



State of Missouri
DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION

IN RE:)
)
 BRYAN WAYNE COOLEY,) Case No. 160907407C
)
 Applicant.)

PETITION FOR ORDER REFUSING TO ISSUE MOTOR VEHICLE
EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On January 26, 2017, the Consumer Affairs Division submitted a Petition alleging cause for refusing to issue a motor vehicle extended service contract producer license to Bryan Wayne Cooley. After reviewing the Petition, the Investigative Report, and the entirety of the file, the Acting Director ("Director") issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Bryan Wayne Cooley ("Cooley") is a Missouri resident with a residential and mailing address of 1166 Belrue Ave., University City, Missouri 63130.
2. On April 15, 2016, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Cooley'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. I further certify, under penalty of perjury, that a) I have no outstanding state or federal income tax obligations, or b) I have an outstanding state or federal income tax obligation and I have provided all information and documentation requested in Background Information Question [4].
4. Cooley accepted the “Applicant’s Certification and Attestation” section by signing the Application under oath and before a notary public.
5. Background Question No. 2 of the Application asks:

Have you ever been named or involved as a party in an administrative proceeding or action regarding any professional or occupational license or registration, or regarding the lack of such license or registration?

“Involved” means having a license censured, suspended, revoked, canceled, terminated or being assessed a fine, a voluntary forfeiture, a cease and desist order, a prohibition order, a consent order, or being placed on probation. “Involved” also includes the act of surrendering a license to resolve an administrative proceeding or action. “Involved” also means being named as a party to an administrative or arbitration proceeding which is related to a professional or occupational license or is related to the lack of such license. “Involved” also means having a license application denied or the act of withdrawing an application to avoid a denial. You must **INCLUDE** any business so named because of your actions or because of your capacity as an owner, partner, officer, director, or member or manager of a Limited Liability Company. You may **EXCLUDE** terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.

If you answer yes, you must attach to this application:

- a) a written statement identifying the type of license and explaining the circumstances of each incident,
 - b) a copy of the Notice of Hearing or other document that states the charges and allegations, and
 - c) a certified copy of the official document which demonstrates the resolution of the charges and/or a final judgment.
6. Cooley answered “No” to Background Question No. 2.
 7. Contrary to Cooley’s response, during its investigation, the Consumer Affairs Division (“Division”) discovered that Cooley failed to disclose that his Missouri Real Estate License was suspended for twelve days in 2010 due to unpaid taxes. The Missouri Real Estate Commission’s November 10, 2010 letter stated, in relevant part:

The Missouri Real Estate Commission has received notification from the Missouri Department of Revenue that you have not satisfactorily responded to the Department of Revenue's previous notice requiring you to file and/or pay your Missouri taxes. As a result, the law requires that your professional real estate license be automatically suspended. This letter is to inform you that your Missouri real estate license was SUSPENDED by operation of law as of October 30, 2010.

In re Bryan Cooley, Missouri Real Estate Comm., Suspension Letter, Nov. 10, 2010.

8. Background Question No. 4 of the Application asks:

Have you failed to pay state or federal income tax?

Have you failed to comply with an administrative or court order directing payment of state or federal income tax?

Answer "Yes" if the answer to either question (or both) is "Yes."

If you answer yes, you must attach to this application:

- a) a written statement explaining the circumstances of each administrative or court order,
- b) copies of all relevant documents (i.e. demand letter from the Department of Revenue or Internal Revenue Service, etc.),
- c) a certified copy of each administrative or court order, judgment, and/or lien, and
- d) a certified copy of the official document which demonstrates the resolution of the tax delinquency (i.e. tax compliance letter, etc.).

9. Cooley answered "No" in response to Background Question No. 4.

10. Contrary to Cooley's response, during its investigation, the Division discovered the following unsatisfied state and federal income tax obligations that Cooley failed to disclose on his Application:

- a. On May 16, 2011, the St. Louis County Circuit Court entered a judgment against Cooley for unpaid state income tax for the 2002, 2003, 2004, and 2005 filing years as follows:

[Department] of Revenue, under Section 143.902, RSMo, hereby certifies tha the following assessment of tax, interest, additions to tax, penalties, and fees have been made and become final [in the amount of \$7,489.03]. Interest continues to accrue as provided by law until the

full amount of the tax liability is paid.

