



**State of Missouri**  
**DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND**  
**PROFESSIONAL REGISTRATION**

IN RE: )  
 )  
 JAMES ELLINGTON THOMAS, ) Case No. 161128499C  
 )  
 Applicant. )

**ORDER REFUSING TO ISSUE MOTOR VEHICLE**  
**EXTENDED SERVICE CONTRACT PRODUCER LICENSE**

On January 26, 2017, the Consumer Affairs Division submitted a Petition to the Acting Director alleging cause for refusing to issue a motor vehicle extended service contract producer license to James Ellington Thomas. After reviewing the Petition and Investigative Report, the Acting Director issues the following findings of fact, conclusions of law, and order:

**FINDINGS OF FACT**

1. James Ellington Thomas ("Thomas") is a Missouri resident with a residential and mailing address of 1033 Washington Street, St. Charles, Missouri 63301 and a business address of 200 N. Center Drive, Alton, Illinois 62002.
2. On June 3, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Thomas's Application for Motor Vehicle Extended Service Contract Producer License ("2013 Application").
3. The "Applicant's Certification and Attestation" section of the 2013 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. I further certify, under penalty of perjury, that a) I have no child-support

obligation, b) I have a child-support obligation and I am currently in compliance with that obligation, or c) I have identified my child support obligation arrearage on this application.

4. Thomas accepted the "Applicant's Certification and Attestation" section by signing the 2013 Application under oath and before a notary public.

5. Background Question No. 1 of the 2013 Application asks:

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 (DWT), 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 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.

6. Thomas answered "No" in response to Background Question No. 1 of the 2013 Application.

7. Contrary to Thomas's response, an investigation by the Consumer Affairs Division ("Division") of the Department revealed the following felony convictions:

- a. On May 16, 2003, Thomas pled guilty to, and was convicted of four (4) counts of Distribute, Deliver, Manufacture, Produce Or Attempt To, Or Possess With Intent To Distribute, Deliver, Manufacture, Produce A Controlled Substance, Class B Felonies, in violation of § 195.211 RSMo.<sup>1</sup> The court sentenced Thomas to ten (10) years' incarceration for each count, to be served concurrently, but suspended the execution of sentence for each

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<sup>1</sup> All criminal statutory references are to those contained in the version of the Revised Statutes of Missouri under which the court rendered judgment.

count and placed Thomas on five (5) years' supervised probation. On April 30, 2009, the court revoked Thomas's probation and executed the sentence on each count, to be served concurrently with each other, but consecutively with the sentence in *State v. James Ellington Thomas*, St. Charles Co. Cir. Ct., Case No. 0811-CR03486-01. *State v. James E. Thomas*, St. Charles Co. Cir. Ct., Case No. 02CR130923-01.

- b. On May 17, 2005, Thomas pled guilty to, and was convicted of, Possession Of Controlled Substance Except 35 Grams Or Less Of Marijuana, a Class C Felony, in violation of § 195.202 RSMo. The court sentenced Thomas to seven (7) years' incarceration, but suspended the execution of sentence and placed Thomas on three (3) years' supervised probation. *State v. James E. Thomas*, St. Charles Co. Cir. Ct., Case No. 01CR128913-01.
- c. On April 30, 2009, Thomas pled guilty to, and was convicted of, two (2) counts of Distribute, Deliver, Manufacture, Produce Or Attempt To, Or Possess With Intent To Distribute, Deliver, Manufacture, Produce A Controlled Substance, Class B Felonies, in violation of § 195.211 RSMo. The court sentenced Thomas to five (5) years' incarceration on each count, to be served concurrently with each other, but consecutively with the sentence in Case No. 02CR130923-01. *State v. James Ellington Thomas*, St. Charles Co. Cir. Ct., Case No. 0811-CR03486-01.

8. Background Question No. 7 of the 2013 Application asks:

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.)

