

FINAL ORDER
EFFECTIVE
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**DEPARTMENT OF INSURANCE, FINANCIAL
INSTITUTIONS AND PROFESSIONAL REGISTRATION**

P.O. Box 690, Jefferson City, Mo. 65102-0690

RECEIVED

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In the Matter of:

DAVID L. FAIR III,

Applicant.

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MO. DEPT OF INSURANCE,
FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

Case No. 151109501C

CONSENT ORDER

John M. Huff, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, takes up the above matter for consideration and disposition. The Consumer Affairs Division, through counsel Shelly Krueger, and David L. Fair have reached a settlement in this matter and consent to the issuance of this Consent Order.

1. John M. Huff is the duly appointed Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration ("Director" of the "Department") whose duties, pursuant to Chapters 374, 375, and 385 RSMo,¹ include the

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

supervision, regulation, and discipline of motor vehicle extended service contract producer licenses.

2. The Consumer Affairs Division (“Division”) of the Department has the duty, charged by the insurance laws of this state, to conduct investigations into the acts of motor vehicle extended service contract producer licensees and is authorized by the Director to initiate actions necessary to enforce the insurance laws of this state, including the refusal of motor vehicle extended service contract producer license applications.

3. On December 28, 2011, the Department of Insurance, Financial Institutions and Professional Registration (“Department”) received David L. Fair III’s (“Fair”) completed Application for a Motor Vehicle Extended Service Contract Producer License (“2011 Application”).

4. The “Applicant’s Certification and Attestation” section of the 2011 Application states, in relevant part:

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.

5. Fair signed the “Applicant’s Certification and Attestation” section of the 2011 Application under oath before a notary public on December 1, 2011.

6. Background Question No. 1 of the 2011 Application asks, in relevant part:

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 and 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 was made, but imposition 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[.]

7. Fair answered “Yes” to Background Question No. 1 on his 2011 Application.

8. Fair attached court documents to his 2011 Application evidencing that on May 10, 2004, Fair was convicted of eight (8) felonies. The court sentenced Fair to concurrent terms in the Missouri Department of Corrections for each felony conviction as follows:

- a. Sale of a Controlled Substance, a Class B Felony, in violation of § 195.211, RSMo,² ten year sentence imposed;
- b. Trafficking in the First Degree, a Class A Felony, in violation of § 195.222, RSMo, ten year sentence imposed;

² All references to criminal statutes are to those contained in the version of the Missouri Revised Statutes under which the court rendered judgment.

- c. Possession of a Chemical with the Intent to Create a Controlled Substance, a Class C Felony, in violation of § 195.420, RSMo, five year sentence imposed;
- d. Endangering the Welfare of a Child in the First Degree, a Class C Felony, in violation of § 568.045, RSMo, five year sentence imposed;
- e. Possession of a Controlled Substance, a Class C Felony, in violation of § 195.202, RSMo, five year sentence imposed;
- f. Unlawful Use of Drug Paraphernalia, a Class D Felony, in violation of § 195.233, RSMo, four year sentence imposed;
- g. Trafficking in the First Degree, a Class A Felony, in violation of § 195.222, RSMo, ten year sentence imposed; and
- h. Possession of a Controlled Substance, a Class C Felony, in violation of § 195.202, RSMo, five year sentence imposed.

State v. David L. Fair, St. Charles Co. Cir. Ct., Case No. 03CR129969.

9. On January 1, 2012, the Department issued Fair a motor vehicle extended service contract (“MVESC”) producer license in error.

10. On December 4, 2012, the Director of the Department filed a Complaint with the Administrative Hearing Commission (“Commission”) seeking cause to discipline Fair’s MVESC producer license pursuant to § 385.209.1(5) RSMo. *Dir. Dep’t of Ins., Fin. Inst. and Prof’l Reg’n vs. David Fair*, Case No. 12-2135 DI (Mo. Admin. Hrn’g Comm’n Dec. 4, 2012).

11. On April 3, 2013, the Commission issued a Decision finding cause to discipline Fair’s MVESC producer license pursuant to § 385.209.1(5) RSMo. *Id.*

12. On July 22, 2013, the Director issued an Order of Discipline which revoked Fair’s MVESC producer license pursuant to § 385.209.1(5) RSMo. *In the Matter of: David Fair*, Order of Discipline, Dep’t of Ins., Fin. Inst. and Prof’l Reg’n Case No. 175338 (July 22, 2013).

13. Fair did not appeal the Director’s Order of Discipline.

14. On September 1, 2015, the Department received Fair's Motor Vehicle Extended Service Contract Producer Application ("2015 Application").

15. The "Applicant's Certification and Attestation" section of the 2015 Application states, in relevant part:

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.

16. Fair properly disclosed his eight (8) felony convictions when he answered "Yes" to Background Question No. 1 on his 2015 Application. *State v. David L. Fair*, St. Charles Co. Cir. Ct., Case No. 03CR129969.

17. Fair also properly disclosed his prior administrative action when he provided a copy of the Director's Order of Discipline. *In the Matter of: David Fair*, Order of Discipline, Dep't of Ins., Fin. Inst. and Prof'l Reg'n Case No. 175338 (July 22, 2013).

18. Fair acknowledges and understands that the Director may refuse to issue a motor vehicle extended service contract producer license to Fair pursuant to § 385.209.1(5) because Fair has been convicted of eight felonies. *State v. David L. Fair*, St. Charles Co. Cir. Ct., Case No. 03CR129969.

