



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

In the Matter of:

DANIEL RYAN BRENNAN,

Applicant.

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Case No. 141022694C

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On March 19, 2015, the Consumer Affairs Division submitted a Petition to the Director alleging cause to refuse to issue a motor vehicle extended service contract producer license to Daniel Ryan Brennan. 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. Daniel Ryan Brennan ("Brennan") is a Missouri resident with a residential address of record of 17 Muirfield Court North, Saint Charles, Missouri 63304.
2. On July 11, 2014, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Brennan's incomplete 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. Brennan signed the Application in the "Applicant's Certification and Attestation" section under oath and before a notary public.

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, received a suspended imposition of sentence ("SIS") or suspended execution of sentence ("SES"), or are you currently charged with committing a crime?

"Crime" includes a misdemeanor, felony, or a military offense. You may exclude any of the following if they are/were misdemeanor traffic citations or misdemeanors: driving under the influence (DUI), driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license. You may also exclude misdemeanor juvenile convictions.

"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, having entered an Alford Plea, 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 was 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").

Unless excluded by the language above, you must disclose convictions that have been expunged.

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

- a) a written statement explaining the circumstances of each incident,
- b) a certified copy of the charging document, and
- c) a certified copy of the official document which demonstrates the resolution of the charges or any final judgment.

- 6. Brennan originally marked "YES" to Background Question No. 1.
- 7. Brennan did not attach a written explanation or any documents to his Application.
- 8. The Department's Licensing Section returned Brennan's Application and asked him to provide a written statement and related court documents as the Application instructs.

9. On July 28, 2014, Brennan returned his Application to the Department without providing a statement or any documents. Brennan changed his answer to Background Question No. 1 to "NO" and initialed the change.
10. During its investigation, the Consumer Affairs Division ("Division") of the Department discovered the following criminal history that Brennan failed to disclose on his Application:
 - a. On September 15, 2003, Brennan pled guilty to Possession of a Controlled Substance, a Class A Misdemeanor, in violation of § 195.202.¹ The court sentenced Brennan to pay a \$500.00 fine and court costs. *State v. Daniel R. Brennan*, St. Charles Co. Cir. Ct., Case No. 03CR127657.
 - b. On December 18, 2006, Brennan pled guilty to Possession of a Controlled Substance, a Class A Misdemeanor, in violation of § 195.202. The court sentenced Brennan to one (1) year incarceration, suspended execution of the sentence, and placed Brennan on two (2) years' supervised probation. *State v. Daniel R. Brennan*, St. Charles Co. Cir. Ct., Case No. 0611-CR03542.
 - c. On November 8, 2013, the St. Charles County Sheriff's Department served a warrant on Brennan for Possession of a Controlled Substance with Intent to Distribute, a Class B Felony, in violation of § 195.211. On July 11, 2014, Brennan was indicted for that charge. Disposition of the case is pending. *State v. Daniel Ryan Brennan*, St. Charles Co. Cir. Ct., Case No. 1311-CR05994-01.
 - d. On March 14, 2014, the St. Charles County Sheriff's Department served a warrant on Brennan for Driving While Intoxicated – Alcohol – Aggravated Offender, a Class C Felony, in violation of § 577.010. On February 3, 2015, Brennan pled guilty to the charge. The court sentenced Brennan to seven (7) years' incarceration, suspended execution of the sentence, and placed Brennan on supervised probation for five (5) years. On February 25, 2015, the court further sentenced Brennan to two (2) days' confinement in the St. Charles County Department of Corrections. *State v. Daniel Ryan Brennan*, St. Charles Co. Cir. Ct., Case No. 1411-CR01321-01.
11. The Division sent an inquiry letter to Brennan asking why he failed to disclose his criminal history on his Application. In response, Brennan sent a letter to the Division that explained, in part, as follows:

¹ All references to criminal statutes correspond to the version of the Revised Statutes of Missouri under which each judgment was rendered.

I did discuss the application in general with two employees of a company that specializes in motor vehicle extended service contracts. I was advised that if the charges were five years old or if I hadn't been convicted of any felonies that I should mark that box as no. I had sent the application out the first time with the box marked yes. It was sent back and I called and told the woman on the phone that I didn't have any felonies. She then advised me that I should check the box no and initial my name next to it so they would know what correction was made to the application.

