



## State of Missouri

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

IN RE:

BENJAMIN CONWAY,

Applicant.

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Case No. 167839e

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

On October 3, 2012, 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 Benjamin Conway. 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. Benjamin Conway, ("Conway") is a Missouri resident with a residential address of 951 Parkcrest Drive, St. Charles, Missouri 63301.
2. On December 19, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Conway's incomplete Application for Motor Vehicle Extended Service Contract Producer License ("Application"). See Exhibit 1, Application. That Application became complete on March 6, 2012.
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. Conway signed the Application in the "Applicant's Certification and Attestation" section under oath before a notary.

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 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 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").

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. Conway marked "Yes" to Question No. 1. With his Application, Conway included a written statement that read, in its entirety:

I was convicted of a felony for child support. I had my two children for that time and was seeking custody. MO. is a mother state so didn't get custody and was ordered to pay the rearage for that time plus current. I pay \$509.00 month and \$283.00 in rears each month. This issue has been resolved.

I was also convicted in a trial for a self defense asalt. It went to a trial witch I was ordered to pay med. bill of \$3,200. This has also been resolved.

7. Background Question No. 7 of the Application asks the following:

7. Do you have a child support obligation in arrearage?

If you answer yes:

- a) by how many months are you in arrearage?
- b) are you currently subject to and in compliance with any repayment agreement?
- c) are you the subject of a child support related subpoena/warrant? (If you answer yes,

provide documentation showing proof of current payments or an approved repayment plan from the appropriate state child support agency.)

8. Conway answered "Yes" to Background Question No. 7, indicated that he was twenty-four (24) months in arrearage and answered "Yes" to sub-part (b) of Background Question No. 7.
9. In a supplementary statement to the Department dated February 28, 2012, Conway stated, in relevant part:<sup>1</sup>

I am writing this letter to clear up a misunderstanding on my VSP Producer License Application.

On my original application, in Section 33 question # 1, I misread the question being asked and mistakenly marked Yes. In the supporting documentation required when responding Yes, I stated that I had an Assault charge on my record. This in fact was incorrect. I suppose I was confused by the wording in the question, but I should not have marked YES as I was never arrested, charged or convicted of an assault charge. I did have an incident a few years back where I had a dispute with an associate of mine and charges were threaten to be filed, but nothing was ever actually filed with the courts. Since no charges were ever filed, there is no documentation to be obtained from the courts. There in fact was never an incident for which any sort of paperwork would have been required. As such, I cannot provide you with any additional evidence that my record is clear of an Assault charge.

10. Conway did not disclose any further criminal history and did not provide further documentation of his criminal nonsupport history or child support payment history.
11. The Department's subsequent investigation revealed that:
  - a. On or about September 15, 1995, Conway pleaded guilty to Class A Misdemeanor Stealing in the Associate Circuit Court of St. Charles County, Missouri, received a suspended imposition of sentence and two (2) years' probation.
  - b. On March 28, 2000, the Circuit Court of St. Charles County entered an order in the dissolution proceedings involving Conway and his former wife, under which Conway was ordered to pay \$600 per month in child support.
  - c. On October August 25, 2003, Conway was convicted of criminal nonsupport, in the Circuit Court of St. Charles County, Missouri, and was sentenced to a period of four (4) years' confinement. Execution of that sentence was suspended and Conway was placed on probation for a term of five (5) years.

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<sup>1</sup> The complete written statement is attached to this Petition as part of Exhibit 1.

- d. As of June 1, 2012, Conway's outstanding child support arrearages totaled \$17,031.41.

### **CONCLUSIONS OF LAW**

12. Section 385.209 RSMo, Supp. 2012,<sup>2</sup> 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:

\* \* \*

- (3) Obtained or attempted to obtain a license through material misrepresentation or fraud;

\* \* \*

- (5) Been convicted of any felony;

\* \* \*

- (12) Failed to comply with an administrative or court order imposing a child support obligation[.]

13. 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.

### **CAUSE FOR ORDER TO REFUSE TO ISSUE A MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE**

14. Conway may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(5) because he has been convicted of a felony:
- a. *State of Missouri v. Benjamin E. Conway*, St. Charles Co. Cir. Ct., Case No. 02CR129184 (Criminal Nonsupport, a Class D Felony, in violation of § 568.040, RSMo (2000)).

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<sup>2</sup> Statutory references are to the 2012 version of the Revised Statutes of Missouri unless otherwise noted.

15. Conway also may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(12) because he was convicted of felony criminal nonsupport as a result of failing to comply with his legal child support obligations to his two children in each of six (6) individual months within the period between April 1, 2000, and March 31, 2000. Each time Conway failed to pay child support as ordered by the St. Charles County Circuit Court, he failed to comply with a court order imposing a child support obligation.
16. Conway also may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(3) because he attempted to obtain a motor vehicle extended service contract producer license through material misrepresentation, in that Conway failed to disclose that he pleaded guilty to the Class A Misdemeanor of Stealing in 1995 but attested under oath in his submitted Application that the information submitted in his Application and attachments was true and complete. An incident of stealing is material to the Director's consideration of a motor vehicle extended service contract producer application because a motor vehicle extended service contract producer is routinely provided with consumers' credit card information and other consumer information that could be used in theft of consumers' money or identities.
17. The Director has considered Conway's history and all of the circumstances surrounding Conway's Application. Granting Conway 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 a motor vehicle extended service contract producer license to Conway.
18. An order refusing to issue a motor vehicle extended service contract producer license to Conway is in the public interest.

### ORDER

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

**SO ORDERED.**

WITNESS MY HAND THIS 5<sup>TH</sup> DAY OF OCTOBER, 2012.



  
**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 10 day of October, 2012, 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:

Benjamin Conway  
951 Parkcrest Drive  
St. Charles, Missouri 63301

Certified No. 7C09 3410 0001 9254 3372

  
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