



State of Missouri
DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION

IN RE:)
)
 MARY JO McGUIRE,) Case No. 170206169C
)
 Applicant.)

ORDER REFUSING TO ISSUE
MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On May 4, 2017, 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 Mary Jo McGuire. After reviewing the Petition, 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. Mary Jo McGuire ("McGuire") is a Missouri resident with a residential and mailing address of 16 Juno Drive, Wentzville, Missouri 63385-1924, and a business address of 1 Mid Rivers Mall Drive, Suite 269, Saint Peters, Missouri 63376-4322.
2. The Department of Insurance, Financial Institutions and Professional Registration ("Department") has never issued McGuire a motor vehicle extended service contract ("MVEESC") producer license.
3. On August 21, 2003, McGuire pled guilty to, and was convicted of, Passing Bad Check - Less Than \$500, a Class A Misdemeanor, in violation of § 570.120 ("Passing Bad Checks").¹ The court sentenced her to sixty days' incarceration, but suspended execution of the sentence and placed her on two years' probation. *State v. Mary J. McGuire*, St. Charles Co. Cir. Ct., Case No. 03CR126236 ("*McGuire I*").
4. On April 29, 2009, McGuire pled guilty to, and was convicted of, Passing Bad Checks a second time. The court sentenced her to thirty days' incarceration, but suspended execution of the sentence and placed her on two years' probation. *State v. Mary J. McGuire*, St. Charles Co. Cir. Ct., Case No. 0611-CR04766 ("*McGuire II*").
5. On October 5, 2009, the Saint Charles County Circuit Court entered a judgment against McGuire for \$16,583.90 of unpaid 2002, 2003, 2004, 2005, and 2007 income "tax,

¹ All criminal statutory references are to those contained in the version of the Missouri Revised Statutes pursuant to which each judgment was rendered.

McGuire for \$16,583.90 of unpaid 2002, 2003, 2004, 2005, and 2007 income “tax, interest, additions to tax, penalties, and fees ... as provided by law until the full amount of the tax liability is paid.” *Dep’t of Revenue v. Michael J. McGuire, et al.*, St. Charles Co. Cir. Ct., Case No. 0911-MC01586. The judgment remains unsatisfied.

6. On October 6, 2009, McGuire pled guilty to Theft - \$500 or More, a Class C Felony, in violation of § 570.030 (“Theft”). The court suspended imposition of sentence and ordered her to pay \$6,500.00 as restitution and complete five years’ probation. *State v. Mary J. McGuire*, St. Charles Co. Cir. Ct., Case No. 0511-CR04451-01 (“*McGuire III*”).
7. On September 27, 2010, the Saint Charles County Circuit Court entered a judgment against McGuire for \$3,628.98 of unpaid 2006 and 2008 income “tax, interest, additions to tax, penalties, and fees ... as provided by law until the full amount of the tax liability is paid.” *Dep’t of Revenue v. Michael J. McGuire, et al.*, St. Charles Co. Cir. Ct., Case No. 1011-MC03956. The judgment remains unsatisfied.
8. On January 5, 2012, the Saint Charles County Prosecuting Attorney charged McGuire with Passing Bad Checks again. She was served later that month, and her attorney entered his appearance in the matter. The prosecution was unresolved as of May 6, 2013.² *See State v. Mary J. McGuire*, St. Charles Co. Cir. Ct., Case No. 1211-CR00103 (“*McGuire IV*”).
9. On July 15, 2013, the Department received McGuire’s first Application for Motor Vehicle Extended Service Contract Producer License (“2013 Application”).
10. McGuire responded “Yes” to Background Information Question 33.1 of the 2013 Application, which asked:

Have you ever been convicted of a crime, had a judgement 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 and 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 judgement 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

² See ¶ 12, *infra*.

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 judgement

11. In further response to Background Information Question 33.1 of the 2013 Application, McGuire admitted the prosecutions of *McGuire II* and *McGuire III*, but made no mention of, nor provided documents regarding, her earlier conviction in *McGuire I* or her then-pending charge in *McGuire IV*.
12. McGuire signed the 2013 Application before a notary and under oath on May 6, 2013.
13. The 2013 Application’s “Applicant’s Certification and Attestation” section provided, 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.

14. On March 10, 2014, the Director refused McGuire’s 2013 Application in the administrative action known as *In re Mary Jo McGuire*, DIFP Case No. 202399, pursuant to § 385.209.1(3), (7), and (13)³ because:
 - a. McGuire had attempted to obtain a MVESC producer license through material misrepresentation or fraud by failing to disclose *McGuire I* and *McGuire IV* on the 2013 Application as required;
 - b. McGuire twice was found in violation of law in actions instituted by the Saint Charles County Prosecuting Attorney in matters regarding financial services, credit, banking, or finance, as reflected by her convictions for Passing Bad Checks; and
 - c. McGuire had failed to comply with administrative or court orders directing payment of Missouri income tax, as reflected by the unsatisfied judgments against her in *Dep’t of Revenue v. Michael J. McGuire, et al.*, St. Charles Co. Cir. Ct., Case No. 0911-MC01586, and *Dep’t of Revenue v. Michael J. McGuire, et al.*, St. Charles Co. Cir. Ct., Case No. 1011-MC03956.