Department of Revenue v. Bryan W. Cooley, St. Louis Co. Cir. Ct., Case No. 11SL-MC06403.

- b. On February 5, 2009, the St. Louis County Circuit Court entered a judgment against Cooley for unpaid state income tax for the 2005 filing year as follows:

[Department] 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 \$1,843.64]. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.

Department of Revenue v. Bryan W. Cooley, St. Louis Co. Cir. Ct., 08SL-AC45934.

- c. On October 6, 2006, the Internal Revenue Service filed a Notice of Federal Tax Lien against Cooley in St. Louis County for unpaid federal income tax for the 2002 and 2003 filing years as follows, in part:

[The Internal Revenue Service is] giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer [in the amount of \$7,645.74]. We have made a demand for payment of this liability, but it remains unpaid.

Instrument No. 318167006, Recorder of Deeds, St. Louis County, Missouri.

- d. On December 29, 2010, the Internal Revenue Service filed a Notice of Federal Tax Lien against Cooley in St. Louis County for unpaid federal income tax for the 2005 filing year as follows, in part:

[The Internal Revenue Service is] giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer [in the amount of \$249.45]. We have made a demand for payment of this liability, but it remains unpaid.

Instrument No. 733440810, Recorder of Deeds, St. Louis County, Missouri.

11. On April 20, 2016, after reviewing Cooley's Application and his delinquent tax obligations, Special Investigator Andrew Engler of the Division sent an inquiry letter to Cooley. The inquiry letter requested that Cooley provide a payment plan or a letter of compliance from the Department of Revenue. The inquiry letter further requested a response within twenty (20) days, and warned Cooley that failure to respond could

result in the Department refusing to issue him a motor vehicle extended service contract (“MVESC”) producer license.

12. The United States Postal Service did not return the April 20, 2016 inquiry letter to the Division as undeliverable, and therefore it is presumed received by Cooley.
13. Cooley failed to provide a written response to the Division’s April 20, 2016 inquiry letter and failed to demonstrate a reasonable justification for the delay.
14. On May 11, 2016, after receiving no response from Cooley, Special Investigator Andrew Engler of the Division sent a second inquiry letter to Cooley. The inquiry letter requested the same documentation requested in the April 20, 2016 inquiry letter. The inquiry letter further requested a response within twenty (20) days, and again warned Cooley that failure to respond could result in the Department refusing to issue him a MVESC producer license.
15. The United States Postal Service did not return the May 11, 2016 inquiry letter to the Division as undeliverable, and therefore it is presumed received by Cooley.
16. Cooley failed to provide a written response to the Division’s May 11, 2016 inquiry letter and failed to demonstrate a reasonable justification for the delay.
17. It is inferable, and hereby found as fact, that Cooley failed to disclose his Missouri Real Estate License suspension in order to misrepresent to the Director that he had not been involved in any administrative actions regarding a professional or occupational license, and accordingly, in order to improve the chances that the Director would approve his Application and issue him a MVESC producer license.
18. It is inferable, and hereby found as fact, that Cooley failed to disclose his delinquent tax obligations on his Application in order to misrepresent his tax compliance to the Director, and accordingly, in order to improve the chances that the Director would approve his Application and issue him a MVESC producer license.

CONCLUSIONS OF LAW

19. Section 385.209 RSMo (Supp. 2013)¹ states, 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

¹ All statutory references are to the Revised Statutes of Missouri (2000) as updated by the 2013 Supplement unless otherwise indicated.

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[.]

20. Title 20 CSR 100-4.100(2)(A) Required Response to Inquiries by the Consumer Affairs Division, a rule of the Director, states:

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.

21. "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).
22. The Director may refuse to issue a MVESC producer license to Cooley pursuant to § 385.209.1(2) because Cooley failed to respond to two (2) inquiry letters from the Division and failed to provide a reasonable justification for the delays, thereby twice violating 20 CSR 100-4.100(2)(A), a rule of the Director.
23. Each violation of a rule of the Director is a separate and sufficient cause for refusal pursuant to § 385.209.1(2).
24. The Director may refuse to issue a MVESC producer license to Cooley pursuant to § 385.209.1(3) because Cooley attempted to obtain a MVESC producer license through material misrepresentation or fraud in that he failed to disclose that his Missouri Real Estate License was suspended in response to Background Question No.

