State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
JOSEPH DANIEL FERGUSON,	)	**Case No. 150810387C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On December 29, 2015, the Consumer Affairs Division submitted a Petition to the Director alleging cause to refuse to issue a motor vehicle extended service contract producer license to Joseph Daniel Ferguson. 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. Joseph Daniel Ferguson ("Ferguson") is a Missouri resident with a residential address of 361 Mason Ridge Drive, St. Charles, Missouri 63304.

2. The Department of Insurance, Financial Institutions and Professional Registration ("Department") issued a motor vehicle extended service contract ("MVESC") producer license (License No. 8089665) to Ferguson on January 19, 2012. Ferguson's license expired on January 18, 2014.

3. On February 20, 2014, the Department received Ferguson's Application for Motor Vehicle Extended Service Contract Producer License Renewal ("2014 Application").

4. The "Applicant's Certification and Attestation" section of the 2014 Application states in relevant part:

> 1. I hereby certify that, under penalty of perjury, 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.

5. Ferguson accepted the "Applicant's Certification and Attestation" section by signing the 2014 Application under oath and before a notary public.

6. On July 25, 2014, the Director of the Department issued an Order Refusing to Renew Ferguson's MVESC producer license ("2014 Refusal Order"). The Director found cause to refuse Ferguson's 2014 Application pursuant to:

   a. Section 385.209.1(2) RSMo (Supp. 2013)[1] because Ferguson failed to adequately respond to an inquiry letter from the Division and failed to provide a reasonable justification for the delay, thereby violating 20 CSR 100-4.100(2)(A), a rule of the Director.

   b. Section 385.209.1(3) because Ferguson attempted to obtain a license through material misrepresentation or fraud when he failed to disclose a pending felony charge on his 2014 Application. *State v. Joseph Daniel Ferguson*, St. Charles Co. Cir. Ct., Case No. 1311-CR04052-01.

   c. Section 385.209.1(5) because Ferguson was convicted of Driving While Intoxicated – Alcohol/Drug Intoxication – Persistent Offender, a Class D Felony, in violation of § 577.010.[2] *State v. Joseph Daniel Ferguson*, St. Charles Co. Cir. Ct., Case No. 1311-CR04052-01.

   In re: Joseph Daniel Ferguson, Order Refusing to Renew Motor Vehicle Extended Service Contract Producer License, Case No. 140610494C (July 25, 2014).

7. On July 28, 2014, the Department served Ferguson with the 2014 Refusal Order via United Parcel Service, signature required, at Ferguson's residential address of record. The Refusal Order was delivered on July 29, 2015 and signed for by "Ferguson."

8. The 2014 Refusal Order included a Notice that provided instructions regarding filing a complaint with the Administrative Hearing Commission of Missouri ("Commission") within 30 days. *Id.*

9. Ferguson did not file a complaint with the Commission or appeal the 2014 Refusal Order.

10. On April 17, 2015, the Department received Ferguson's Application for Motor Vehicle Extended Service Contract Producer License ("2015 Application").

11. The "Applicant's Certification and Attestation" section of the 2015 Application states in relevant part:

> 1. I hereby certify that, under penalty of perjury, 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.

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[1] All civil statutory references are to RSMo (2000) as updated by the 2013 Supplement, unless otherwise indicated.
[2] All references to criminal statutes are to those contained in the version of the Revised Statutes of Missouri under which the court rendered judgment.

12. Ferguson accepted the "Applicant's Certification and Attestation" section by signing the 2015 Application under oath and before a notary public.

13. Background Question No. 1 of the 2015 Application asked:

> 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 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 differed" 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 documentation which demonstrates the resolution of the charges or any final judgment.

14. Ferguson answered "yes" in response to Background Question No. 1 on his 2015 Application.

15. Ferguson provided court documents that revealed that on February 18, 2014, Ferguson pled guilty to DWI – Alcohol – Persistent Offender, a Class D Felony, in violation of § 577.010. The court sentenced Ferguson to three (3) years' incarceration, suspended execution of sentence, and ordered Ferguson to complete five (5) years' supervised probation. *State v. Joseph Daniel Ferguson*, St. Charles Co. Cir. Ct., Case No. 1311-CR04052-01.

16. Ferguson also submitted a letter explaining his answer. The letter stated, in part:

On February 16, 2013, at approximately 1:30 am, I was parked in my vehicle in a Taco Bell parking lot eating Taco Bell food. Approximately two or three St. Peters police cars pulled up near my vehicle and one or more police officers approached my vehicle. I was asked to step out of the car, and the officers administered a field sobriety test, after which I was arrested. I was charged with driving while intoxicated. I retained an attorney to assist in my defense of the charge. On February 18, 2014, I pled guilty to the charge of driving while intoxicated, and was sentenced to three years SES, five years' probation, restrictions and requirements related to alcohol, court costs, 20 days in jail, and random chemical testing. Since being sentenced, I have complied with every stipulation of my probation without any violation.