19. Fair acknowledges and understands that he has the right to consult legal counsel at his own expense.

20. Fair stipulates and agrees to waive any waivable rights to a hearing before the Administrative Hearing Commission or the Director, any waivable rights to seek judicial review, and any waivable rights to challenge or contest the terms and conditions of this Consent Order. Fair further stipulates and agrees to forever release and hold harmless the Department, the Director and his agents, and the Division from all liability and claims arising out of, pertaining to, or relating to this matter.

21. Fair acknowledges and understands that this Consent Order is an administrative action and that the Department will report it to other states. Fair further acknowledges and understands that this administrative action should be disclosed on his future applications and renewal applications and that he is responsible for complying with the reporting requirements of each state in which he may be licensed.

22. Each signatory to this Consent Order certifies by signing that he or she is fully authorized, in his or her own capacity or by the named party he or she represents, to accept the terms and provisions of this Consent Order in their entirety and agrees, in his or her personal or representational capacity, to be bound by the terms of this Consent Order.

CONCLUSIONS OF LAW

23. Section 385.209.1 provides, in relevant part:

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[.]

24. The facts admitted by Fair are grounds to refuse his Application for Motor Vehicle Extended Service Contract Producer License pursuant to § 385.209.1(5).

25. The Director may impose consent orders in the public interest under §§ 374.046, 385.216, and 621.045.

26. The terms set forth in this Consent Order are an appropriate disposition of this matter, and entry of this Consent Order is in the public interest.

ORDER

IT IS ORDERED that the Department will issue a motor vehicle extended service contract producer license to David L. Fair III subject to the terms set forth herein and the following special conditions:

1. David L. Fair III shall respond to all inquiries and consumer complaints forwarded or otherwise communicated to him by the Department or a consumer within five (5) business days of receipt. If Fair receives a complaint directly from a consumer, whether written or oral, Fair shall report the complaint in writing to the Consumer Affairs Division within five (5) business days of receipt. Fair shall include in such report: 1) a copy of the complaint, if written, or a brief, accurate description of the complaint, if oral; 2) a detailed explanation of the circumstances surrounding the complaint; and 3) any measures taken or planned to address the conduct described in the complaint.

2. David L. Fair III shall respond to all inquiries from the Consumer Affairs Division in accordance with 20 CSR 100-4.100.
3. David L. Fair III shall report to the Consumer Affairs Division any and all of the following incidents involving Fair: the first appearance in court in any criminal proceeding, guilty plea, Alford plea, nolo contendere plea, finding of guilt, or conviction concerning a felony or misdemeanor. Fair shall report all such incidents to the Division within five (5) business days of their occurrence.
4. David L. Fair III shall report to the Consumer Affairs Division any administrative action taken against Fair in another jurisdiction or by another governmental agency in this state within five (5) business days after he receives notification of the initiation of such administrative action.
5. David L. Fair III shall report to the Division any violation of or failure to comply with Missouri insurance regulations and Missouri insurance laws, including those set forth in Chapters 374, 375, or 385, within five (5) business days of such violation or failure to comply.
6. The special conditions listed in paragraphs 1 through 5 immediately above will expire upon the earlier of: 1) the expiration of David L. Fair's motor vehicle extended service contract producer license; 2) the refusal or revocation of such license; or 3) two (2) years subsequent to the date of issuance of this Consent Order.

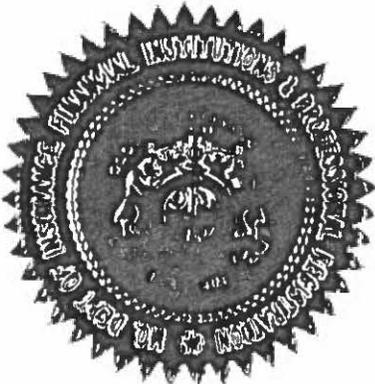
IT IS ORDERED that for two (2) years subsequent to the date of issuance of this Consent Order, David L. Fair III will voluntarily surrender his license to the Department

within five (5) business days of Fair's guilty plea, nolo contendere plea, finding of guilt or conviction for a felony, regardless of whether sentence is imposed, suspended, or executed.

IT IS ORDERED that if Fair maintains his motor vehicle extended service contract producer license beyond its initial term and complies with the terms of this Consent Order, then Fair may apply to renew his motor vehicle extended service contract producer license, and the Director shall consider any renewal application in accordance with Chapters 374, 375, and 385 without regard to Fair's felony conviction or the underlying conduct in *State v. David L. Fair*, St. Charles Co. Cir. Ct., Case No. 03CR129969.

IT IS ORDERED that the Director may pursue additional legal remedies, as determined appropriate by the Director, without limitation as authorized by Chapters 374, 375, and 385, including remedies for violation of or failure to comply with the terms of this Consent Order.

SO ORDERED, SIGNED, AND OFFICIAL SEAL AFFIXED THIS 10TH
DAY OF JANUARY, ~~2016.~~ 2017.





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

CONSENT AND WAIVER OF HEARING

The undersigned persons understand and acknowledge that David L. Fair may have a right to a hearing but that David L. Fair waives the hearing and consents to the issuance of this Consent Order.

David L. Fair III

11-24-16
Date

David L. Fair III
20 Hammes Drive
Florissant, Missouri 63031
Applicant

Counsel for Applicant
Name: _____
Missouri Bar No.: _____
Address: _____

Telephone: _____
Facsimile: _____
Email: _____

Date

Shelly Krueger

1-6-2017
Date

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