

DEPARTMENT OF COMMERCE AND INSURANCE

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

IN RE:

KYLE JAMES FISCHER,

Applicant.

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Case No. 1907150919C

**ORDER REFUSING TO ISSUE AN
INSURANCE PRODUCER LICENSE**

CHLORA LINDLEY-MYERS, Director of the Missouri Department of Commerce and Insurance, takes up the above matter for consideration and disposition. After reviewing the Petition, the Investigative Report, and the entirety of the Petition file, the Director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Kyle James Fischer (“Fischer”) is a Missouri resident with a residential address of 41 Chestnut Ridge Court, St. Charles, Missouri, 63303.
2. On March 1, 2019, the Missouri Department of Insurance, Financial Institutions and Professional Registration¹ (“Department”) received Fischer’s Application for an insurance producer license (“Application”), along with attachments.
3. The Application contains an Applicant’s Certification and Attestation section, which 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

¹ The Department of Insurance, Financial Institution and Professional Registration is the predecessor agency of the Department of Commerce and Insurance. See Executive Order 19-02.

revocation or denial of the license and may subject me to civil or criminal penalties.

4. Background Information Questions Number 1A of the Application asks, in relevant part:

Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged committing a misdemeanor? You may exclude the following misdemeanor convictions or pending misdemeanor charges: traffic citations, 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 juvenile adjudications (offenses where you were adjudicated delinquent in a juvenile court)

5. Fischer answered “No” to Background Information Question Number 1A on his application.

6. Background Information Question Number 1B of the Application asks, in relevant part:

Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony? You may exclude juvenile adjudications (offenses where you were adjudicated delinquent in a juvenile court)

7. Fischer answered “Yes” to Background Information Question 1B on his application.

8. Fischer attached to his Application court records showing that he was convicted of a felony:

On January 14, 2013, Fischer entered a plea of guilty in the Madison County Circuit Court of Illinois to one count of Aggravated Battery, in violation of the Revised Codes of Illinois 720 §5/12-3.05(a)(1).² *State v. Kyle J. Fischer*, Madison County Cir. Ct., Case No.12-CF2266. He was sentenced to two years of supervised probation on that date, and was discharged from probation on August 17, 2015.

9. Contrary to Fischer’s sworn attestation that all of the information submitted in his application and attachments was true and complete, and his answer to Background Information Question Number 1A, Fischer was found to have a misdemeanor conviction:

On October 17, 2006, Fischer entered a plea of guilty to the misdemeanor charge of Purchasing/Attempt to Purchase or Possession of Liquor by a Minor – 1st Offense, in violation of Missouri Revised Statutes §311.325.³ He was sentenced to a fine of \$10.00.

² All references are to the Revised Codes of Illinois in effect at the time of the offense, unless otherwise noted.

³ All references are to the Revised Codes of Missouri in effect at the time of the offense, unless otherwise noted.