17. Background Question No. 2 of the 2015 Application asked the following:

> Have you ever been named or involved as a party in an administrative proceeding or action regarding any professional or occupational license or registration, or regarding the lack of such license or registration?
>
> "Involved" means having a license censured, suspended, revoked, canceled, terminated or being assessed a fine, a voluntary forfeiture, a cease and desist order, a prohibition order, a consent order, or being placed on probation. "Involved" also includes the act of surrendering a license to resolve an administrative proceeding or action. "Involved" also means being named as a party to an administrative or arbitration proceeding which is related to a professional or occupational license or is related to the lack of such license. "Involved" also means having a license application denied or the act of withdrawing an application to avoid a denial. You must INCLUDE any business so named because of your actions or because of your capacity as an owner, partner, officer, director, or member or manager of a Limited Liability Company. You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.
>
> If you answer yes, you must attach to this application:
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> a) a written statement identifying the type of license and explaining the circumstances of each incident,
>
> b) a copy the Notice of Hearing or other document that states the charges and allegations, and
>
> c) a certified copy of the official document which demonstrates the resolution of the charges and/or a final judgment.

18. Ferguson answered "no" in response to Background Question No. 2 on his 2015 Application.

19. Ferguson failed to disclose the 2014 Refusal Order, an administrative action that named Ferguson as a party in regards to a professional or occupational license, namely his application to renew his MVESC producer license. *In re: Joseph Daniel Ferguson*, Order

Refusing to Renew Motor Vehicle Extended Service Contract Producer License, Case No. 140610494C (July 25, 2014).

20. It is inferable, and hereby found as fact, that Ferguson did not disclose the 2014 Refusal Order in order to represent to the Director that he had not previously had a MVESC producer license refused, and accordingly, in order to improve the chances that the Director would approve his 2015 Application.

21. The Employment History section of the 2014 Application requests the following information:

> Account for all time for the past five years. List all employment experience starting with your current employer working back five years. Include full and part-time work, self-employment, military service, unemployment and full-time education.

22. The Employment History section of the 2015 Application requests the following information:

> Account for all time for the past five years. List all employment experience starting with your current employer working back five years. Include full and part-time work, self-employment, military service, unemployment and full-time education.

23. On or before February 20, 2014, Ferguson provided the following responses to the Employment History section of the 2014 Application:

	FROM		TO		POSITION HELD
	MONTH	YEAR	MONTH	YEAR	
Mavaro Solutions Cottleville, MO, U.S.	12	2013	current		Sales rep
American Automotive Wentzville, MO, U.S.	10	2012	12	2013	Sales rep
Navis St. Louis, MO, U.S.	05	2012	10	2012	Sales rep
Stop Repair Bills St. Louis, MO, U.S.	01	09	05	2012	Sales rep

24. On or before April 9, 2015, Ferguson provided the following responses to the Employment History section of the 2015 Application:

	FROM		TO		POSITION HELD
	MONTH	YEAR	MONTH	YEAR	
Unemployed	02	2015			To current
American Automotive Wentzville, MO, USA	12	2012	02	2015	Sales

Unemployed	08	2012	12	2012	Unemployed
Stop Repair Bills St. Louis, MO, USA	03	2010	08	2012	Sales

25. American Automotive Service Solutions Inc. in Wentzville, Missouri is a MVESC business entity producer licensed (License No. 8088396) by the Department to sell, offer, negotiate, or solicit motor vehicle extended service contracts.

26. "NRRM LLC DBA Stoprepairbills.com Insurance Agency" is a MVESC business entity producer licensed (License No. 8050081) by the Department to sell, offer, negotiate, or solicit motor vehicle extended service contracts.

27. Naviss LLC is a MVESC business entity producer licensed (License No. 8088830) by the Department to sell, offer, negotiate, or solicit motor vehicle extended service contracts.

28. Mavaro Solutions in O'Fallon, Missouri was an MVESC business entity producer licensed (License No. 8088447) by the Department to sell, offer, negotiate, or solicit motor vehicle extended service contracts until its license expired on January 1, 2012.

29. Ferguson's MVESC producer license expired on January 18, 2014. Therefore, it is inferable, and herby found as fact, that Ferguson sold, offered, negotiated, or solicited motor vehicle extended service contracts with consumers without an MVESC producer license between January 18, 2014 and at least February 2015 during his employment at American Automotive Service Solutions Inc. and/or Mavaro Solutions.

30. In the course of his investigation, Special Investigator Engler discovered that Ferguson was employed as an MVESC producer at Mavaro Solutions between at least January 18, 2014 and March 5, 2014 and that Ferguson had sold, offered, negotiated, or solicited motor vehicle extended service contracts to consumers during that time without a MVESC producer license.

31. Ferguson's employment at Mavaro Solutions does not appear on his 2015 Application.

32. It is inferable, and hereby found as fact, that Ferguson did not disclose his employment at Mavaro Solutions on his 2015 Application in order to hide the fact that he had been employed in a sales position at Mavaro Solutions at a time when he was not licensed and accordingly to improve the chances that the Director would approve his 2015 Application.

33. It is inferable, and hereby found as fact, that Ferguson misrepresented his employment history in an attempt to improve the chances that the Director would approve his 2015 Application.

