

State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

DERRICK L. SCARBROUGH,

Applicant.

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Case No. 195055

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On September 9, 2013, 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 Derrick L. Scarbrough. 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. Derrick L. Scarbrough ("Scarbrough") is a Missouri resident with a residential address of record of 1447 Summergate Parkway, St. Charles, Missouri 63303.
2. On December 9, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Scarbrough's Application for Motor Vehicle Extended Service Contract Producer License ("2011 Application").
3. On June 13, 2013, the Director refused Scarbrough's 2011 Application under § 385.209.1 (2), (3), (5) and (12) through his Order Refusing to Issue Motor Vehicle Extended Service Contract Producer License (the "June 13, 2013 Refusal Order").¹
4. Scarbrough did not appeal the June 13, 2013 Refusal Order.
5. The Director hereby incorporates the Findings of Fact and Conclusions of Law contained in his June 13, 2013 Order Refusing to Issue Motor Vehicle Extended Service Contract License as if fully set out herein.
6. On May 10, 2013, the Department received Scarbrough's completed Application for

¹ *In Re: Derrick L. Scarbrough*, Before the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, Case No. 168009 (June 13, 2013).

Motor Vehicle Extended Service Contract Producer License (“2013 Application”).

7. Scarbrough signed the 2013 Application under oath before a notary.

8. Background Question No. 1 of the 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[.]

9. Scarbrough marked “Yes” to Question No. 1 of the 2013 Application.

10. Scarbrough included a signed written statement with his 2013 Application that read, verbatim and in its entirety:

To whom it may concern,
I Derrick Lamont Scarbrough, on or about Aug 10 - 2013, was locked up for Domestic Assault. My wife and I went to a friends 50th Birthday celebration. Thing got out of hand, and I turned my self in to police station. She did not prosecute me, the state of Mo. picked up charges. I did 120 days in county jail and 5 yrs probation. This was the first time anything like that has happened, we’ve been together 19 yrs. I regret my actions and we are both comitted to our family.

11. Scarbrough also attached to his 2013 Application uncertified court documents from his

2012 conviction for Domestic Assault in the Second Degree.²

12. On December 14, 2012, Scarbrough pleaded guilty in the St. Louis County Circuit Court to Domestic Assault in the Second Degree, a Class C Felony in violation of § 565.073, RSMo.³
13. According to the Indictment in that case, Scarborough “knowingly caused injury to [his spouse] by smashing her face into a car and dragging her across the pavement[.]”
14. The court sentenced Scarbrough to seven (7) years in the custody of the Missouri Department of Corrections but suspended execution of the sentence and placed Scarbrough on probation for a period of five (5) years, after a 120-day shock incarceration.
15. Scarbrough did not disclose any other criminal history in his 2013 Application.
16. The Department’s investigation revealed that on August 31, 2001, Scarbrough pleaded guilty to Possession of a Controlled Substance with Intent to Deliver, a Class B Felony in violation of § 195.211, RSMo. On January 7, 2002, the court sentenced Scarbrough to ten (10) years in the custody of the Missouri Department of Corrections and to an Institutional Treatment Center for 120 days. On April 15, 2002, Scarbrough was released on probation, but on September 16, 2005, the court revoked his probation.⁴
17. Background Question No. 7 of the 2013 Application asks the following:
 7. Do you have a child support obligation in arrearage? _____ monthsIf you answer yes:
 - a) by how many months are you in arrearage?
 - b) are you currently subject to and in compliance with any repayment agreement?
 - c) are you the subject of a child support related subpoena/warrant? (If you answer yes, provide documentation showing proof of current payments or an approved repayment plan from the appropriate state child support agency.)
18. Scarbrough answered “Yes” to Background Question No. 7, but did not indicate how many months he was in arrearage in response to sub-part (a) of Background Question No. 7.
19. On April 2, 1996, the Ventura County, California, Superior Court ordered Scarbrough to

² *State of Missouri v. Derrick Scarbrough*, St. Louis Co. Cir. Ct., No. 12SL-CR08934-01.

