



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

Daniel J. Gastreich, Sr.,

Applicant.

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Case No. 141231839C

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On February 10, 2015, 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 Daniel J. Gastreich, Sr. 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 J. Gastreich, Sr., ("Gastreich"), is a Missouri resident with a residential address of 1009 Drexel Dr., St. Charles, Missouri 63303.
2. On September 23, 2014, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Gastreich's completed Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. The "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. Gastreich accepted the "Attestation" section by signing the Application under oath 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. Gastreich answered "Yes" in response to Background Question No. 1 and made a handwritten note on the Application that stated "back in 2003 (Assault)."
7. With his application, Gastreich included a letter and provided the Information and Order of Probation relating to *State v. Daniel J. Gastreich*, St. Charles Co. Cir. Ct., Case No. 04CR124166. The documents provided by Gastreich and the Division's investigation revealed the following:
 - a. On November 29, 2004 Gastreich pled guilty to Assault 3rd Degree, a Class A Misdemeanor, in violation of § 565.070. The court sentenced Gastreich to one-year incarceration, but suspended execution of the sentence and placed him on supervised probation for two years. *State v. Daniel J. Gastreich*, St. Charles Co. Cir. Ct., Case No. 04CR124166.
8. During its investigation, the Consumer Affairs Division ("Division") discovered the following conviction that Gastreich failed to disclose on his Application:

- a. On June 29, 2005, Gastreich pled guilty to Passing Bad Check - Less Than \$500.00, a Class A Misdemeanor, in violation of § 570.120. The court sentenced Gastreich to pay a fine in the amount of \$50.00 plus court costs. *State v. Daniel J. Gastreich*, St. Charles Co. Cir. Ct., Case No. 0511-CR02011.
9. Background Question No. 7 of the Application asks the following:

Do you currently have or have you had a child support obligation?

If you answer yes:

 - (a) are you in arrearage?
 - (b) by how many months are you in arrearage? _____ months
 - (c) what is the total amount of your arrearage? _____
 - (d) are you currently subject to a repayment agreement to cure the arrearage? (If you answer yes, provide documentation showing an approved repayment plan from the appropriate state child support agency.)
 - (e) are you in compliance with said repayment agreement? (If you answer yes, provide documentation showing proof of current payments from the appropriate state child support agency.)
 - (f) are you the subject of a child support related subpoena/warrant? (If you answer yes, provided documentation showing proof of current payments or an approved repayment plan from the appropriate state child support agency.)
 - (g) have you ever been convicted of a misdemeanor or felony for failure to pay child support?
10. In response to Background Question No. 7, Gastreich answered that he did not have a child support obligation.
11. During its investigation, the Division discovered the following child support obligation that Gastreich failed to disclose on this Application;
 - a) A court ordered Gastreich to pay \$263.00 per month for child support, and as of February 2015 is in arrears \$3,156.00. *Missouri Family Support Div., Child Support Enforcement v. Daniel John Gastreich*, St. Louis Co. Cir. Ct., Case No. 13SL-DR03304.
12. After reviewing Gastreich's Application and his criminal record, Special Investigator Andrew Engler ("Special Investigator Engler"), with the Division, sent an inquiry letter to Gastreich on September 26, 2014. Said letter requested additional documentation and information about Gastreich's criminal background and child support obligation. The letter further requested a response by October 16, 2014, and warned Gastreich that a failure to respond could result in the Department refusing to issue him a motor vehicle extended service contract ("MVESC") producer license.
13. The United States Postal Service did not return the September 26, 2014 inquiry letter to

the Division, and therefore it is presumed delivered to Gastreich.

