State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
ODIS BUCKLEY,	)	**Case No. 14-1110728C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE A MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On January 2, 2015, the Consumer Affairs Division ("Division") submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract producer license to Odis Buckley. 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. Odis Buckley ("Buckley") is a Missouri resident with a residential address of 2823 Lynhurst, St. Louis, MO 63114.

2. On August 19, 2014, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Buckley's "Application for Motor Vehicle Extended Service Contract Producer License" ("Application").

3. The "Applicant's Certification and Attestation" section of the Application reads, in relevant part, as follows:

   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. Buckley signed the Application under oath and before a notary.

5. Background Question No. 4 of the Application asks, in relevant part:

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?

6. Buckley answered "No" to Background Question No. 4.

7. The Division's investigation revealed that, in fact, Buckley had outstanding tax obligations to the State of Missouri for tax years 2006 and 2007.

8. The St. Louis County Circuit Court entered judgment against Buckley upon the Department of Revenue's certification of individual income tax, interest and additions to the tax, totaling $605.63. *Department of Revenue v. Odis J. Buckley*, St. Louis Co. Cir. Ct., Case No. 10SL-MC02463. The judgment remains unsatisfied.

9. On August 26, 2014, Andrew Engler ("Engler"), Special Investigator with the Division, sent an inquiry letter to Buckley via first class mail, postage prepaid, at Buckley's residential address, 2823 Lynhurst, St. Louis, MO 63114. In it, Engler indicated that the Division's investigation revealed that the Missouri Department of Revenue had filed a tax lien against Buckley. Engler asked Buckley to provide the current status of the lien and evidence of either a repayment agreement or a letter of compliance. Engler requested a response on or before September 15, 2014.

10. The United States Postal Service did not return Engler's August 26, 2014 inquiry letter to the Division as undeliverable and it is presumed delivered.

11. Buckley did not timely respond to Engler's August 26, 2014 letter and he did not demonstrate reasonable justification for delay.

12. Again on September 15, 2014, Engler sent another inquiry letter to Buckley via first class mail, postage prepaid. In it, Engler reiterated that the Division's investigation revealed that the Missouri Department of Revenue had filed a tax lien against Buckley. Engler again asked Buckley to provide the current status of the lien and evidence of either a repayment agreement or a letter of compliance. Engler requested a response on or before October 5, 2014.

13. The United States Postal Service did not return Engler's September 15, 2014 inquiry letter to the Division as undeliverable and it is presumed delivered.

14. On September 22, 2014, Buckley contacted Engler by phone and left a voice mail message indicating that he (Buckley) was unaware of any tax lien filed against him. Engler responded by leaving Buckley a voice mail directing Buckley to speak with

someone at the Department of Revenue and provide a letter of compliance to the Department regarding his tax situation.

15. To date, Buckley has not provided a letter of compliance showing that he has resolved his tax issues with the State of Missouri.

16. To date, Buckley has not mailed an adequate response to the September 15, 2014 inquiry, nor has he demonstrated a reasonable justification for delay.

17. Background Question No. 7 of the Application reads as follows:

Do you currently have or have you had a child support obligation?

If you answer yes:
a) are you in arrearage?
b) by how many months are you in arrearage? _____ months
c) what is the total amount of your arrearage? _____
d) are you currently subject to a repayment agreement to cure the arrearage? (If you answer yes, provide documentation showing an approved repayment plan from the appropriate state child support agency.)
e) are you in compliance with said repayment agreement? (If you answer yes, provide documentation showing proof of current payments from the appropriate state child support agency.)
f) 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.)
g) have you ever been convicted of a misdemeanor or felony for failure to pay child support?

18. Buckley answered "No" to Background Question No. 7.

19. The Division's investigation revealed that, in fact, Buckley has legal obligations to pay child support, as follows:

a. Buckley is required to pay $380.00 per month for support of one child, D.C. *Missouri Family Support Division – Child Support Enforcement, et al. v. Odis J. Buckley et al.*, St. Louis Co. Cir. Ct., Case No. 09SL-DR02795. This order has been in effect since August 2009. As of December 18, 2014, Buckley was $11,269.81 in arrears for this case.

b. Buckley is required to pay $364.00 per month for one child, D.B. *State v. Missouri, Division of Family Services, et al. v. Odis Jamar Buckley*, St.

