



State of Missouri

**DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION**

IN RE:)
)
Joseph T. Schmidt,) **Case No. 141027696C**
)
Applicant.)

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

On December 2, 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 Joseph T. Schmidt. After reviewing the Petition, the Investigative Report, and the entirety of the file, the Director issues the following findings of fact, conclusion of law, and order:

FINDINGS OF FACT

1. Joseph T. Schmidt, ("Schmidt") is a Missouri resident with a residential address of 731 Summersons Drive, O'Fallon, Missouri 63366.
2. On August 11, 2014, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Schmidt'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:
 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. Schmidt signed the Application in the "Applicant's Certification and Attestation" section under oath and before a notary.
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 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. Schmidt marked “No” to Question No. 1 on his Application.
7. Contrary to Schmidt’s “No” answer to Background Question No. 1, the Consumer Affairs Division’s (“Division”) investigation of Schmidt’s Application revealed two convictions:
 - a. On June 25, 2008 Schmidt pled guilty to Passing Bad Check-Less Than \$500, Class A Misdemeanor, in violation of § 570.120 RSMo. The court ordered Schmidt to pay \$150.00 fine and court costs. *State v. Joseph T. Schmidt*, St. Charles County Assoc. Cir. Ct., No. 0711-CR00732.
 - b. On July 29, 2014, Schmidt pled guilty to DWI-Alcohol-Persistent Offender, a Class D Felony, in violation of § 577.010 RSMo. The court sentenced Schmidt to three years’ incarceration for his felony conviction but suspended the execution

of sentence placed him on five years' supervised probation. *State v. Joseph Thomas Schmidt*, St. Charles Co. Cir. Ct., No. 1311-CR03272-01.

8. Background Question No. 7 of the Application asks the following, in relevant part:

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, provided 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, Schmidt answered that he does have a child support obligation but that he was not in arrearage.
10. Contrary to Schmidt's response to Background Question No. 7, on January 7, 2008, the circuit court ordered Schmidt to pay \$458.00 per month for child support. *Juanita P. Schmidt v. Joseph T. Schmidt*, St. Charles Co. Cir. Ct., No. 0711-FC02374. According to the records of the Family Support Division, Child Support Enforcement, Missouri Department of Social Services, Case No. 61232506, Schmidt has never made a payment on his child support and is in arrearage \$38,014.00 as of November 29, 2014.
11. On August 14, 2014, Special Investigator Andrew Engler ("Engler"), with the Division, mailed an inquiry letter to Schmidt. The inquiry letter requested documentation and addition information surrounding Schmidt's felony and misdemeanor convictions that he failed to disclose on his Application.
12. On September 4, 2014, Engler received a letter from Schmidt stating that he was unaware of the bad check charge. He explained that his ex-wife had received the court documentation and handled it back in 2004. Schmidt also stated that he did not disclose the Felony DWI because he was confused by the wording on the Application.
13. Schmidt's explanation of the Passing Bad Check-Less Than \$500, Class A Misdemeanor, is incredulous: the certified court records establish that Schmidt himself,

not his wife, resolved the criminal charge. Schmidt personally appeared before Associate Circuit Judge William T. Lohmar, Jr., on June 25, 2008 and pled guilty to the charge. In fact, Schmidt himself signed three separate court documents: the Judgment and Sentence, Waiver of Rights and Plea of Guilty, and Waiver of Counsel. *State v. Joseph T. Schmidt*, St. Charles County Assoc. Cir. Ct., No. 0711-CR00732.

14. Schmidt's explanation for failing to disclose the DWI-Alcohol-Persistent Offender, a Class D Felony, is likewise unbelievable. Schmidt pled guilty to the Class D Felony on July 29, 2014, **only two weeks** before submitting his Application on August 11, 2014. Furthermore, Background Question No. 1 is very clear and states, in part:

"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.

15. It is inferable, and hereby found as fact, that Schmidt falsely answered the criminal background question in order to misrepresent to the Director his criminal history and thereby to improve his chances that the Director would issue an MVESC producer license.
16. It is inferable, and hereby found as fact, that Schmidt provided materially incomplete, incorrect, and untrue information in response to the child support background question in order to misrepresent to the Director the true extent of his child support obligation and to hide the fact that he is over \$38,000 in arrearage and thereby to improve his chances that the Director would issue an MVESC producer license.

CONCLUSIONS OF LAW

17. Section 385.209 RSMo (Supp. 2013)¹ 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:

* * *

¹ All statutory references are to the 2013 Supplement to the Revised Statutes of Missouri unless otherwise noted.

(3) Obtained or attempted to obtain a license through material misrepresentation or fraud;

* * *

(5) Been convicted of any felony;

* * *

(12) Failed to comply with an administrative or court order imposing a child support obligation[.]

18. 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.
19. Schmidt may be refused a motor vehicle extended service contract (“MVESC”) producer license pursuant to § 385.209.1(3) for attempting to obtain a license through material misrepresentation or fraud. By signing the Application, Schmidt certified that all of the information submitted was true and complete. However, Schmidt provided false information or omitted pertinent or material information. Each of the following instances of material misrepresentation or fraud by Schmidt on his Application is a separate and sufficient ground for the Director to exercise his discretion to refuse the license:
 - a. Schmidt failed to disclose his conviction for Passing Bad Check-Less Than \$500.00, a Class A Misdemeanor, in violation of § 570.120. *State v. Joseph T. Schmidt*, St. Charles Cir. Ct. No. 0711-CR00732;
 - b. Schmidt failed to disclose on his Application his conviction for DWI-Alcohol-Persistent Offender, a Class D Felony, in violation of § 577.010. *State v. Joseph Thomas Schmidt*, St. Charles Cir. Ct. No. 1311-CR03272-01;
 - c. Schmidt failed to disclose on his Application his child support arrearage of \$38,014.00. *Juanita P. Schmidt v. Joseph T. Schmidt*, St. Charles Co. Cir. Ct., No. 0711-FC02374 (Administrative Case No. 61232506).
20. The Director may refuse to issue Schmidt an MVESC producer license pursuant to § 385.209.1(5) because he has been convicted of a felony, to wit: DWI-Alcohol-Persistent Offender, a Class D Felony, in violation of § 577.010. *State v. Joseph Thomas Schmidt*, St. Charles Cir. Ct. No. 1311-CR03272-01.
21. The Director may refuse Schmidt’s MVESC producer license pursuant to

§ 385.209.1(12) because he failed to comply with an administrative or court order imposing a child support obligation. *Juanita P. Schmidt v. Joseph T. Schmidt*, St. Charles Co. Cir. Ct. No. 0711-FC02374 (Administrative Case No. 61232506).

22. Issuing an MVESC producer license to Schmidt would not be in the public's interest. Schmidt misrepresented his criminal history and child support arrearage on his Application and has failed to comply with administrative or court orders imposing child support obligations.
23. The Director has considered Schmidt's history and all of the circumstances surrounding his Application. Granting Schmidt an MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue Joseph Schmidt an MVESC producer license.
24. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of Joseph T. Schmidt is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 3rd DAY OF DECEMBER, 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 4th day of December, 2014 a copy of the foregoing Order and Notice was served upon the Applicant by UPS, signature required, at the following address:

Joseph T. Schmidt
731 Summersons Drive
O'Fallon, MO 63366

No. 1Z0R15W84290927595



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