9. Thomas answered "Yes" in response to Background Question No. 7, answered that he was zero (0) months in arrearage in response to Background Question No. 7A, and answered "No" to the remaining subparts of Background Question No. 7 of the 2013 Application.
10. Contrary to Thomas's response that he was zero (0) months in arrearage, at the time Thomas attested to the accuracy of the 2013 Application he owed \$1,401.97 in child support arrearage. *State of Missouri Family Support Division v. James Thomas*, Case No. 30846951.
11. On December 27, 2013, the Director of the Department issued an Order Refusing to Issue Motor Vehicle Extended Service Contract Producer License ("2013 Refusal Order") to

Thomas. The Director found that grounds existed to refuse Thomas's 2013 Application pursuant to:

- a. Section 385.209.1(3) RSMo (Supp. 2012)<sup>2</sup> because Thomas attempted to obtain a license through material misrepresentation of fraud;
- b. Section 385.209.1(5) RSMo (Supp. 2012) because Thomas has been convicted of seven (7) Felonies; and
- c. Section 385.209.1(12) RSMo (Supp. 2012) because Thomas failed to comply with an administrative or court order imposing a child support obligation.

*In re: James E. Thomas*, Order Refusing to Issue Motor Vehicle Extended Service Contract Producer License, Case No. 195786 (December 27, 2013).

12. The 2013 Refusal Order included a Notice that provided instructions regarding filing a complaint with the Administrative Hearing Commission of Missouri ("Commission") within thirty (30) days. *Id.*
13. On December 30, 2013, the Department served Thomas with the 2013 Refusal Order via first class and certified mail. *Id.*
14. Thomas did not file a complaint with the Commission.
15. On May 26, 2016, the Department received Thomas's second Application for Motor Vehicle Extended Service Contract Producer License ("2016 Application").
16. The "Applicant's Certification and Attestation" section of the 2016 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.
17. Thomas accepted the "Applicant's Certification and Attestation" section by signing the 2016 Application under oath and before a notary public.
18. Background Question No. 1 of the 2016 Application asks:

Have you ever been convicted of a crime, had a judgment withheld or deferred, received a suspended imposition of sentence ("SIS") or suspended

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<sup>2</sup> All civil statutory references are to the Revised Statutes of Missouri (2000) as updated by the 2013 Supplement unless otherwise noted.

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.

19. Thomas answered “Yes” to Background Question No. 1 of the 2016 Application and attached records revealing the following felony convictions:

- a. Four (4) counts of Distribute, Deliver, Manufacture, Produce Or Attempt To, Or Possess With Intent To Distribute, Deliver, Manufacture, Produce A Controlled Substance, Class B Felonies. *State v. James E. Thomas*, St. Charles Co. Cir. Ct., Case No. 02CR130923-01.
- b. Possession Of Controlled Substance Except 35 Grams Or Less Of Marijuana, a Class C Felony. *State v. James E. Thomas*, St. Charles Co. Cir. Ct., Case No. 01CR128913-01.
- c. Two (2) counts of Distribute, Deliver, Manufacture, Produce Or Attempt To, Or Possess With Intent To Distribute, Deliver, Manufacture, Produce A Controlled Substance, Class B Felonies. *State v. James Ellington Thomas*, St. Charles Co. Cir. Ct., Case No. 0811-CR03486-01.

20. An investigation by Special Investigator Andrew Engler (“Special Investigator Engler”) of the Division revealed that Thomas failed to disclose the following conviction:

- a. On October 18, 1995, Thomas pled guilty to, and was convicted of, Stealing, a Class A Misdemeanor, in violation of § 570.030 RSMo. The court suspended the imposition of sentence and placed Thomas on two (2) years’ probation and ordered Thomas to pay restitution. On May 7, 1997, Thomas violated his probation; the court sentenced Thomas to one (1) year incarceration, but suspended the execution of sentence and continued Thomas’s probation. On January 14, 1998, Thomas again violated his probation; the court sentenced Thomas to six (6) months’ incarceration. *State v. James Ellington Thomas*, St. Charles Co. Cir. Ct., Case No. 11R019501029.

