State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
NICHOLAS STEVEN KOTANICH,	)	**Case No. 160712345C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On October 28, 2016, 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 Nicholas Steven Kotanich. After reviewing the Petition, Investigative Report, and additional relevant documents, the Director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Nicholas Steven Kotanich ("Kotanich") is a Missouri resident with a residential address of 1210 Chargene St., St. Charles, Missouri 63301 and a business address of record of 3902 S. Old Hwy. 94, St. Charles, Missouri 63304.

2. On September 11, 2015, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Kotanich'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:

> 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. Kotanich accepted the "Applicant's Certification and Attestation" section by signing the Application before a notary public.

5. Kotanich answered "No" to Background Question No. 1 of the Application which asks, in relevant part, "Have you ever been convicted of a crime, had a judgement withheld or deferred, or are you currently charged with committing a crime?"

6. Contrary to Kotanich's response to Background Question No. 1 of the Application, an investigation by Special Investigator Karen Crutchfield ("Special Investigator Crutchfield") of the Consumer Affairs Division ("Division") of the Department revealed that:

   a. On September 4, 2009, Kotanich pled guilty to, and was convicted of, Driving While Intoxicated – Persistent Offender, a Class D Felony, in violation of 577.010 RSMo.[1] The court sentenced Kotanich to three (3) years' incarceration, but suspended the execution of sentence and placed Kotanich on five (5) years' supervised probation. *State v. Nicholas Kotanich*, St. Charles Co. Cir. Ct., Case No. 0911-CR02445-01.

7. Background Question No. 7 of the Application asks the following:

   Do you have a child support obligation in arrearage?

   If you answer yes:
   a) by how many months are you in arrearage? _____ months
   b) are you currently subject to and in compliance with any repayment agreement?
   c) are you the subject of a child support related subpoena/warrant? (If you answer yes, provide documentation showing proof of current payments or an approved repayment plan from the appropriate state child support agency.)

8. Kotanich answered "Yes" in response to Background Question No. 7 of the Application and disclosed fourteen (14) months of arrears. Kotanich is obligated to pay $300.00 per month in child support. *Nicholas Steven Kotanich v. Stacy L. Richard*, St. Charles Co. Cir. Ct., Case No. 0911-FC02489. Records obtained by the Department from the Missouri Automated Child Support System indicate that as of October 24, 2016, Kotanich is $3,803.61 in child support arrears. *Id.*

9. On May 4, 2016, Special Investigator Crutchfield sent an inquiry letter to Kotanich at his residential address. The inquiry letter requested a statement from Kotanich explaining his failure to disclose his felony DWI conviction, the circumstances surrounding that conviction, and certified court records. Additionally, the inquiry

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

letter requested that Kotanich provide his child support payment history for the past twenty-four (24) months. The inquiry letter further requested a response within twenty (20) days.

10. The United States Postal Service did not return the May 4, 2016 inquiry letter to the Division as undeliverable, and therefore it is presumed received by Kotanich.

11. Kotanich failed to respond to the Division's May 4, 2016 inquiry letter, and failed to demonstrate a reasonable justification for the delay.

12. It is inferable, and hereby found as fact, that Kotanich failed to disclose his criminal record on his Application in order to misrepresent to the Director that he had no such criminal history, and accordingly, in order to improve the chances that the Director would approve his Application and issue him a motor vehicle extended service contract ("MVESC") producer license.

CONCLUSIONS OF LAW

13. Section 385.209 RSMo[2] provides, 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:
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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; [or]
>
> * * *

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

> (12) Failed to comply with an administrative or court order imposing a child support obligation[.]

14. Title 20 CSR 100-4.100(2)(A) provides, in relevant part:

> 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.

15. "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. E.D. 2000) (internal citation omitted).

CAUSE FOR ORDER TO REFUSE TO ISSUE A MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

16. The Director may refuse to issue a MVESC producer license to Kotanich under § 385.209.1(2) because Kotanich failed to adequately respond to an inquiry letter from the Division and failed to demonstrate a reasonable justification for the delay, thereby violating 20 CSR 100-4.100(2)(A), a rule of the Director.

17. The Director may refuse to issue Kotanich a MVESC producer license under § 385.209.1(3) because Kotanich attempted to obtain a MVESC producer license through material misrepresentation or fraud by failing to disclose his felony DWI conviction in his Application in order to misrepresent his criminal history to the Director, and, accordingly, in order to improve the chances that the Director would approve his Application and issue him a MVESC producer license.

18. The Director may refuse to issue Kotanich a MVESC producer license under § 385.209.1(5) because Kotanich has been convicted of a felony:

    a. Driving While Intoxicated – Persistent Offender, a Class D Felony. *State v. Nicholas Kotanich*, St. Charles Co. Cir. Ct., Case No. 0911-CR02445-01.

19. The Director may refuse to issue Kotanich a MVESC producer license under § 385.209.1(12) because Kotanich has failed to comply with an administrative or court order imposing a child support obligation. *Nicholas Steven Kotanich v. Stacy L. Richard*, St. Charles Co. Cir. Ct., Case No. 0911-FC02489.

20. For all the reasons given in this Petition, the Director should consider Kotanich's history and all of the circumstances surrounding Kotanich's Application and exercise his discretion to refuse to issue a MVESC producer license to Kotanich.

21. An order refusing to issue Kotanich a MVESC producer license would be in the public interest.

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

23. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Nicholas Steven Kotanich** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 2nd **DAY OF** November, **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.

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of November, 2016, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required service, at the following address:

Nicholas Steven Kotanich
1210 Chargene St.
St. Charles, Missouri 63301

No. 1Z0R15W84295133899

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