CONCLUSIONS OF LAW

34. Section 385.209.1 provides, in relevant 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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> * * *
>
> (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;
>
> * * *
>
> (5) Been convicted of any felony;
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> * * *
>
> (9) Been refused a license or had a license revoked or suspended by a state or federal regulator of service contracts, financial services, investments, credit, insurance, banking, or finance; [or]
>
> * * *
>
> (11) Unlawfully acted as a producer without a license[.]

35. Section 385.206 provides, in relevant part:

> 1. It is unlawful for any person in or from this state to sell, offer, negotiate, or solicit a motor vehicle extended service contract with a consumer, other than the following:
>
> * * *
>
> (6) A business entity producer or individual producer licensed under section 385.207[.]

36. Section 385.207 provides, in relevant part:

* * *

> 3. An individual, prior to selling, offering, negotiating, or soliciting a motor vehicle extended service contract with a consumer under subdivision (6) of subsection 1 of section 385.206, shall apply for and obtain licensure with the director as an individual producer in accordance with this section.

* * *

> 6. A producer license issued under this section, if not renewed by the director by its expiration date, shall terminate on its expiration date and shall not after that date authorize its holder under sections 385.200 to 385.220 to sell, offer, negotiate, or solicit motor vehicle extended service contracts.

37. Collateral estoppel "is used to preclude the relitigation of an issue that already has been decided in a different cause of action." *Brown v. Carnahan,* 370 S.W.3d 637, 658 (Mo. banc 2012) (citation omitted).

38. The Director may refuse to issue Ferguson a MVESC producer license pursuant to § 385.209.1(2) because, as found in the 2014 Refusal Order, Ferguson failed to adequately respond to an inquiry letter from the Division and failed to provide a reasonable justification for the delay, thereby violating 20 CSR 100-4.100(2)(A), which is a rule of the Director. *In re: Joseph Daniel Ferguson,* Order Refusing to Renew Motor Vehicle Extended Service Contract Producer License, Case No. 140610494C (July 25, 2014).

39. The Director may refuse to issue Ferguson a MVESC producer license pursuant to § 385.209.1(3) because, as found in the 2014 Refusal Order, Ferguson attempted to obtain a license through material misrepresentation or fraud when Ferguson failed to disclose a pending felony charge on his 2014 Application. *Id.*

40. The Director may refuse to issue Ferguson a MVESC producer license pursuant to § 385.209.1(5) because, as found in the 2014 Refusal Order, Ferguson has been convicted of a Felony: DWI – Alcohol – Persistent Offender, a Class D Felony. *Id.*

41. The Director may refuse to issue Ferguson a MVESC producer license pursuant to § 385.209.1(11) because Ferguson unlawfully acted as a producer without a license when he sold, offered, negotiated, or solicited motor vehicle extended service contracts with consumers during his employment in "Sales" at either American Automotive Service Solutions Inc. or Mavaro Solutions after the expiration of his license on January 18, 2014.

42. The Director may refuse to issue Ferguson a MVESC producer license pursuant to § 385.209.1(9) because Ferguson has been refused a license by a state regulator of service contracts, namely the Director. *In re: Joseph Daniel Ferguson,* Order Refusing to Renew

Motor Vehicle Extended Service Contract Producer License, Case No. 140610494C (July 25, 2014).

43. The Director may refuse to issue Ferguson a MVESC producer license pursuant to § 385.209.1(2) because Ferguson violated a provision in §§ 385.200 to 385.220, namely § 385.206.1(6), when he, in or from this state, unlawfully, sold, offered, negotiated, or solicited a motor vehicle extended service contract with a consumer during his employment at either American Automotive Service Solutions Inc. or Mavaro Solutions after the expiration of his license on January 18, 2014.

44. The Director may refuse to issue Ferguson a MVESC producer license pursuant to § 385.209.1(3) because Ferguson attempted to obtain a license through material misrepresentation or fraud when Ferguson failed to disclose the 2014 Refusal Order on his 2015 Application. *In re: Joseph Daniel Ferguson,* Order Refusing to Renew Motor Vehicle Extended Service Contract Producer License, Case No. 140610494C (July 25, 2014).

45. The Director may refuse to issue Ferguson a MVESC producer license pursuant to § 385.209.1(3) because Ferguson attempted to obtain a license through material misrepresentation or fraud when Ferguson omitted his employment at Mavaro Solutions from the Employment History section of his 2015 Application.

46. Each attempt to obtain a license through material misrepresentation or fraud is a separate and sufficient ground for refusal pursuant to § 385.209.1(3).

47. The Director has considered Ferguson's history and all of the circumstances surrounding Ferguson's 2015 Application. Accordingly, the Director exercises his discretion to refuse to issue Ferguson a MVESC producer license.

48. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that **Joseph Daniel Ferguson's** Motor Vehicle Extended Service Contract producer license application of is hereby **REFUSED.**

SO ORDERED.

WITNESS MY HAND THIS 5th **DAY OF** JANUARY**, 2016.**

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 5th day of January, 2016, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, Signature required, to the following address:

Joseph Daniel Ferguson
361 Mason Ridge Drive
St. Charles, Missouri 63304

Tracking No. 1Z0R15W84296863910

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