



## State of Missouri

### DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

NATHAN R. CLAY,

Applicant.

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Case No. 184703

### **ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE**

On June 12, 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 Nathan R. Clay. 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. Nathan R. Clay, ("Clay") is a Missouri resident with a residential address of record of 11 Queensboro Drive, St. Peters, Missouri, 63376.
2. On December 24, 2012, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Clay's Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. Background Question No. 1 of the Application asks, in part, 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[.]

4. Clay marked “Yes” to Question No. 1.
5. With his Application, Clay included a certified copy of the Judgment of Sentence in a case in which Clay was convicted in 2007 in Crawford County, Michigan, of Felonious Assault, a felony under § 750.82 of the Michigan Compiled Laws, and was sentenced to 365 days in jail. *State of Michigan v. Nathan Robert Clay*, 46<sup>th</sup> Jud. Dist. Cir. Ct., Crawford Co., Michigan, No. 07-002575-FH-A.
6. Clay also included a written statement with his Application. The part of that statement dealing with his answer to Background Question No. 1 read, verbatim in its entirety:

Background Information, Question 1:

Felonious Assault- Altercation with police turned out with me pleading to felonious assault.

7. Clay did not disclose any further criminal history in his Application and did not provide any further statement regarding his conviction of Felonious Assault.
8. Department investigation revealed that Clay had also been convicted in 2006 in Wayne County, Michigan, of Stealing a Financial Transaction Device, a felony under § 750.157n of the Michigan Compiled Laws, and was sentenced to three (3) months in jail. *State of Michigan v. Nathan Robert Clay*, 83<sup>rd</sup> Jud. Dist. Cir. Ct., Roscommon Co., Michigan, No. 06-005173-FH-A.
9. On January 16, 2013, in response to a request from the Department, Clay provided a written explanation concerning the 2006 conviction and copies of certified documents from that case.
10. Clay’s January 16 explanation stated, in part:
  - a. “I was 19 years old at the time. I was in the wrong place at the wrong time really. A friend I used to know had stolen a purse from a vehical at a party. He had kept all cash and cards and had attempted to use the card in local gas station. Police viewed cameras, seen Mr. Labean get into my truck. When

they found me, they searched truck and found card. I was unaware that it was in my truck. I explained what had happened and what it boiled down to was guilt by association” and “I was a kid hanging out with the wrong people”; but also:

b. “I’m not saying it wasn’t wrong because it was, I am still ashamed today. I ask that you take into consideration that nothing like that had happened before 2006 and certenl[y]<sup>1</sup> hasn’t happened since.”

11. In his January 16 explanation, Clay also noted that he was “misled ... to believe that if I pled guilty and completed my probationary period that it would be removed from my record, obviously not.”
12. The matter in *State of Michigan v. Nathan Robert Clay*, 83<sup>rd</sup> Jud. Dist. Cir. Ct., Roscommon Co., Michigan, No. 06-005173-FH-A was initiated by the Prosecuting Attorney of Roscommon County, Michigan, and in that matter Clay was found guilty upon his plea of guilty.

### CONCLUSIONS OF LAW

13. 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:

\* \* \*

    - (3) Obtained or attempted to obtain a license through material misrepresentation or fraud;

\* \* \*
    - (5) Been convicted of any felony;

\* \* \*
    - (7) Been found in violation of law by a court of competent jurisdiction in an action instituted by any officer of any state or the United States in any matter involving motor vehicle extended service contracts, financial services, investments, credit, insurance, banking, or finance [.]

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<sup>1</sup> Clay’s handwritten statement was copied so that the end of this word was apparently cut off.

14. The Stealing a Financial Transaction Device count, to which Clay pled guilty, was set out in Section 750.157n(1) of the Michigan Compiled Laws, which read:

(1) A person who steals, knowingly takes, or knowingly removes a financial transaction device from the person or possession of a deviceholder, or who knowingly retains, knowingly possesses, knowingly secretes, or knowingly uses a financial transaction device without the consent of the deviceholder, is guilty of a felony.

Mich. Comp. Laws Ann. § 750.157n(1) (West 2004).

15. 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.
16. Clay may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(5) because he has been convicted of two felonies:
- a. *State of Michigan v. Nathan Robert Clay*, 83<sup>rd</sup> Jud. Dist. Cir. Ct., Roscommon Co., Michigan, No. 06-005173-FH-A (Stealing a Financial Transaction Device, a felony in violation of § 750.157n(1) of the Michigan Compiled Laws); and
  - b. *State of Michigan v. Nathan Robert Clay*, 46<sup>th</sup> Jud. Dist. Cir. Ct., Crawford Co., Michigan, No. 07-002575-FH-A (Felonious Assault, a felony in violation of § 750.82 of the Michigan Compiled Laws).
17. Clay also may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(7) because he was found in violation of law by a court of competent jurisdiction in an action instituted by any officer of any state in a matter involving financial services, credit, banking, and/or finance, in that in *State of Michigan v. Nathan Robert Clay*, 83<sup>rd</sup> Jud. Dist. Cir. Ct., Roscommon Co., Michigan, No. 06-005173-FH-A Clay was found guilty of Stealing a Transaction Device by the Roscommon County Circuit Court in Roscommon County, Michigan, in a criminal action instituted by the State of Michigan through the Prosecuting Attorney of Roscommon County.
18. Clay also may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(3) because he attempted to obtain a motor vehicle extended service contract producer license through material misrepresentation, in that Clay misrepresented the extent and nature of his criminal history when he failed to disclose on his Application that he had been convicted of the felony of Stealing a Financial Transaction Device, which conviction is material to the Director's licensure decision.

19. The Director has considered Clay's history and all of the circumstances surrounding Clay's Application. Granting Clay 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 Clay.
20. This order is in the public interest.

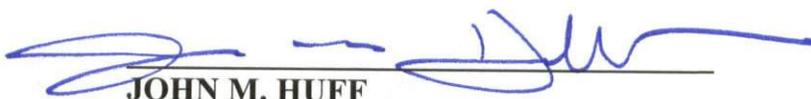
**ORDER**

**IT IS THEREFORE ORDERED** that the motor vehicle extended service contract producer license application of **Nathan R. Clay** is hereby **REFUSED**.

**SO ORDERED.**

WITNESS MY HAND THIS 13<sup>TH</sup> DAY OF JUNE, 2013.



  
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**JOHN M. HUFF**  
**DIRECTOR**

**NOTICE**

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

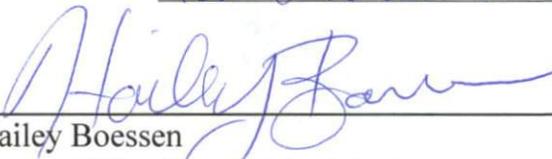
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send 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 14 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:

Nathan R. Clay  
11 Queensboro Drive  
St. Peters, Missouri, 63376

Certified No. 7009 3410 0001 9255 0837

  
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