State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
VANCE PATRICK FOGLE,	)	**Case No. 160707333C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On September 27, 2016, 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 Vance Patrick Fogle. After reviewing the Petition and Investigative Report, the Director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Vance Patrick Fogle ("Fogle") is a Missouri resident with a residential and mailing address of 5611 Highway MM, House Springs, Missouri 63051 and a business address of 5353 S. Lindbergh, Concord, Missouri 63123.

2. On March 23, 2016, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Fogle'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:

> 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. Fogle accepted the "Applicant's Certification and Attestation" section by signing the Application before a notary public.

5. 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?
>
> "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.

6. Fogle answered "No" in response to Background Question No. 1.

7. Contrary to Fogle's response to Background Question No. 1, the Consumer Affairs Division's ("Division") investigation revealed the following criminal history that Fogle failed to disclose:

   a. On February 10, 2009, Fogle pled guilty to, and was convicted of, two (2) counts of Littering, a Class A Misdemeanor, in violation of § 577.070 RSMo.[1] The court sentenced Fogle to pay a fine. *State v. Vance P. Fogle*, Jefferson Co. Cir. Ct., Case No. 08JE-CR03339.

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

b. On August 27, 2013, Fogle pled guilty to Possession Of Up To 35 Grams Marijuana, a Class A Misdemeanor, in violation of § 195.202 RSMo. The court sentenced Fogle to pay a fine. *State v. Vance P. Fogle*, Jefferson Co. Cir. Ct., Case No. 13JE-CR01710.

8. On April 19, 2016, after reviewing Fogle's Application and his criminal record, Special Investigator Andrew Engler of the Division sent an inquiry letter to Fogle. The inquiry letter requested that Fogle provide a statement of the circumstances surrounding the charges, any explanation for failing to disclose the convictions, and certified court records. The inquiry letter further requested a response within twenty (20) days, and warned Fogle that a failure to respond could result in the Department refusing to issue him a motor vehicle extended service contract ("MVESC") producer license.

9. The United States Postal Service did not return the April 19, 2016 inquiry letter to the Division as undeliverable, and therefore it is presumed received by Fogle.

10. Fogle failed to provide a written response to the Division's April 19, 2016 inquiry letter, and failed to demonstrate a reasonable justification for the delay.

11. On May 10, 2016, after receiving no response from Fogle, Special Investigator Andrew Engler of the Division sent a second inquiry letter to Fogle. The inquiry letter requested the same information and documentation as requested in the April 19, 2016 inquiry letter. The inquiry letter further requested a response within twenty (20) days, and again warned Fogle that a failure to respond could result in the Department refusing to issue him a MVESC producer license.

12. The United States Postal Service did not return the May 10, 2016 inquiry letter to the Division as undeliverable, and therefore it is presumed received by Fogle.

13. Fogle failed to provide a written response to the Division's May 10, 2016 inquiry letter, and failed to demonstrate a reasonable justification for the delay.

14. It is inferable, and hereby found as fact, that Fogle failed to disclose his criminal record on his Application in order to misrepresent to the Director that he had no such criminal history, 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

15. Section 385.209.1 RSMo (Supp. 2013)[2] states, in relevant part:

> 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

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

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) Violated any provision in sections 385.200 to 385.220, or violated any rule, subpoena, or order of the director; [or]

(3) Obtained or attempted to obtain a license through material misrepresentation or fraud[.]

16. Title 20 CSR 100-4.100(2)(A), Required Response to Inquiries by the Consumer Affairs Division, is a rule of the Director and 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.

17. "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).

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

19. Each violation of a rule of the Director is a separate and sufficient ground for refusal pursuant to § 385.209.1(2).

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

    a. Two (2) counts of Littering, a Class A Misdemeanor, in violation of § 577.070 RSMo. *State v. Vance P. Fogle*, Jefferson Co. Cir. Ct., Case No. 08JE-CR03339.

    b. Possession Of Up To 35 Grams Marijuana, a Class A Misdemeanor, in violation of § 195.202 RSMo. *State v. Vance P. Fogle*, Jefferson Co. Cir. Ct., Case No. 13JE-CR01710.

21. The Director has considered Fogle's history and all of the circumstances surrounding Fogle's Application. Issuing Fogle a MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue Fogle a MVESC producer license.

22. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Vance Patrick Fogle** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 29th **DAY OF** September**, 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.

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of September, 2016, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required service, at the following address:

Vance Patrick Fogle
5611 Highway MM
House Springs, Missouri 63051-2227

No. 1Z0R15W84291776783

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