



**DEPARTMENT OF INSURANCE, FINANCIAL
INSTITUTIONS AND PROFESSIONAL REGISTRATION**

P.O. Box 690, Jefferson City, Mo. 65102-0690

In the Matter of:

DAVID FAIR

) DIFP No. 175338
) AHC Case No. 12-2135 DI
)

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE**

Based on the competent and substantial evidence on the whole record, I, John M. Huff, Director of the Missouri Department of Insurance, Financial Institutions, and Professional Registration, hereby issue the following Findings of Fact, Conclusions of Law, and Order of Discipline.

Findings of Fact

1. John M. Huff is the duly appointed Director ("Director") of the Missouri Department of Insurance, Financial Institutions and Professional Registration ("Department"), whose duties, pursuant to Chapters 374 and 385, RSMo, include supervision, regulation and discipline of motor vehicle extended service contract (MVESC) producers.

2. The Department issued Respondent David Fair ("Fair") an MVESC producer license (No. 8088470) on January 1, 2012. His license is current and active.

3. On December 4, 2012, the Director filed a Complaint with the Administrative Hearing Commission ("Commission"), alleging cause existed to discipline Fair's MVESC producer license under § 385.209.1(5) RSMo (Supp. 2012).¹ Fair filed an Answer to the Complaint on January 11, 2013.

4. On February 20, 2013, the Director filed a Motion for Summary Decision in this matter. Fair did not respond to the Motion.

5. On April 3, 2013, the Commission issued its Decision granting summary decision and finding cause to discipline Fair's MVESC producer license under § 385.209.1(5).

6. In support of that finding of cause, the Commission found the following facts:

a. Fair pled guilty to the following felonies in the St. Charles County Circuit Court and received the following sentences:

i. Sale of a controlled substance (methamphetamine), in violation of § 195.211 RSMo 2000, on July 29, 2003 (Class B Felony); ten years in the Missouri Department of Corrections;

ii. First-degree drug trafficking (methamphetamine), in violation of § 195.222.8(1) RSMo (Supp. 2002), on August 20, 2003 (Class A Felony); ten years in the Missouri Department of Corrections;

iii. Possession of a chemical with the intent to create a controlled substance (methamphetamine), in violation of § 195.420 RSMo 2000,

¹ All statutory references are to RSMo (Supp. 2012) unless otherwise indicated.

- on August 20, 2003 (Class C Felony); five years in the Missouri Department of Corrections;
- iv. First-degree endangering the welfare of a child, in violation of § 568.045 RSMo (Supp. 2004), on August 20, 2003 (Class C Felony); five years in the Missouri Department of Corrections;
 - v. Possession of a controlled substance (methamphetamine), in violation of § 195.202.2 RSMo 2000, on August 20, 2003 (Class C Felony); five years in the Missouri Department of Corrections;
 - vi. Unlawful use of drug paraphernalia, in violation of § 195.233.2 RSMo 2000, on August 20, 2003 (Class D Felony); four years in the Missouri Department of Corrections;
 - vii. First-degree trafficking (manufacturing methamphetamine), in violation of § 195.222.8(1) RSMo (Supp. 2002), on October 22, 2003 (Class A Felony); ten years in the Missouri Department of Corrections; and
 - viii. Possession of a controlled substance (methamphetamine), in violation of § 195.202.2 RSMo 2000, on October 22, 2003 (Class C Felony); five years in the Missouri Department of Corrections.

b. Fair's sentences ran concurrently.

7. Based on these facts, the Commission found cause to discipline Fair's license pursuant to § 385.209.1(5) for being convicted of eight felonies.

8. On May 13, 2013, the Commission certified its record of its proceedings to the Director pursuant to § 621.110.

9. On May 16, 2013, the Department served by regular U.S. mail and by UPS the Notice of Hearing, setting the disciplinary hearing for June 4, 2013.

10. According to online UPS records, the copy of the Notice of Hearing sent by UPS was delivered on May 17, 2013.

11. The copy of the Notice of Hearing sent by regular U.S. mail was not returned to the Department as undeliverable.

12. At the June 4, 2013 disciplinary hearing, Mary S. Erickson presided as hearing officer. Neither Fair nor anyone representing Fair appeared. Andy Heitmann appeared on behalf of the Department's Consumer Affairs Division. Carrie Couch, Chief of Investigations, Consumer Affairs Division, testified and recommended revocation of Fair's MVESC producer license.

13. At the hearing, the hearing officer took official notice of the Commission's record of proceedings and the Notice of Hearing (with the UPS Proof of Delivery and Tracking Detail), which were admitted into evidence as Exhibits 1 and 2, respectively.

14. The Director hereby incorporates the Commission's April 3, 2013 Decision, including its Findings of Fact and Conclusions of Law, as if fully set out herein as Findings of Fact and as Conclusions of Law of this Order. *Director of Dep't of Ins., Fin. Insts. & Prof. Reg'n v. David Fair*, No. 12-2135 DI (Mo. Admin. Hearing Comm'n, April 3, 2013).

15. Pursuant to § 385.209 RSMo (Supp. 2012) and § 621.110 RSMo 2000, the Director has discretion to discipline Fair's MVESC producer license, including revocation of such license.

Conclusions of Law

16. The Administrative Hearing Commission has the authority to conduct hearings and make findings of fact and conclusions of law that cause exists to suspend or revoke a motor vehicle extended service contract producer license. §§ 621.045 and 621.110.

17. Pursuant to §§ 385.209.1 and 621.110, the Director has the discretion to discipline Fair's license, including the discretion to revoke such license.

18. 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:

* * *

(5) Been convicted of any felony[.]

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 a motor vehicle extended service contract producer licensees or applicants, but to protect the public.

20. Based on the nature of the aforementioned conduct, specifically, his convictions for eight felonies, sufficient grounds exist to revoke Fair's MVESC producer license pursuant to § 385.209.1(5).

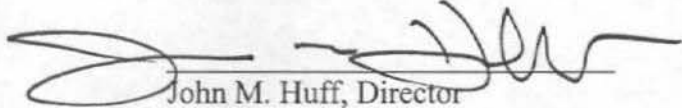
21. This Order is in the public interest.

ORDER

Based on the evidence presented, David Fair's individual motor vehicle extended service contract producer license (No. 8088470) is hereby **REVOKED**.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 27th DAY OF JULY, 2013.



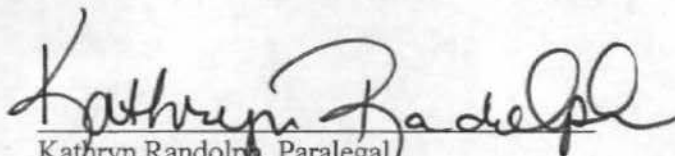

John M. Huff, Director
Missouri Department of Insurance,
Financial Institutions & Professional
Registration

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served by UPS, on this 22nd day of July, 2013 to:

David Fair
85 Saint Daniel Lane
Florissant, MO 63031-6728

UPS Tracking No. 1Z0R15W84299458915



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