



## State of Missouri

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

IN RE:

JAMES E. THOMAS,

Applicant.

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Case No. 195786

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

On December 23, 2013, 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 James E. Thomas. 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. James E. Thomas ("Thomas") is a Missouri resident with a residential address of record of 1033 Washington Street, St. Charles, Missouri, 63301.
2. On June 3, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Thomas's Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. By signing the Application, Thomas 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. Thomas answered “No” to Question No. 1.
6. Contrary to Thomas’s “No” answer to Question No. 1, investigation by the Consumer Affairs Division, revealed that Thomas had been convicted of seven felonies:
  - a. On May 16, 2003, Thomas pleaded guilty to four counts of the Class B Felony of Sale of a Controlled Substance, in violation of § 195.211.<sup>1</sup> The court sentenced Thomas to ten years’ imprisonment on each count, to be served concurrently, but suspended execution of the sentence and placed Thomas on five years’ probation. On April 30, 2009, the court revoked Thomas’s probation, executed the sentence on each count and ordered that sentences be served concurrently with each other but consecutively to the sentence in No. 0811-CR03486-01;<sup>2</sup>
  - b. On May 17, 2005, Thomas pleaded guilty in the St. Charles County Circuit Court to the Class C Felony of Possession of a Controlled Substance, in violation of § 195.202. The court sentenced Thomas to seven years’ imprisonment, to be served concurrently with the sentence in No. 02CR130923-01, suspended execution of the sentence and placed Thomas on three years’ probation. On May 17, 2008, Thomas was discharged from probation;<sup>3</sup>
  - c. On April 17, 2009, Thomas pleaded guilty to two counts of the Class B Felony of Possession of a Controlled Substance with the Intent to Distribute, in violation of § 195.211. The court sentenced Thomas to five years’ imprisonment on each count, to be service concurrently with each other but consecutively to the sentences in No. 02CR130923-01. Thomas was released from prison on April 30, 2013.<sup>4</sup>

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<sup>1</sup> All references to criminal statutes are to those contained in the version of the Revised Statutes of Missouri under which each judgment was rendered.

<sup>2</sup> *State of Missouri v. James E. Thomas*, St. Charles Co. Cir. Ct., No. 02CR130923-01.

<sup>3</sup> *State of Missouri v. James E. Thomas*, St. Charles Co. Cir. Ct., No. 01CR128913-01.

<sup>4</sup> *State of Missouri v. James Ellington Thomas*, St. Charles Co. Cir. Ct., No. 0811-CR03486-01.

7. Background Question No. 7 of the Application asks the following:

7. Do you have a child support obligation in arrearage?

If you answer yes:

- a) by how many months are you in arrearage? \_\_\_\_\_ months
- b) are you currently subject to and in compliance with any repayment agreement?
- c) are you the subject of a child support related subpoena/warrant? (If you answer yes, provide documentation showing proof of current payments or an approved repayment plan from the appropriate state child support agency.)

8. Thomas answered "Yes" to Background Question No. 7, but in response to part a) of Question No. 7 indicated that he was "0" months in arrearage.
9. Contrary to Thomas's answer to part a) of Question No. 7, as of the date of the Application Thomas owed \$1,402.97 in child support arrearages. As of December 20, 2013, Thomas owed \$1,408.97 in arrearages.
10. On February 27, 2006, the Director of the Division of Child Support Enforcement filed an administrative order in the St. Louis City Circuit Court, imposing a child support obligation on Thomas in the amount of \$133.00 per month. On the same day, that order was then issued as the court's judgment. The judgment has not been satisfied.<sup>5</sup>
11. On February 11, 2010, the Director of the Division of Child Support Enforcement filed an administrative order in the St. Louis City Circuit Court, modifying Thomas's child support obligation to \$1.00 per month. On the same day, that order was then issued as the court's judgment. The judgment has not been satisfied. No additional orders have been issued in the case.<sup>6</sup>
12. Despite the modification of his payment obligation to \$1.00 per month, Thomas has not made a child support payment since November 2010.
13. On July 1, 2013, in response to a written inquiry from the Consumer Affairs Division, Thomas provided a written statement regarding his criminal history, his failure to disclose his criminal history, his child support history, and his efforts at rehabilitation. The statement read, verbatim, in part:

I did not include the crimes committed on the application because I wanted to explain the nature of the crimes in detail.

14. Thomas's statement then described the facts of the convictions and sentences in some detail, but did not explain why Thomas committed the criminal acts or provide any

<sup>5</sup> *Heier v. Thomas*, St. Louis City Cir. Ct., No. 22067-00309.

<sup>6</sup> *Heier v. Thomas*, St. Louis City Cir. Ct., No. 22067-00309-01.

mitigating explanation. After that, the statement continued, verbatim:

Since my first conviction, charge code 3245099.0 possession of a controlled substance I got a job working with my father at his catering business. I've taken classes to help me write out my resume and master the skills of job interviewing and spending time with my kids. After the 4 counts of sales of controlled substances, code 3246599.0 I was still working with my father and taking care of and spending time with my kids. After count 1 and 2 of distribution/delivery/manufacturing of a controlled substance code 3246532.0 I was sentenced to 15 years in state penitentiary May 5, 2009. I was released from prison April 30, 2013. Since then I have been searching for a job in the warranty industry because they don't frown upon felons being hired. "While I was in prison I received my GED and more classes to help myself adjust and rehabilitate my faulty thinking." See copies of certificates in envelope of the training I received. As far as my probation being revoked, it was revoked because of charge code 3246532.0. The Judge was fed up with my continuous disregard for law.

