FINAL ORDER EFFECTIVE 03-21-16

State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
ROY KENNETH KISOR,	)	**Case No. 151027491C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On February 10, 2016, the Consumer Affairs Division submitted a Petition to the Director alleging cause to refuse to issue a motor vehicle extended service contract producer license to Roy Kenneth Kisor. 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. Roy Kenneth Kisor ("Kisor") is a Missouri resident with a residential address of 1310 Ticonderoga Drive, St. Peters, Missouri, 63376.

2. On or about December 5, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Kisor's Application for Motor Vehicle Extended Service Contract Producer License ("2011 Application").

3. The "Applicant's Certification and Attestation" section of the 2011 Application states, in relevant part:

> 1. I hereby certify that, under penalty of perjury, 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. Kisor signed the "Applicant's Certification and Attestation" section under oath before a notary public.

5. Background Question No. 1 of the 2011 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 and 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. Kisor answered "No" in response to Background Question No. 1 on the 2011 Application.

7. Kisor did not submit any additional documents with his 2011 Application.

8. Relying on Kisor's representation on his 2011 Application, the Department issued Kisor a motor vehicle extended service contract ("MVESC") producer license (License No. 8088439) on January 1, 2012. That license expired on December 31, 2013.

9. On July 13, 2015, the Department received Kisor's Application for Motor Vehicle Extended Service Contract Producer License Renewal ("2015 Application").[1]

10. The "Applicant's Certification and Attestation" section of the 2015 Application states, in relevant part:

1. I hereby certify that, under penalty of perjury, 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.

[1] Because Kisor's MVESC producer license expired on December 31, 2013, the Department treated his 2015 Application as a new application for licensure. *See* § 385.206.6 RSMo (supp. 2013).

11. Kisor signed the "Applicant's Certification and Attestation" section under oath before a notary public.

12. Background Question No. 1 of the 2015 Application asks the following:

> Have you ever been convicted of a crime, had a judgment withheld or deferred, received a suspended imposition of sentence ("SIS") or suspended execution of sentence ("SES"), or are you currently charged with committing a crime, which has not been previously reported to this insurance department?
>
> "Crime" includes a misdemeanor, felony or a military offense. You may exclude any of the following if they are/were misdemeanor traffic citations or misdemeanors: driving under the influence (DUI), driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license. You may also exclude misdemeanor juvenile convictions.
>
> "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, having entered an Alford Plea, or having been given probation, a suspended sentence, or a fine.
>
> "Had a judgment withheld or deferred" includes circumstances in which a guilty plea was entered and/or a finding of guilt was 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").
>
> Unless excluded by the language above, you must disclose convictions that have been expunged. If you answer yes, you must attach to this application:
>
> a) a written statement explaining the circumstances of each incident,
> b) a certified copy of the charging document, and
> c) a certified copy of the official document which demonstrates the resolution of the charges or any final judgment.

13. Kisor answered "No" in response to Background Question No. 1 of the 2015 Application.

14. Kisor did not submit any documents disclosing his criminal history along with the 2015 Application.

15. Contrary to Kisor's response to Background Question No. 1 of his 2011 Application, an investigation conducted by the Consumer Affairs Division ("Division") of the Department revealed that Kisor failed to disclose the following conviction:

a. On September 24, 2010, Kisor pled guilty to DWI – Alcohol – Persistent Offender, a Class D Felony, in violation of § 577.010.[2] The court sentenced Kisor to three (3) years' incarceration but suspended the execution of his sentence, and sentenced Kisor to five (5) years' supervised probation. *State v. Roy Kenneth Kisor*, St. Charles Co. Cir. Ct., Case No. 1011-CR1432-01.

