



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

MARSHAWN C. GREGORY,

Applicant.

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Case No. 187327

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On June 21, 2013, 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 Marshawn C. Gregory. 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. Marshawn C. Gregory ("Gregory") is a Missouri resident with a residential address of record of 890 Nottinghill Row Apt. K, St. Louis, Missouri 63033.
2. On December 2, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Gregory's Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. Gregory signed the Application under oath before a notary, thereby attesting that all of the information submitted in the Application and its attachments was "true and complete" and acknowledging that omitting pertinent or material information in connection with the Application was grounds for refusal of the Application and could subject Gregory to civil or criminal penalties.
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 judgment[.]

5. Gregory marked "No" to Question No. 1.
6. Gregory did not disclose any criminal history in his Application or in his written explanation.
7. The Department's investigation of Gregory's Application revealed that on or about April 27, 1999, Gregory pled guilty in the Circuit Court of St. Louis City to the Class A Misdemeanor of Possession of a Controlled Substance.¹ The court granted Gregory a suspended imposition of sentence and one year of probation.
8. Background Question No. 4 of the Application asked 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?
9. Gregory marked "Yes" to Question No. 4 and identified the jurisdiction as "Federal." Gregory did not disclose any delinquent state tax obligation.
10. Gregory attached to the Application a document apparently faxed from "Certified Tax Inc.," which stated:

To Whom it may concern:

This notice is to confirm that Marshawn Gregory hired Certified Tax Inc. to resolve his tax liability. We are currently in dispute over the amounts claimed and will be working diligently to resolve this matter as quickly as possible.

¹ A violation of § 195.202, RSMo. *State of Missouri v. Marshawn Gregory*, St. Louis City Cir. Ct., No. 22989-04370.

11. Gregory did not attach any additional documents or explanation concerning his answer to Background Question No. 4.
12. On January 4, 2012, the Department's Consumer Affairs Division investigator Dennis Fitzpatrick sent Gregory a written inquiry letter in which Fitzpatrick noted Gregory's Possession of a Controlled Substance case and his "No" answer to Background Question No. 1, requested certified court documents and a written statement from Gregory concerning that case, and requested a certified copy of any federal tax repayment schedule. Fitzpatrick also requested information related to Gregory's child support payment history.
13. Fitzpatrick mailed the January 4, 2012 letter by first class mail to Gregory's address of record with sufficient postage attached.
14. The January 4, 2012 letter was not returned as undeliverable.
15. On or about January 20, 2012, Gregory faxed Fitzpatrick a copy of his child support payment history, dated January 20, 2012.
16. On or about January 25, 2012, Gregory faxed Fitzpatrick a copy of an Income Withholding Support document dated January 17, 2012.
17. Gregory did not provide a written explanation of his Possession of a Controlled Substance case, nor did he provide certified court documents in that case, nor did he provide any information concerning his federal tax obligations.
18. Gregory has not demonstrated any reasonable justification for his failure to provide an adequate response to the inquiries in Fitzpatrick's January 25, 2012 letter that concerned his criminal history and his federal tax obligations.
19. On June 15, 2012, Fitzpatrick sent another written inquiry letter to Gregory, again requesting a written explanation of, and certified court records related to, Gregory's conviction of Possession of a Controlled Substance, a certified copy of any federal tax repayment schedule, and proof of child support payments.
20. Fitzpatrick mailed the June 15, 2012 letter by first class mail to Gregory's address of record with sufficient postage attached.
21. The June 15, 2012 letter was not returned as undeliverable.
22. Gregory never responded to the June 15, 2012 letter and has not demonstrated any reasonable justification for his failure to respond to the letter.
23. On November 16, 2012, Fitzpatrick sent another written inquiry letter to Gregory, again

