



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

JAMES P. MACHALEK,

Applicant.

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Case No. 192924

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On January 2, 2014, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract (MVESC) producer license to James P. Machalek. 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. James P. Machalek ("Machalek") is a Missouri resident with a residential address of record of 1054 Caulks Hill Road, St. Charles, Missouri, 63304.
2. On May 6, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Machalek's Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. By signing the Application, Machalek attested and certified that "all of the information submitted in this application and attachments is true and complete."
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 judgement[.]

5. Machalek answered “No” to Question No. 1 and did not disclose any criminal history in his Application.
6. Contrary to Machalek’s answer to Question No. 1, the Consumer Affairs Division’s investigation revealed that Machalek had pleaded guilty to three misdemeanors in the Lincoln County Circuit Court:
 - a. On January 12, 1999, Machalek pleaded guilty to the Class A Misdemeanor of Possession of a Controlled Substance, in violation of § 195.202. The court sentenced Machalek to a fine of \$150.00.¹
 - b. Also on January 12, 1999, Machalek pleaded guilty to the unclassified Misdemeanor of Supplying Intoxicating Liquor to a Minor, in violation of § 311.880. The court sentenced Machalek to a fine of \$150.00.²
 - c. On January 15, 2013, Machalek pleaded guilty to the Class A Misdemeanor of Criminal Nonsupport, in violation of § 568.040. The court suspended the imposition of sentence, placed Machalek on two years’ supervised probation, and ordered Machalek to pay both his current monthly support obligation and half again that amount each month toward his arrearage. Machalek’s obligation addressed in this case was for the support of his child, E.M.³
7. On May 17, 2013, in response to a written inquiry from the Consumer Affairs Division, Machalek provided a written explanation of his criminal history. In that written explanation, Machalek addressed his failure to disclose his criminal history in his Application, stating in relevant part, verbatim: “I apologize for the discrepancy on my back ground check application. I thought it was a question of a felony and I believed I

¹ *State of Missouri v. James Patrick Machalek*, Lincoln Co. Cir. Ct., No. CR198-863M (Case.net No. 45R019800863).

² *Id.*

³ *State of Missouri v. James Patrick Machalek*, Lincoln Co. Cir. Ct., No. 11L6-CR00647.

was answering truthfully.”

8. Machalek’s explanation that he thought Question No. 1 asked only about felonies is not credible given the plain and explicit language of Question No. 1, which specifies that “‘Crime’ includes a misdemeanor, felony or a military offense.”
9. It is inferable, and hereby found as fact, that Machalek falsely answered “No” to Question No. 1 and failed to disclose his pleas of guilty to the Class A Misdemeanor of Criminal Nonsupport, the Class A Misdemeanor of Possession of a Controlled Substance and the unclassified Misdemeanor of Supplying an Intoxicating Liquor to a Minor in order to falsely represent to the Director that he had no criminal history and, accordingly, to improve the chances that the Director would approve his Application and issue him an MVESC producer license.
10. 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? _____ months
 - 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.)
11. Machalek answered “Yes” to Background Question No. 7 but did not answer part a) of Question No. 7 with any number (he marked the blank with a dash) or otherwise disclose the amount of the arrearage in his Application.
12. On March 1, 1996, the St. Charles County Circuit Court entered a Judgment and Decree of Dissolution, in which the court ordered Machalek to pay \$250.00 per month for the support of his child, E.M.⁴
13. On February 23, 2006, the St. Charles County Circuit Court entered a Judgment on Dissolution, in which the court ordered Machalek to pay \$323.00 per month for the support of his child, D.M.⁵
14. As of May 6, 2013, the date of the Application, Machalek owed a total of \$15,203.04 in arrearages on two child support obligations: \$6,443.27 for the support of E.M. and \$8,759.77 for the support of D.M. Such arrearages are the result of Machalek’s failure to comply, on multiple occasions, with the child support obligations imposed by the St. Charles County Circuit Court’s orders in No. 11V019507505 and No. 0511-FC02966.

