State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
STEPHEN H. SCAIFE SR.,	)	**Case No. 150831417C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On November 13, 2015, the Consumer Affairs Division, through counsel, submitted a Petition to the Director alleging cause to refuse Stephen H. Scaife Sr.'s motor vehicle extended service contract producer license application. 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. Stephen H. Scaife Sr. ("Scaife") is a Missouri resident with a residential address of 11359 Prentice Drive, Florissant, Missouri 63033. Scaife also has a business address of 2544 Highway K, O'Fallon, Missouri 63368.[1]

2. On June 8, 2015, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Scaife'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.

[1] 2544 Highway K, O'Fallon, Missouri 63368 is the business address of Auto Assure, LLC. See ¶ 7, *Infra.*

* * *

> 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. Scaife accepted the "Applicant's Certification and Attestation" section by signing the Application under oath 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 and working back five years.

6. In response to Employment History Question No. 35, Scaife admits he has been working as a "sales associate" for Auto Assure in O'Fallon, Missouri since May 2015.

7. Auto Assure, LLC is licensed by the Department as a motor vehicle extended service contract business entity producer, License Number 8088400, to sell, offer, negotiate, or solicit motor vehicle extended service contracts.

8. At no time since January 1, 2012,[2] has the Director issued a motor vehicle extended service contract ("MVESC") producer license to Scaife to sell, offer, negotiate, or solicit motor vehicle extended service contracts with consumers.

9. Based upon his Application, Scaife, since May 2015, 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. 1 of the 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?

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[2] 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).

"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.

11. Scaife answered "No" to Background Question No. 1 on his Application.

12. Contrary to Scaife's answer, the Consumer Affairs Division ("Division") discovered that on August 6, 2008, Scaife pled guilty to Stealing, a Class A Misdemeanor, in violation of § 570.030 RSMo.[3] The court suspended imposition of sentence, placed Scaife on two years' supervised probation, and ordered that he complete 20 hours' community service and pay $700.00 in restitution. *State v. Stephen H. Scaife*, St. Charles Co. Cir. Ct., Case No. 0811-CR01742.

13. The Probable Cause Statement alleged, in relevant part:

> The Huck's manager reported that more than $500.00 was missing from a store register. Police investigation identified employee, Stephen

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

Scaife, as a suspect. During an interview with Scaife he admitted taking $603.00 from the store. Scaife stated that he sold money orders without ringing them in to his register, doing this would cause his totals to be off and enable him to take the difference.

Id.

14. Background Question No. 4 of the Application asks the following:

> 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 administrative 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 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.).

15. Scaife answered "No" to Background Question No. 4 on his Application.

16. During its investigation, the Division discovered the following delinquent state income tax obligation that Scaife failed to disclose on his Application:

    a. On August 9, 2010, the St. Louis County Circuit Court entered a judgment against Scaife for unpaid state income tax for the 2006 and 2007 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 $355.93]. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.

    Department of Revenue v. Stephen H. Scaife, et al., St. Louis Co. Cir. Ct., Case No. 10SL-MC08399.

17. On June 23, 2015, after reviewing Scaife's Application, noting Scaife's "No" answer to Background Question Nos. 1 and 4, Special Investigator Andrew Engler of the Division sent an inquiry letter to Scaife via first class mail to his residential address of record. Said inquiry letter requested additional documentation and information about Scaife's criminal charge, delinquent tax obligation, and why he failed to disclose them on his application. The inquiry letter further requested a response within twenty days, and warned Scaife that a failure to respond could result in the Department refusing to issue him a MVESC producer license.

18. The United States Postal Service did not return the June 23, 2015 inquiry letter to the Division as undeliverable, and therefore it is presumed received by Scaife.

19. Scaife failed to provide a response to the Division's June 23, 2015 inquiry letter, and failed to demonstrate a reasonable justification for the delay.

20. On July 13, 2015, Special Investigator Engler sent a second inquiry letter to Scaife via first class mail to his residential address of record asking for the same information previously requested in the June 23, 2015 inquiry letter. The inquiry letter requested a response within twenty days, and warned Scaife that a failure to respond could result in the Department refusing to issue a MVESC producer license to Scaife.

21. The United States Postal Service did not return the July 13, 2015 inquiry letter to the Division as undeliverable, and therefore it is presumed received by Scaife.

