



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

BRIAN K. VIERA,

Applicant.

)
)
)
)
)

Case No. 194431

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On October 21, 2013, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract (MVESC) producer license to Brian K. Viera. 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 K. Viera ("Viera") is a Missouri resident with a residential address of record of 5 Linkous Drive, Florissant, Missouri, 63031, and a mailing address of 6402 Brown Fox Drive, Florissant, Missouri, 63034.
2. On February 28, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Viera's Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. 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[.]

- 4. Viera answered "Yes" to Question No. 1.
- 5. With his Application, Viera included a written statement that read, verbatim and in its entirety:

To Whom it May Concern

Concerning the crimes that, I, Brian Viera, committed in 2006. I know it was wrong and illegal I wish it never happened. I was sucked in by the fast dollar. As I look back I feel foolish for putting the illegal dollar in front of my well being and my families well being. That's why I consider my position at Naviss a Blessing to make alot for my family and I. I look forward to a long career with Naviss.

Sincerely,
B. K. Viera
2/27/13

- 6. Viera also attached to his Application uncertified Department of Corrections and court records which, along with records later obtained by the Consumer Affairs Division, showed that Viera has been convicted of four felonies:
 - a. On May 6, 2008, Viera pleaded guilty in the St. Louis County Circuit Court to three Class B Felony counts of Sale of a Controlled Substance, in violation of § 195.211, and one Class C Felony count of Possession of a Controlled Substance – Marijuana Over 35 Grams, in violation of § 195.202.¹
 - b. On July 8, 2008, the court sentenced Viera to ten (10) years' imprisonment on each of the thee Class B Felony counts of Sale of a Controlled Substance and seven (7) years' imprisonment on the Class C Felony count of Possession of a Controlled Substance – Marijuana Over 35 Grams, all to be served concurrently, with shock incarceration and institutional treatment

¹ *State of Missouri v. Brian Keith Viera*, St. Louis Co. Cir. Ct., No. 2107R-02421-01.

recommended.

- c. On September 29, 2008, after a period of shock incarceration, the court ordered that execution of the remainder of Viera's sentence be suspended and placed Viera on five (5) years' probation beginning on November 8, 2008, the date of his release.
7. On May 17, 2013, in reply to an inquiry by the Consumer Affairs Division, Viera submitted a written response and a second set of uncertified Department of Corrections and court documents, also related to the same four felony convictions that he had disclosed in his Application.
8. In the written response, Viera provided further details of the circumstances surrounding his convictions, including that he had been selling "powder cocaine," and that he had "sold controlled substances off and on for years since the mid 90's." He also offered assurances that he had learned from his imprisonment and that he had refocused himself and his life.

CONCLUSIONS OF LAW

9. 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:

* * *

(5) Been convicted of any felony[.]
10. 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.
11. Viera may be refused an MVESC producer license pursuant to § 385.209.1(5) because he has been convicted of four felonies:
 - a. Three counts of Sale of a Controlled Substance, a Class B Felony in violation of § 195.211.

² *State of Missouri v. Brian Keith Viera*, St. Louis Co. Cir. Ct., No. 2107R-02421-01.

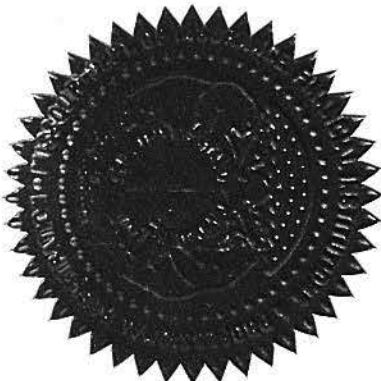
- b. One count of Possession of a Controlled Substance – More than 35 Grams of Marijuana, a Class C Felony in violation of § 195.202.
12. The Director has considered Viera's history and all of the circumstances surrounding Viera's Application. Only five years ago, Viera was convicted of four serious felonies, including three involving the sale of a controlled substance. Granting Viera an 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 Viera.
13. This order is in the public interest.

ORDER

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

SO ORDERED.

WITNESS MY HAND THIS 25th DAY OF OCTOBER, 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 28th day of October, 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 addresses:

Brian K. Viera
5 Linkous Drive
Florissant, Missouri 63031

Certified No. 7009 3410 0001 9255 0332

and

Brian K. Viera
6402 Brown Fox Drive
Florissant, Missouri 63034

Certified No. 7009 3410 0001 9255 0349


Meleigha Caudel

Investigations Section
Missouri Department of Insurance, Financial
Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: 573.751.1922
Facsimile: 573.522.3630
Email: meleigha.caudel@insurance.mo.gov