21. Background Question No. 2 of the 2016 Application asks:

Have you ever been named or involved as a party in an administrative proceeding or action regarding any professional or occupational license or registration, or regarding the lack of such a licenses or registration?

“Involved” means having a license censured, suspended, revoked, canceled, terminated or being assessed a fine, a voluntary forfeiture, a cease and desist order, a prohibition order, a consent order, or being placed on probation. “Involved” also includes the act of surrendering a license to resolve an administrative proceeding or action. “Involved” also means being named as a party to an administrative or arbitration proceeding which is related to a professional or occupational license or is related to the lack of such license. “Involved” also means having a license application denied or the act of withdrawing an application to avoid a denial. You must **INCLUDE** any business so named because of your actions or because of your capacity as an owner, partner, officer, director, or member or manager of a Limited Liability Company. You may **EXCLUDE** terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.

If you answer yes, you must attach to this application:

- a) a written statement identifying the type of license and explaining the circumstances of each incident,
- b) a copy of the Notice of Hearing or other document that states the charges and allegations, and
- c) a certified copy of the official document which demonstrates the resolution of the charges and/or a final judgment.

22. Thomas answered “No” to Background Question No. 2 of the 2016 Application.

23. Contrary to Thomas's answer to Background Question No. 2 of the 2016 Application, on December 27, 2013, the Director issued an Order Refusing to Issue Motor Vehicle Extended Service Contract Producer License (previously introduced as "2013 Refusal Order") that refused Thomas's 2013 Application. *In re: James E. Thomas, Order Refusing to Issue Motor Vehicle Extended Service Contract Producer License, Case No. 195786 (December 27, 2013).*
24. On June 6, 2016, Special Investigator Engler sent an inquiry letter to Thomas. The inquiry letter requested a statement from Thomas explaining his failure to disclose his 2013 Refusal Order. The inquiry letter requested a response within twenty (20) days and warned Thomas that a failure to respond could result in the Department refusing to issue him a motor vehicle extended service contract ("MVESC") producer license.
25. The United States Postal Service did not return the June 6, 2016 inquiry letter to the Division as undeliverable, and therefore it is presumed received by Thomas.
26. Thomas failed to provide a written response to the Division's June 6, 2016 inquiry letter, and failed to demonstrate a reasonable justification for the delay.
27. On July 14, 2016, after receiving no response from Thomas, Special Investigator Andrew Engler sent a second inquiry letter to Thomas. The inquiry letter requested the same information and documentation as requested in the June 6, 2016 inquiry letter. The inquiry letter further requested a response within twenty (20) days, and again warned Thomas that a failure to respond could result in the Department refusing to issue him a MVESC producer license.
28. The United States Postal Service did not return the July 14, 2016 inquiry letter to the Division as undeliverable, and therefore it is presumed received by Thomas.
29. Thomas failed to provide a written response to the Division's July 14, 2016 inquiry letter, and failed to demonstrate a reasonable justification for the delay.
30. It is inferable, and hereby found as fact, that Thomas failed to disclose his criminal history and child support arrearage on his 2013 Application in order to misrepresent to the Director that he had no criminal history or child support obligation and, accordingly, in order to improve the chances that the Director would approve his Application and issue him a MVESC producer license.
31. It is inferable, and hereby found as fact, that Thomas failed to disclose the 2013 Refusal Order on his 2016 Application in an attempt to convince the Director that he is a new applicant without a prior refusal and, accordingly, in order to improve the chances that the Director would approve his 2016 Application and issue him a MVESC producer license.
32. It is inferable and hereby found as fact, that Thomas failed to disclose his entire criminal record on his 2016 Application in order to misrepresent to the Director the extent of his

criminal history, and accordingly, in order to improve the chances that the Director would approve his 2016 Application and issue him a MVESC producer license.