⁴ *Maggie R. Machalek v. James P. Machalek*, St. Charles Co. Cir. Ct., No. CV195-7505DR (Case.net No. 11V019507505).

⁵ *Jessica Leigh Machalek v. James P. Machalek*, St. Charles Co. Cir. Ct., No. 0511-FC02966.

Each time Machalek failed to pay child support as ordered by the St. Charles County Circuit Court, he failed to comply with a court order imposing a child support obligation.

15. As of November 19, 2013, Machalek owed a total of \$17,979.04 in arrearages on two child support obligations: \$7,443.27 for the support of E.M. and \$10,535.77 for the support of D.M.

CONCLUSIONS OF LAW

16. 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;

* * *

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

17. 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.
18. The Director may refuse to issue an MVESC producer license to Machalek under § 385.209.1(3) because Machalek falsely answered "No" to Question No. 1 and failed to disclose his pleas of guilty to the Class A Misdemeanor of Criminal Nonsupport, the Class A Misdemeanor of Possession of a Controlled Substance and the unclassified Misdemeanor of Supplying an Intoxicating Liquor to a Minor in order to falsely represent to the Director that he had no criminal history and, accordingly, to improve the chances that the Director would approve his Application and issue him an MVESC producer license.
19. The Director also may refuse to issue Machalek an MVESC producer license under § 385.209.1(12) because Machalek has failed to comply with court orders imposing child support obligations:

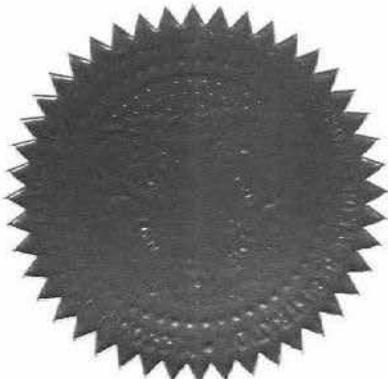
- a. Machalek pleaded guilty to the Class A Misdemeanor of Criminal Nonsupport, in violation of § 568.040, as a result of his failure to comply with the St. Charles County Circuit Court's order and judgment in *Maggie R. Machalek v. James P. Machalek*, St. Charles Co. Cir. Ct., No. 11V019507505, which order imposed a child support obligation.
 - b. As of the date of the Application, Machalek owed a total of \$15,203.04 in arrearages on two child support obligations: \$6,443.27 for the support of E.M. and \$8,759.77 for the support of D.M. Such arrearages are the result of Machalek's failure to comply, on multiple occasions, with the child support obligations imposed by the St. Charles County Circuit Court's orders in No. 11V019507505 and No. 0511-FC02966. Each time Machalek failed to pay child support as ordered by the St. Charles County Circuit Court, he failed to comply with a court order imposing a child support obligation.
 - c. As of November 19, 2013, Machalek owed a total of \$17,979.04 in arrearages on two child support obligations: \$7,443.27 for the support of E.M. and \$10,535.77 for the support of D.M.
20. The Director has considered Machalek's history and all of the circumstances surrounding Machalek's Application. Granting Machalek an MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue a MVESC producer license to Machalek.
21. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **James P. Machalek** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 2ND DAY OF JANUARY, 2014.




JOHN M. HUFF
DIRECTOR

NOTICE

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

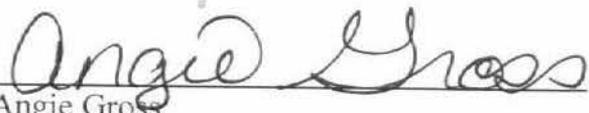
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send 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 6th day of January, 2014, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by certified mail at the following addresses:

James P. Machalek
1054 Caulks Hill Road
St. Charles, Missouri 63304

Certified No. 7009 3410 0001 9254 6786


Angie Gross
Senior Office Support Assistant
Investigations Section
Missouri Department of Insurance, Financial
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