³ *Id.*

⁴ *State of Missouri v. Derrick L. Scarbrough*, St. Louis Co. Cir. Ct., No. 2100R-03804-01 (also referred to as No. 00CR-003804).

pay \$113 per month in child support and an additional \$734 for back child support.⁵

20. On February 17, 1998, the Ventura County, California, Superior Court ordered Scarbrough to pay \$113 per month in child support and an additional \$3,831 for arrearages.⁶
21. At the time he submitted his 2013 Application, Scarbrough owed total arrearages of \$46,314.66 for the support of two children.
22. It is inferable, and is hereby found as fact, that Scarbrough purposely failed to completely answer Background Question No. 7 of the 2013 Application, and thereby purposely concealed from the Director the number of months he was in arrearage on his child support obligations, because if he had accurately disclosed the large arrearages, that information would have diminished the chances that the Director would issue Scarbrough a motor vehicle extended service contract producer license.

CONCLUSIONS OF LAW

23. 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:

* * *

(3) Obtained or attempted to obtain a license through material misrepresentation or fraud;

* * *

(5) Been convicted of any felony;

* * *

(12) Failed to comply with an administrative or court order imposing a child support obligation[.]

24. 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

⁵ *County of Ventura, et al. v. Derrick Lomont* [sic] *Scarbrough*, Ventura County, California, Superior Court, Case No. D237094.

⁶ *Id.*

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.

25. Scarbrough may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(5) because he has been convicted of two felonies:
 - a. *State of Missouri v. Derrick L. Scarbrough*, St. Louis Co. Cir. Ct., No. 2100R-03804-01 (Possession of a Controlled Substance with Intent to Deliver, a Class B Felony in violation of § 195.211, RSMo).
 - b. *State of Missouri v. Derrick L. Scarbrough*, St. Louis Co. Cir. Ct., No. 12SL-CR08934-01 (Domestic Assault in the Second Degree, a Class C Felony in violation of § 565.073, RSMo).
26. Scarbrough also may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(12) because he failed to comply with a court order imposing a child support obligation, in that he failed to comply with at least two orders to pay child support of \$113 per month issued by the Ventura County, California, Superior Court, on April 2, 1996, and February 17, 1998, instead accruing child support arrearages totaling \$46,314.66 at the time he submitted his 2013 Application.
27. Scarbrough also may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(3) because he attempted to obtain a motor vehicle extended service contract producer license through material misrepresentation, in that on his 2011 Application:
 - a. He grossly misrepresented the extent of the child support arrearages he owed;
 - b. He falsely stated that he was in compliance with a child support repayment agreement;
 - c. He made these misrepresentations in an attempt to obtain a license; and
 - d. These misrepresentations were material to the Director's licensing decision.⁷
28. Scarbrough also may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(3) because he attempted to obtain a motor vehicle extended service contract producer license through material misrepresentation, in that on his 2013 Application:
 - a. He failed to disclose his 2002 Class B Felony conviction of Possession of a Controlled Substance with Intent to Deliver;

⁷ See June 13, 2013 Refusal Order.

- b. He purposely failed to completely answer Background Question No. 7, and thereby purposely concealed from the Director the number of months he was in arrearage on his child support obligations;
 - c. He made these misrepresentation in an attempt to obtain a license; and
 - d. These misrepresentations were material to the Director's licensing decision.
29. The Director has considered Scarbrough's history and all of the circumstances surrounding Scarbrough's 2013 Application. Granting Scarbrough 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 Scarbrough.
30. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the May 10, 2013 motor vehicle extended service contract producer license application of **Derrick L. Scarbrough** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 19th DAY OF SEPTEMBER, 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 24th day of September, 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:

Derrick L. Scarbrough
1447 Summergate Parkway
St. Charles, Missouri 63303

Certified No. 7009 3410 0001 9255 0097


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