



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION

IN RE:

CHRISTOPHER JAMES KUBIK,

Applicant.

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Case No. 140722557C

ORDER REFUSING TO RENEW MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On August 25, 2014, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to renew a motor vehicle extended service contract producer license to Christopher James Kubik. 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. Christopher James Kubik ("Kubik") is a Missouri resident with a residential address of 127 Savannah Garden Drive, O'Fallon, Missouri 63366.
2. The Department of Insurance, Financial Institutions, and Professional Registration ("Department") received Kubik's completed application for a motor vehicle extended service contract ("MVESC") producer license ("2011 Application") on December 28, 2011.
3. The "Applicant's Certification and Attestation" section of the 2011 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. Kubik accepted the "Applicant's Certification and Attestation" section by signing the 2011 Application under oath and before a notary public.

5. Background Question No. 1 of the 2011 Application asks the following:

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 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 judgement 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 judgement[.]

6. Kubik answered “No” in response to Background Question No. 1 on the 2011 Application.
7. Relying on Kubik’s representation, the Department issued a MVESC producer license (License No. 8088472) to Kubik on January 1, 2012. This license expired on January 1, 2014.
8. The Department received Kubik’s completed application for renewal of his MVESC producer license (“Renewal Application”) on February 27, 2014.
9. The “Applicant’s Certification and Attestation” section of the Renewal 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.

10. Kubik accepted the "Applicant's Certification and Attestation" section by signing the Renewal Application under oath and before a notary public.
11. Background Question No. 1 of the Renewal Application asks the following:

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").

If you answer yes, you must attach to this application:

- d) a written statement explaining the circumstances of each incident,
 - e) a certified copy of the charging document, and
 - f) a certified copy of the official document which demonstrates the resolution of the charges or any final judgment.
12. Kubik answered "No" in response to Background Question No. 1 on the Renewal Application.
 13. During its investigation, the Consumer Affairs Division ("Division") discovered the following criminal history that Kubik failed to disclose:
 - a. On November 12, 2008, Kubik pled guilty to Passing a Bad Check, a Class A Misdemeanor, in violation of § 570.120 RSMo. The court sentenced Kubik to

ten (10) days' incarceration. *State v. Chris Kubik*, St. Charles Co. Cir. Ct., Case No. 0811-CR00371.

- b. On November 22, 2013, Kubik was charged with one (1) count of Possession of a Controlled Substance Except 35 Grams or Less of Marijuana, a Class C Felony, in violation of § 195.202 RSMo and one (1) count of Unlawful Use of Drug Paraphernalia, a Class A Misdemeanor, in violation of § 195.233 RSMo. Disposition on this case is pending. A plea hearing is scheduled for September 25, 2014. *State v. Christopher James Kubik*, St. Charles Co. Cir. Ct., Case No. 1311-CR00761-01.
14. After reviewing Kubik's 2011 Application, Renewal Application, and his criminal record, Special Investigator Andrew Engler, with the Division, sent an inquiry letter to Kubik dated March 3, 2014. Said letter requested additional documentation and information about Kubik's criminal history and his failure to disclose it. The letter further requested a response by March 23, 2014, and warned Kubik that failure to respond could result in the Department refusing to issue him a MVESC producer license.
15. In response to Special Investigator Engler's inquiry letter, Kubik sent a letter that explained that he was "convicted and charged with...(Passing Bad Check) – Less Than 500\$, case # 0811-CR00371" but that he did not disclose his 2008 conviction because he "thought [the Department] already had the information regarding case # 0811-CR00371...on file since the beginning since [he] was convicted in 2008." Kubik also stated that he had "not been convicted of [Possession of a Controlled Substance Except 35 Grams or Less of Marijuana or Unlawful Use of Drug Paraphernalia] as of yet."
16. It is inferable, and is hereby found as fact, that Kubik failed to disclose his criminal history in his 2011 Application and his Renewal Application in order to misrepresent to the Director that he had no criminal history, and accordingly, in order to improve the chances that the Director would approve his applications and issue him a MVESC producer license.

CONCLUSIONS OF LAW

17. Section 385.209 RSMo (Supp. 2013)¹ states, in pertinent 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

¹ All statutory references are to the RSMo (2000) as updated by the 2013 Supplement, unless otherwise indicated.

connection with the applicant's or licensee's motor vehicle extended service contract program has:

(1) Filed an application for license in this state within the previous ten years, which, as of the effective date of the license, was incomplete in any material respect or contained incorrect, misleading, or untrue information;

* * *

(3) Obtained or attempted to obtain a license through material misrepresentation or fraud[.]

18. 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 MVESC producer license, but to protect the public.
19. The Director may refuse to renew Kubik's MVESC producer license under § 385.209.1(1) because Kubik filed an application for a license in this state within the previous ten years, which, as of the effective date of the license, was incomplete, incorrect, misleading, or untrue in a material respect when he failed to disclose the following conviction on his 2011 Application:
 - a. *State v. Chris Kubik*, St. Charles Co. Cir. Ct., Case No. 0811-CR00371 (Passing a Bad Check, a Class A Misdemeanor, in violation of § 570.120 RSMo).
20. The Director may refuse to renew Kubik's MVESC producer license under § 385.209.1(3) because he obtained a license through material misrepresentation or fraud when he failed to disclose the following conviction on his 2011 Application:
 - a. *State v. Chris Kubik*, St. Charles Co. Cir. Ct., Case No. 0811-CR00371 (Passing a Bad Check, a Class A Misdemeanor, in violation of § 570.120 RSMo).
21. The Director may refuse to renew Kubik's MVESC producer license under § 385.209.1(3) because he attempted to obtain a license through material misrepresentation or fraud when he failed to disclose the following conviction and pending charges on his Renewal Application:
 - a. *State v. Chris Kubik*, St. Charles Co. Cir. Ct., Case No. 0811-CR00371 (Passing a Bad Check, a Class A Misdemeanor, in violation of § 570.120 RSMo).

- b. *State v. Christopher James Kubik*, St. Charles Co. Cir. Ct., Case No. 1311-CR00761-01 (charged with Possession of a Controlled Substance Except 35 Grams or Less of Marijuana, a Class C Felony, in violation of § 195.202 RSMo and Unlawful Use of Drug Paraphernalia, a Class A Misdemeanor, in violation of § 195.233 RSMo).
22. Each attempt to obtain a license through material misrepresentation or fraud is a separate and sufficient cause for refusal pursuant to § 385.209.1(3).
23. The Director has considered Kubik's history and all of the circumstances surrounding Kubik's 2011 Application and Renewal Application. Renewing Kubik's MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to renew Kubik's MVESC producer license.
24. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license renewal application of **Christopher James Kubik** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 29th DAY OF August, 2014.




JOHN M. HUFF
DIRECTOR

NOTICE

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

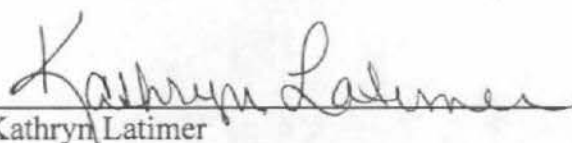
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send 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 2nd day of September, 2014, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following addresses:

Christopher James Kubik
127 Savannah Garden Drive
O'Fallon, Missouri 63366

Tracking No. 1Z0R15W84293738703



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