State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
KENNETH O'TOOLE,	)	**Case No. 171844**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On February 27, 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 Kenneth O'Toole. 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. Kenneth O'Toole, ("O'Toole") is a Missouri resident with a residential address of record of 68 Devondale Place, St. Peters, Missouri, 63376.

2. On April 18, 2012, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received O'Toole's incomplete Application for Motor Vehicle Extended Service Contract Producer License ("Application"). Upon the request of the Department's Licensing Section, O'Toole provided additional information on May 2, 2012, after which point the Application was treated by the Department as complete solely for purposes of processing the 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. O'Toole signed the Application in the "Applicant's Certification and Attestation" section

under oath before a notary.

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 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 judgement[.]

6. O'Toole marked "Yes" to Question No. 1. With his Application, O'Toole included uncertified copies of an Order of Probation and a Judgment and Sentence, both from *State of Missouri v. Kenneth O'Toole*, St. Charles Co. Cir. Ct., 0811-CR02475, a 2008 case in which O'Toole pled guilty to the Class A Misdemeanor of Domestic Assault in the 3rd Degree in the Circuit Court of St. Charles County, Missouri.

7. O'Toole did not disclose any other criminal history in his Application as originally submitted on April 18, 2012.

8. Upon request of the Department's Licensing Section, O'Toole provided a brief "Explanation of charge" that appears to relate to *State of Missouri v. Kenneth O'Toole*, St. Charles Co. Cir. Ct., 0811-CR02475. The statement reads, verbatim in its entirety:

> Explanation of charge
>
> My wife and I had a party at our house one evening. I had allergies very bad & was taking medication for them.
>
> After too many drinks I fell asleep on the couch. Then after some time

went by my wife came to wake me up. When she did I just started swinging my arms and she got hit. I had been having strange dreams. I guess because of the alcohol & Allergy medicine.
Someone at the party called the police & the state charged me with assault.

9. O'Toole did not disclose any other criminal history in his May 2, 2012 follow up to his Application.

10. Contrary to O'Toole's sworn statements and attestation in his Application, further investigation of O'Toole's Application revealed several more criminal cases that should have been disclosed on his Application:

    a. On May 27, 2010, O'Toole pled guilty in the Circuit Court of St. Charles County, Missouri, to the Class A Misdemeanor of Domestic Assault in the Third Degree. The court suspended execution of its sentence and placed O'Toole on two years' probation. O'Toole's probation was still in effect at the time he filed his Application without disclosing this conviction. *State of Missouri v. Kenneth O'Toole*, St. Charles Co. Cir. Ct., No. 1011-CR01365.

    b. On or about November 21, 2003, O'Toole pled guilty in the Circuit Court of Jefferson County, Missouri, to the Class A Misdemeanor of Domestic Assault in the Third Degree. The court suspended imposition of its sentence and placed O'Toole on two years' probation. *State of Missouri v. Kenneth O'Toole*, Jefferson Co. Cir. Ct., No. CR303-3626.

    c. On or about November 21, 1994, O'Toole pled guilty in two separate cases in the Circuit Court of St. Francois County, Missouri, to two Class A Misdemeanor counts of Passing a Bad Check. In each case, the court suspended execution of its sentence and placed O'Toole on two consecutive one-year periods of probation. *State of Missouri v. Kenneth Ronald O'Toole*, St. Francois Co. Cir. Ct., No. 24R079400797; *State of Missouri v. Kenneth Ronald O'Toole*, St. Francois Co. Cir. Ct., No. 24R079401831.

    d. On or about December 19, 1985, O'Toole pled guilty in the Circuit Court of St. Louis County, Missouri, to the Class C Felony of Receiving Stolen Property. The court suspended imposition of its sentence and placed O'Toole on two years' probation. *State of Missouri v. Kenneth Ronald O'Toole*, St. Louis Co. Cir. Ct, No. 533364.

    e. On or about October 18, 1985, O'Toole pled guilty in the Circuit Court of St. Louis County, Missouri, to the Class C Felony of Burglary in the Second Degree and the Class A Misdemeanor of Stealing Under One Hundred Fifty Dollars. The court suspended imposition of its sentence and placed O'Toole on two years' probation. *State of Missouri v. Kenneth Ronald O'Toole*, St. Louis Co. Cir. Ct., No. 531475.

11. O'Toole's undisclosed criminal history is too extensive and recent for his failure to disclose more than one case to have been inadvertent. Additionally, at the time he filed his Application, O'Toole was still on probation for his 2010 Domestic Assault conviction, making it still more unlikely that his failure to disclose that conviction was inadvertent.

12. On May 7, 2012, Department investigator Karen Crutchfield sent an inquiry letter to O'Toole, requesting explanation of O'Toole's criminal history and his failure to disclose that criminal history.

13. O'Toole did not respond to the May 7, 2012 letter and has demonstrated no reasonable justification for his failure to respond.

14. Crutchfield sent the May 7, 2012 letter by regular mail to O'Toole's address of record, with sufficient postage attached. The letter was not returned.

15. On May 31, 2012, Crutchfield sent a follow-up inquiry letter to O'Toole, again requesting explanation of O'Toole's criminal history and his failure to disclose that criminal history.

16. Crutchfield sent the May 31, 2012 letter by certified mail to O'Toole's address of record and also to a second address she had discovered for O'Toole, at 2510 S. Old Hwy. 94, St. Charles, Missouri, 63303.

17. The certified letter sent to O'Toole's address of record was signed for with the name Nick O'Toole on November 2, 2012. The certified letter sent to the Old Hwy. 94 address was signed for with an illegible signature.

18. O'Toole did not respond to the May 31, 2012 letter and has demonstrated no reasonable justification for his failure to respond.

CONCLUSIONS OF LAW

19. Section 385.209 RSMo, Supp. 2012,[1] 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:
>
> * * *

[1] Statutory references are to the 2012 version of the Revised Statutes of Missouri unless otherwise noted.

(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[.]

20. Regulation 20 CSR 100-4.100(2) states:

(2) Except as required under subsection (2)(B)—

(A) 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.

(B) This rule shall not apply to any other statute or regulation which requires a different time period for a person to respond to an inquiry by the department. If another statute or regulation requires a shorter response time, the shorter response time shall be met. This regulation operates only in the absence of any other applicable laws.

21. 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.

22. O'Toole may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(2) because he violated a rule of the Director, namely 20 CSR 100-4.100. O'Toole twice failed to respond to an inquiry letter from Department investigator Karen Crutchfield, thereby violating 20 CSR 100-4.100.

23. O'Toole also may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(3) because he failed to disclose the full extent of his criminal history and thereby attempted to obtain a license through misrepresentation or fraud.

24. The Director has considered O'Toole's history and all of the circumstances surrounding O'Toole's Application. Granting O'Toole 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 O'Toole.

25. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the individual motor vehicle extended service contract producer license application of **Kenneth O'Toole** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 6th **DAY OF** MARCH**, 2013.**

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 8 day of March, 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:

Kenneth O'Toole
68 Devondale Place
St. Peters, Missouri 63376

Certified No. 7009 3410 0001 9254 4768

Hailey Boessen

Hailey Boessen
Senior Office Support Assistant
Agent Investigation Section
Missouri Department of Insurance, Financial Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: 573.751.2640
Facsimile: 573.526.4898
Email: hailey.boessen@insurance.mo.gov