



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

DERRICK L. SCARBROUGH,

Applicant.

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Case No. 168009

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On June 12, 2013, 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 Derrick L. Scarbrough. 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. Derrick L. Scarbrough ("Scarbrough") is a Missouri resident with a residential address of record of 1447 Summergate Parkway, St. Charles, Missouri 63303.
2. On December 9, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Scarbrough's Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. Scarbrough signed the Application under oath before a notary.
4. Background Question No. 1 of the Application asks the following:

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 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 judgement 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[.]

5. Scarbrough marked “Yes” to Question No. 1. With his Application, Scarbrough included a written statement that read, verbatim and in its entirety:

To: The, MO. Prof. Liscense Board, on August 8th 2000, I was charged with possession with intent to deliver marijuana. I’ve completed Institutional treatment, Completed outpatient and 12-12 my probation in 2007 April 14. I attended the “Mo. School of Barbering and Hairstyling” and, I currently am a State of MO. Licensed barber since 2004. I made a mistake and learned from my past. Please take that into consideration when determining my eligibility, thank you.

6. 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.)

7. Scarbrough answered “Yes” to Background Question No. 7, indicated that he was “30 ?” months in arrearage and answered “Yes” to sub-part (b) of Background Question No. 7.
8. Investigation revealed that at the time he submitted his Application, Scarbrough owed total arrearages of \$46,812.66 for the support of two children. At the current court-ordered rate of \$267 total per month, that arrearage represents 175 months’ worth of unpaid support.
9. Further investigation revealed that on April 2, 1996, the Ventura County, California, Superior Court ordered Scarbrough to pay \$113 per month in child support and an additional \$734 for back child support. *County of Ventura, et al. v. Derrick Lomont*

Scarbrough, Ventura County, California, Superior Court, Case No. D237094.

10. The investigation also revealed that on February 17, 1998, the Ventura County, California, Superior Court ordered Scarbrough to pay \$113 per month in child support and an additional \$3,831 for arrearages. *Id.*
11. Payment History Reports obtained from the Missouri Department of Social Services Family Support Division indicate that out of \$49,503.66 in total child support obligations owed, Scarbrough has paid a total of only \$ 3,189 and since at least April of 2011 has paid a total of only \$ 179.
12. Scarbrough did not provide a copy or even a description of any child support payment agreement, nor of compliance with any such agreement.
13. Given Scarbrough's extremely poor child support payment history, it is inferable that even if Scarbrough is subject to a child support payment agreement, he is not in compliance with any such agreement.
14. On January 4, 2012, Consumer Affairs Division Investigator Dennis Fitzpatrick mailed an inquiry letter to Scarbrough requesting court records in *State of Missouri v. Derrick L. Scarbrough*, St. Louis Co. Cir. Ct., No. 2100R-03804-01 and *State of Missouri v. Derrick L. Scarbrough*, St. Louis Co. Cir. Ct., No. 2190R-07882.
15. Fitzpatrick mailed the January 4, 2012 letter by regular U.S. mail, to Scarbrough's address of record, with sufficient postage attached.
16. Scarbrough did not respond to the January 4, 2012 letter and has offered no justification for his failure to respond.
17. Fitzpatrick then acquired certified copies of the court records in *State of Missouri v. Derrick L. Scarbrough*, St. Louis Co. Cir. Ct., No. 2100R-03804-01, directly from the St. Louis County Circuit Court, and those records revealed that:
 - a. On January 7, 2002, Scarbrough was convicted of Possession of a Controlled Substance with Intent to Deliver, a Class B Felony in violation of § 195.211, RSMo. *State of Missouri v. Derrick L. Scarbrough*, St. Louis Co. Cir. Ct., No. 2100R-03804-01. The court sentenced Scarbrough to ten (10) years in the custody of the Department of Justice Services of St. Louis County.
 - b. On April 15, 2002, the court ordered Scarbrough released on probation for a period of five (5) years. On September 16, 2005, the court revoked Scarbrough's probation. The court sentenced Scarbrough to sixty (60) days' shock incarceration and continued his probation to May 13, 2007.
18. Fitzpatrick also later acquired certified copies of court records in *State of Missouri v. Derrick L. Scarbrough*, St. Louis Co. Cir. Ct., No. 12SL-CR08934-01, directly from the

St. Louis County Circuit Court, and those records revealed that:

- a. On December 14, 2012, Scarbrough pled guilty in the St. Louis County Circuit Court to Domestic Assault in the Second Degree, a Class C Felony in violation of § 565.073, RSMo. *State of Missouri v. Derrick L. Scarbrough*, St. Louis Co. Cir. Ct., No. 12SL-CR08934-01.
- b. According to the Indictment, Scarborough “knowingly caused injury to [his spouse] by smashing her face into a car and dragging her across the pavement[.]”
- c. The court sentenced Scarbrough to seven (7) years in the custody of the Missouri Department of Corrections but suspended execution of the sentence and placed Scarbrough on probation for a period of five (5) years, after a 120-day shock incarceration.

CONCLUSIONS OF LAW

19. Section 385.209 RSMo, Supp. 2012, 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:

* * *

- (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;

* * *

- (5) Been convicted of any felony;

* * *

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

21. Regulation 20 CSR 100-4.100(2) states:
- (2) Except as required under subsection (2)(B)—
- (A) 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.
- (B) This rule shall not apply to any other statute or regulation which requires a different time period for a person to respond to an inquiry by the department. If another statute or regulation requires a shorter response time, the shorter response time shall be met. This regulation operates only in the absence of any other applicable laws.
22. 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.
23. Scarbrough may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(5) because he has been convicted of two felonies:
- a. *State of Missouri v. Derrick L. Scarbrough*, St. Louis Co. Cir. Ct., No. 2100R-03804-01 (Possession of a Controlled Substance with Intent to Deliver, a Class B Felony in violation of § 195.211, RSMo).
- b. *State of Missouri v. Derrick L. Scarbrough*, St. Louis Co. Cir. Ct., No. 12SL-CR08934-01 (Domestic Assault in the Second Degree, a Class C Felony in violation of § 565.073, RSMo).
24. Scarbrough also may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(12) because he failed to comply with a court order imposing a child support obligation, in that he failed to comply with at least two orders to pay child support of \$113 per month issued by the Ventura County, California, Superior Court, on April 2, 1996, and February 17, 1998, instead accruing child support arrearages totaling \$46,812.66 at the time he submitted his Application.
25. Scarbrough 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 on his Application Scarbrough grossly misrepresented the extent of the child support

arrears he owed and falsely stated that he was in compliance with a repayment agreement, and these misrepresentations were material to the Director's licensing decision.

26. Scarbrough may also be refused a motor vehicle extended service contract producer license under § 385.209.1(2) because he violated a rule of the Director, in that he failed to respond to a written inquiry from the Consumer Affairs Division without demonstrating reasonable justification for that failure, thereby violating regulation 20 CSR 100-4.100(2), which is a rule of the Director.
27. The Director has considered Scarbrough's history and all of the circumstances surrounding Scarbrough's Application. Granting Scarbrough 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 Scarbrough.
28. This order is in the public interest.

ORDER

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

SO ORDERED.

WITNESS MY HAND THIS 13TH DAY OF JUNE, 2013.




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 14 day of June, 2013, 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:

Derrick L. Scarbrough
1447 Summergate Parkway
St. Charles, Missouri 63303

Certified No. 7009 3410 0001 9255 0851



Hailey Boessen
Senior Office Support Assistant
Agent Investigation Section
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Institutions and Professional Registration
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