³ All civil statutory references are to the 2013 Cumulative Supplement of the Missouri Revised Statutes.

15. On July 17, 2015, the Saint Charles County Circuit Court entered a judgment against McGuire for \$1,099.91 of unpaid 2013 income “tax, interest, additions to tax, penalties, and fees ... as provided by law until the full amount of the tax liability is paid.” *Dep’t of Revenue v. Michael J. McGuire, et al.*, St. Charles Co. Cir. Ct., Case No. 1511-MC03595. The judgment remains unsatisfied.
16. On April 15, 2016, the Saint Charles County Circuit Court entered a judgment against McGuire for \$1,903.52 of unpaid 2014 income “tax, interest, additions to tax, penalties, and fees ... as provided by law until the full amount of the tax liability is paid.” *Dep’t of Revenue v. Michael J. McGuire, et al.*, St. Charles Co. Cir. Ct., Case No. 1611-MC01626. The judgment remains unsatisfied.
17. On or about September 12, 2016, the Department received McGuire’s second Application for Motor Vehicle Extended Service Contract Producer License (“2016 Application”).
18. McGuire responded “Yes” to Background Information Question 36.1 of the 2016 Application, which asked:

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, which has not been previously reported to this insurance department?

“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.

19. In further response, McGuire disclosed *McGuire II*, *McGuire III*, and *McGuire IV* and provided records regarding *McGuire II*, *McGuire III*, and *McGuire IV*. However, McGuire did not disclose or provide any records regarding *McGuire I*.

20. McGuire also responded "Yes" to Background Information Question 36.4 of the 2016 Application, which asked:

Have you failed to pay state or federal income tax, which has not been previously reported to this insurance department?

Have you failed to comply with an administrative or court order directing payment of state or federal income tax, which has not been previously reported to this insurance department?

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 or 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 or 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.).

21. Along with the 2016 Application, McGuire included a letter stating, in part:

My adult son was on my checking account with me He was an addict. He is now recovering and I do not have a checking account[.]

* * *

The taxes are being deducted per arrangement through my husband's check I included[.]

22. McGuire did not include with the 2016 Application a written statement explaining the circumstances of each administrative or court order, copies of all relevant documents (i.e. demand letter from the Department of Revenue or Internal Revenue Service, etc.), a certified copy of each administrative or court order, judgment, and/or lien, and a certified

copy of the official document which demonstrates the resolution of the tax delinquency (i.e. tax compliance letter, etc.).

23. McGuire responded to Employment History Question 35 of the 2016 Application in part by indicating that she held the position of "Auto Warranties" while working at "Auto Assure" in "O Fallon, MO" from May 2013 until August 2015.
24. AutoAssure, LLC, a Texas Limited Liability Company ("Auto Assure"), has been licensed by the Department as a MVESC business entity producer to sell, offer, negotiate, and solicit MVESCs with consumers since January 1, 2012. It maintains a place of business in O'Fallon, Missouri.
25. McGuire signed the 2016 Application before a notary and under oath.
26. The 2016 Application's "Applicant's Certification and Attestation" section stated, 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. 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.
27. On November 17, 2016, Special Investigator Andrew Engler of the Department's Consumer Affairs Division ("Special Investigator Engler" of the "Division") mailed an inquiry letter to McGuire requesting the missing information and documents described in paragraph 22 above, as well as a description of McGuire's job duties while "work[ing] for Auto Assure from May 2013 to August 2015." The inquiry letter advised McGuire that by regulation her response was "due within twenty days. Failure to respond could result in a refusal to issue your MVESC [producer] license."
 28. The November 17, 2016 inquiry letter was not returned to the Division as undeliverable; therefore, McGuire is presumed to have received it.
 29. McGuire neither responded to the November 17, 2016 inquiry letter nor demonstrated reasonable justification for her nonresponse.

30. On December 13, 2016, Special Investigator Engler mailed to McGuire a second inquiry letter requesting the same information and documents as his first inquiry letter had, and again warning that “[f]ailure to respond could result in an administrative action[.]”
31. The December 13, 2016 inquiry letter was not returned to the Division as undeliverable; therefore, McGuire is presumed to have received it.
32. McGuire neither responded to the December 13, 2016 inquiry letter nor demonstrated reasonable justification for her nonresponse.
33. It is inferable, and hereby found as fact, that McGuire failed to fully disclose her criminal record and/or tax delinquencies on her 2013 Application and 2016 Application in order to materially misrepresent to the Director that the matters were nonexistent or insignificant and thereby improve the chances that her applications would be approved and she would be granted licensure.

