



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION

In the Matter of:

Joshua W. Kemp,

Applicant.

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Case No. 181012

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On September 10, 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 Joshua W. Kemp. 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. Joshua W. Kemp ("Kemp") is a Missouri resident with a residential address of record of 428 Pearl Creek Drive, Wentzville, Missouri, 63385.

2. On January 5, 2012, the Department received Kemp's Application for Motor Vehicle Extended Service Contract Producer License ("Application").

3. Kemp 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. Kemp marked "Yes" to Question No. 1.

6. With his Application, Kemp included uncertified court documents and a written statement disclosing that he had been convicted of the C Felony of Possession of a Controlled Substance:

- a. On October 24, 2006, Kemp pled guilty in the Franklin County Circuit Court to one count of the Class C Felony of Possession of a Controlled Substance under § 195.202, RSMo.¹
- b. On December 12, 2006, the court sentenced Kemp to three years' incarceration but suspended execution of sentence and gave him five (5) years' supervised probation.

7. Kemp did not disclose any further criminal history in his Application.

8. Investigation by the Department's Consumer Affairs Division revealed that Kemp had also been convicted of two misdemeanors:

- a. On March 11, 2003, Kemp pleaded guilty in the St. Charles County Circuit Court to the Class B Misdemeanor of Property Damage, under § 569.120, RSMo. The

¹ *State of Missouri v. Joshua W. Kemp*, Franklin Co. Cir. Ct., No. 05AB-CR00136.

court suspended imposition of sentence and placed Kemp on two (2) years' supervised probation. However, on February 23, 2004, the court terminated Kemp's probation and sentenced Kemp to 10 days' incarceration in jail with work release.²

b. On October 2, 2009, Kemp pleaded guilty to the Class A Misdemeanor of Unlawful Use of Drug Paraphernalia, under § 195.233, RSMo. The court sentenced Kemp to one year's incarceration in jail but suspended execution of the sentence and placed Kemp on two years' supervised probation.³

9. It is inferable, and is hereby found as fact, that Kemp failed to disclose his Class B Misdemeanor Property Damage and Class A Misdemeanor Unlawful Use of Drug Paraphernalia in his Application in order to attempt to conceal the full extent of his criminal history from the Director and, accordingly, in order to improve the chances that the Director would approve his Application and issue him an MVESC producer license.

CONCLUSIONS OF LAW

10. 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:

* * *

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

* * *

(5) Been convicted of any felony[.]

² *State of Missouri v. Josh Wayne Kemp*, St. Charles Co. Cir. Ct., 02CR129732.

³ *State of Missouri v. Joshua Wayne Kemp*, St. Charles Co. Cir. Ct., No. 0811-CR05096-01.

11. 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.

12. Kemp may be refused an MVESC producer license pursuant to § 385.209.1(5) because he has been convicted of a felony:

- a. *State of Missouri v. Joshua W. Kemp*, Franklin Co. Cir. Ct., No. 05AB-CR00136 (Possession of a Controlled Substance, a Class C Felony in violation of § 195.202, RSMo).

13. The Director also may refuse to issue Kemp an MVESC producer license under § 385.209.1(3) because Kemp attempted to obtain a license through material misrepresentation or fraud, in that Kemp failed to disclose his Class B Misdemeanor Property Damage and Class A Misdemeanor Unlawful Use of Drug Paraphernalia in his Application in order to attempt to conceal the full extent of his criminal history from the Director and, accordingly, in order to improve the chances that the Director would approve his Application and issue him an MVESC producer license.

14. The Director has considered Kemp's history and all of the circumstances surrounding Kemp's Application. Granting Kemp 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 Kemp.

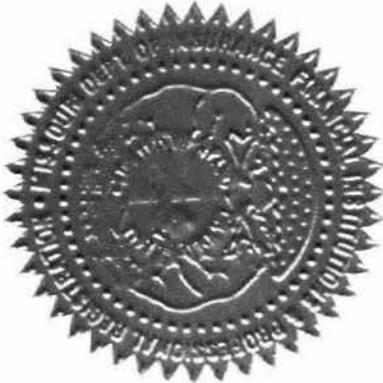
15. This order is in the public interest.

ORDER

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

SO ORDERED.

WITNESS MY HAND THIS 27th DAY OF SEPTEMBER, 2013.



A handwritten signature in black ink, appearing to read "John M. Huff", is written over a horizontal line.

JOHN M. HUFF
DIRECTOR

NOTICE

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

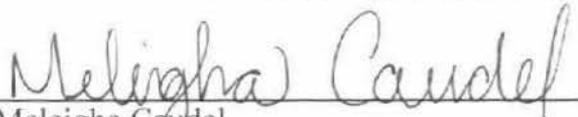
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send 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 3rd day of October, 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:

Joshua W. Kemp
428 Pearl Creek Drive
Wentzville, Missouri 63385

Certified No. 7009 3410 0001 9255 0158


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