

FINAL ORDER
EFFECTIVE
09-27-2018



**DEPARTMENT OF INSURANCE, FINANCIAL
INSTITUTIONS AND PROFESSIONAL REGISTRATION**

P.O. Box 690, Jefferson City, Mo. 65102-0690

In the Matter of:)
) **Case No. 180517692C**
DEREK WINSTON,)
)
)
Applicant.)

CONSENT ORDER

Chlora Lindley-Myers, Director of the Department of Insurance, Financial Institutions and Professional Registration, takes up the above matter for consideration and disposition. The Consumer Affairs Division, through legal counsel Shelley A. Woods, and Applicant Derek Winston have reached a settlement in this matter and have consented to the issuance of this Consent Order.

1. Chlora Lindley-Myers is the duly appointed Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration (the "Director")

of the “Department”) whose duties, pursuant to Chapters 374 and 375, RSMo,¹ include the supervision, regulation, and discipline of insurance producers.

2. The Consumer Affairs Division (“Division”) has the duty of conducting investigations into the acts of insurance producers under Chapters 374 and 375 and is authorized by the Director to investigate and to recommend enforcement action, including insurance producer license application refusal.

3. Derek Winston (“Winston”) is a Missouri resident with a residential and mailing address of 409 Lakeside Dr., Ballwin, Missouri 63021 and a business address of 390 S. Woods Mill Road, Chesterfield, Missouri 63017.

4. On February 14, 2018, Winston submitted an electronic application for a resident insurance producer license (“Application”) to the Department, along with attachments.

5. Background Information Question Number 1B on the Application asks, in relevant part, “Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony?”

6. Winston answered “Yes” to Background Information Question Number 1B. He provided a letter of explanation regarding his criminal past and court documents showing that he was previously convicted of a felony, as follows: On December 8, 2009, the St. Louis County Prosecutor charged Winston with one count of the Class C Felony of Driving While Intoxicated, in violation of § 577.010, one count of a Class A Misdemeanor, Driving While License was Revoked, one count of the Misdemeanor, Failing to Display Valid

¹ All civil statutory references are to RSMo 2016 unless otherwise noted.

License Plates, and one count of the Class C Misdemeanor, Failing to Maintain Financial Responsibility, for a total of four counts. *State v. Derek Winston*, St. Louis Co. Cir. Ct., Case No. 09SL-CR06279-01. On August 25, 2010, Winston pled guilty to the Class C Felony, Driving While Intoxicated, in violation of § 577.010, and the Class A Misdemeanor, Operating a Motor Vehicle While License Was Revoked. *Id.* Also on August 25, 2010, the St. Louis County Prosecutor nolle prossed Counts III (Failure to Display Valid License Plates) and IV (No Proof of Insurance). The Court then sentenced Winston to four years in the Missouri Department of Corrections, with execution of that sentence suspended, ten days shock time, completion of an alcohol treatment program, payment of certain costs, random urine testing and five years of supervised probation. *Id.*

7. On June 20, 2013, the St. Louis County Circuit Court revoked Winston's probation because he failed to report to his probation officer that the court had issued an arrest warrant when Winston failed to appear or pay a fine for speeding and ordered him to serve the previously imposed four year sentence. On that same date, the Court did suspend execution of the full four year sentence, ordered shock incarceration for a period of 120 days and placed Winston on supervised probation for a period of five years. Winston completed his probation, early, on June 29, 2016.

8. Background Question No. 7 asks if an applicant has "a child support obligation in arrearage?"

9. Winston answered "Yes" to Background Question No. 7. He also provided an explanation of the child support arrearage and court documentation. Winston stated that he did not understand that his child support obligation would begin from the date his child

custody trial began. While as of March 16, 2018, Winston's child support arrearage was \$1514.25, Winston has been paying his child support as directed by the court and the Missouri Department of Social Services and has been paying an additional amount to pay off the amount in arrears.

10. The Department of Revenue did revoke Winston's driving privileges, but had granted him limited driving privileges as long as Winston complied with certain conditions. One of those conditions was that Winston have a monitor installed in any vehicle he owned or drove. Winston complied with that condition until he left his employment and could no longer afford the cost of the monitor. As a result, the Department of Revenue terminated his limited driving privileges.

11. Winston acknowledges and understands that under § 375.141.1(6), the Director may refuse to issue an insurance producer license to Winston because Winston has been convicted of a felony.

