



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

Brian C. Hayes,

Applicant.

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Case No. 193726

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On September 23, 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 Brian C. Hayes. 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. Brian C. Hayes ("Hayes") is a Missouri resident with a residential address of record of 2609 Headland Drive, St. Charles, Missouri, 63301.
2. On April 11, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Hayes's Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. Hayes signed the Application under oath before a notary.
4. 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[.]

- 5. Hayes marked "No" to Question No. 1.
- 6. Hayes did not disclose any criminal history in his Application.
- 7. The Consumer Affairs Division's investigation into the Applications revealed that, contrary to Hayes's "No" answers to Background Question No. 1, Hayes has been convicted of four felonies and a Class A misdemeanor that should have been disclosed in response to Question No. 1:
 - a. On or about July 11, 1997, Hayes pled guilty in the St. Charles County Circuit Court to the Class D Felony of Driving While Intoxicated (Persistent Offender) in violation of § 577.010, RSMo. The court sentenced Hayes to three (3) years' imprisonment, but suspended execution of sentence and placed Hayes on five (5) years' probation.¹
 - b. On or about February 23, 2007, Hayes pled guilty in the St. Louis County Circuit Court to the Class D Felony of Driving While Intoxicated (Persistent Offender) in violation of § 577.010, RSMo. The court sentenced Hayes to four (4) years' imprisonment but suspended execution of the sentence and placed Hayes on five (5) years' supervised probation.²
 - c. On or about July 11, 2011, Hayes pled guilty in the St. Charles County Circuit Court to two (2) counts of the Class D Felony of Driving While Revoked in violation of § 302.321, RSMo. The court sentenced Hayes on each count to 180 days' incarceration in county jail, the two sentences to run concurrently.³
 - d. On or about February 1, 2012, Hayes pled guilty in the St. Charles County Circuit Court to the Class A Misdemeanor of Passing Bad Checks in violation of

¹ *State of Missouri v. Brian Christopher Hayes*, St. Charles Co. Cir. Ct., No. CR196-2217FX (Case.net No. 11R019602217-01).

² *State of Missouri v. Brian C. Hayes*, St. Louis Co. Cir. Ct., No. 05CR-5399-01 (Case.net No. 2105R-05399-01).

³ *State of Missouri v. Brian C. Hayes*, St. Charles Co. Cir. Ct., No. 1011-CR06091-01.

§ 570.120, RSMo. The court sentenced Hayes to six (6) months' incarceration in county jail, to run concurrently with his sentence in an Illinois case.⁴

8. On April 16, 2013, Consumer Affairs Division investigator Karen Crutchfield mailed an inquiry letter to Hayes requesting an explanation of his "No" answer to Background Question No. 1, in light of his criminal history that should have been reported in response to that question.
9. Crutchfield mailed the April 16, 2013 inquiry letter by regular U.S. mail, to Hayes's address of record, with sufficient postage attached.
10. The April 16, 2013 inquiry letter was not returned as undeliverable.
11. Hayes never responded to the April 16, 2013 letter and has not demonstrated any justification for his failure to respond.
12. On May 10, 2013, Consumer Affairs Division investigator Karen Crutchfield mailed another inquiry letter to Hayes again requesting an explanation of his "No" answer to Background Question No. 1, in light of his criminal history that should have been reported in response to that question.
13. Crutchfield mailed the May 10, 2013 inquiry letter by regular U.S. mail, to Hayes's address of record, with sufficient postage attached.
14. The May 10, 2013 inquiry letter was not returned as undeliverable.
15. Hayes never responded to the May 10, 2013 letter and has not demonstrated any justification for his failure to respond.
16. It is inferable, and is hereby found as fact, that Hayes failed to disclose his criminal convictions in his Application in order to mislead the Director into believing that Hayes had no criminal history, and, accordingly, in order to improve the chances that the Director would approve his Application and issue him an MVESC producer license.
17. Background Question No. 4 of the Application asks the following:

Have you been notified by any jurisdiction to which you are applying of any delinquent tax obligation that is not the subject of a repayment agreement?
18. Hayes marked "No" to Question No. 4.

⁴ *State of Missouri v. Brian C. Hayes*, St. Charles Co. Cir. Ct., No. 1011-CR06703.