Louis Co. Cir. Ct., Case No. 09SL-CR02456. This order has been in effect since January 2008. As of the December 18, 2014, Buckley was $14,144.31 in arrears for this case.

20. It is inferable, and hereby found as fact, that Buckley failed to disclose his child support obligations and arrearages in order to improve the chances that the Director would issue a license to him.

CONCLUSIONS OF LAW

21. Section 385.209.1, RSMo Supp. 2014,[1] provides:

> 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;
>
> * * *
>
> (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 payment of state or federal income tax[.]

22. 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

[1] All further statutory references are to RSMo Supp. 2014 unless otherwise indicated.

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.

23. Under Missouri law, when a letter is duly mailed by first class mail, there is a rebuttable presumption that the letter was delivered to the addressee in the due course of the mails. *Hughes v. Estes*, 793 S.W.2d 206, 209 (Mo. App. S.D. 1990).

24. 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 motor vehicle extended service contract ("MVESC") producer licenses, but to protect the public.

25. Buckley may be refused an MVESC producer license under § 385.209.1(2) because Buckley violated a rule of the Director, specifically 20 CSR 100-4.100(2)(A). Buckley failed to timely or adequately respond to two written inquiries from the Division, mailed on August 26, 2014 and September 15, 2014. Buckley failed to demonstrate reasonable justification for any delay.

26. Each violation of 20 CSR 100-4.100(2)(A) constitutes a separate and sufficient ground for the Director to refuse to issue Buckley an MVESC producer license under § 385.209.1(2).

27. Buckley may be refused an MVESC producer license under § 385.209.1(3) because Buckley attempted to obtain a license through material misrepresentation or fraud. In his Application, Buckley answered "No" in response to Background Question No. 7 regarding child support. But the Division's investigation revealed two separate child support orders. *Missouri Family Support Division – Child Support Enforcement, et al. v. Odis J. Buckley et al.*, St. Louis Co. Cir. Ct., Case No. 09SL-DR02795; *State of Missouri, Division of Family Services, et al. v. Odis Jamar Buckley*, St. Louis Co. Cir. Ct., Case No. 09SL-DR02456. As of mid-December 2014, Buckley was $11,269.81 in arrears in one case, and $14,144.31 in arrears in the other case, for a total arrearage of $25,414.12.

28. Buckley may be refused an MVESC producer license under § 385.209.1(12) because Buckley failed to comply with an administrative or court order imposing a child support obligation. As noted, Buckley owes a total of $25,414.12 in child support, in two separate cases. *Missouri Family Support Division – Child Support Enforcement, et al. v. Odis J. Buckley et al.*, St. Louis Co. Cir. Ct., Case No. 09SL-DR02795; *State of Missouri, Division of Family Services, et al. v. Odis Jamar Buckley*, St. Louis Co. Cir. Ct., Case No. 09SL-DR02456.

29. Each violation of an administrative or court order imposing a child support obligation constitutes a separate and sufficient ground for the Director to refuse to issue Buckley an MVESC producer license under § 385.209.1(12).

30. Buckley may be refused an MVESC producer license under § 385.209.1(13) because Buckley failed to comply with any administrative or court order directing payment of state income tax, specifically, the $605.63 tax judgment in *Department of Revenue v. Odis J. Buckley*, St. Louis Co. Cir. Ct., Case No. 10SL-MC02463.

31. The above-described instances are grounds upon which the Director may refuse to issue Buckley an MVESC producer license. Buckley has failed to timely or adequately respond to this state's regulator, he has failed to comply with orders regarding tax and child support, and he failed to disclose his child support obligations and arrearages in order to improve his chances of licensure through such concealment.

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

33. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the MVESC producer license Application of **Odis Buckley** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 7th DAY OF JANUARY, 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 8th day of January, 2015, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, with signature required, at the following address:

Odis Buckley
2823 Lynhurst
St. Louis, Missouri 63114

Tracking No. 1Z0R15W84296249683

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