14. On October 1, 2014, Gastreich called Special Investigator Engler to check on the status of his Application. Special Investigator Engler informed Gastreich that a letter was mailed to him asking about possible misstatements on his Application. Special Investigator Engler read the letter to Gastreich and verified his address. Gastreich stated that he did not have an open child support case. Special Investigator Engler asked if the name Patricia Cypret meant anything to him. He answered "No" to that question. When Special Investigator Engler informed Gastreich that he obtained the payment history from Family Services and it shows that the child support case is open, Gastreich then contradicted his previous answer to the question by saying "Well it's complicated, she doesn't even let me see the kid." Special Investigator Engler instructed Gastreich to follow the instructions of the letter and provide the requested documents.
15. On October 16, 2014, Special Investigator Engler sent a second inquiry letter to Gastreich asking for the same information previously requested in the September 26, 2014 inquiry letter. The inquiry letter requested a response by November 5, 2014, and warned Gastreich that a failure to respond could result in the Department refusing to issue him a MVESC producer license.
16. The United States Postal Service did not return the October 16, 2014 inquiry letter to the Division, and therefore it is presumed delivered to Gastreich.
17. Gastreich did not respond to the Division's October 16, 2014 inquiry letter nor did he demonstrate a reasonable justification for the delay.
18. It is inferable, and hereby found as fact, that Gastreich failed to disclose all of his criminal background on his Application in order to misrepresent to the Director that he had only one conviction, and accordingly, in order to improve the chances that the Director would approve his Application and issue him a MVESC producer license.
19. Gastreich failed to disclose his child support obligation when in fact he is subject to a court order imposing a child support obligation. It is inferable, and hereby found as fact, that Gastreich failed to disclose his child support obligation on his Application in order to misrepresent to the Director that he had no such obligation in order to improve the chances the Director would approve his Application.

CONCLUSIONS OF LAW

20. Section 385.209 RSMo (Supp. 2013) provides, 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 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]

* * *

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

21. Title 20 CSR 100-4.100(2)(A), Required Response to Inquiries by the Consumer Affairs Division, provides:

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.

22. "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).
23. 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.
24. The Director may refuse to issue a MVEESC producer license to Gastreich under § 385.209.1(2) because Gastreich failed to adequately respond to an inquiry letter from the Division and failed to provide a reasonable justification for the delay, thereby violating 20 CSR 100-4.100(2)(A), a department regulation.
25. The Director may refuse to issue a MVEESC producer license to Gastreich under § 385.209.1(3) because Gastreich attempted to obtain a MVEESC producer license through material misrepresentation or fraud by failing to disclose a misdemeanor conviction and child support obligation in response to Background Question 1 and 7 on his Application.

State v. Daniel J. Gastreich, St. Charles Co. Cir. Ct., Case No. 04CR124166; *Missouri Family Support Div., Child Support Enforcement v. Daniel John Gastreich*, St. Louis Co. Cir. Ct., Case No. 13SL-DR03304.

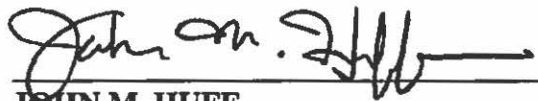
26. Each attempt to obtain a MVESC producer license through material misrepresentation or fraud is a separate and sufficient cause for the Director to refuse to issue a MVESC producer license to Gastreich.
27. Gastreich may be refused a MVESC producer license pursuant to § 385.209.1(12) because he failed to comply with an administrative or court order imposing a child support obligation. *Missouri Family Support Div., Child Support Enforcement v. Daniel John Gastreich*, St. Louis Co. Cir. Ct., Case No. 13SL-DR03304.
28. The Director has considered Gastreich's history and all of the circumstances surrounding his Application. Issuing Gastreich an MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue Gastreich an MVESC producer license.
29. This Order is in the public interest.

ORDER

IT IS THEREFORE ordered that the motor vehicle extended service contract producer license application of Daniel J. Gastreich, Sr., is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 20th DAY OF FEBRUARY, 2015.



JOHN M. HUFF
DIRECTOR



NOTICE

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

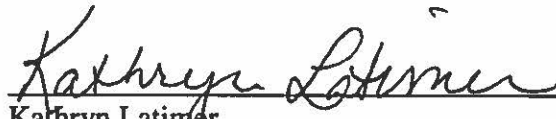
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send 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 23rd day of February, 2015 a copy of the foregoing Order and Notice was served upon the Renewal Applicant by UPS, signature required, at the following address:

Daniel J. Gastreich, Sr.
1009 Drexel Dr.
St. Charles, MO 63303

Tracking No. 1Z0R15W84299638748


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