



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION

IN RE:)

JESSE EARL BROWN,)

Applicant.)

Case No. 140715552C

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

On July 31, 2014, the Consumer Affairs Division submitted a Petition to the Director alleging cause to refuse to issue a motor vehicle extended service contract ("MVESC") producer license to Jesse Earl Brown. After reviewing the Petition, the Investigative Report, and the entirety of the file, the Director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Jesse Earl Brown ("Brown") is a Missouri resident with a residential address of record of 1459 De Porres Lane, St. Charles, Missouri, 63304.
2. On March 3, 2014, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Brown's 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. Brown signed the Application in the "Applicant's Certification and Attestation" section under oath and before a notary public.

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

Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?

“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 a 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 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”).

Unless excluded by the language above, you must disclose convictions that have been expunged.

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 judgment.

6. Brown marked “No” to Question No. 1.

7. During its investigation, the Consumer Affairs Division (“Division”) discovered the following convictions that Brown failed to disclose in response to Background Question No. 1 on his Application:

- a. On July 16, 2008, Brown pled guilty to Possession of Drug Paraphernalia with Intent to Use, a Class A Misdemeanor, in violation of § 195.233. The court suspended imposition of the sentence and placed Brown on two years’ probation. On April 22, 2009, the court revoked Brown’s probation and sentenced him to ninety (90) days’ incarceration, but suspended execution of the sentence and placed Brown on two (2) years’ probation. *State v. Jesse Earl Brown*, St. Charles Co. Cir. Ct., Case No. 0811-CR01994.

- b. On May 3, 2011, Brown pled guilty to Resisting Arrest, a Class A Misdemeanor, in violation of § 575.150. The court sentenced Brown to one hundred eighty (180) days' incarceration, but suspended execution of the sentence and placed Brown on two (2) years' supervised probation. On February 7, 2012, after finding that Brown violated his probation, the court continued Brown's probation and ordered that he serve ten (10) days' shock incarceration. *State v. Jesse Earl Brown*, St. Charles Co. Cir. Ct., Case No. 1011-CR05627.
8. On March 27, 2014, Special Investigator Andrew Engler ("Engler"), with the Division, mailed an inquiry letter to Brown at his address of record requesting information regarding Brown's convictions and Brown's failure to disclose his convictions on his Application. Engler requested a response by April 16, 2014, and warned Brown that failure to respond could result in refusal of Brown's motor vehicle extended service contract ("MVESC") producer license.
9. The March 27, 2014 inquiry letter was not returned to the Division as undeliverable, and therefore is presumed received by Brown.
10. Brown never responded to the Division's March 27, 2014 inquiry and never demonstrated a reasonable justification for the delay.
11. On April 16, 2014, Engler mailed a second inquiry letter to Brown requesting information regarding Brown's convictions and Brown's failure to disclose his convictions on his Application. Engler requested a response by May 6, 2014 and warned Brown that failure to respond could result in refusal of Brown's MVESC producer license.
12. The April 16, 2014 inquiry letter was not returned to the Division as undeliverable, and therefore is presumed received by Brown.
13. Brown never responded to the Division's April 16, 2014 inquiry and never demonstrated a reasonable justification for the delay.
14. On June 16, 2014, Engler mailed a third inquiry letter to Brown requesting information regarding Brown's convictions and Brown's failure to disclose his convictions on his Application. Engler also requested information regarding an additional charge Engler discovered in his investigation. Engler requested a response by July 6, 2014 and warned Brown that failure to respond could result in refusal of Brown's MVESC producer license.
15. The June 16, 2014 inquiry letter was not returned to the Division as undeliverable, and therefore is presumed received by Brown.

16. Brown never responded to the Division's June 16, 2014 inquiry and never demonstrated a reasonable justification for the delay.

CONCLUSIONS OF LAW

17. 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:

* * *

(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[.]

18. Title 20 CSR 100-4.100(2) states, in relevant part:

(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.

19. "There is a presumption that a letter duly mailed has been received by the addressee." *Clear v. Missouri Coordinating Bd. for Higher Educ.*, 23 S.W.3d 896, 900 (Mo. App. 2000) (internal citations omitted).

20. 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.

21. The Director may refuse to issue Brown a MVESC producer license pursuant to § 385.209.1(2) because Brown violated a rule of the Director, namely 20 CSR 100-4.100(2)(A), in that Brown failed to respond to three (3) written inquiries from the Division and failed to demonstrate a reasonable justification for the delay.
22. Each failure to provide an adequate response to the Division or failure to provide a reasonable justification for the delay is a separate and sufficient cause for refusal pursuant to § 385.209.1(2).
23. The Director may refuse to issue a MVESC producer license to Brown pursuant to § 385.209.1(3) because Brown attempted to obtain a MVESC producer license through material misrepresentation or fraud when he failed to disclose the following convictions on his Application:
 - a. *State v. Jesse Earl Brown*, St. Charles Co. Cir. Ct., Case No. 0811-CR01994 (Possession of Drug Paraphernalia with Intent to Use, a Class A Misdemeanor, in violation of § 195.233).
 - b. *State v. Jesse Earl Brown*, St. Charles Co. Cir. Ct., Case No. 1011-CR05627 (Resisting Arrest, a Class A Misdemeanor, in violation of § 575.150).
24. The Director has considered Brown's history and all of the circumstances surrounding Brown's Application. Granting Brown a MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue a MVESC producer license to Brown.
25. This order refusing to issue a MVESC producer license to Brown is in the public interest.

ORDER

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

SO ORDERED.

WITNESS MY HAND THIS 4TH DAY OF AUGUST, 2014.





JOHN M. HUFF
DIRECTOR

NOTICE

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

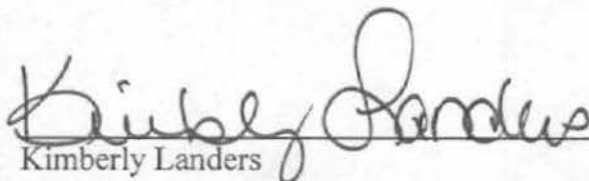
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send 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 5th day of August, 2014, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required mail at the following addresses:

Jesse Earl Brown
1459 De Porres Lane
St. Charles, Missouri, 63304

Tracking No. 1Z0R15W84299306954



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