State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
MARCUS WILLIAM HARRIS,	)	**Case No. 150129054C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On May 11, 2015, the Consumer Affairs Division submitted a Petition to the Director alleging cause to refuse the issuance of a motor vehicle extended service contract producer license to Marcus William Harris. 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. Marcus William Harris ("Harris") is an Illinois resident with a residential address of record of 2609 Eastview, Belleville, Illinois 62221.[1]

2. On October 20, 2014, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Harris'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.

* * *

[1] Upon information and belief, Harris may also use the address of 5735 Albia Terrace, St. Louis, Missouri 63136.

4. I further certify, under penalty of perjury, that a) I have no outstanding state or federal income tax obligations, or b) I have an outstanding state or federal income tax obligation and I have provided all information and documentation requested in Background Information Question 36.4.

5. I further certify, under penalty of perjury, that a) I have no child support obligation, b) I have a child support obligation and I am currently in compliance with that obligation, or c) I have a child support obligation that is in arrears, I am in compliance with a repayment plan to cure the arrears, and I have provided all information and documentation requested in Background Information Question 36.7.

4. Harris signed the Application in the "Applicant's Certification and Attestation" section under oath and before a notary public.

5. During its investigation, the Consumer Affairs Division ("Division") of the Department discovered that the social security number Harris provided on his Application, 463-11-XXXX, belongs to a T.G.[2] The Division conducted a search of Harris's name and birthdate, which yielded seven (7) various court documents showing a complete social security number and a state income tax judgment showing a partially censored social security number, all of which match 524-61-XXXX. A search of 524-61-XXXX produced results for Harris.

6. Background Question No. 1 of the Application asks the following:

> 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.

[2] Initials are used to protect the identity of this person who is not Harris.

"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.

7. Harris marked "NO" to Background Question No. 1.

8. During its investigation, the Division discovered the following felony convictions that Harris failed to disclose in response to Background Question No. 1:

a. On August 25, 2005, Harris pled guilty to three (3) counts of Robbery in the Second Degree, all Class B Felonies in violation of § 569.020.[3] The court sentenced Harris to five (5) years' incarceration on each count with the three (3) sentences to run concurrently. *State v. Marcus Harris*, St. Louis Co. Cir. Ct., Case No. 2105R-00049-01.

b. On April 24, 2009, Harris pled guilty to Leaving the Scene of a Motor Vehicle Accident - Injury, Property Damage, or Second Offense, a Class D Felony in violation of § 577.060. The court suspended the imposition of sentence and placed Harris on supervised probation for five (5) years. On December 6, 2012, the court found Harris in violation of his probation, sentenced him to four (4) years' incarceration, suspended execution of the sentence, and placed Harris on supervised probation for another five (5) years. *State v. Marcus W. Harris*, St. Charles Co. Cir. Ct., Case No. 0811-CR02985-01.

c. On November 9, 2012, Harris pled guilty to Theft/Stealing (Value Of Property or Services Is $500 or More but Less than $25,000), a Class C Felony in violation of § 570.030. The court sentenced Harris to seven (7) years' incarceration, suspended execution of the sentence, and placed Harris on supervised probation for five (5) years. *State v. Marcus Harris*, St. Louis Co. Cir. Ct., Case No. 11SL-CR08135-01.

[3] All references to criminal statutes correspond to the version of the Revised Statutes of Missouri under which each judgment was rendered.

9. Background Question No. 4 of the Application asks:

> Have you failed to pay state or federal income tax?
>
> Have you failed to comply with an administrative or court order directing payment of state or federal income tax?
>
> Answer "Yes" if the answer to either question (or both) is "Yes."
>
> If you answer yes, you must attach to this application:
> a) a written statement explaining the circumstances of each administrative or court order,
> b) copies of all relevant documents (i.e. demand letter from the Department of Revenue or Internal Revenue Service, etc.),
> c) a certified copy of each administrative or court order, judgment, and/or lien, and
> d) a certified copy of the official document which demonstrates the resolution of the tax delinquency (i.e. tax compliance letter, etc.).

10. Harris marked "NO" to Background Question No. 4.

11. During its investigation, the Division discovered an outstanding tax obligation that Harris failed to disclose in response to Background Question No. 4:

    a. On July 25, 2014, the St. Charles County Circuit Court entered a judgment against Harris for unpaid state income taxes for the 2012 filing year as follows:

    > The Director of Revenue, under Section 143.902, RSMo, hereby certifies that the following assessment of tax, interest, additions to tax, penalties, and fees have been made and become final [in the amount of $1,308.25]. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.

    Department of Revenue v. Marcus W. Harris, St. Charles Co. Cir. Ct., Case No. 1411-MC04160.

12. Background Question No. 7 of the Application asks in part, "Do you currently have or have you had a child support obligation?"

