



## State of Missouri

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

IN RE:

BRANDON M. EARLS,

Applicant.

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Case No. 140815607C

#### **ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE**

On December 29, 2014, 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 Brandon M. Earls. 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. Brandon M. Earls ("Earls") is a Missouri resident with a residential address of 6065 Hawkins Rd, St. Louis, MO 63129.
2. On June 9, 2014, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Earls' motor vehicle extended service contract ("MVESC") producer application ("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. On May 27, 2014, Earls signed the "Applicant's Certification and Attestation" section under oath before a notary public.
5. Background Question No. 4 of the Application asks, in relevant part: "Have you failed to

pay state or federal income tax?"

6. Earls answered "No" to Background Question No. 4 on the Application.
7. Contrary to Earls' answer to Background Question No. 4 on his Application, the Consumer Affairs Division's ("Division") investigation revealed that on July 5, 2011, the St. Louis County Circuit Court entered a judgment against Earls for unpaid taxes for the 2008 tax filing year as follows:

The Director of Revenue, under Section 143.902, RSMo, hereby certifies that the following assessment of tax, interest, additions to tax, penalties, and fees have been made and become final [in the amount of \$1,303.83]. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.

*Department of Revenue v. Brandon M. Earls*, St. Louis Co. Cir. Ct., Case No. 11SL-MC08835.

8. On June 13, 2014, Special Investigator Andrew Engler ("Engler"), with the Division, sent an inquiry letter to Earls via first class mail. The inquiry letter requested that Earls "provide the current status of the lien along with evidence of a repayment arrangement or a letter of compliance". The inquiry letter further requested a response by July 3, 2014, and warned Earls that a failure to respond could result in the Department refusing to issue him an MVESC producer license.
9. The inquiry letter sent by first class mail was not returned as undeliverable, and is therefore presumed received by Earls.
10. Earls did not respond to the Division's June 13, 2014 inquiry letter nor did he demonstrate a reasonable justification for the delay.
11. On July 9, 2014, Special Investigator Engler sent a second inquiry letter to Earls via first class mail asking for the same information previously requested in the June 13, 2014 inquiry letter. The inquiry letter requested a response by July 29, 2014, and warned Earls that a failure to respond could result in the Department refusing to issue him a MVESC producer license.
12. The inquiry letter sent by first class mail was not returned as undeliverable, and is therefore presumed received by Earls.
13. Earls did not respond to the Division's July 9, 2014 inquiry letter nor did he demonstrate a reasonable justification for the delay.
14. It is inferable, and hereby found as fact, that Earls failed to disclose his delinquent state income tax obligation on his Application in order to misrepresent to the Director that he had no outstanding obligations and accordingly, in order to improve the chances that the

Director would approve his application and issue him an MVESC producer license. This inference is further supported by the fact that despite being given the opportunity to explain the tax delinquency or show tax compliance, Earls failed to respond to the Division's inquiries.

### **CONCLUSIONS OF LAW**

15. Section 385.209 RSMo (Supp. 2014) 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; [or]

\* \* \*

(13) Failed to comply with any administrative or court order directing payment of state or federal income tax[.]

16. Title 20 CSR 100-4.100(2)(A), Required Response to Inquiries by the Consumer Affairs Division, provides:

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.

17. "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).

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 motor vehicle extended service contract producer license, but to protect the public.

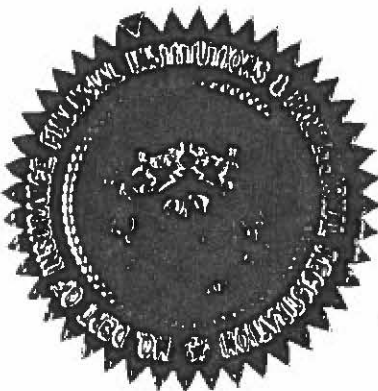
19. Earls' MVESC producer license may be refused pursuant to § 385.209.1(2) because Earls violated a rule of the Director, namely 20 CSR 100-4.100(2)(A), when he failed to timely respond to two (2) written inquiries from the Division or demonstrate a reasonable justification for the delay.
20. Each violation of a rule of the Director is a separate and sufficient cause pursuant to § 385.209.1(2) to refuse Earls' MVESC producer license.
21. Earls' MVESC producer license may be refused pursuant to § 385.209.1(3) because Earls attempted to obtain a license through material misrepresentation or fraud. Earls falsely answered "No" to Background Question No. 4 when, in fact, he failed to pay state income tax and a judgment had been issued against him for the tax obligation.
22. Earls' MVESC producer license may be refused renewal pursuant to § 385.209.1(13) because Earls failed to comply with an administrative or court order directing payment of state income tax. *Department of Revenue v. Brandon M. Earls*, St Louis Co. Cir. Ct., Case No. 11SL-M00883.
23. The Director has considered Earls' history and all of the circumstances surrounding his Application. Issuing Earls an MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue Earls an MVESC producer license.
24. This Order is in the public interest.

### ORDER

**IT IS THEREFORE ORDERED** that the motor vehicle extended service producer license application of Brandon M. Earls is hereby **REFUSED**.

**SO ORDERED.**

WITNESS MY HAND THIS 29<sup>th</sup> DAY OF DECEMBER, 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 30th day of December, 2014 a copy of the foregoing Order and Notice was served upon the Renewal Applicant by UPS, signature required, at the following address:

Brandon M. Earls  
6065 Hawkins Rd.  
St. Louis, MO 63129

Tracking No. 1Z0R15W84291491054



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