FINAL ORDER
EFFECTIVE
07-18-16

STATE OF MISSOURI

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
LAURA ELIZABETH KENNEDY,	)	**Case No. 160426254C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On June 13, 2016, the Consumer Affairs Division, through counsel, submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract producer license to Laura Elizabeth Kennedy. 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. Laura Elizabeth Kennedy ("Kennedy") is a Missouri resident with a residential address of 17 B San Miguel Drive, St. Charles, Missouri 63303.

2. On February 3, 2016, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Kennedy'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. On January 27, 2016, Kennedy signed the "Applicant's Certification and Attestation" section under oath before a notary public.

5. Background Question No. 1 of the Application asks:

> 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. Kennedy answered "Yes" to Background Question No. 1 and included a written statement and court documents which revealed the following conviction:

   a. On December 6, 2004, Kennedy pled guilty to Forgery, a Class C Felony, in violation of § 570.090.[1] On January 18, 2005, the court suspended the imposition of sentence and ordered Kennedy to complete five (5) years' supervised probation and pay restitution in the amount of $7,648.63. On April 19, 2010, the court revoked Kennedy's probation and sentenced her to five (5) years' incarceration,

[1] All criminal statutory references are to those contained in the version of the Revised Statutes of Missouri under which the court rendered judgment.

but suspended the execution of the sentence and ordered her to complete five (5) years' supervised probation. *State v. Laura E. Kennedy*, Boone Co. Cir. Ct., Case No. 04CR168855-01.

7. During its investigation, the Consumer Affairs Division ("Division") discovered the following conviction that Kennedy failed to disclose on her Application:

   a. On August 1, 2007, Kennedy pled guilty to and was convicted of Passing Bad Check - Less Than $500, a Class A Misdemeanor, in violation of § 570.120. The court sentenced Kennedy to one (1) year of incarceration, but suspended the execution of sentence and placed Kennedy on two (2) years' supervised probation. *State v. Laura Kennedy*, Randolph Co. Cir. Ct., Case No. 06RA-CR01413-01.

8. On February 5, 2016, Special Investigator Andrew Engler ("Engler"), with the Division, sent an inquiry letter to Kennedy via first class mail. The inquiry letter notified Kennedy that the Division's investigation revealed a misdemeanor conviction that she failed to disclose and requested that Kennedy provide a statement explaining the circumstances surrounding the charge and why she failed to disclose it on her Application. Additionally, the inquiry letter requested a certified copy of the Information, Complaint, Judgment, or other charging documents in the criminal matter. The inquiry letter further requested a response within twenty (20) days, and warned Kennedy that a failure to respond could result in the Director refusing to issue her a motor vehicle extended service contract ("MVESC") producer license.

9. The February 5, 2016 inquiry letter was not returned as undeliverable, and is therefore presumed received by Kennedy.

10. Kennedy did not respond to the Division's February 5, 2016 inquiry letter, nor did she demonstrate a reasonable justification for the delay.

11. On February 29, 2016, Special Investigator Engler sent a second inquiry letter to Kennedy via first class mail asking for the same information previously requested in the February 5, 2016 inquiry letter. The inquiry letter requested a response within twenty (20) days, and again warned Kennedy that failure to respond could result in the Director refusing to issue her a MVESC producer license.

12. The February 29, 2016 inquiry letter was not returned as undeliverable, and is therefore presumed received by Kennedy.

13. Kennedy did not respond to the Division's February 29, 2016 inquiry letter, nor did she demonstrate a reasonable justification for the delay.

14. It is inferable, and hereby found as fact, that Kennedy failed to disclose her full criminal

history in response to Background Question No. 1 on her Application to misrepresent her complete criminal record to the Director and to improve the likelihood that the Director would issue her a MVESC producer license. This inference is further supported by the fact that, when given the opportunity to explain the circumstances surrounding her misdemeanor conviction and why she failed to disclose it, she disregarded the Division's inquiry letters.

CONCLUSIONS OF LAW

15. Section 385.209 RSMo (Supp. 2013)[2] 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:
>
> * * *
>
> (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; [or]
>
> * * *
>
> (5) Been convicted of any felony[.]

16. Title 20 CSR 100-4.100(2)(A) states:

> 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.

17. "There is a presumption that a letter duly mailed has been received by the addressee." *Clear v. Missouri Coordinating Bd. for Higher Educ.*, 23 S.W.3d 896, 900 (Mo. App.

[2] All civil statutory references are to the Revised Statues of Missouri (2000) as updated by the 2013 Supplement unless otherwise noted.

2000) (internal citations omitted).

18. The Director has grounds to refuse to issue a MVESC producer license to Kennedy pursuant to § 385.209.1(2) because Kennedy twice violated a rule of the Director, namely 20 CSR 100-4.100(2)(A), when she failed to respond to two (2) inquiry letters from the Division and failed to demonstrate reasonable justifications for the delays.

19. Each violation of a rule of the Director is a separate and sufficient ground for the Director to refuse to issue a MVESC producer license to Kennedy pursuant to § 385.209.1(2).

20. The Director has grounds to refuse to issue a MVESC producer license to Kennedy pursuant to § 385.209.1(3) because Kennedy attempted to obtain a MVESC producer license through material misrepresentation or fraud when she failed to disclose her conviction for Passing Bad Check – Less Than $500, a Class A Misdemeanor, in response to Background Question No. 1 on her Application. *State v. Laura Kennedy*, Randolph Co. Cir. Ct., Case No. 06RA-CR01413-01.

21. The Director has grounds to refuse to issue a MVESC producer license to Kennedy pursuant to § 385.209.1(5) because Kennedy has been convicted of a felony: Forgery, a Class C Felony. *State v. Laura E. Kennedy*, Boone Co. Cir. Ct., Case No. 04CR168855-01.

22. The Director has considered Kennedy's history and all of the circumstances surrounding Kennedy's Application. Granting Kennedy 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 Kennedy.

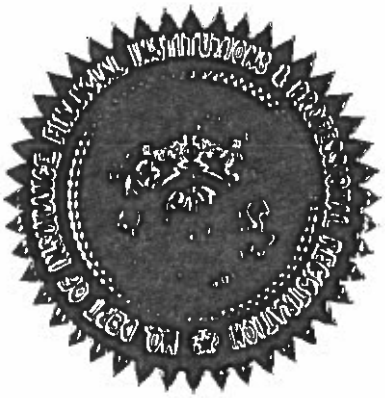
23. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that **Laura Elizabeth Kennedy's** motor vehicle extended service contract producer license application is hereby **REFUSED.**

SO ORDERED.

WITNESS MY HAND THIS 13th DAY OF JUNE, 2016.



JOHN M. HUFF, Director
Missouri Department of Insurance, Financial Institutions and Professional Registration

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 15th day of June, 2016, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following address:

Laura Elizabeth Kennedy
17 B San Miguel Drive
St. Charles, Missouri 63303

Tracking No. 1Z0R15W84297366385

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