13. Harris marked "NO" to Background Question No. 7.

14. During its investigation, the Division discovered two (2) child support obligations that Harris failed to disclose in response to Background Question No. 7. The current arrearage of both obligations totals $127,636.87.

    a. Harris owed $8,601.87 in child support arrears to M.K. as of the date he submitted

his Application. Harris was obligated to pay $276.00 per month in child support payments until the order ended on July 29, 2014. As of April 30, 2015, Harris owed $8,216.87 in arrears. *Melissa A. Kline v. Marcus W. Harris*, Cole Co. Cir. Ct., Case No. 1901AO98090.

b. Harris owed $112,875.00 in child support arrears to S.H. as of the date he submitted his Application. Harris is obligated to pay $335.00 per week in child support payments. As of April 30, 2015, Harris owed $119,420.00 in arrears. *Sarah Lateesha Harris v. Marcus Williams Harris*, St. Louis City Cir. Ct., Case No. 0822-FC00675-01.

15. After reviewing Harris's Application, criminal record, tax lien, and child support obligations, Division Special Investigator Andrew Engler ("Special Investigator Engler") sent an inquiry letter to Harris dated October 27, 2014. Said letter requested additional documentation and information about Harris's criminal background, Harris's tax obligation, and Harris's child support obligations. The letter further requested a response by November 16, 2014 and warned Harris that a failure to respond could result in refusal of his Application.

16. The United States Postal Service did not return the October 27, 2014 inquiry letter to the Division, and therefore, it is presumed received by Harris.

17. Harris failed to provide a written response to the Division's October 27, 2014 inquiry letter by November 16, 2014 and failed to demonstrate a reasonable justification for the delay.

18. Special Investigator Engler sent another inquiry letter to Harris dated November 17, 2014. Said letter requested additional documentation and information about Harris's criminal background, Harris's tax obligation, and Harris's child support obligations. Said letter also requested information regarding Harris's incorrect social security number. The letter further requested a response by December 7, 2014 and warned Harris that a failure to respond could result in refusal of his Application.

19. The United States Postal Service did not return the November 17, 2014 inquiry letter to the Division, and therefore, it is presumed received by Harris.

20. Harris failed to provide a written response to the Division's November 17, 2014 inquiry letter by December 7, 2014 and failed to demonstrate a reasonable justification for the delay.

21. It is inferable, and hereby found as fact, that Harris provided a false social security number on his Application to misrepresent to the Director that he had no criminal record, no outstanding tax obligation, and no child support obligations and to improve the likelihood that the Director would issue him a motor vehicle extended service contract ("MVESC") producer license.

22. It is inferable, and hereby found as fact, that Harris failed to disclose his five (5) felony convictions in response to Background Question No. 1 on his Application to misrepresent to the Director that he had no criminal history and to improve the likelihood that the Director would issue him a MVESC producer license.

23. It is inferable, and hereby found as fact, that Harris failed to disclose his outstanding tax obligation in response to Background Question No. 4 on his Application to misrepresent to the Director that he had no outstanding tax obligations and to improve the likelihood that the Director would issue him a MVESC producer license.

24. It is inferable, and hereby found as fact, that Harris failed to disclose his two (2) child support obligations and their arrearages in response to Background Question No. 7 on his Application to misrepresent to the Director that he had no child support obligations and to improve the likelihood that the Director would issue him a MVESC producer license.

CONCLUSIONS OF LAW

25. Section 385.209 RSMo[4] 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;
>
> (3) Obtained or attempted to obtain a license through material misrepresentation or fraud;
>
> * * *
>
> (5) Been convicted of any felony;
>
> * * *
>
> (12) Failed to comply with an administrative or court order imposing a child support obligation;
>
> (13) Failed to comply with any administrative or court order directing

[4] All statutory references are to RSMo (2000) as updated by RSMo (Supp. 2013) unless otherwise noted.

payment of state or federal income tax[.]

26. Title 20 CSR 100-4.100(2)(A) Required Response to Inquiries to the Consumer Affairs Division provides:

> 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.

27. There is a "presum[ption] that a document duly mailed has been received by the addressee." *Johnson v. March*, 376 S.W.3d 26, 31 (Mo. Ct. App. 2012) (internal citations omitted).

28. 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 MVESC producer license but to protect the public.

29. The Director may refuse to issue a MVESC producer license to Harris pursuant to § 385.209.1(2) because Harris failed to adequately respond to two (2) inquiry letters from the Division and failed to provide reasonable justifications for the delays, thereby twice violating 20 CSR 100-4.100(2)(A), a Department regulation.

30. Each violation of a Department regulation is a separate and sufficient ground for refusal pursuant to § 385.209.1(2).

31. The Director may refuse to issue a MVESC producer license to Harris pursuant to § 385.209.1(3) because Harris attempted to obtain a MVESC producer license through material misrepresentation or fraud when he provided a false social security number on his Application.