- requesting a copy of any federal tax repayment schedule.
24. Fitzpatrick mailed the November 16, 2012 letter by first class mail to Gregory's address of record with sufficient postage attached.
 25. The November 16, 2012 letter was not returned as undeliverable.
 26. Gregory never responded to the November 16, 2012 letter and has not demonstrated any reasonable justification for his failure to respond to the letter.
 27. Further investigation revealed that on or about October 24, 2011, in the Circuit Court of St. Louis County, a tax lien judgment in the amount of \$7,173.24 had been entered against Gregory in favor of the Missouri Department of Revenue.²
 28. As of April 30, 2013, Gregory owed taxes and interest to the Missouri Department of Revenue from years 2004, 2006, 2007, 2008 and 2009, totaling \$11,442.97, and had no repayment plan in place for the years 2004, 2006, 2007 or 2008.
 29. On January 25, 2013, Fitzpatrick sent another written inquiry letter to Gregory, again requesting a copy of any federal tax repayment schedule, a copy of any repayment schedule related to the Missouri tax lien judgment in case number 11SL-MC13773, and certified court records related to Gregory's conviction of Possession of a Controlled Substance.
 30. Fitzpatrick mailed the January 25, 2013 letter by first class mail to Gregory's address of record with sufficient postage attached.
 31. The January 25, 2013 letter was not returned as undeliverable.
 32. Gregory never responded to the January 25, 2013 letter and has not demonstrated any reasonable justification for his failure to respond to the letter.

CONCLUSIONS OF LAW

33. 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 *Department of Revenue v. Marshawn Gregory*, St. Louis Co. Cir. Ct., No. 11SL-MC13773.

(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[.]

34. 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.

35. Regulation 20 CSR 100-4.010(1) defines the following terms as they are used in 20 CSR 100-4.100(2):

(A) "Adequate response," a written response answering each inquiry with reasonable specificity. A person's acknowledgment of the division's inquiry is not an adequate response.

* * *

(D) "Inquiry," each and every question or request for information submitted in writing to a person by the Consumer Affairs Division concerning subjects which are within the division's authority to regulate or investigate.

36. 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.
37. Gregory 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 a tax lien judgment in favor of the Missouri Department of Revenue was entered against Gregory in the Circuit Court of St. Louis County, evidencing Gregory's failure to comply with an administrative order directing the payment of state income tax, and in that as of April 30, 2013, Gregory had failed to repay the delinquent taxes that were the subject of the tax lien judgment and thus had failed to comply with the Circuit Court of St. Louis County's order directing payment of state income tax.
38. Gregory also may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(2) because Gregory violated a rule of the Director, in that he failed to respond to Consumer Affairs Division written inquiries mailed on January 4, 2012,³ June 15, 2012, November 16, 2012, and January 25, 2013, and failed to demonstrate any reasonable justification for his failures to respond, and thereby violated 20 CSR 100-4.100(2), which is a rule of the Director, four separate times.
39. Gregory also may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(3) because, in an attempt to obtain a license through his Application, he misrepresented his criminal history, in that he failed to disclose that he had been convicted of the Class A Misdemeanor of Possession of a Controlled Substance, and instead falsely answered Background Question No. 1 with a "No" in an effort to conceal his criminal history, and in that he failed to disclose his delinquent state tax obligation, all of which information was material to the Director's licensure decision.
40. The Director has considered Gregory's history and all of the circumstances surrounding Gregory's Application. Granting Gregory 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 Gregory.
41. This order is in the public interest.

³ Although Gregory faxed some child support records in response to the January 4, 2012 inquiry, Gregory did not respond to the inquiries in that letter that requested information related to his criminal history and tax delinquency.

ORDER

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

SO ORDERED.

WITNESS MY HAND THIS 24th DAY OF JUNE, 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 24 day of June, 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:

Marshawn C. Gregory
890 Nottinghill Row Apt. K
St. Louis, Missouri 63033

Certified No. 7009 3410 0001 9255 0950



Hailey Boessen
Senior Office Support Assistant
Agent Investigation Section
Missouri Department of Insurance, Financial
Institutions and Professional Registration
301 West High Street, Room 530
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