



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

James Scott Gilmartin,

Applicant.

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Case No. 14-0429436C

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On June 20, 2014 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 James Scott Gilmartin. 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. James Scott Gilmartin, ("Gilmartin") is currently a Missouri resident with a residential address of PO Box 54, Grover, Missouri 63040.
2. On December 10, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Gilmartin's Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. The "Applicant's Certification and Attestation" section of the Current 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. Gilmartin signed the "Applicant's Certification and Attestation" section under oath before a notary on December 6, 2013.
5. Background Question No. 4 of the Application asks, in relevant part: "Have you been notified by any jurisdiction to which you are applying of any delinquent tax obligation that is not the subject of a repayment agreement?"

6. Gilmartin responded "No" to Background Question No. 4.
7. Contrary to Gilmartin's "No" answer to Question No. 4, the Consumer Affairs Division's investigation revealed information indicating that Gilmartin had delinquent tax obligations to the State of Missouri from tax years 2007, 2008, 2009 and 2010.
8. The St. Louis County Circuit Court entered multiple judgments against Gilmartin upon the Department of Revenue's certification of the assessment of individual income tax, interest, additions to tax, and fees. The following tax judgments remain unsatisfied:
 - a) *Department of Revenue v. James S. Gilmartin*, St. Louis Co. Cir. Ct., 1122-MC04459; \$3,639.38
 - b) *Department of Revenue v. James S. Gilmartin*, St. Louis Co. Cir. Ct., 1122-MC05167; \$3,635.60
 - c) *Department of Revenue v. James S. Gilmartin*, St. Louis Co. Cir. Ct., 1122-MC07433; \$4,409.54
 - d) *Department of Revenue v. James S. Gilmartin*, St. Louis Co. Cir. Ct., 1122-MC09341; \$1,131.52
 - e) *Department of Revenue v. James S. Gilmartin*, St. Louis Co. Cir. Ct., 1122-MC09990; \$1,573.02
 - f) *Department of Revenue v. James S. Gilmartin*, St. Louis Co. Cir. Ct., 1222-MC00378; \$3,643.87
 - g) *Department of Revenue v. James S. Gilmartin*, St. Louis Co. Cir. Ct., 1222-MC01591; \$1,210.62
 - h) *Department of Revenue v. James S. Gilmartin*, St. Louis Co. Cir. Ct., 12SL-MC14978; \$1,012.91
 - i) *Department of Revenue v. James S. Gilmartin*, St. Louis Co. Cir. Ct., 12SL-MC15063; \$1,214.04
 - j) *Department of Revenue v. James S. Gilmartin*, St. Louis Co. Cir. Ct., 12SL-MC06878; \$981.58
9. On December 24, 2013, Special Investigator Andrew Engler, with the Division, sent an inquiry letter to Gilmartin at his address on record, first class mail via the US Postal Service, asking for the current status of the tax obligations along with evidence of a repayment arrangement and payment history.
10. The first class mail to Gilmartin was not returned as undeliverable.
11. Gilmartin never responded to the Division's December 24, 2013 inquiry nor did he demonstrate a reasonable justification for the delay.
12. On January 13, 2014, Special Investigator Engler sent a second inquiry letter to Gilmartin again asking for the current status of the obligation along with evidence of a repayment arrangement and payment history.

13. On January 27, 2014, Gilmartin called Special Investigator Engler and said he was working with the Missouri Department of Revenue (DOR) to resolve the issue and asked for an extension for his reply with the documentation.
14. Special Investigator Engler granted an extension to Gilmartin until February 15, 2014.
15. To date, Gilmartin has not responded to the Division's inquiries nor provided any documentation showing his compliance with DOR. Gilmartin did not demonstrate a reasonable justification for the delay.
16. It is inferable, and hereby found as fact, that Gilmartin falsely answered "No" to Background Question No. 4 in order to misrepresent to the Director that he had no tax delinquencies and, accordingly, in order to improve the chances the Director would approve his Application and issue him an MVESC producer license.

CONCLUSIONS OF LAW

17. Section 385.209 provides, 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) 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;

* * *

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

18. Regulation 20 CSR 100-4.100(2) states in relevant part,

(A) 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.

19. 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.
20. The Director may refuse to issue Gilmartin a motor vehicle extended service contract ("MVESC") producer license pursuant to § 385.209.1(2) because Gilmartin violated a rule of the Director, in that Gilmartin failed to respond to two written inquiries from the Consumer Affairs Division or demonstrate a reasonable justification for the delay. Each violation of 20 CSR 100-4.100(2) is a separate and sufficient ground for refusal.
21. The Director also may refuse to issue Gilmartin an MVESC producer license under § 385.209.1(3) because he attempted to obtain a license through material misrepresentation or fraud. Gilmartin falsely answered no to Question No. 4 and failed to disclose his delinquent Missouri tax obligations in his application, in order to represent to the Director that he had no delinquent tax obligations, and, accordingly, in order to improve the chances that the Director would approve his Application and issue him an MVESC producer license.
22. The Director also may refuse to issue a MVESC producer license pursuant to § 385.209.1(13) because Gilmartin failed to comply with an administrative or court order directing payment of state income tax totaling \$22,452.08:
 - a) *Department of Revenue v. James S. Gilmartin*, St. Louis Co. Cir. Ct., 1122-MC04459; \$3,639.38
 - b) *Department of Revenue v. James S. Gilmartin*, St. Louis Co. Cir. Ct., 1122-MC05167; \$3,635.60
 - c) *Department of Revenue v. James S. Gilmartin*, St. Louis Co. Cir. Ct., 1122-MC07433; \$4,409.54
 - d) *Department of Revenue v. James S. Gilmartin*, St. Louis Co. Cir. Ct., 1122-MC09341; \$1,131.52
 - e) *Department of Revenue v. James S. Gilmartin*, St. Louis Co. Cir. Ct., 1122-MC09990; \$1,573.02
 - f) *Department of Revenue v. James S. Gilmartin*, St. Louis Co. Cir. Ct., 1222-MC00378; \$3,643.87
 - g) *Department of Revenue v. James S. Gilmartin*, St. Louis Co. Cir. Ct., 1222-MC01591; \$1,210.62
 - h) *Department of Revenue v. James S. Gilmartin*, St. Louis Co. Cir. Ct., 12SL-MC14978; \$1,012.91

- i) *Department of Revenue v. James S. Gilmartin*, St. Louis Co. Cir. Ct., 12SL-MC15063; \$1,214.04
- j) *Department of Revenue v. James S. Gilmartin*, St. Louis Co. Cir. Ct., 12SL-MC06878; \$981.58

23. Each failure by Gilmartin to comply with an administrative or court order directing payment of state income taxes is a separate and sufficient cause for refusal of his Application.
24. This order is in the public interest.

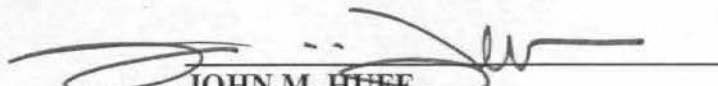
ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service producer license application of **James Scott Gilmartin** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 24TH DAY OF JUNE, 2014.




JOHN M. HUFF
DIRECTOR

NOTICE

TO: Applicant and any unnamed persons aggrieved by this Order:

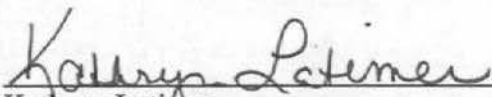
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send 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 25th day of June, 2014 a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following address:

James Scott Gilmartin
PO Box 54
Grover, MO 63040

Tracking No. 1Z0R15W84299887498


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