



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION

IN RE:)
)
 XIOMARA JIMENEZ,) Case No. 200084
)
 Applicant.)

**ORDER REFUSING TO ISSUE MOTOR VEHICLE
EXTENDED SERVICE CONTRACT PRODUCER LICENSE**

On October 11, 2013, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract (MVESC) producer license to Xiomara Jimenez. After reviewing the Petition and the Investigative Report, the Director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Xiomara Jimenez ("Jimenez") is a Missouri resident with a residential address of record of 178 American Inn Road, Villa Ridge, Missouri, 63089.
2. On January 9, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Jimenez's completed Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. Background Question No. 4 of the Application asked the following:

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?

If you answer yes, identify the jurisdiction(s): _____
4. Jimenez marked "No" to Background Question No. 4.
5. Jimenez did not disclose any delinquent tax obligation in her Application.
6. Contrary to Jimenez's "No" answer to Question No. 4, the Consumer Affairs Division's

investigation revealed information indicating that Jimenez owed delinquent tax obligations, of which she had been notified:

- a. On October 4, 2010, the Director of the Missouri Department of Revenue filed a Certificate of Tax Lien – Individual Income Tax, certifying that Jimenez, jointly with one David R. Tucker, owed \$2,338.76 in delinquent taxes from 2006, interest and penalties, which, upon filing, became the judgment of the court under § 143.902. The judgment remains unsatisfied.¹
 - b. On June 16, 2011, the St. Louis City Collector of Revenue filed a petition in the St. Louis City Circuit Court, naming Jimenez as the Respondent, seeking payment of delinquent taxes.²
7. It is inferable, and is hereby found as fact, that Jimenez failed to disclose her delinquent tax obligations in her Application in order to represent to the Director that she had no delinquent tax obligations, and, accordingly, in order to improve the chances that the Director would approve her Application and issue her an MVESC producer license.
 8. On January 25, 2013, Consumer Affairs Division investigator Dennis Fitzpatrick mailed an inquiry letter to Jimenez requesting an explanation of her “No” answer to Background Question No. 4, in light of the information indicating that Jimenez had delinquent tax obligations of which she had been notified, and requesting copies of her repayment schedules in both cases.
 9. Fitzpatrick mailed Jimenez two copies of the January 25, 2013 letter by first class mail, one copy to Jimenez’s home address of record and one copy to Jimenez’s business address of record, with sufficient postage attached to both copies.
 10. Neither copy of the January 25, 2013 letter was returned as undeliverable.
 11. Jimenez never responded to the January 25, 2013 letter and has not demonstrated any justification for her failure to respond.
 12. On March 1, 2013, Fitzpatrick mailed a second inquiry letter to Jimenez, again requesting an explanation of her “No” answer to Background Question No. 4, and again requesting copies of her repayment schedules in both cases.
 13. Fitzpatrick mailed Jimenez two copies of the March 1, 2013 letter by first class mail, one copy to Jimenez’s home address of record and one copy to Jimenez’s business address of record, with sufficient postage attached to both copies.
 14. Neither copy of the March 1, 2013 letter was returned as undeliverable.

¹ *Department of Revenue v. David R. Tucker and Xiomara Jimenez*, St. Louis Co. Cir. Ct., 10SL-MC11026.

² *St. Louis City Collector of Revenue v. Xiomara Jimenez*, St. Louis City Cir. Ct., 1122-CC06018.

15. Jimenez never responded to the March 1, 2013 letter and has not demonstrated any justification for her failure to respond.
16. On August 21, 2013, the Missouri Department of Revenue provided an affidavit showing that, as of that date, Jimenez owed the following amounts, with interest updated to August 31, 2013, in individual Missouri state income tax:
 - a. For tax year 2006, \$ 2,259.89;
 - b. For tax year 2008, \$ 293.81;
 - c. For tax year 2009, \$ 527.02;
 - d. For tax year 2010, \$ 24.62.

CONCLUSIONS OF LAW

17. Section 385.209 RSMo, Supp. 2012, 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:

* * *

 - (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:
 - (2) Except as required under subsection (2)(B)—
 - (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.

(B) This rule shall not apply to any other statute or regulation which requires a different time period for a person to respond to an inquiry by the department. If another statute or regulation requires a shorter response time, the shorter response time shall be met. This regulation operates only in the absence of any other applicable laws.

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 Jimenez an MVESC producer license pursuant to § 385.209.1(13) because Jimenez failed to comply with an administrative and court order directing payment of state income tax. The Certificate of Tax Lien – Individual Income Tax, filed on October 10, 2010 by the Director of Revenue in *Department of Revenue v. David R. Tucker, et al.*, St. Louis Co. Cir. Ct., 10SL-MC11026, which became the judgment of the court upon its filing, remains unsatisfied.
21. The Director also may refuse to issue Jimenez an MVESC producer license under § 385.209.1(3) because Jimenez attempted to obtain a license through material misrepresentation or fraud when in her Application she failed to disclose her delinquent tax obligations, falsely answering “No” to Background Question No. 4.
22. The Director also may refuse to issue Jimenez an MVESC producer license under § 385.209.1(2) because Jimenez violated a rule of the Director, in that Jimenez failed to respond to two written inquiries from the Consumer Affairs Division—on January 25, 2013, and March 1, 2013—without demonstrating reasonable justification for either of her failures to respond, each time thereby violating regulation 20 CSR 100-4.100(2), which is a rule of the Director.
23. The Director has considered Jimenez’s history and all of the circumstances surrounding Jimenez’s Application. Granting Jimenez an MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue an MVESC producer license to Jimenez.
24. This order is in the public interest.

ORDER

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

SO ORDERED.

WITNESS MY HAND THIS 21st DAY OF OCTOBER, 2013.




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 23rd day of October, 2013, 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:

Xiomara Jimenez
178 American Inn Road
Villa Ridge, Missouri 63089

Certified No. 7009 3410 0001 9255 0271



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