10. Background Information Question Number 4 of the Application asks, in relevant part:

Have you been notified by any jurisdiction to which you are applying of any delinquent tax obligation that is not the subject of a repayment agreement?
If you answer yes, identify the jurisdiction(s).
11. Fischer answered “No” to Background Information Question 4 on his application.
12. The Department’s Consumer Affairs Division (“Division”) investigated Fischer’s Application, revealing that, contrary to his “No” answer to Background Information Question No. 4, Fischer has an unsatisfied state tax judgment in the amount of \$1,338.50 for the 2016 tax year. *Department of Revenue v. Kyle J. Fischer*, St. Louis City Cir. Ct., Case No. 1822-MC04337.
13. On March 14, 2019, Division Special Investigator Karen Crutchfield (“Crutchfield”) sent an inquiry letter via first class mail to Fischer at the address provided in the Application. In her letter, Crutchfield asked Fischer to provide an explanation for his failure to disclose the misdemeanor charge of Purchasing/Attempt to Purchase or Possession of Liquor by a Minor – 1st Offense and the unsatisfied state tax judgment. Crutchfield asked for a response within twenty days. Crutchfield also noted in this letter that Fischer had called the Division and disclosed his state lien, despite answering “No” to Background Information Question Number 4 on the Application.
14. The inquiry letter dated March 14, 2019 was not returned as undeliverable to the Division and, therefore, it is presumed received.
15. Fischer did not respond timely or at all to Crutchfield’s March 14, 2019 inquiry letter and he did not demonstrate reasonable justification for any delay.
16. On April 10, 2019, Crutchfield sent another inquiry letter to Fischer via first-class mail, to Fischer’s residential address. In her letter, Crutchfield again asked Fischer to explain why he had failed to disclose his misdemeanor conviction for Purchasing/Attempt to Purchase or Possession of Liquor by a Minor – 1st Offense. Crutchfield stated that “[p]ursuant to 20 CSR 100-4.100(2)(A), your adequate response is due in twenty days. Your failure to respond by the due date could be a violation of the law and a ground for discipline of your license.”
17. The inquiry letter dated April 10, 2019 was not returned as undeliverable to the Division and, therefore, it is presumed received.
18. Fischer did not respond timely or at all to Crutchfield’s April 10, 2019 inquiry letter and he did not demonstrate reasonable justification for any delay.
19. It is inferable and hereby found as fact that Fischer did not disclose his full criminal history in order to misrepresent to the Director that he did not have such an extensive criminal history and to improve the chances that the Director would approve his application and issue him an insurance producer license.

CONCLUSIONS OF LAW

20. Title 20 CSR 100-4.100(2)(A), Required Response to Inquiries by the Consumer Affairs 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.

21. "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).

22. Section 375.141, RSMo (2016),⁴ states, in relevant part:

The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

* * *

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state; [or]

* * *

(6) Having been convicted of a felony or crime involving moral turpitude; [or]

* * *

(14) Failing to comply with an administrative or court order directing payment of state or federal income tax[.]

23. The Director may refuse to use an insurance producer license to Fischer under §375.141.1(2) because Fischer violated 20 CSR 100-4.100(2)(A), a rule of the Director, in that Fischer failed to respond to two written inquiries from the Division from March 14, 2019 and April 10, 2019, and Fischer failed to demonstrate reasonable justification for any delay.

⁴ All civil statutory references are to the Revised Statutes of Missouri (2016) unless otherwise indicated.

24. Each violation of 20 CSR 100-4.100(2)(A) constitutes a separate and sufficient ground for the Director to refuse to issue an insurance producer license to Fischer under §375.141.1(2).
25. The Director may refuse to issue an insurance producer license to Fischer under §375.141.1(6) because Fischer has been convicted of a felony charge, namely:

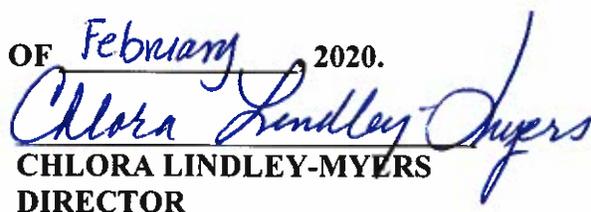
Aggravated Battery, a felony, in violation of the Revised Codes of Illinois 720 §5/12-3.05(a)(1). *State v. Kyle J. Fischer*, Madison County Cir. Ct., Case No.12-CF2266.
26. The Director may refuse to issue an insurance producer license to Fischer under §375.141.1(14) because Fischer has an unsatisfied state tax judgment in the amount of \$1,338.50. *Department of Revenue v. Kyle J. Fischer*, St. Louis City Cir. Ct., Case No. 1822-MC04337.
27. The Director has considered Fischer's history and all the circumstances surrounding Fischer's Application and exercises her discretion to refuse to issue Fischer an insurance producer license.
28. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the insurance producer Application of **Kyle James Fischer** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 19th DAY OF February, 2020.


CHLORA LINDLEY-MYERS
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 20th day of February, 2020, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following address:

Kyle James Fischer
41 Chestnut Ridge Court
St. Charles, MO 63303

Tracking No. 1Z0R15W84291715473



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