22. Scaife failed to provide a response to the Division's July 13, 2015 inquiry letter, and failed to demonstrate a reasonable justification for the delay.

23. It is inferable, and hereby found as fact, that Scaife sold, offered, negotiated, or solicited motor vehicle extended service contracts with consumers without a MVESC producer license during his employment as a "sales associate" at Auto Assure, LLC.

24. It is inferable, and hereby found as fact, that Scaife failed to disclose his guilty plea to misdemeanor stealing on his Application in order to improve the chances that the Director would approve his Application and issue him a MVESC producer license.

25. It is further inferable, and hereby found as fact, that Scaife failed to disclose his delinquent tax obligation on his Application in order to misrepresent to the Director that he had no outstanding tax obligation, 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

26. Section 385.209 RSMo (Supp. 2013)[4] 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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> * * *
>
> (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;
>
> * * *
>
> (6) Used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere;
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> * * *
>
> (11) Unlawfully acted as a producer without a license;
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> * * *
>
> (13) Failed to comply with any administrative or court order directing payment of state or federal income tax[.]

27. Section 385.206 RSMo provides, in 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:
>
> * * *

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

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

28. Section 385.207 RSMo provides, in 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.

29. 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.

30. "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).

31. The Director may refuse to issue a MVESC producer license to Scaife under § 385.209.1(2) because Scaife 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 a consumer since May 2015, during his employment with Auto Assure, LLC.

32. The Director may refuse to issue a MVESC producer license to Scaife under § 385.209.1(2) because Scaife twice violated a rule of the Director, namely 20 CSR 100-4.100(2)(A), when he failed to adequately respond to two inquiry letters from the Division and failed to provide a reasonable justification for the delays.

33. Each violation of a provision found in §§ 385.200 to 385.220, or a violation of a rule of the Director, is a separate and sufficient cause for refusal under § 385.209.1(2).

34. The Director may refuse to issue a MVESC producer license to Scaife under § 385.209.1(3) because he attempted to obtain a MVESC producer license through material misrepresentation or fraud in that he failed to disclose the following suspended sentence in response to Background Question No. 1 on his Application:

    a. *State v. Stephen H. Scaife*, St. Charles Co. Cir. Ct., Case No. 0811-CR01742 (Stealing, a Class A Misdemeanor).

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

    a. *Department of Revenue v. Stephen H. Scaife, et al.*, St. Louis Co. Cir. Ct., Case No. 10SL-MC08399 (Judgment in the amount of $355.93 for unpaid state income tax for the 2006 and 2007 filing years).

36. Each false answer to a Background Question on the Application and the related non-disclosure of criminal history and outstanding tax obligations is a separate and sufficient cause for refusal under § 385.209.1(3).

37. The Director may refuse to issue a MVESC producer license to Scaife under § 385.209.1(6) because Scaife used fraudulent or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state, specifically by stealing money from his former employer. *State v. Stephen H. Scaife*, St. Charles Co. Cir. Ct., Case No. 0811-CR01742.

38. The Director may refuse to issue a MVESC producer license to Scaife under § 385.209.1(11) because Scaife unlawfully acted as a producer without a license when he, in or from this state, sold, offered, negotiated, or solicited a motor vehicle extended service contract with a consumer during his employment with Auto Assure, LLC.

39. The Director may refuse to issue a MVESC producer license to Scaife under § 385.209.1(13) because Scaife has failed to comply with an administrative or court order directing payment of state income tax:

    a. *Department of Revenue v. Stephen H. Scaife, et al.*, St. Louis Co. Cir. Ct., Case No. 10SL-MC08399 (Judgment in the amount of $355.93 for unpaid state income tax for the 2006 and 2007 filing years).

40. The Director has considered Scaife's history and all of the circumstances surrounding Scaife's Application. Granting Scaife 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 Scaife.

41. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that **Stephen H. Scaife Sr.'s** motor vehicle extended service contract producer license application is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 7TH **DAY OF** DECEMBER**, 2015.**

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 8th day of December, 2015, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following address:

Stephen H. Scaife Sr.
11359 Prentice Drive
Florissant, Missouri 63033

Tracking No. 1Z0R15W84299930896

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