32. The Director may refuse to issue a MVESC producer license to Harris pursuant to § 385.209.1(3) because Harris attempted to obtain a MVESC producer license through material misrepresentation or fraud when he failed to disclose the following five (5) felony convictions on his Application in response to Background Question No. 1:

    a. *State v. Marcus Harris*, St. Louis Co. Cir. Ct., Case No. 2105R-00049-01 (Three counts of Robbery in the Second Degree, all Class B Felonies);

    b. *State v. Marcus W. Harris*, St. Charles Co. Cir. Ct., Case No. 0811-CR02985-01 (Leaving the Scene of a Motor Vehicle Accident - Injury, Property Damage, or Second Offense, a Class D Felony);

c. *State v. Marcus Harris*, St. Louis Co. Cir. Ct., Case No. 11SL-CR08135-01 (Theft/Stealing (Value of Property or Services Is $500 or More but Less than $25,000), a Class C Felony).

33. The Director may refuse to issue a MVESC producer license to Harris pursuant to § 385.209.1(3) because Harris attempted to obtain a MVESC producer license through material misrepresentation or fraud when he failed to disclose the following outstanding tax obligation on his Application in response to Background Question No. 4:

a. *Department of Revenue v. Marcus W. Harris*, St. Charles Co. Cir. Ct., Case No. 1411-MC04160 (Judgment in the amount of $1,308.25 for unpaid taxes in the 2012 filing year).

34. The Director may refuse to issue a MVESC producer license to Harris pursuant to § 385.209.1(3) because Harris attempted to obtain a MVESC producer license through material misrepresentation or fraud when he failed to disclose the his two (2) child support obligations in response to Background Question No. 7:

a. *Melissa A. Kline v. Marcus W. Harris*, Cole Co. Cir. Ct., Case No. 1901AO98090 (Arrearage of approximately $8,216.87);

b. *Sarah Lateesha Harris v. Marcus Williams Harris*, St. Louis City Cir. Ct., Case No. 0822-FC00675-01 (Arrearage of approximately $119,420.00).

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

36. The Director may refuse to issue a MVESC producer license to Harris pursuant to § 385.209.1(5) because Harris has been convicted of five (5) felonies:

a. *State v. Marcus Harris*, St. Louis Co. Cir. Ct., Case No. 2105R-00049-01 (Three counts of Robbery in the Second Degree, all Class B Felonies);

b. *State v. Marcus W. Harris*, St. Charles Co. Cir. Ct., Case No. 0811-CR02985-01 (Leaving the Scene of a Motor Vehicle Accident - Injury, Property Damage, or Second Offense, a Class D Felony);

c. *State v. Marcus Harris*, St. Louis Co. Cir. Ct., Case No. 11SL-CR08135-01 (Theft/Stealing (Value of Property or Services Is $500 or More but Less than $25,000), a Class C Felony).

37. Each felony conviction is a separate and sufficient ground for refusal pursuant to § 385.209.1(5).

38. The Director may refuse to issue a MVESC producer license to Harris pursuant to

§ 385.209.1(12) because Harris failed to comply with two (2) administrative or court orders imposing child support obligations:

a. *Melissa A. Kline v. Marcus W. Harris*, Cole Co. Cir. Ct., Case No. 1901AO98090 (Arrearage of approximately $8,216.87);

b. *Sarah Lateesha Harris v. Marcus Williams Harris*, St. Louis City Cir. Ct., Case No. 0822-FC00675-01 (Arrearage of approximately $119,420.00).

39. Each failure to comply with an administrative or court order imposing a child support obligation is a separate and sufficient ground for refusal pursuant to § 385.209.1(12).

40. The Director may refuse to issue a MVESC producer license to Harris pursuant to § 385.209.1(13) because Harris failed to comply with an administrative or court order directing payment of state income taxes:

a. *Department of Revenue v. Marcus W. Harris*, St. Charles Co. Cir. Ct., Case No. 1411-MC04160 (Judgment in the amount of $1,308.25 for unpaid state income taxes in the 2012 filing year).

41. The Director has considered Harris's history and all of the circumstances surrounding Harris's Application. Issuing Harris a MVESC producer license is not in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue a MVESC producer license to Harris.

42. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that **Marcus William Harris's** Application for a Motor Vehicle Extended Service Contract Producer License is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 12th **DAY OF** MAY **2015.**

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 13th day of May, 2015 a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following addresses:

Marcus William Harris
2609 Eastview
Belleville, Illinois 62221

Tracking No.: 1Z0R15W84291762270

Marcus William Harris
5735 Albia Terrace
St. Louis, Missouri 63136

Tracking No.: 1Z0R15W84292241483

Kathryn Latimer, Paralegal
Missouri Department of Insurance, Financial
Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: 573.751.2619
Facsimile: 573.526.5492
Email: kathryn.latimer@insurance.mo.gov