16. Contrary to Kisor's response to Background Question No. 1 of his 2015 Application, the Division's investigation revealed that Kisor failed to disclose the following convictions:

a. On September 24, 2010, Kisor pled guilty to DWI – Alcohol – Persistent Offender, a Class D Felony, in violation of § 577.010. The court sentenced Kisor to three (3) years' incarceration but suspended the execution of his sentence, and sentenced Kisor to five (5) years' supervised probation. *Id.*

b. On October 29, 2012, Kisor was convicted of Driving While Revoked/Suspended, a Class D Felony, in violation of § 302.321. The court sentenced Kisor to four (4) years' incarceration but suspended the execution of his sentence, and sentenced Kisor to five (5) years' supervised probation to run concurrent with his sentence in case number 1011-CR1432-01. *State v. Roy Kenneth Kisor*, St. Charles Co. Cir. Ct., Case No. 1211-CR01891-01.

17. On July 16, 2015, Special Investigator Andrew Engler ("Engler"), with the Division, sent an inquiry letter to Kisor, by first class mail, asking for a statement explaining the circumstances surrounding his felony convictions and why he failed to disclose them on his application. Engler also asked Kisor to provide a certified copy of the Information, Judgment, Complaint, or other charging documents. The inquiry letter further cited 20 CSR 100-4.100, requested a response within twenty days, and warned that failure to respond could result in a refusal to issue Kisor an MVESC license.

18. The United States Postal Service did not return the July 16, 2015 inquiry letter as undeliverable and therefore, Kisor is presumed to have received it.

19. Kisor did not respond to the July 16, 2015 inquiry letter nor did he demonstrate a reasonable justification for the delay.

20. After no response to his July 16, 2015 inquiry letter, on August 5, 2015, Special Investigator Engler sent a second inquiry letter to Kisor by first class mail, requesting the same information and documents requested in the first inquiry letter. The second inquiry letter again cited 20 CSR 100-4.100, informed Kisor that his response was due within twenty days, and that failure to respond could result in a refusal to issue Kisor an MVESC license.

21. On August 26, 2015, Kisor sent a letter that stated verbatim, in part:

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

> I Roy Kisor got a felony DWI on 2-12-2009. I thought I checked the box on my application saying that I have a felony DWI. If I did not I do apologize because I have nothing to hide. I made a mistake and drove my friends truck across the street from were we were getting dinner to "QT" to get a pack of ciggerets and get some money from ATM. The truck I was driving had very loud exhaust on it and drew the Attention of an officer I have had a couple of drinks and it was enough to be over the legal limit, I was ignorant and young and made a terrible mistake I regret that I drove and made the decision to get behind the wheel. I have been paying for it ever since. My drivers license was suspended for many years because of it. Which actually led to the felony driving while Revoked. My fiancé and I went out with friends for her birthday and she drank to much and since I do not drink anymore I was sobber. She has 3 kids and they needed to get picked up at the babysitter after dinner. So I was going to drive since she drank to much. I thought I was doing the nobel thing by not letting her drive. But I got pulled over and since my license was suspsended I got a felony for that. That was on 2-26-2012. Im not a bad person Ive just made stupid mistakes driving in my younger day's I get my driver's license back on Sept 24th 2015. It has been a long time coming. I have had my Motor Vehicle Service Contract license before and it was not a problem with my charges[.]

22. Kisor was arraigned for Driving While Revoked/Suspended on August 20, 2012, filed a Petition to Enter Plea of Guilty and was sentenced on October 29, 2012. *State v. Roy Kenneth Kisor*, St. Charles Co. Cir. Ct., Case No. 1211-CR01891-01. Although Kisor was a licensed MVESC producer at the time of his arraignment, he did not report the felony proceeding to the Director. In fact, Kisor did not disclose the felony proceedings to the Director until his letter of August 26, 2015.

23. It is inferable, and hereby found as fact, that Kisor failed to disclose his felony conviction on his 2011 Application in order to misrepresent to the Director that he had no criminal history and consequently improve the chances that the Director would approve his 2011 Application and issue him an MVESC producer license.