20. Contrary to Hayes's answer to Question No. 4, the Department's investigation of the Application revealed that Hayes owed delinquent income taxes to the Missouri Department of Revenue ("DOR"):
- a. On November 9, 2009, the St. Charles County Circuit Court entered its judgment adopting as the court's order the DOR's Certificate of Tax Lien against Hayes for File Period 2004. Under the order, Hayes's wages were garnished on multiple occasions in 2010 and 2011;⁵
 - b. As of June 27, 2013, DOR records for Hayes reflect delinquent balances, including interest, of \$7,569.03 for income tax year 2004 and \$27.82 for income tax year 1998.
21. It is inferable, and is hereby found as fact, that Hayes falsely answered Background Question No. 4 "No" and otherwise failed to disclose his tax delinquencies in order to mislead the Director into believing that Hayes had no tax delinquencies and had not failed to comply with an administrative or court order directing the payment of income tax, and, accordingly, in order to improve the chances that the Director would approve his Application and issue him an MVEEC producer license.

CONCLUSIONS OF LAW

22. 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:

* * *

 - (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;

* * *
 - (5) Been convicted of any felony;

* * *

⁵ *Missouri Department of Revenue v. Brian Hayes*, St. Charles Co. Cir. Ct., No. 0911-MC01851.

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

23. Regulation 20 CSR 100-4.100(2) states:

(2) Except as required under subsection (2)(B)—

(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.

(B) This rule shall not apply to any other statute or regulation which requires a different time period for a person to respond to an inquiry by the department. If another statute or regulation requires a shorter response time, the shorter response time shall be met. This regulation operates only in the absence of any other applicable laws.

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 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. Hayden may be refused an MVESC producer license pursuant to § 385.209.1(5) because he has been convicted of four felonies:

- a. *State of Missouri v. Brian Christopher Hayes*, St. Charles Co. Cir. Ct., No. 11R019602217-01 (Driving While Intoxicated (Persistent Offender), a Class D Felony in violation of § 577.010, RSMo);
- b. *State of Missouri v. Brian C. Hayes*, St. Louis Co. Cir. Ct., No. 2105R-05399-01 (Driving While Intoxicated (Persistent Offender), a Class D Felony in violation of § 577.010, RSMo); and
- c. *State of Missouri v. Brian C. Hayes*, St. Charles Co. Cir. Ct., No. 1011-CR06091 (Two (2) counts of Driving While Revoked, a Class D Felony in violation of § 302.321, RSMo).

26. The Director also may refuse to issue Hayes an MVESC producer license under § 385.209.1(3) because Hayes attempted to obtain a license through material misrepresentation or fraud, in that Hayes falsely answered "No" to Background Question No. 1 of the Application and otherwise failed to disclose his felony Driving

While Intoxicated (Persistent Offender) and Driving While Revoked convictions and his misdemeanor Passing Bad Checks conviction. Hayes concealed his criminal history in order to misrepresent to the Director that he had no criminal history and, accordingly, in order to improve the chances that the Director would approve his Application and issue him an MVESC producer license.

27. The Director also may refuse to issue Hayes an MVESC producer license under § 385.209.1(3) because Hayes attempted to obtain a license through material misrepresentation or fraud, in that Hayes falsely answered "No" to Background Question No. 4 of the Application. Hayes did so in order to misrepresent to the Director that he had no delinquent tax obligations and that he had not failed to comply with an administrative or court order directing the payment of state income tax and, accordingly, in order to improve the chances that the Director would approve his Application and issue him an MVESC producer license.
28. Hayes may be refused a motor vehicle extended service contract producer license under § 385.209.1(2) because he twice violated a rule of the Director, in that he failed to adequately respond to two written inquiries from the Consumer Affairs Division—on April 16, 2013 and May 10, 2013—without demonstrating any reasonable justification for either of his failures to respond, each time thereby violating regulation 20 CSR 100-4.100(2), which is a rule of the Director.
29. Hayes may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(13) because he failed to comply with an administrative or court order directing payment of state income tax. A tax lien judgment in favor of the Missouri Department of Revenue was entered against Hayes in the St. Charles Circuit Court, evidencing Hayes's failure to comply with an administrative order directing the payment of state income tax. As of June 21, 2013, Hayes had failed to repay the delinquent taxes that were the subject of the tax lien judgment and thus had failed to comply with the St. Charles County Circuit Court's order directing payment of state income tax.
30. The Director has considered Hayes's history and all of the circumstances surrounding Hayes's Application. Granting Hayes 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 an MVESC producer license to Hayes.
31. This order is in the public interest.

ORDER

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

SO ORDERED.

WITNESS MY HAND THIS 23RD 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 25th 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:

Brian C. Hayes
2609 Headland Drive
St. Charles, Missouri, 63301

Certified No. 7009 3410 0001 9255 0141

Meleigha Caudel
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