FINAL ORDER EFFECTIVE 07-20-16

State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
RECORDO TRANCE STRAUTHER,	)	**Case No. 160511276C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On June 15, 2016, the Consumer Affairs Division, through counsel, submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract producer license to Recordo Trance Strauther. 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. Recordo Trance Strauther ("Strauther") is a Missouri resident with a residential and mailing address of 1229 Louisville, St. Louis, Missouri 63119.

2. On February 9, 2016, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Strauther'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:

   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. I further certify, under penalty of perjury, that a) I have no outstanding

> state or federal income tax obligations, or b) I have an outstanding state or federal income tax obligation and I have provided all information and documentation requested in Background Information Question 36.4.

4. Strauther accepted the "Applicant's Certification and Attestation" section by signing the Application under oath and before a notary public.

5. Employment History Question No. 35 of the Application requests the following, in relevant part:

> Account for all time for the past five years. List all employment experience starting with your current employer working back five years.

6. In response to Employment History Question No. 35, Strauther admits he has been working in "Sales" for "Express Protect" in St. Louis, Missouri since January 2014.

7. Express Protect, LLC, located in St. Louis, Missouri, is licensed by the Department as a motor vehicle extended service contract business entity producer, License Number 8310356, to sell, offer, negotiate, or solicit motor vehicle extended service contracts.

8. At no time since January 1, 2012[1] has the Director issued a motor vehicle extended service contract ("MVESC") producer license to Strauther to sell, offer, negotiate, or solicit motor vehicle extended service contracts with consumers.

9. Based upon his Application, Strauther, since January 2014, has engaged in selling, offering, negotiating, or soliciting motor vehicle extended service contracts with consumers, in or from this state, without a MVESC producer license.

10. Background Question No. 4 of the Application asks:

> 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?
>
> Answer "Yes" if the answer to either question (or both) is "Yes."
>
> If you answer yes, you must attach to this application:
> a) a written statement explaining the circumstances of each

[1] Under SB 132, the licensing and general requirements to be a MVESC producer became effective on January 1, 2012. *See* §§ 385.206, 385.209 RSMo (Supp. 2013).

administrative or court order,

b) copies of all relevant documents (i.e. demand letter from the Department of Revenue or Internal Revenue Service, etc.),

c) a certified copy of each administrative or court order, judgment, and/or lien, and

d) a certified copy of the official document which demonstrates the resolution of the tax delinquency (i.e. tax compliance letter, etc.).

11. Strauther answered "No" in response to Background Question No. 4.

12. Contrary to Strauther's response, during its investigation, the Consumer Affairs Division ("Division") discovered the following delinquent state income tax obligations that Strauther failed to disclose on his Application:

a. On February 14, 2012, the St. Louis County Circuit Court entered a judgment against Strauther for unpaid income taxes for the 2007 and 2008 filing years as follows:

> [Department] of Revenue, under Section 143.902, RSMo, hereby certifies that the following assessment of tax, interest, additions to tax, penalties, and fees have been made and become final [in the amount of $3,778.84]. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.

Department of Revenue v. Recordo T. Strauther, St. Louis Co. Cir. Ct., Case No. 12SL-MC02986.

b. On April 1, 2013, the St. Louis County Circuit Court entered a judgment against Strauther for unpaid income tax for the 2009 filing year as follows:

> [Department] of Revenue, under Section 143.902, RSMo, hereby certifies that the following assessment of tax, interest, additions to tax, penalties, and fees have been made and become final [in the amount of $3,628.90]. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.

Department of Revenue v. Recordo T. Strauther, St. Louis Co. Cir. Ct., Case No. 13SL-MC02458.

13. On February 16, 2016, after reviewing Strauther's Application and his delinquent tax obligations, Special Investigator Andrew Engler of the Division sent an inquiry letter to Strauther. The inquiry letter requested that Strauther provide a payment plan or a letter of compliance from the Department of Revenue. The inquiry letter further requested a response within twenty (20) days, and warned Strauther that failure to

respond could result in the Department refusing to issue him a MVESC producer license.

14. The United States Postal Service did not return the February 16, 2016 inquiry letter to the Division as undeliverable, and therefore it is presumed received by Strauther.

15. Strauther failed to provide a written response to the Division's February 16, 2016 inquiry letter, and failed to demonstrate a reasonable justification for the delay.

16. On March 9, 2016, after receiving no response from Strauther, Special Investigator Andrew Engler of the Division sent a second inquiry letter to Strauther. The inquiry letter requested the same documentation requested in the February 16, 2016 inquiry letter. The inquiry letter further requested a response within twenty (20) days, and again warned Strauther that failure to respond could result in the Department refusing to issue him a MVESC producer license.

17. The United States Postal Service did not return the March 9, 2016 inquiry letter to the Division as undeliverable, and therefore it is presumed received by Strauther.