12. Winston acknowledges and understands that he has the right to consult counsel at his own expense.

13. Winston stipulates and agrees to waive any waivable rights that he may have to a hearing before the Administrative Hearing Commission or the Director, and any rights to seek judicial review or other challenge to the terms and conditions of this Consent Order and forever releases and holds harmless the Department, the Director and her agents, and the Consumer Affairs Division from all liability and claims arising out of, pertaining to, or relating to this matter.

14. Winston acknowledges and understands that this Consent Order is an

administrative action and will be reported by the Department to other states. Winston further acknowledges and understands that this administrative action should be disclosed on future applications and renewal applications and that it is his responsibility to comply with the reporting requirements of each state in which he may be licensed.

15. Each signatory to this Consent Order certifies by signing that she or he is fully authorized, in his or her own capacity, or by the named party she or he represents, to accept the terms and provisions of this Consent Order in their entirety, and agrees, in his or her personal or representational capacity, to be bound by the terms of this Consent Order.

Conclusions of Law

16. Section 375.141.1 provides, in relevant part:

The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

* * *

(6) Having been convicted of a felony or crime involving moral turpitude;

(13) Failing to comply with any administrative or court order imposing a child support obligation[.]

17. The facts admitted herein by Winston provide cause for the Director to refuse to issue a resident insurance producer license to Winston pursuant to § 375.141.1(6) and (13).

18. The Director may impose orders in the public interest under § 374.046.

19. The terms set forth in this Consent Order are an appropriate disposition of this matter and entry of this Consent Order is in the public interest.

Order

IT IS ORDERED that the Department will issue a resident individual insurance producer license to Winston, subject to the conditions set forth herein.

1. Winston shall respond to all inquiries and consumer complaints forwarded or otherwise communicated to him by the Department or a consumer within five (5) business days of receipt.

2. Winston shall report in writing all consumer complaints, both written and oral, to the Division within five (5) business days of receipt. If a complaint was not communicated to Winston by the Department, Winston shall send a copy of the complaint and Winston's response to the consumer to the Department within five (5) business days of receipt.

3. Winston shall report to the Department any violation of or failure to comply with the laws set forth in Chapter 374 or 375 within five (5) business days of such violation or failure to comply.

4. Winston shall continue to comply with any administrative or court order imposing a child support obligation.

5. Winston shall report to the Department any administrative action taken against Winston in another jurisdiction or by another governmental agency in this state within five (5) business days after he receives notification of the initiation of such administrative action.

6. Winston shall report to the Department any arrest, court hearing, court appearance, arraignment hearing, guilty plea, nolo contendere plea, Alford plea, finding of

guilt or conviction concerning a felony or crimes involving moral turpitude within five (5) business days of such occurrence.

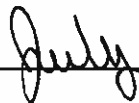
7. The special conditions listed in the preceding six (6) paragraphs will expire upon the expiration, lapse, termination, revocation, or renewal of Winston's insurance producer license, whichever comes first.

IT IS FURTHER ORDERED that for five (5) years subsequent to the date of this executed Consent Order, Winston will voluntarily surrender his license to the Department within thirty (30) days of Winston's entry of a guilty plea, nolo contendere plea, Alford plea, or finding of guilty or conviction for a felony, regardless of whether sentence is imposed, suspended, or executed.

IT IS FURTHER ORDERED that if Winston maintains his insurance producer license and complies with the terms of this Consent Order, Winston may apply to renew his license and the Director shall consider any renewal application in accordance with Chapters 374 and 375, but without regard to Winston's prior felony conviction in *State v. Derek Winston*, St. Louis Co. Cir. Ct., Case No.09SL-CR06279-01.

IT IS FINALLY ORDERED that the Director may pursue additional legal remedies, as determined appropriate by the Director, and without limitation, as authorized by Chapters 374 and 375 including remedies for violation of, or failure to comply with, the terms of this Consent Order.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 31 DAY OF

, 2018.



Chlora Lindley Myers
CHLORA LINDLEY MYERS

Director
Missouri Department of Insurance,
Financial Institutions and Professional
Registration

CONSENT AND WAIVER OF HEARING

The undersigned persons understand and acknowledge that Jonathan P. Winston may have the right to a hearing, but that Jonathan P. Winston has waived the hearing and consented to the issuance of this Consent Order.

Derek Winston

Derek Winston, Applicant
409 Lakeside Dr.
Ballwin, MO 63021
Telephone: (314) 420-5835

7-31-18

Date

Counsel for Applicant

Name: _____

Missouri Bar No. _____

Address: _____

Telephone: _____

Date

Shelley A. Woods

Shelley A. Woods
Counsel for Consumer Affairs Division
Missouri Bar No. 33525
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

August 6, 2018
Date