State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
JOSEPH E. WEBER,	)	**Case No. 120409352C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On May 17, 2012, 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 Joseph E. Weber. 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. Joseph E. Weber, ("Weber") is currently a Missouri resident with a residential address of 24 Saint Matthews Avenue, O'Fallon, Missouri 63366.

2. On January 3, 2012, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Weber'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. Weber signed the Application in the "Applicant's Certification and Attestation" section.

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, 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 judgment 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 judgment[.]

6. Weber marked "Yes" to Question No. 1, and reported that he had been convicted of felonies in Case Nos. 04L6-CR00597-01 and 05L6-CR00557-01, and misdemeanors in Case Nos. 45R019800779, 45R019801127, 45R019900582, 45R010000281, 06L6-CR01788.

7. Although Weber did not provide copies of the charging documents, copies of the official documents which demonstrate the resolution of the charges, or copies of any final judgments, he did provide written statements regarding the following cases and the Department was able to verify that:

   a. On September 9, 1998, Weber pleaded guilty to Property Damage – Second Degree, a Class B Misdemeanor, in violation of § 569.120. In his written statement, Weber explained that he "got into a fight" and "broke the window out of the person's car." The court imposed a monetary fine as punishment. *State of Missouri v. Joseph W. Weber*, Lincoln Co. Cir. Ct., Case No. 45R019800779.

   b. On April 20, 1999, Weber pleaded guilty to Trespass – First Degree, a Class B Misdemeanor, in violation of § 569.140. In his written statement, Weber explained that he "went back to the house where my belongings were and the cops

were called due to a verbal argument." The court imposed a monetary fine as punishment. *State of Missouri v. Joseph E. Weber*, Lincoln Co. Cir. Ct., Case No. 45R019801127.

c. On December 7, 1999, Weber pleaded guilty to Assault – Third Degree – Pursuant to Subdivisions (3) and (5), a Class C Misdemeanor, in violation of § 565.070. In his written statement, Weber explained that he "got into a fight that led to the cops being called." The court sentenced Weber to seven (7) days' confinement. *State of Missouri v. Joseph E. Weber*, Lincoln Co. Cir. Ct., Case No. 45R019900582.

d. On May 10, 2001, Weber pleaded guilty to Assault – Third Degree – Pursuant to Subdivisions (1), (2), (4), and (6), a Class A Misdemeanor, in violation of § 565.070. In his written statement, Weber explained that he "was in a verbal argument with someone [and] they spit in my face so I spit in their face." The court sentenced Weber to ninety (90) days' confinement, but suspended the execution of sentence. The court also placed Weber on supervised probation for 730 days and ordered that he complete sixty-one (61) days local shock. On June 19, 2003, Weber's probation was revoked and he was sentenced to sixty (60) days' confinement in the Lincoln County Jail. *State of Missouri v. Joseph E. Weber*, Lincoln Co. Cir. Ct., Case No. 45R010000281.

e. On December 21, 2005, Weber pleaded guilty to Tampering with Motor Vehicle, Airplane, Motor Boat, Etc. – First Degree, a Class C Felony, in violation of § 569.080. In his written statement, Weber explained that he was "involved in a fight" and that he was driving his girlfriend's car, which was titled to his girlfriend's father, "without the permission of her father." The court sentenced Weber to four (4) years' confinement, but suspended the execution of sentence and placed Weber on supervised probation for five (5) years. Weber was also ordered to pay restitution in the amount of $1,380.72. *State of Missouri v. Joseph E. Weber*, Lincoln Co. Cir. Ct., Case No. 04L6-CR00597-01.

f. On May 16, 2006, Weber pleaded guilty to Non-Support In Each Of Six Individual Months Within Any Twelve-Month Period – Amount Owed Is In Excess of $5,000.00, a Class D Felony, in violation of § 568.040. In his written statement, Weber explained that he had "lost my job and was looking for work and I fell behind." The court sentenced Weber to two (2) years' confinement, but suspended the execution of sentence and placed Weber on unsupervised probation for five (5) years. On October 6, 2008, Weber's probation was revoked after he confessed to violating Condition of Probation No. 1 by resisting arrest and by failing to pay child support as ordered. The court sentenced Weber to two (2) years' confinement in the Missouri Department of Corrections. *State of Missouri v. Joseph Eric Weber*, Lincoln Co. Cir. Ct., Case No. 05L6-CR00557-01.

i. The Department also received a letter from Kyle A. Burrows, Esq., dated December 27, 2011. The letter explained that Mr. Burrows represents Weber in Case Nos. 11L6-FC00133 and 08AC-AD00087, which both involve child support. However, he did not mention Case No. 05L6-CR00557-01. With regards to 11L6-FC00133, Mr. Burrows stated that the parties have worked out a preliminary settlement agreement that should be finalized within the next sixty (60) days. With regards to Case No. 08AC-AD00087, Mr. Burrows stated that the parties have agreed to a dismissal of the child support obligation.

g. On January 16, 2007, Weber pleaded guilty to Assault – Third Degree – Pursuant to Subdivisions (1), (2), (4), and (6), a Class A Misdemeanor, in violation of § 565.070. In his written statement, Weber explained that he was "at a party and a fight broke out [and] I punched someone." The court sentenced Weber to eight (8) days' confinement in the Lincoln County Jail, with said sentence to be served on weekends and served concurrently with the sentence imposed in Case No. 04L6-CR00597-01. *State of Missouri v. Joseph E. Weber*, Lincoln Co. Cir. Ct., Case No. 06L6-CR01788.