**CONCLUSIONS OF LAW**

33. Section 385.209 states, 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;

\* \* \*

(5) Been convicted of any felony; [or]

\* \* \*

(9) Been refused a license or had a license revoked or suspended by a state regulator of service contracts, financial services, investments, credit, insurance, banking, or finance[.]

34. Title 20 CSR 100-4.100(2)(A), Required Response to Inquiries by the Division, is a rule of the Director and 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.

35. "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).

36. Collateral estoppel “is used to preclude the relitigation of an issue that already has been decided in a different cause of action.” *Brown v. Carnahan*, 370 S.W.3d 637, 658 (Mo. banc 2012) (citation omitted).
37. The Director may refuse to issue a MVESC producer license to Thomas pursuant to § 385.209.1(2) because Thomas failed to respond to two (2) inquiry letters from the Division and failed to demonstrate a reasonable justification for the delays, thereby twice violating 20 CSR 100-4.100(2)(A), a rule of the Director.
38. Each violation of a rule of the Director is a separate and sufficient ground for refusal pursuant to § 385.209.1(2).
39. The Director may refuse to issue a MVESC producer license to Thomas pursuant to § 385.209.1(3) because Thomas attempted to obtain a license through material misrepresentation or fraud when he failed to disclose his criminal history in response to Background Question No. 1 of the 2013 Application:
  - a. Stealing, a Class A Misdemeanor. *State v. James Ellington Thomas*, St. Charles Co. Cir. Ct., Case No. 11R019501029.
  - b. Four (4) counts of Distribute, Delivery, Manufacture, Produce Or Attempt To, Or Possess With Intent To Distribute, Deliver, Manufacture, Produce A Controlled Substance, Class B Felonies. *State v. James E. Thomas*, St. Charles Co. Cir. Ct., Case No. 02CR130923-01.
  - c. Possession Of Controlled Substance Except 35 Grams Or Less Of Marijuana, a Class C Felony. *State v. James E. Thomas*, St. Charles Co. Cir. Ct., Case No. 01CR128913-01.
  - d. Two (2) counts of Distribute, Delivery, Manufacture, Produce Or Attempt To, Or Possess With Intent To Distribute, Deliver, Manufacture, Produce A Controlled Substance, Class B Felonies. *State v. James Ellington Thomas*, St. Charles Co. Cir. Ct., Case No. 0811-CR03486-01.
40. The Director may refuse to issue a MVESC producer license to Thomas pursuant to § 385.209.1(3) because Thomas attempted to obtain a license through material misrepresentation or fraud when he failed to disclose his child support arrearage in response to Background Question No. 7 of the 2013 Application:
  - a. *State of Missouri Family Support Division v. James Thomas*, Case No. 30846951. (Arrearage in the amount of \$1,401.97 at the time Thomas attested to the accuracy of the 2013 Application.)
41. The Director may refuse to issue a MVESC producer license to Thomas pursuant to § 385.209.1(3) because Thomas attempted to obtain a license through material

misrepresentation or fraud when he failed to disclose the following conviction in response to Background Question No. 1 of the 2016 Application:

- a. Stealing, a Class A Misdemeanor. *State v. James Ellington Thomas*, St. Charles Co. Cir. Ct., Case No. 11R019501029.

42. The Director may refuse to issue a MVESC producer license to Thomas pursuant to § 385.209.1(3) because Thomas attempted to obtain a license through material misrepresentation or fraud when he failed to disclose the 2013 Refusal Order in response to Background Question No. 2 of the 2016 Application:

- a. *In re: James E. Thomas*, Order Refusing to Issue Motor Vehicle Extended Service Contract Producer License, Case No. 195786 (December 27, 2013).

43. Each attempt to obtain a license through material misrepresentation or fraud is a separate and sufficient ground for refusal pursuant to § 385.209.1(3).

