State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
JOHN ATTEBERRY,	)	**Case No. 185219**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On May 3, 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 John Atteberry. 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. John Atteberry, ("Atteberry") is a Missouri resident with a residential address of record of 14 Breezy Knoll, Lake St. Louis, Missouri, 63367.

2. On December 5, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Atteberry's incomplete 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. Atteberry signed the Application in the "Applicant's Certification and Attestation" section under oath before a notary.

5. Background Question No. 4 of the Application asks 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?

6. Atteberry marked "No" to Question No. 4.

7. Contrary to Atteberry's answer to Question No. 4, the Department's investigation of the Application revealed that on or about November 14, 2011, a Certificate of Tax Lien was filed with the St. Charles County Recorder of Deeds, indicating that Atteberry owed the Missouri Department of Revenue $1,422 in taxes for the year 2004, along with $532.25 in interest, $355.50 in "additions to tax," and $4.50 in lien fees. The Certificate of Tax Lien cites Case No. 1111-MC06520.

8. The Missouri Case.net docket for *Department of Revenue v. John W. Atteberry*, St. Charles Co. Cir. Ct., 1111-MC06520, shows that judgment was entered upon the Department of Revenue's certification of the assessment of individual income tax, interest, additions to tax, and fees. No further relevant docket entries appear after the judgment, the docket does not show that the judgment was ever satisfied, and the "Date of Satisfaction" entry under the "Civil Judgments" tab reads "not yet on file."

9. On or about December 29, 2011, Department investigator Dennis Fitzpatrick sent Atteberry an inquiry letter requesting certified documentation showing that the judgment in *Department of Revenue v. John W. Atteberry*, St. Charles Co. Cir. Ct., 1111-MC06520 had been satisfied or that a repayment schedule was in place.

10. Fitzpatrick mailed the letter to Atteberry at his address of record by first class mail with sufficient postage attached. The letter was not returned as undeliverable.

11. Atteberry failed to respond to Fitzpatrick's December 29, 2011 letter. Atteberry has not demonstrated any justification for his failure to respond to the letter.

12. On or about February 6, 2012, Department investigator Dennis Fitzpatrick sent Atteberry a second inquiry letter, again requesting certified documentation showing that the judgment in *Department of Revenue v. John W. Atteberry*, St. Charles Co. Cir. Ct., 1111-MC06520 had been satisfied or that a repayment schedule was in place.

13. Fitzpatrick mailed the letter to Atteberry at his address of record by first class mail with sufficient postage attached. The letter was not returned as undeliverable.

14. On March 1, 2012, the president of Atteberry's employer emailed an uncertified .jpg image attachment to Fitzpatrick, showing what appeared to be an image of Atteberry's Certificate of Tax Lien dated November 14, 2011.

15. Atteberry himself failed to provide any response to Fitzpatrick's February 6, 2012 letter. The response that was provided apparently on behalf of Atteberry contained no documentation showing that the judgment in *Department of Revenue v. John W.*

Atteberry, St. Charles Co. Cir. Ct., 1111-MC06520 had been satisfied, no documentation showing any repayment schedule in that case, no explanation for the lack of such requested documentation, and no explanation or acknowledgment that the response failed to provide the documentation requested.

16. Atteberry accordingly failed to adequately respond to Fitzpatrick's letter. Atteberry has not demonstrated any justification for his failure to adequately respond to Fitzpatrick's February 6, 2012 letter.

CONCLUSIONS OF LAW

17. 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:

* * *

(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;

* * *

(13) Failed to comply with any administrative or court order directing payment of state or federal income tax[.]

18. Regulation 20 CSR 100-4.100(2) states:

(2) Except as required under subsection (2)(B)—

(A) 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.

(B) This rule shall not apply to any other statute or regulation which requires a different time period for a person to respond to an inquiry by the department. If another statute or regulation requires a shorter response time, the shorter response time shall be met. This regulation operates only in the absence of any other applicable laws.

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. Atteberry may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(13) because he failed to comply with an administrative or court order directing payment of state income tax, in that on November 14, 2011, the St. Charles Circuit Court entered a judgment upon the Missouri Department of Revenue's certification of the assessment of 2004 individual income tax, interest, additions to tax, and fees, but Atteberry has failed to satisfy the judgment. *Department of Revenue v. John W. Atteberry*, St. Charles Co. Cir. Ct., 1111-MC06520.

21. Atteberry also may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(2) because he violated a rule of the Director, namely 20 CSR 100-4.100. Atteberry twice failed to adequately respond to an inquiry letter from Department investigator Dennis Fitzpatrick, thereby twice violating 20 CSR 100-4.100.

22. Atteberry also may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(3) because he materially misrepresented the existence of his delinquent Missouri state tax obligation with his "No" answer to Background Question No. 4 of his Application.

23. The Director has considered Atteberry's history and all of the circumstances surrounding Atteberry's Application. Granting Atteberry a motor vehicle extended service contract producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue a motor vehicle extended service contract producer license to Atteberry.

24. This order is in the public interest.

ORDER

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

SO ORDERED.

WITNESS MY HAND THIS 7TH **DAY OF** MAY**, 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 7 day of May, 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 address:

John Atteberry
14 Breezy Knoll
Lake St. Louis, Missouri 63367

Certified No. 70093410000192545352

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