State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
Mathew L. Livingston,	)	**Case No. 120413375C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On April 19, 2012, 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 Mathew L. Livingston. After reviewing the Petition, the Investigative Memo, and the entirety of the file, the Director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Mathew L. Livingston, ("Livingston") is a Missouri resident with a residential address of 3457 St. Mark Lane, St. Ann, Missouri 63074.

2. On or about July 1, 2010, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received a Uniform Application for Individual Insurance Producer License ("Insurance Producer Application") from Livingston.

3. In the section of the Insurance Producer Application headed "Background Questions," Background Question #1 asks "Have you ever been convicted of a crime, had a judgement withheld or deferred, or are you currently charged with committing a crime?"

4. Livingston answered "Yes" to Background Question #1, and submitted by fax an explanation for leaving the scene of an accident in 2006 and production of a controlled substance in 2002. Livingston also stated that he was 17 years of age when the latter occurred and he would complete the term of his probation and parole in 2012.

5. Livingston disclosed the following in response to Background Question #1:

   a. On February 18, 2003, Livingston pleaded guilty to the class B felony of attempted manufacturing of a controlled substance with intent to distribute. The court sentenced Livingston to five years' incarceration and suspended the execution of such sentence. Livingston is scheduled to complete probation in May 2012. *State v. Matthew L. Livingston*, Lincoln Co. Cir. Ct., Case No. 02CR858643-01.

b. On May 2, 2005, Livingston pleaded guilty to failing to yield and improper lane usage. The court ordered Livingston to pay a fine and court costs. *State v. Matthew Livingston*, St. Charles Co. Cir. Ct., Case No. 040225908.

c. On May 2, 2005, Livingston pleaded guilty to the class B misdemeanor of driving while intoxicated. The court sentenced Livingston to two years' incarceration, suspended the execution of sentence, and placed Livingston on probation. On July 23, 2007, the court revoked Livingston's probation and sentenced him to 90 days' incarceration. *State v. Matthew L. Livingston*, St. Charles Co. Cir. Ct., Case No. 0511-CR00352

d. On May 2, 2005, Livingston pleaded guilty to resisting arrest, a class A misdemeanor. The court suspended the imposition of Livingston's sentence and placed him on probation for two years. On September 17, 2008, Livingston confessed to violating probation, which the court terminated and ordered that the previously ordered sentence be executed. *State v. Matthew Livingston*, St. Charles Co. Cir. Ct., Case No. 04CR130713.

e. On September 10, 2007, Livingston pleaded guilty to and was convicted of a class D felony for leaving the scene of an accident. The court sentenced Livingston to three years' incarceration. *State v. Mathew Lance Livingston,* St. Charles Co. Cir. Ct., Case No. 0611-CR07297-01.

6. Livingston's response to Background Question #1 was incomplete in that Livingston failed to disclose two misdemeanor charges that were pending at the time he submitted his Insurance Producer Application:

a. On December 28, 2009, Livingston was charged with possession of up to 35 grams of marijuana. *See State v. Mathew Lance Livingston*, Shannon Co. Cir. Ct., Case No. 09AN-CR01403.

b. On December 28, 2009, Livingston was charged with unlawful use of drug paraphernalia. *See State v. Mathew Lance Livingston*, Shannon Co. Cir. Ct., Case No. 09AN-CR01404.

7. On August 24, 2010, Special Investigator Karen Crutchfield ("Crutchfield") sent a letter by first class mail to Livingston's mailing and business address asking Livingston to provide certified copies of the court documents and detailed information about each charge on his record. The letter was not returned as undeliverable. The letter requested a response on or before September 14, 2010. Livingston did not respond with the requested information and did not contact the Department in any way to provide a reasonable justification for a delayed response.

8. On September 16, 2010, Crutchfield sent a letter by certified mail to Livingston's mailing

and business address again asking Livingston to provide certified copies of the court documents and detailed information about each charge on his record.

9. Livingston sent a response on September 20, 2010. The response included an explanation of the charges and paperwork printed from www.courts.mo.gov/casenet. None of the paperwork was certified, therefore, Livingston did not provide the requested response to the September 16, 2010 letter.

10. On July 1, 2011, the Director issued an Order Refusing to Issue Insurance Producer License. *In re: Mathew L. Livingston*, Case No. 11-0315374C.

11. On February 6, 2012, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Livingston's Application for Motor Vehicle Extended Service Contract Producer License ("MVESC Producer Application").

12. On the MVESC Producer Application, Livingston disclosed that he was approximately 10 months in arrears for child support. Official records indicate Livingston owed $3,541.96 in back child support as of March 16, 2012.

CONCLUSIONS OF LAW

13. Section 385.209 RSMo Supp. 2011 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:
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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;
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> (3) Obtained or attempted to obtain a license through material misrepresentation or fraud;
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> * * *
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> (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;

* * *

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

14. Title 20 CSR 100-4.100 Required Response to Inquiries by the Consumer Affairs Division, provides, in part:

> (2)(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.

15. "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. 2000) (internal citations omitted).

16. 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.

17. Livingston may be refused a motor vehicle extended service contract ("MVESC") license pursuant to §385.209.1(2) for violating 20 CSR 100-4.100(2)(A) by failing to respond to the August 24, 2010 letter, and for failing to provide the requested certified copies of court documents in response to the September 16, 2010 letter.

18. Livingston may be refused a MVESC producer license pursuant to §385.209.1(3) for attempting to obtain a license through material misrepresentation or fraud. By failing to disclose two pending criminal charges on his Insurance Producer Application, Livingston attempted to obtain a license through material misrepresentation or fraud. The criminal charges were material in that they may have reflected negatively on Livingston's fitness for licensure as an insurance producer. *State v. Mathew Lance Livingston*, Shannon Co.

Cir. Ct., Case No. 09AN-CR01403; *State v. Mathew Lance Livingston*, Shannon Co. Cir. Ct., Case No. 09AN-CR01404.

19. Livingston may be refused a MVESC producer license pursuant to §385.209.1(5) because he has been convicted of two felonies. *State v. Mathew Lance Livingston*, Lincoln Co. Cir. Ct., Case No. 02CR858643-01; *State v. Mathew Lance Livingston*, St. Charles Co. Cir. Ct., Case No. 0611-CR07297-01.

20. Livingston may be refused a MVESC producer license pursuant to §385.209.1(9) because he has been refused an insurance producer license by the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration. *In re: Mathew L. Livingston*, Case No. 11-0315374C.

21. Livingston may be refused a MVESC producer license pursuant to §385.209.1(12) because by being in arrears for child support, Livingston has failed to comply with an administrative or court order imposing a child support obligation.

22. Livingston failed to disclose material criminal matters on a prior application for licensure as an insurance producer. During the insurance producer application process, Livingston violated a Department regulation by failing to properly respond to Division inquiries. Ultimately, the Director refused Livingston's insurance producer license. Livingston has also failed to comply with an administrative or court order imposing a child support obligation. Finally, Livingston has been convicted of two felonies. Granting Livingston a MVESC producer license would not be in the interest of the public. The Director has considered Livingston's history and all of the circumstances surrounding Livingston's Application and exercises his discretion to refuse Livingston's MVESC producer license.

23. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service producer license application of **Mathew L. Livingston** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 23RD DAY OF APRIL, 2012.

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 24th day of April, 2012 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:

Mathew L. Livingston
3457 St. Mark Lane
St. Ann, Missouri 63074

Certified No. 7009 3410 0001 8931 2981

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