State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
NICHOLAS ANTHONY ROACH,	)	**Case No. 160202063C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On March 10, 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 Nicholas Anthony Roach. 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. Nicholas Anthony Roach ("Roach") is a Missouri resident with a residential address of 1454 Cochise Dr., O'Fallon, Missouri 63366.

2. On November 6, 2015, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Roach'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 October 26, 2015, Roach 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.
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> "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. Roach answered "No" in response to Background Question No. 1.

7. Contrary to Roach's answer to Background Question No. 1, the Consumer Affairs Division's ("Division") investigation into Roach's Application revealed the following criminal history:

   a. On February 22, 2011, Roach pled guilty to Property Damage 2nd Degree, a Class B Misdemeanor, in violation of § 569.120 RSMo.[1] The court suspended the

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

imposition of sentence and placed Roach on two (2) years' supervised probation. *State v. Nicholas A. Roach*, St. Charles Co. Cir. Ct., Case No. 1011-CR02977.

b. On September 15, 2014, Roach pled guilty to and was convicted of Unlawful Use of Drug Paraphernalia, a Class A Misdemeanor, in violation of § 195.233 RSMo. The court ordered Roach to pay a $200.00 fine. *State v. Nicholas Anthony Roach*, St. Charles Co. Cir. Ct., Case No. 1311-CR02331.

8. On November 10, 2015, Special Investigator Andrew Engler, with the Division, sent an inquiry letter to Roach at his address of record by first class mail via the United States Postal Service. Said inquiry letter requested a statement explaining the circumstances surrounding Roach's criminal history and why he failed to disclose it on his Application, as well as certified copies of the Information, Complaint, Judgment, or other charging documents in the criminal matters. The inquiry letter further requested a response within twenty days, and warned Roach that a failure to respond could result in the Department refusing to issue him a motor vehicle extended service contract ("MVESC") producer license.

9. The United States Postal Service did not return the November 10, 2015 inquiry letter to the Division, and therefore it is presumed received by Roach.

10. Roach failed to respond to the Division's November 10, 2015 inquiry letter and failed to demonstrate a reasonable justification for the delay.

11. On December 4, 2015, Special Investigator Engler sent a second inquiry letter to Roach at his address of record by first class mail via the United States Postal Service. Said inquiry letter requested the same information and documentation previously requested in the November 10, 2015 inquiry letter. The inquiry letter further requested a response within twenty days, and warned Roach that a failure to respond could result in the Department refusing to issue him a MVESC producer license.

12. The United States Postal Service did not return the December 4, 2015 inquiry letter to the Division, and therefore it is presumed received by Roach.

13. Roach failed to respond to the Division's December 4, 2015 inquiry letter and failed to demonstrate a reasonable justification for the delay.

14. It is inferable, and hereby found as fact, that Roach falsely answered "No" to Background Question No. 1 in order to misrepresent to the Director that he had no criminal history and, accordingly, in order to improve the chances the Director would approve his Application and issue him a MVESC producer license.

CONCLUSIONS OF LAW

15. Section 385.209 RSMo (Supp. 2013)[2] states, 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; [or]
>
> (3) Obtained or attempted to obtain a license through material misrepresentation or fraud[.]

16. Title 20 CSR 100-4.100(2)(A) Required Response to Inquiries by 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.

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. 2000) (internal citations omitted).

18. The Director may refuse to issue Roach a MVESC producer license pursuant to § 385.209.1(2) because Roach twice violated a rule of the Director, namely 20 CSR 100-4.100(2)(A), in that Roach failed to respond to two (2) inquiry letters from the Division and failed to demonstrate reasonable justification for the delays.

19. Each violation of a rule of the Director is a separate and sufficient ground for refusal pursuant to § 385.209.1(2).

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

20. The Director also may refuse to issue Roach a MVESC producer license pursuant to § 385.209.1(3) because he attempted to obtain a license through material misrepresentation or fraud in that Roach falsely answered "No" to Question No. 1 and failed to disclose the following criminal history:

   a. Suspended imposition of sentence for Property Damage 2nd Degree, a Class B Misdemeanor. *State v. Nicholas A. Roach*, St. Charles Co. Cir. Ct., Case No. 1011-CR02977.

   b. Unlawful Use of Drug Paraphernalia, a Class A Misdemeanor. *State v. Nicholas Anthony Roach*, St. Charles Co. Cir. Ct., Case No. 1311-CR02331.

21. Each instance in which Roach attempted to obtain a license through material misrepresentation or fraud is a separate and sufficient ground for refusal pursuant to § 385.209.1(3).

22. By being untruthful on his Application and failing to respond to inquiries from the Division, Roach has shown a disregard for the regulator from whom he seeks a license.

23. The Director has considered Roach's history and all of the circumstances surrounding his Application. Granting Roach 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 Roach.

24. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that **Nicholas Anthony Roach's** motor vehicle extended service contract producer license application is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 17th DAY OF MARCH, 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 11th day of March, 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:

Nicholas Anthony Roach
1454 Cochise Drive
O'Fallon, Missouri 63366

Tracking No. 1Z0R15W84295216817

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