CONCLUSIONS OF LAW

34. Section 385.209.1 provides, 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 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;

* * *

- (7) Been found in violation of law by a court of competent jurisdiction in an action instituted by any officer of any state or the United States in any matter involving motor vehicle extended service contracts, financial services, investments, credit, insurance, banking, or finance;

* * *

- (9) Been refused a license or had a license revoked or suspended by a state or federal regulator of service contracts, financial services, investments, credit, insurance, banking, or finance;

* * *

(11) Unlawfully acted as a producer without a license; [or]

* * *

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

35. Section 385.206.1 provides, in relevant part:

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:

* * *

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

36. Section 385.207.3 provides:

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.

37. Title 20 CSR 100-4.100(2)(A) 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.

38. "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. E.D. 2000) (internal citation omitted).

39. The Director may refuse to issue McGuire a MVESC producer license pursuant to § 385.209.1(2) because she violated § 385.206, in conjunction with § 385.207, when she sold, offered, negotiated, or solicited a MVESC with a consumer, in or from Missouri, without a MVESC producer license during her employment at Auto Assure.

40. The Director may refuse to issue McGuire a MVESC producer license pursuant to § 385.209.1(2) because she twice violated a rule of the Director, specifically 20 CSR 100-4.100(2)(A), when she failed to respond to each of two Division inquiry letters and demonstrated no reasonable justification for her nonresponsiveness.
41. Each violation of a provision in §§ 385.200 to 385.220 or a rule of the Director is a separate and sufficient ground for refusal pursuant to § 385.209.1(2).
42. The Director may refuse to issue McGuire a MVESC producer license pursuant to § 385.209.1(3) because she twice attempted to obtain a license through material misrepresentation or fraud by failing to disclose her full criminal history, as required by both the 2013 Application and 2016 Application.
43. Each time McGuire attempted to obtain a MVESC producer license through material misrepresentation or fraud is a separate and sufficient ground for refusal pursuant to § 385.209.1(3).
44. The Director may refuse to issue McGuire a MVESC producer license pursuant to § 385.209.1(7) because she twice was found in violation of § 570.120 in actions instituted by an officer of Missouri, specifically *McGuire I* and *McGuire II*, which were matters involving financial services, credit, banking, or finance.
45. Each of McGuire's convictions for Passing Bad Checks is a separate and sufficient ground for refusal pursuant to § 385.209.1(7).
46. The Director may refuse to issue McGuire a MVESC producer license pursuant to § 385.209.1(9) because she was refused a MVESC producer license in 2014 in the Department proceeding known as *In re Mary Jo McGuire*, DIFP Case No. 202399.
47. The Director may refuse to issue McGuire a MVESC producer license pursuant to § 385.209.1(11) because she unlawfully acted as a producer without a license when she sold, offered, negotiated, or solicited a MVESC with a consumer, in or from Missouri, without a MVESC producer license during her employment at Auto Assure.
48. The Director may refuse to issue McGuire a MVESC producer license pursuant to § 385.209.1(13) because she has failed to comply with administrative or court orders directing payment of state income tax, as reflected by the unsatisfied judgments in:
 - a. *Dep't of Revenue v. Michael J. McGuire, et al.*, St. Charles Co. Cir. Ct., Case No. 0911-MC01586;
 - b. *Dep't of Revenue v. Michael J. McGuire, et al.*, St. Charles Co. Cir. Ct., Case No. 1011-MC03956;
 - c. *Dep't of Revenue v. Michael J. McGuire, et al.*, St. Charles Co. Cir. Ct., Case No. 1511-MC03595; and

d. *Dep't of Revenue v. Michael J. McGuire, et al.*, St. Charles Co. Cir. Ct., Case No. 1611-MC01626.

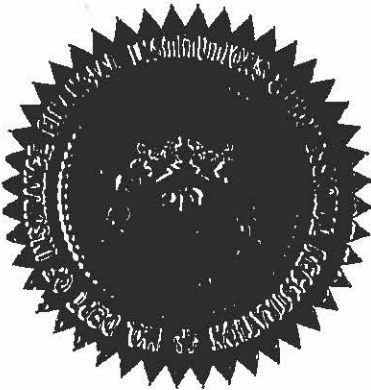
49. Each failure to comply with an administrative or court order directing payment of state income tax is a separate and sufficient ground for refusal pursuant to § 385.209.1(13).
50. The Director has considered McGuire's history and all of the circumstances surrounding McGuire's 2016 Application, including the material misrepresentations of her 2013 Application. Issuing a MVESC producer license to McGuire would not be in the interest of the public. Accordingly, the Director exercises her discretion to refuse McGuire's 2016 Application for a MVESC producer license.
51. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Mary Jo McGuire** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 28th DAY OF August, 2017.



Chlora Lindley Myers

CHLORA LINDLEY-MYERS
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.

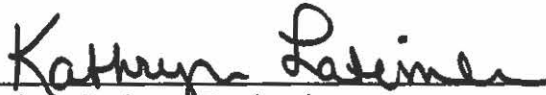
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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of August, 2017, 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:

Mary Jo McGuire
16 Juno Drive
Wentzville, Missouri 63385-1924

No. 1Z0R15W84294829498



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Missouri Department of Insurance, Financial
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