State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
PAUL A. BENENATI,	)	**Case No. 14-0128129C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On April 29 2014, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract (MVESC) producer license to Paul A. Benenati. 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. Paul A. Benenati ("Benenati") is a Missouri resident with a residential address of record of 304 Durham Meadows Dr., O'Fallon, Missouri, 63368.

2. On March 4, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Benenati's Application for Motor Vehicle Extended Service Contract Producer License ("Application").

3. By signing the Application, Benenati attested and certified that "all of the information submitted in this application and attachments is true and complete."

4. 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[.]

5. Benenati answered "No" to Question No. 1 and failed to disclose any criminal history in his Application.

6. Contrary to Benenati's "No" answer to Question No. 1, the Consumer Affairs Division's investigation of Benenati's Application revealed that Benenati had been convicted of a felony:

   a. On September 29, 1998, Benenati pleaded guilty in the St. Charles County Circuit Court to the Class D Felony of Assault on School Property, in violation of § 565.075. The court sentenced Benenati to five years' incarceration, but suspended execution of the sentence and placed Benenati on five years' probation, ordering Benenati to serve 90 days' shock incarceration and to pay $913.00 in restitution. Benenati completed his probation on December 11, 2003.[1]

7. In a March 1, 2013 phone call, Benenati stated to Consumer Affairs Division Special Investigator E. J. Jackson that despite the plain language of Question No. 1, asking whether he had "ever been" convicted of a crime, Benenati had answered the question "No" and had failed to disclose his felony conviction because someone in the MVESC industry had told him that the Department was only concerned with tax and child support issues, and because he thought that since the conviction was more than seven years old, it "could not be found anywhere."

8. It is inferable, and is hereby found as fact, that Benenati falsely answered "No" to Question No. 1 and failed to disclose his conviction for the Class D Felony of Assault on School Property, in order to misrepresent to the Director that he had no criminal history, and, accordingly, in order to improve the chances that the Director would approve his Application and issue him an MVESC producer license.

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[1] *State of Missouri v. Paul A. Benenati*, St. Charles Co. Cir. Ct., No. CR198-677FX (Case.net No. 11R019800677-01).

CONCLUSIONS OF LAW

9. Section 385.209 RSMo, Supp. 2013, 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:
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> * * *
>
> (3) Obtained or attempted to obtain a license through material misrepresentation or fraud;
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> * * *
>
> (5) Been convicted of any felony[.]

10. 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.

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

    a. Assault on School Property, a Class D Felony in violation of § 565.075.

12. The Director may refuse to issue an MVESC producer license to Benenati under § 385.209.1(3) because Benenati attempted to obtain an MVESC producer license through material misrepresentation or fraud. Benenati falsely answered "No" to Question No. 1 and failed to disclose his conviction for the Class D Felony of Assault on School Property, in order to misrepresent to the Director that he had no criminal history, and, accordingly, in order to improve the chances that the Director would approve his Application and issue him an MVESC producer license

13. The Director has considered Benenati's history and all of the circumstances surrounding Benenati's Application. Granting Benenati an 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 Benenati.

14. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Paul A. Benenati** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 2ND **DAY OF** MAY**, 2014.**

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 5th day of May, 2014, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by regular and certified mail at the following addresses:

Paul A. Benenati
304 Durham Meadows Dr.
O'Fallon, Missouri 63368

Certified No. 7009 3410 0001 9254 7752

Angie Gross

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