Child support – see attached documentation from Child Support Enforcement. I owe a total of \$1402.97 and right now I'm paying \$1.00 a month. Child Support Enforcement instructed me to call them once I seek employment and monthly payments will be increased.

I apologize for making it look like I was being deceitful or hiding information regarding my criminal background and child support information. I just wanted the opportunity to explain my charges in more detail. Please put into consideration that is the last step of my employment process and the chance to have a responsible life, hold full time employment and care for my children because I do not want to go back to my old lifestyle.

15. Thomas also provided certified court and administrative documents related to his criminal convictions and his child support payment history, as well as certificates showing his completion of his high school equivalence and the trainings he mentioned in his written statement. Thomas did not provide any further explanation of his criminal history or his child support payment history.
16. Thomas's explanation for his false answer to Question No. 1 of the Application and his failure to disclose his criminal history in the Application is not credible. Based on Thomas's seven felony convictions, the truthful answer to Question No. 1 was obviously "Yes," regardless of Thomas's desire to more fully explain his criminal history. In addition, Question No. 1 expressly requires that a "Yes" answer be accompanied by exactly the type of explanation Thomas claims he wanted to provide.
17. It is inferable, and hereby found as fact, that Thomas falsely answered "No" to Question

No. 1 and failed to disclose his convictions of four counts of the Class B Felony of Sale of a Controlled Substance, the Class C Felony of Possession of a Controlled Substance, and two counts of the Class B Felony of Possession of a Controlled Substance with the Intent to Distribute in order to falsely represent to the Director that he had no criminal history and, accordingly, to improve the chances that the Director would approve his Application and issue him an MVESC producer license.

### CONCLUSIONS OF LAW

18. 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:

\* \* \*

(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[.]

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 motor vehicle extended service contract producer license, but to protect the public.

20. The Director may refuse to issue an MVESC producer license to Thomas under § 385.209.1(5) because Thomas has been convicted of seven felonies, and each conviction is a separate and sufficient cause for refusal:

a. Four counts of the Class B Felony of Sale of a Controlled Substance, in violation of § 195.211.<sup>7</sup>

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<sup>7</sup> *State of Missouri v. James E. Thomas*, St. Charles Co. Cir. Ct., No. 02CR130923-01.

- b. The Class C Felony of Possession of a Controlled Substance, in violation of § 195.202.<sup>8</sup>
  - c. Two counts of the Class B Felony of Possession of a Controlled Substance with the Intent to Distribute, in violation of § 195.211.<sup>9</sup>
21. The Director may refuse to issue an MVESC producer license to Thomas under § 385.209.1(3) because Thomas attempted to obtain an MVESC producer license through material misrepresentation or fraud when he falsely answered “No” to Question No. 1 and failed to disclose his convictions of four counts of the Class B Felony of Sale of a Controlled Substance, the Class C Felony of Possession of a Controlled Substance, and two counts of the Class B Felony of Possession of a Controlled Substance with the Intent to Distribute in order to falsely represent to the Director that he had no criminal history and, accordingly, to improve the chances that the Director would approve his Application and issue him an MVESC producer license.
22. The Director also may refuse to issue Thomas an MVESC producer license under § 385.209.1(12) because Thomas has failed to comply with administrative and court orders imposing a child support obligation in *Heier v. Thomas*, St. Louis City Cir. Ct., Nos. 22067-00309 and 22067-00309-01:
- a. On February 27, 2006, the Director of the Division of Child Support Enforcement filed an administrative order in the St. Louis City Circuit Court, imposing a child support obligation on Thomas in the amount of \$133.00 per month. On the same day, that order was then issued as the court’s judgment. The judgment has not been satisfied.<sup>10</sup>
  - b. On February 11, 2010, the Director of the Division of Child Support Enforcement filed an administrative order in the St. Louis City Circuit Court, modifying Thomas’s child support obligation to \$1.00 per month. On the same day, that order was then issued as the court’s judgment. The judgment has not been satisfied.<sup>11</sup>
  - c. Despite the modification, Thomas has not made a child support payment since November 2010 and overall has only reduced his arrearages by \$169.65 since the modification.
  - d. As of the date of the Application Thomas owed \$1,402.97 in child support arrearages.

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<sup>8</sup> *State of Missouri v. James E. Thomas*, St. Charles Co. Cir. Ct., No. 01CR128913-01.

<sup>9</sup> *State of Missouri v. James Ellington Thomas*, St. Charles Co. Cir. Ct., No. 0811-CR03486-01.

<sup>10</sup> *Heier v. Thomas*, St. Louis City Cir. Ct., No. 22067-00309.

<sup>11</sup> *Heier v. Thomas*, St. Louis City Cir. Ct., No. 22067-00309-01.

- 23. The Director has considered Thomas's history and all of the circumstances surrounding Thomas's Application. Granting Thomas an 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 Thomas.
- 24. This order is in the public interest.

**ORDER**

**IT IS THEREFORE ORDERED** that the motor vehicle extended service contract producer license application of **James E. Thomas** is hereby **REFUSED**.

**SO ORDERED.**

WITNESS MY HAND THIS 21<sup>TH</sup> DAY OF DECEMBER, 2013.

  
**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 30<sup>th</sup> day of December, 2013, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by regular and certified mail at the following addresses:

James E. Thomas  
1033 Washington Street  
St. Charles, Missouri 63301

Certified No. 7009 3410 0001 9254 6748



Angie Gross  
Senior Office Support Assistant  
Investigations Section  
Missouri Department of Insurance, Financial  
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301 West High Street, Room 530  
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