12. It is inferable, and hereby found as fact, that Brennan failed to disclose his two (2) misdemeanor convictions in response to Background Question No. 1 on his Application to misrepresent to the Director that he had no criminal history and to improve the likelihood that the Director would issue him a motor vehicle extended service contract ("MVESC") producer license. Brennan knew he pled guilty to two (2) misdemeanors, and his explanation for the failure to disclose is not credible.
13. It is inferable, and hereby found as fact, that Brennan failed to disclose this two (2) pending felony charges in response to Background Question No. 1 on his Application to misrepresent to the Director that he had no criminal history and to improve the likelihood that the Director would issue him a MVESC producer license. Brennan knew he had a pending felony charge for Possession of a Controlled Substance with Intent to Distribute because he was served a warrant on November 8, 2013. Brennan also knew he had a pending felony charge for Driving While Intoxicated because he was served a warrant on March 14, 2014.

CONCLUSIONS OF LAW

14. Section 385.209 RSMo (Supp. 2013)² 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;

² All statutory references are to RSMo (2000) as updated by RSMo (Supp. 2013) unless otherwise noted.

* * *

(5) Been convicted of any felony[.]

15. 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 MVEESC producer license but to protect the public.
16. The Director may refuse to issue a MVEESC producer license to Brennan pursuant to § 385.209.1(3) because Brennan attempted to obtain a MVEESC producer license through material misrepresentation or fraud. Brennan failed to disclose the following convictions and charges in response to Background Question No. 1 on his Application:
 - a. Possession of a Controlled Substance, a Class A Misdemeanor. *State v. Daniel R. Brennan*, St. Charles Co. Cir. Ct., Case No. 03CR127657.
 - b. Possession of a Controlled Substance, a Class A Misdemeanor. *State v. Daniel R. Brennan*, St. Charles Co. Cir. Ct., Case No. 0611-CR03542.
 - c. Possession of a Controlled Substance with Intent to Distribute, a pending Class B Felony charge. *State v. Daniel Ryan Brennan*, St. Charles Co. Cir. Ct., Case No. 1311-CR05994-01 (pending).
 - d. Driving While Intoxicated – Alcohol – Aggravated Offender, a Class C Felony.³ *State v. Daniel Ryan Brennan*, St. Charles Co. Cir. Ct., Case No. 1411-CR01321-01.
17. Each attempt to obtain a license through material misrepresentation or fraud is a separate and sufficient ground for refusal pursuant to § 385.209.1(3).
18. The Director may refuse to issue a MVEESC producer license to Brennan pursuant to § 385.209.1(5) because Brennan has been convicted of a felony:
 - a. Driving While Intoxicated – Alcohol – Aggravated Offender, a Class C Felony. *State v. Daniel Ryan Brennan*, St. Charles Co. Cir. Ct., Case No. 1411-CR01321-01.

³ This charge was pending at the time Brennan submitted his Application. Brennan has since pled guilty to the charge.

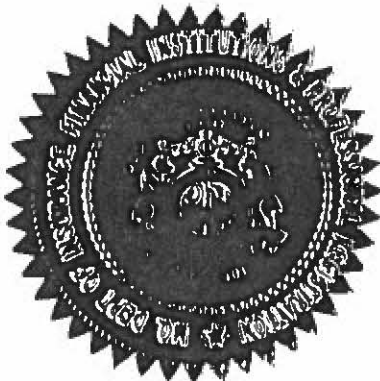
19. The Director has considered Brennan's history and all of the circumstances surrounding Brennan's Application. Issuing Brennan a MVESC producer license is not in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue a MVESC producer license to Brennan.
20. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the Motor Vehicle Extended Service Contract Producer License application of **Daniel Ryan Brennan** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 25th **DAY OF MARCH, 2015.**




JOHN M. HUFF
DIRECTOR

NOTICE

TO: Applicant and any unnamed persons aggrieved by this Order:

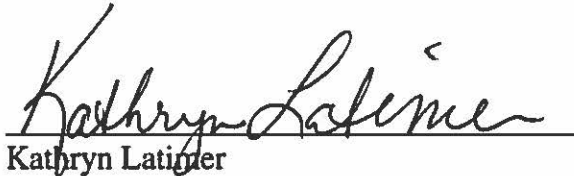
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send 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 26th day of March, 2015 a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following address:

Daniel Ryan Brennan
17 Muirfield Court North
Saint Charles, Missouri 63304

Tracking No. 1Z0R15W84294010040

A handwritten signature in cursive script, reading "Kathryn Latimer", is written over a horizontal line.

Kathryn Latimer
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