2 on his Application. *In re Bryan Cooley, Missouri Real Estate Comm., Suspension Letter, Nov. 10, 2010.*

25. The Director may refuse to issue a MVESC producer license to Cooley pursuant to § 385.209.1(3) because Cooley attempted to obtain a MVESC producer license through material misrepresentation or fraud in that he failed to disclose his delinquent state and federal tax obligations in response to Background Question No. 4 on his Application:
 - a. Judgment in the amount of \$7,489.03 for unpaid state income tax for the 2002, 2003, 2004, and 2005 filing years. *Department of Revenue v. Bryan W. Cooley*, St. Louis Co. Cir. Ct., Case No. 11SL-MC06403.
 - b. Judgment in the amount of \$1,843.64 for unpaid state income tax for the 2005 filing year. *Department of Revenue v. Bryan W. Cooley*, St. Louis Co. Cir. Ct., 08SL-AC45934.
 - c. Judgment in the amount of \$7,645.74 for unpaid federal income tax for the 2002 and 2003 filing years. Instrument No. 318167006, Recorder of Deeds, St. Louis County, Missouri.
 - d. Judgment in the amount of \$249.45 for unpaid federal income tax for the 2005 filing year. Instrument No. 733440810, Recorder of Deeds, St. Louis County, Missouri.
26. Each instance in which Cooley failed to disclose his delinquent state or federal income tax obligation in response to Background Question No. 4 is a separate and sufficient cause for refusal pursuant to § 385.209.1(3).
27. The Director may refuse to issue a MVESC producer license to Cooley pursuant to § 385.209.1(13) because Cooley failed to comply with an administrative or court order directing payment of state or federal income tax:
 - a. Judgment in the amount of \$7,489.03 for unpaid state income tax for the 2002, 2003, 2004, and 2005 filing years. *Department of Revenue v. Bryan W. Cooley*, St. Louis Co. Cir. Ct., Case No. 11SL-MC06403.
 - b. Judgment in the amount of \$1,843.64 for unpaid state income tax for the 2005 filing year. *Department of Revenue v. Bryan W. Cooley*, St. Louis Co. Cir. Ct., 08SL-AC45934.
 - c. Judgment in the amount of \$7,645.74 for unpaid federal income tax for the 2002 and 2003 filing years. Instrument No. 318167006, Recorder of Deeds, St. Louis County, Missouri.

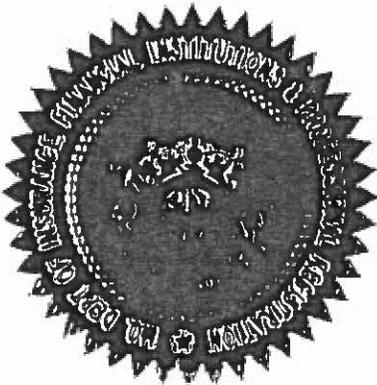
- d. Judgment in the amount of \$249.45 for unpaid federal income tax for the 2005 filing year. Instrument No. 733440810, Recorder of Deeds, St. Louis County, Missouri.
28. Each instance in which Cooley failed to comply with an administrative or court order directing payment of state or federal income tax is a separate and sufficient cause for refusal pursuant to § 385.209.1(13).
29. The Director has considered Cooley's history and all of the circumstances surrounding Cooley's Application. Issuing Cooley a MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue Cooley a MVESC producer license.
30. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that Bryan Wayne Cooley's motor vehicle extended service contract producer license application is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 27th DAY OF JANUARY, 2017.





JOHN M. HUFF, ACTING DIRECTOR
Missouri Department of Insurance, Financial
Institutions and Professional Registration

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.

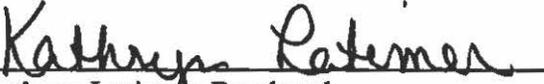
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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of January 2017, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following address:

Bryan Wayne Cooley
1166 Belrue Ave.
University City, Missouri 63130

Tracking No. 1Z0R15W84290547399


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