44. The Director may refuse to issue a MVESC producer license to Thomas pursuant to § 385.209.1(5) because, as found in the 2013 Refusal Order, Thomas has been convicted of seven (7) felonies:

- a. Four (4) counts of Distribute, Deliver, Manufacture, Produce Or Attempt To, Or Possess With Intent To Distribute, Deliver, Manufacture, Produce A Controlled Substance, Class B Felonies. *State v. James E. Thomas*, St. Charles Co. Cir. Ct., Case No. 02CR130923-01.
- b. Possession Of Controlled Substance Except 35 Grams Or Less Of Marijuana, a Class C Felony. *State v. James E. Thomas*, St. Charles Co. Cir. Ct., Case No. 01CR128913-01.
- c. Two (2) counts of Distribute, Deliver, Manufacture, Produce Or Attempt To, Or Possess With Intent To Distribute, Deliver, Manufacture, Produce A Controlled Substance, Class B Felonies. *State v. James Ellington Thomas*, St. Charles Co. Cir. Ct., Case No. 0811-CR03486-01.

45. Each felony conviction is a separate and sufficient ground for refusal pursuant to § 385.209.1(5).

46. The Director may refuse to issue a MVESC producer license to Thomas pursuant to § 385.209.1(9) because Thomas has been refused a license by a state regulator (the Director) of service contracts:

- a. *In re: James E. Thomas*, Order Refusing to Issue Motor Vehicle Extended Service Contract Producer License, Case No. 195786 (December 27, 2013).

47. Since Thomas did not appeal the 2013 Refusal Order, he is precluded from relitigating the

2013 Refusal Order.

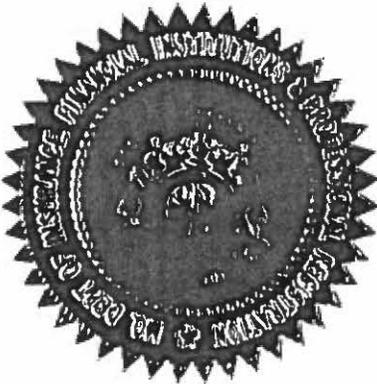
48. The Director has considered Thomas's history and all of the circumstances surrounding Thomas's 2016 Application. Issuing Thomas a MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue Thomas a MVESC producer license.
49. This Order is in the public interest.

**ORDER**

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

**SO ORDERED.**

WITNESS MY HAND THIS 27<sup>th</sup> DAY OF January, 2017.



  
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**JOHN M. HUFF, ACTING DIRECTOR**  
Missouri Department of Insurance, Financial  
Institutions and Professional Registration

## **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.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of January, 2017, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required service, at the following address:

James Ellington Thomas  
1033 Washington Street  
St. Charles, Missouri 62002

Tracking No. 1Z0R15W84290324816



Kathryn Latimer, Paralegal  
Missouri Department of Insurance, Financial  
Institutions and Professional Registration  
301 West High Street, Room 530  
Jefferson City, Missouri 65101  
Telephone: (573) 751-2619  
Facsimile: (573) 526-5492  
Email: [kathryn.latimer@insurance.mo.gov](mailto:kathryn.latimer@insurance.mo.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14th day of February, 2017, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by USPS, certified mail, at the following address:

James Ellington Thomas  
1033 Washington Street  
St. Charles, Missouri 62002

Tracking No. 7016-3010-0000-4563-2523



Kimberly Landers  
Missouri Department of Insurance, Financial  
Institutions and Professional Registration  
301 West High Street, Room 530  
Jefferson City, Missouri 65101  
Telephone: (573) 751-2619  
Facsimile: (573) 526-5492  
Email: [kimberly.landiers@insurance.mo.gov](mailto:kimberly.landiers@insurance.mo.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of March, 2017, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by first class mail, postage prepaid, at the following address:

James Ellington Thomas  
1033 Washington Street  
St. Charles, Missouri 63301

A handwritten signature in black ink, appearing to read "James Ellington Thomas", written over a horizontal line.