 Supplement, unless otherwise indicated.

Division and failed to provide a reasonable justification for the delay, thereby violating 20 CSR 100-4.100(2)(A), a department regulation. Lubs failed to provide the requested documentation regarding his criminal history and twice misrepresented his criminal history to Special Investigator Engler.

21. The Director may refuse to issue a MVESC producer license to Lubs under § 385.209.1(3) because Lubs attempted to obtain a MVESC producer license through material misrepresentation or fraud by failing to disclose his misdemeanor conviction and his misdemeanor charge in his Application in order to misrepresent his criminal history to the Director, and, accordingly, in order to improve the chances that the Director would approve his Application and issue him a MVESC producer license.

22. The Director may refuse to issue a MVESC producer license to Lubs under § 385.209.1(3) because Lubs attempted to obtain a MVESC producer license through material misrepresentation or fraud when he misrepresented the facts underlying his misdemeanor conviction for Theft/Stealing to Special Investigator Engler and when he twice misrepresented to Special Investigator Engler that the charge for Possession of Up to 35 Grams of Marijuana had been dismissed.

23. Each attempt to obtain a license through material misrepresentation or fraud is a separate and sufficient cause for refusal under § 385.209.1(3).

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

25. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Jonathan Tyler Lubs** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 24 **DAY OF** November, **2014.**

JOHN M. HUFF
DIRECTOR

NOTICE

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

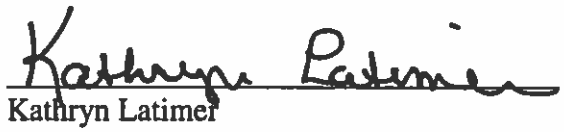
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send 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 24th day of November, 2014, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following addresses:

Jonathan Tyler Lubs
301 Roanoke Drive
Warrenton, Missouri 63383

Tracking No. 1Z0R15W84298238244



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