18. Strauther failed to provide a written response to the Division's March 9, 2016 inquiry letter, and failed to demonstrate a reasonable justification for the delay.

19. It is inferable, and hereby found as fact, that Strauther failed to disclose his delinquent tax obligations on his Application in order to misrepresent his tax compliance 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.

CONCLUSIONS OF LAW

20. Section 385.209 RSMo (Supp. 2013)[2] 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:
>
> * * *

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

(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;

* * *

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

* * *

(13) Failed to comply with any administrative or court order directing payment of state or federal income tax[.]

21. Section 385.206 states, 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[.]

22. Section 385.207.3 states:

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.

23. Title 20 CSR 100-4.100(2)(A) Required Response to Inquiries by the Consumer Affairs Division states:

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.

24. "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. 2000) (internal citations omitted).

25. The Director may refuse to issue a MVESC producer license to Strauther pursuant to § 385.209.1(2) because Strauther failed to respond to two (2) inquiry letters from the Division and failed to provide a reasonable justification for the delays, thereby twice violating 20 CSR 100-4.100(2)(A), a rule of the Director.

26. The Director may refuse to issue a MVESC producer license to Strauther pursuant to § 385.209.1(2) because Strauther violated a provision in §§ 385.200 to 385.220, namely § 385.206.1(6), when he unlawfully, in or from this state, sold, offered, negotiated, or solicited motor vehicle extended service contracts with consumers since January 2014, during his employment with Express Protect, LLC, a licensed MVESC business entity producer.

27. Each violation of any provision in §§ 385.200 to 385.220 or a rule of the Director is a separate and sufficient ground for refusal pursuant to § 385.209.1(2).

28. The Director may refuse to issue a MVESC producer license to Strauther pursuant to § 385.209.1(3) because Strauther attempted to obtain a MVESC producer license through material misrepresentation or fraud in that he failed to disclose the following delinquent tax obligations in response to Background Question No. 4 on his Application:

    a. Judgment in the amount of $3,778.84 for unpaid taxes for the 2007 and 2008 filing years. *Department of Revenue v. Recordo T. Strauther*, St. Louis Co. Cir. Ct., Case No. 12SL-MC02986.

    b. Judgment in the amount of $3,628.90 for unpaid tax for the 2009 filing year. *Department of Revenue v. Recordo T. Strauther*, St. Louis Co. Cir. Ct., Case No. 13SL-MC02458.

29. The Director may refuse to issue a MVESC producer license to Strauther pursuant to § 385.209.1(11) because he unlawfully acted as a producer without a license during his employment in "Sales" at Express Protect, LLC, a MVESC business entity producer.

30. The Director may refuse to issue a MVESC producer license to Strauther pursuant to § 385.209.1(13) because Strauther failed to comply with administrative or court orders directing payment of state income tax:

a. Judgment in the amount of $3,778.84 for unpaid taxes for the 2007 and 2008 filing years. *Department of Revenue v. Recordo T. Strauther*, St. Louis Co. Cir. Ct., Case No. 12SL-MC02986.

b. Judgment in the amount of $3,628.90 for unpaid tax for the 2009 filing year. *Department of Revenue v. Recordo T. Strauther*, St. Louis Co. Cir. Ct., Case No. 13SL-MC02458.

31. Each instance in which Strauther failed to comply with an administrative or court order directing payment of state income tax is a separate and sufficient ground for refusal pursuant to § 385.209.1(13).

32. The Director has considered Strauther's history and all of the circumstances surrounding Strauther's Application. Granting Strauther a 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 Strauther.

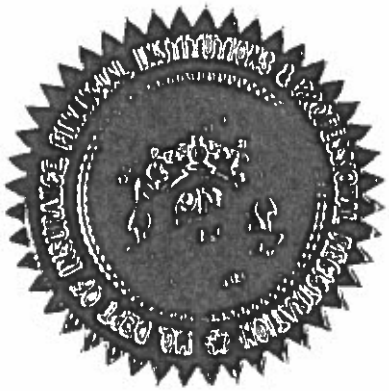
33. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that **Recordo Trance Strauther's** motor vehicle extended service contract producer license application is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 17th DAY OF JUNE, 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:

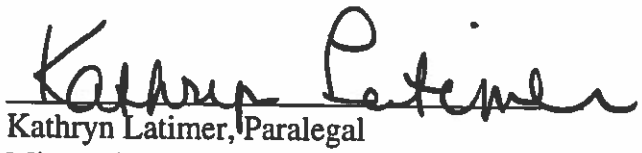
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send your complaint by registered or certified mail, it will not be considered filed until the Administrative Hearing Commission receives it.

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of June, 2016, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following address:

Recordo Trance Strauther
1229 Louisville
St. Louis, Missouri 63119

Tracking No. 1Z0R15W84296533197



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