8. During its investigation, the Department also discovered the following convictions that Weber did not disclose on his Application:

a. On April 5, 2000, Weber pleaded guilty to Assault – Third Degree – Pursuant to Subdivisions (1), (2), (4), and (6), a Class A Misdemeanor, in violation of § 565.070. The court sentenced Weber to thirty (30) days' confinement, but suspended the execution of sentence and placed Weber on supervised probation for one (1) year. *State of Missouri v. Joseph E. Weber*, St. Louis City Cir. Ct., Case No. 22009-01723.

b. On October 6, 2009, Weber pleaded guilty to Resisting Arrest/Detention/Stop by Fleeing – Creating A Substantial Risk of Serious Injury/Death To Any Person, a Class D Felony, in violation of § 575.150. The Information charged Weber with fleeing from a law enforcement officer attempting to make a lawful stop for the purpose of preventing the officer from effecting the stop. The Information also stated that Weber fled in such a manner that created substantial risk of serious physical injury or death to other persons in that Weber drove the vehicle in excess of one hundred (100) miles per hour as he weaved through traffic on Interstate 70. The court sentenced Weber to four (4) years' confinement, but suspended the execution of sentence and placed Weber on supervised probation for five (5) years. *State of Missouri v. Joseph E. Weber*, St. Charles Co. Cir. Ct., Case No. 0811-CR02986-01.

9. Background Question No. 7 of the Application asks the following:

Do you have a child support obligation in arrearage?

If you answer yes:
(a) By how many months are you in arrearage?
(b) Are you currently subject to and in compliance with any repayment agreement?
(c) Are you the subject of a child support related subpoena/warrant? (If you answer yes, provided documentation showing proof of current payments or an approved repayment plan from the appropriate state child support agency.).

10. Weber marked "Yes" to Question No. 7, and reported that he is currently subject to and in compliance of a repayment agreement, and that he is subject to a child support related subpoena/warrant. Weber did not disclose the number of months he is in arrearage. However, as listed above in paragraph 7(f), Weber did disclose his conviction for Non-Support In Each Of Six Individual Months Within Any Twelve-Month Period – Amount Owed Is In Excess of $5,000.00, a Class D Felony, in violation of § 568.040. *State of Missouri v. Joseph Eric Weber*, Lincoln Co. Cir. Ct., Case No. 05L6-CR00557-01.

CONCLUSIONS OF LAW

11. Section 385.209 RSMo (Supp. 2011)[1] 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:

* * *

(3) Obtained or attempted to obtain a license through material misrepresentation or fraud;

* * *

(5) Been convicted of any felony;

* * *

(12) Failed to comply with an administrative or court order imposing a child support obligation[.]

[1] All statutory references are to the 2011 Supplement to the Revised Statutes of Missouri unless otherwise noted.

12. 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.

13. Weber may be refused a Motor Vehicle Extended Service Contract Producer License pursuant to § 385.209.1(3) because he attempted to obtain a license through material misrepresentation or fraud when he did not disclose the following convictions on his application:

    a. *State of Missouri v. Joseph E. Weber*, City of St. Louis Cir. Ct., Case No. 22009-01723 (Assault – Third Degree – Pursuant to Subdivisions (1), (2), (4), and (6), a Class A Misdemeanor, in violation of § 565.070).

    b. *State of Missouri v. Joseph E. Weber*, St. Charles Co. Cir. Ct., Case No. 0811-CR02986-01 (Resisting Arrest/Detention/Stop by Fleeing – Creating A Substantial Risk of Serious Injury/Death To Any Person, a Class D Felony, in violation of § 575.150).

14. Weber may be refused a Motor Vehicle Extended Service Contract Producer License pursuant to § 385.209.1(5) because he has been convicted of three felonies:

    a. *State of Missouri v. Joseph E. Weber*, Lincoln Co. Cir. Ct., Case No. 04L6-CR00597-01 (Tampering with Motor Vehicle, Airplane, Motor Boat, Etc. – First Degree, a Class C Felony, in violation of § 569.080).

    b. *State of Missouri v. Joseph Eric Weber*, Lincoln Co. Cir. Ct., Case No. 05L6-CR00557-01 (Non-Support In Each Of Six Individual Months Within Any Twelve-Month Period – Amount Owed Is In Excess of $5,000.00, a Class D Felony, in violation of § 568.040).

    c. *State of Missouri v. Joseph E. Weber*, St. Charles Co. Cir. Ct., Case No. 0811-CR02986-01 (Resisting Arrest/Detention/Stop by Fleeing – Creating A Substantial Risk of Serious Injury/Death To Any Person, a Class D Felony, in violation of § 575.150).

15. Weber may also be refused a Motor Vehicle Extended Service Contract Producer License pursuant to § 385.209.1(12) because he failed to comply with an administrative or court order imposing a child support obligation and, as a result, was convicted of Non-Support In Each Of Six Individual Months Within Any Twelve-Month Period – Amount Owed Is In Excess of $5,000.00, a Class D Felony, in violation of § 568.040 in Case No. 05L6-CR00557-01. *State of Missouri v. Joseph Eric Weber*, Lincoln Co. Cir. Ct., Case No. 05L6-CR00557-01.

16. The Director has considered Weber's history and all of the circumstances surrounding Weber's Application. Granting Weber a motor vehicle extended service contract producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion to refuse Weber's motor vehicle extended service contract producer license.

17. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Joseph E. Weber** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 18TH **DAY OF** MAY**, 2012.**

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 21st day of May, 2012 a copy of the foregoing Order and Notice was served upon the Applicant in this matter by regular and certified mail at the following address:

Joseph E. Weber
24 Saint Matthews Avenue
O'Fallon, Missouri 63366

Certified No. 7009 3410 0001 8931 3117

Kathryn Randolph

Kathryn Randolph
Paralegal
Missouri Department of Insurance, Financial
Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: 573.751.2619
Facsimile: 573.526.5492
Email: kathryn.randolph@insurance.mo.gov