



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:)
)
MICHAEL ANTHONY PRENDARGAST,) Case No. 150122040C
)
Applicant.)

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On February 24, 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 Michael Anthony Prendargast. 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. Michael Anthony Prendargast ("Prendargast") is a Florida resident with a residential address of record of 925 North J Street, West Palm Beach, Florida 33460.
2. On April 14, 2014, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Prendargast'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. Prendargast signed the Application in the “Applicant’s Certification and Attestation” section under oath and before a notary public.
5. 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 and 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 judgement[.]

6. Prendargast answered “NO” to Background Question No. 1.
7. During its investigation, the Consumer Affairs Division (“Division”) of the Department discovered the following criminal history that Prendargast failed to disclose on his Application:
 - a. On October 2, 2007, Prendargast pled guilty to Burglary, a Second Degree Felony, in violation of Ga. Code Ann. § 16-7-1 and Possession of Tools for the Commission of Crime, a Felony, in violation of Ga. Code § 16-7-20. *State of Georgia v. Michael Prendargast*, Fulton Co. Super. Ct., Case No. 07SC60227.
 - b. On March 5, 2009, Prendargast pled guilty to Possession of Cocaine, a Third Degree Felony, in violation of Fla. Stat. § 893.13(6)(a) and Possession of

Marijuana Less Than 20 Grams, a First Degree Misdemeanor, in violation of Fla. Stat. § 893.13(6)(b). *State of Florida v. Michael Prendargast*, Palm Beach Co. Cir. Ct., Case No. 07CF003270AMB.

- c. On January 5, 2010, Prendargast pled guilty to Possession of Oxycodone, a Third Degree Felony, in violation of Fla. Stat. § 893.13(6)(a) and Possession of Marijuana Less Than 20 Grams, a First Degree Misdemeanor, in violation of Fla. Stat. § 893.13(6)(b). *State of Florida v. Michael Anthony Prendargast*, Palm Beach Co. Cir. Ct., Case No. 2009CF012900AMB.
 - d. On June 27, 2011, Prendargast pled guilty with adjudication of guilt withheld¹ to Possession of Marijuana Less Than 20 Grams, a Second Degree Misdemeanor, in violation of Fla. Stat. § 893.13(6)(b). *State of Florida v. Michael Anthony Prendargast*, Palm Beach Co. Cir. Ct., Case No. 2011 MM007912BMB.
8. After reviewing Prendargast's Application and his criminal record, Special Investigator Andrew Engler ("Special Investigator Engler") with the Division, sent an inquiry letter to Prendargast dated April 30, 2014. Said letter requested additional documentation and information about Prendargast's criminal background. The letter further requested a response by May 20, 2014 and warned Prendargast that a failure to respond could result in refusal of his Application.
 9. The United States Postal Service did not return the April 30, 2014 inquiry letter to the Division, and therefore, it is presumed received.
 10. Prendargast failed to provide a written response to the Division's April 30, 2014 inquiry letter by May 20, 2014 and failed to demonstrate a reasonable justification for the delay.
 11. Special Investigator Engler sent another inquiry letter to Prendargast dated May 20, 2014. Said letter requested additional documentation and information about Prendargast's criminal background. The letter further requested a response by June 9, 2014 and warned Prendargast that a failure to respond could result in refusal of his Application.
 12. The United States Postal Service did not return the May 20, 2014 inquiry letter to the Division, and therefore, it is presumed received.

¹ A judgment with adjudication of guilt withheld in Florida is the functional equivalent of a suspended imposition of sentence in Missouri. See George E. Tragos & Peter A. Sartes, *Withhold of Adjudication: What Everyone Needs to Know*, Fla. B.J., February 2008, at 48.

13. Prendargast failed to provide a written response to the Division's May 20, 2014 inquiry letter by June 9, 2014 and failed to demonstrate a reasonable justification for the delay.
14. It is inferable, and hereby found as fact, that Prendargast failed to disclose his six (6) convictions and one (1) guilty plea with adjudication withheld in 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 motor vehicle extended service contract ("MVESC") producer license.

CONCLUSIONS OF LAW

15. Section 385.209 RSMo (Supp. 2013)² 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) 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[.]

16. Title 20 CSR 100-4.100-4(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

² All statutory references are to RSMo (2000) as updated by RSMo (Supp. 2013) unless otherwise noted.

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 “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).
18. 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.
19. The Director may refuse to issue a MVESC producer license to Prendargast under § 385.209.1(2) because Prendargast failed to adequately respond to two inquiry letters from the Division and failed to provide a reasonable justification for the delays, thereby violating 20 CSR 100-4(2)(A), a department regulation.
20. Each failure to adequately respond to a Division inquiry letter is a separate and sufficient ground for refusal pursuant to § 385.209.1(2).
21. The Director may refuse to issue a MVESC producer license to Prendargast under § 385.209.1(3) because Prendargast attempted to obtain a MVESC producer license through material misrepresentation or fraud. Prendargast failed to disclose his four (4) felony convictions, two (2) misdemeanor convictions, and one (1) guilty plea with adjudication withheld to misrepresent to the Director that he had no convictions and improve the likelihood that the Director would approve his Application and issue him a MVESC producer license.
22. 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).
23. The Director may refuse to issue a MVESC producer license to Prendargast under § 385.209.1(5) because Prendargast has been convicted of four (4) felonies:
 - a. Burglary, a Second Degree Felony. *State of Georgia v. Michael Prendargast*, Fulton Co. Super. Ct., Case No. 07SC60227;
 - b. Possession of Tools for the Commission of Crime, a Felony. *Id.*;
 - c. Possession of Cocaine, a Third Degree Felony. *State of Florida v. Michael Prendargast*, Palm Beach Co. Cir. Ct., Case No. 07CF003270AMB; and
 - d. Possession of Oxycodone, a Third Degree Felony. *State of Florida v. Michael*

Anthony Prendargast, Palm Beach Co. Cir. Ct., Case No. 2009CF012900AMB.

- 24. Each felony conviction is a separate and sufficient ground for refusal pursuant to § 385.209.1(5).
- 25. The Director has considered Prendargast's history and all of the circumstances surrounding Prendargast's Application. Granting Prendargast 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 Prendargast.
- 26. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the Motor Vehicle Extended Service Contract Producer License application of Michael Anthony Prendargast is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 26TH DAY OF FEBRUARY, 2015.




JOHN M. HUFF
DIRECTOR

NOTICE

TO: Applicant and any unnamed persons aggrieved by this Order:

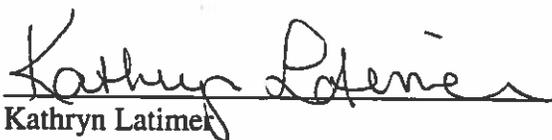
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send 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 27th day of February, 2015 a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following address:

Michael Anthony Prendargast
925 North J Street
Lake Worth, Florida 33460

Tracking No. 1Z0R15W84298410002



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