24. It is also inferable, and hereby found as fact, that Kisor failed to disclose his felony convictions on his 2015 Application in order to misrepresent to the Director that he had no criminal history and consequently improve the chances that the Director would approve his 2015 Application and issue him an MVESC producer license. This inference is further supported by Kisor's own statement that "[I] had my Motor Vehicle Service Contract license before and it was not a problem with my charges[.]" Kisor had no problem obtaining his MVESC license before because he failed to disclose his felony convictions on his 2011 Application. Kisor again failed to disclose his felony convictions on his 2015 Application seeking the same result. However, the Division has discovered his misrepresentation and fraud on his 2011 Application and in his attempt to obtain a license now.

25. The Employment History section of Kisor's 2015 Application requests the following information:

Account for all time for the past five years. List all employment experience starting with your current employer working back five years. Include full and part-time work, self-employment, military service, unemployment and full-time education.

26. Kisor's response to the Employment History section of his 2015 Application indicated that he was employed a "Sales Representative" at Autoplex Extended Service beginning August 2015.

27. "Autoplex Extended Services" is an MVESC business entity producer licensed (License No. 8094464) by the Department to sell, offer, negotiate, or solicit motor vehicle extended service contracts.

28. Kisor's MVESC producer license expired on December 31, 2013. Therefore, it is inferable, and hereby found as fact, that Kisor, in or from this state, sold, offered, negotiated, or solicited motor vehicle extended service contracts with consumers without an MVESC producer license.

CONCLUSIONS OF LAW

29. Section 385.209[3] states, 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:
>
> (1) Filed an application for license in this state within the previous ten years, which, as of the effective date of the license, was incomplete in any material respect or contained incorrect, misleading, or untrue information;
>
> (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]
>
> * * *

[3] All civil statutory references are to the Revised Statutes of Missouri (2000) as updated by the 2013 Supplement, unless otherwise indicated.

(11) Unlawfully acted as a producer without a license[.]

* * *

7. Within thirty days of the initial pretrial hearing date or arraignment, a producer shall report to the director any felony proceeding initiated by any state or the United States for any violation of law by the producer. The report shall include a copy of the indictment or information filed, the order resulting from the hearing and any other relevant legal documents.

30. Section 385.206 provides, in relevant part:

1. It is unlawful for any person in or from this state to sell, offer, negotiate, or solicit a motor vehicle extended service contract with a consumer, other than the following:

* * *

(6) A business entity producer or individual producer licensed under section 385.207[.]

31. Section 385.207 provides, in relevant part:

* * *

3. An individual, prior to selling, offering, negotiating, or soliciting a motor vehicle extended service contract with a consumer under subdivision (6) of subsection 1 of section 385.206, shall apply for and obtain licensure with the director as an individual producer in accordance with this section.

* * *

6. A producer license issued under this section, if not renewed by the director by its expiration date, shall terminate on its expiration date and shall not after that date authorize its holder under sections 385.200 to 385.220 to sell, offer, negotiate, or solicit motor vehicle extended service contracts.

32. 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 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.

33. Title 20 CSR 100-4.100(2)(A) is a rule of the Director.

34. The Director may refuse to issue Kisor an MVESC producer license pursuant to § 385.209.1(1) because Kisor filed an application for license in this state within the previous ten years which, as of the effective date of the license, was incomplete in a material respect or contained incorrect, misleading, or untrue information in that Kisor answered "No" to Background Question No. 1 on his 2011 Application and Kisor failed to disclose his felony conviction for DWI – Alcohol – Persistent Offender, a Class D Felony. *State v. Roy Kenneth Kisor*, St. Charles Co. Cir. Ct., Case No. 1211-CR01891-01.

35. The Director may refuse to issue Kisor an MVESC producer license pursuant to § 385.209.1(2) because Kisor violated a provision in §§ 385.200 to 385.220, namely § 385.209.7, when he failed to report the following felony proceeding to the Director within thirty (30) days of the arraignment:

    a. Driving While Revoked/Suspended, a Class D Felony. *State v. Roy Kenneth Kisor*, St. Charles Co. Cir. Ct., Case No. 1211-CR01891-01.

