



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

CLAYTON MCCARTHY,

Applicant.

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Case No. 178544

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On April 19, 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 Clayton McCarthy. 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. Clayton McCarthy, ("McCarthy") is a Missouri resident with a residential address of record of 2667 Adie Road, Maryland Heights, Missouri, 63043.
2. On December 13, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received McCarthy's incomplete Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. The "Applicant's Certification and Attestation" section of the 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. McCarthy signed the Application in the "Applicant's Certification and Attestation" section under oath before a notary.
5. Background Question No. 1 of the Application asks the following:

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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. McCarthy marked “Yes” to Question No. 1, but did not provide any explanation or documentation of his criminal history.
7. The Department’s subsequent investigation revealed that on January 27, 2005, McCarthy pled guilty in St. Louis County Circuit Court to Involuntary Manslaughter in the First Degree, a Class C Felony in violation of § 565.024, RSMo, and to Possession of a Controlled Substance (35 grams or less of marijuana), a Class A Misdemeanor in violation of § 195.202, RSMo. *State of Missouri v. Clayton K. McCarthy*, St. Louis County Cir. Ct., 2104R-02917-01.
8. The court sentenced McCarthy to five (5) years’ incarceration on the Involuntary Manslaughter count but suspended execution of the sentence and granted McCarthy five (5) years’ probation.
9. The court sentenced McCarthy to six (6) months’ incarceration in the custody of the Department of Justice Services of St. Louis County on the Possession of a Controlled Substance count.

CONCLUSIONS OF LAW

10. 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:

* * *

(5) Been convicted of any felony[.]

11. 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.

12. McCarthy may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(5) because he has been convicted of a felony:

a. *State of Missouri v. Clayton K. McCarthy, St. Louis County Cir. Ct.*, 2104R-02917-01 (Involuntary Manslaughter in the First Degree, a Class C Felony in violation of § 565.024, RSMo, and Possession of a Controlled Substance (35 grams or less of marijuana), a Class A Misdemeanor in violation of 195.202, RSMo).

13. The Director has considered McCarthy's history and all of the circumstances surrounding McCarthy's Application. Granting McCarthy a motor vehicle extended service contract producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue a motor vehicle extended service contract producer license to McCarthy.

14. This Order is in the public interest.

ORDER

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

SO ORDERED.

WITNESS MY HAND THIS 24TH DAY OF APRIL, 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 26 day of April, 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:

Clayton McCarthy
2667 Adie Road
Maryland Heights, Missouri 63043

Certified No. 7009 3410 0001 92542535



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