36. The Director may refuse to issue Kisor an MVESC producer license pursuant to § 385.209.1(3) because Kisor obtained a license through material misrepresentation or fraud when he received a license after failing to disclose the following felony conviction on his 2011 Application:

    a. DWI – Alcohol – Persistent Offender, a Class D Felony. *State v. Roy Kenneth Kisor*, St. Charles Co. Cir. Ct., Case No. 1011-CR1432-01.

37. The Director may refuse to issue Kisor an MVESC producer license pursuant to § 385.209.1(3) because Kisor attempted to obtain a license through material misrepresentation or fraud when he failed to disclose the following felony convictions on his 2015 Application:

    a. DWI – Alcohol – Persistent Offender, a Class D Felony. *State v. Roy Kenneth Kisor*, St. Charles Co. Cir. Ct., Case No. 1011-CR1432-01.

    b. Driving While Revoked/Suspended, a Class D Felony. *State v. Roy Kenneth Kisor*, St. Charles Co. Cir. Ct., Case No. 1211-CR01891-01.

38. Each instance in which Kisor obtained or attempted to obtain a license through material misrepresentation or fraud is a separate and sufficient ground for refusal pursuant to § 385.209.1(3).

39. The Director may refuse to issue Kisor an MVESC producer license pursuant to § 385.209.1(5) because Kisor has been convicted to two felonies:

    a. DWI – Alcohol – Persistent Offender, a Class D Felony. *State v. Roy Kenneth Kisor*, St. Charles Co. Cir. Ct., Case No. 1011-CR1432-01.

b. Driving While Revoked/Suspended, a Class D Felony. *State v. Roy Kenneth Kisor*, St. Charles Co. Cir. Ct., Case No. 1211-CR01891-01.

40. Each felony conviction is a separate and sufficient ground for refusal pursuant to § 385.209.1(5).

41. The Director may refuse to issue Kisor an MVESC producer license pursuant to § 385.209.1(11) because Kisor unlawfully acted as a producer without a license when he sold, offered, negotiated, or solicited motor vehicle extended service contracts with consumers during his employment as a "Sales Representative" at Autoplex Extended Services.

42. The Director may refuse to issue Kisor an MVESC producer license pursuant to §385.209.1(2) because Kisor violated a provision in §§ 385.200 to 385.220, namely §385.206.1(6), when he, in or from this state, unlawfully, sold, offered, negotiated, or solicited a motor vehicle extended service contract with a consumer during his employment as a "Sales Representative" at Autoplex Extended Services.

43. The Director may refuse to issue Kisor an MVESC producer license pursuant to §385.209.1(2) because Kisor violated a rule of the Director, namely 20 CSR 100-4.100(2)(A), when he failed to respond to failed to adequately respond to an inquiry letter from the Division and failed to provide a reasonable justification for the delay.

44. The Director has considered Kisor's history and all of the circumstances surrounding Kisor's 2015 Application, and exercised his discretion to refuse to renew Kisor's MVESC producer license.

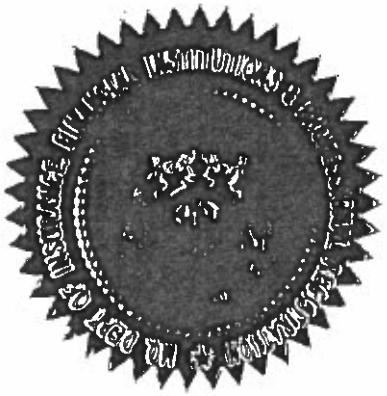
45. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that **Roy Kenneth Kisor's** Motor Vehicle Extended Service Contract producer license application of is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 16TH **DAY OF** FEBRUARY**, 2016.**



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 16th day of February, 2016, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, Signature required, to the following address:

Roy Kenneth Kisor
1310 Ticonderoga Drive
St. Peters, Missouri, 63376

Tracking No. 1Z0R15W84296131693

Kathryn Latimer

Kathryn Latimer
Paralegal
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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of February, 2016, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by USPS, first class mail, to the following address:

Roy Kenneth Kisor
1310 Ticonderoga Drive
St. Peters, Missouri, 63376

Kathryn Latimer

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Paralegal
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