



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION

IN RE:

KIRSTEN KAY MORTON,

Applicant.

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Case No. 194225

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

On December 17, 2013, 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 Kirsten Kay Morton. 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. Kirsten Kay Morton ("Morton") is a Missouri resident with a residential address of record of 505 Sunflower Lane, O'Fallon, Missouri, 63366.
2. On May 10, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Morton's Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. By signing the Application, Morton 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. Morton answered “No” to Question No. 1 and failed to disclose any criminal history in her Application.
6. Contrary to Morton’s “No” answer to Question No. 1, the Consumer Affairs Division’s investigation of Morton’s Application revealed that Morton had been convicted of both a misdemeanor and a felony count of Passing a Bad Check:
- a. On November 7, 2007, Morton pleaded guilty in the St. Charles County Circuit Court to the Class C Felony of Passing a Bad Check, a violation of § 570.120. The court suspended the imposition of sentence and placed Morton on five years’ probation, and ordered her to pay restitution and fees. On December 18, 2008, the court revoked Morton’s probation and sentenced Morton to six years’ imprisonment. However, the court suspended execution of the sentence and placed Morton on five years’ supervised probation. On November 12, 2009, the court again revoked Morton’s probation and executed the sentence of six years’ imprisonment. On February 25, 2010, the court ordered Morton released at the end of a 120-day program and placed her on probation for five years, effective March 13, 2010. Morton currently remains on probation under that order.¹
 - b. On December 10, 2008, Morton pleaded guilty in the St. Charles County Circuit Court to the Class A Misdemeanor of Passing a Bad Check, a violation of § 570.120. The court suspended the imposition of sentence, placed Morton on two years’ probation and ordered Morton to pay restitution and fees. On August 11, 2010, the court terminated Morton’s probation and executed the sentence, ordering Morton to be confined in the St. Charles County Department of Corrections for 90 days, to be served concurrently with the sentence in No. 0611-CR04512-01, with credit for time served.²
7. On June 3, 2013, as a response to a written inquiry from the Consumer Affairs Division about her “No” answer to Question No. 1 and her criminal history, the Department

¹ *State of Missouri v. Kirsten Kay Morton*, St. Charles Co. Cir. Ct., No. 0611-CR04512-01.

² *State of Missouri v. Kirsten K. Morton*, St. Charles Co. Cir. Ct., No. 0611-CR03948.

received a written explanation from Morton. In the written explanation, Morton described the misdemeanor Passing a Bad Check conviction as the result of Morton and her ex-husband both inadvertently writing checks on the same account. She did not provide an explanation of the circumstances surrounding her felony Passing a Bad Check conviction. She did provide requested records relating to her criminal convictions and the status of her probation, as well as some requested tax information.

8. It is inferable, and is hereby found as fact, that Morton falsely answered "No" to Question No. 1 and failed to disclose her convictions for the Class A Misdemeanor of Passing a Bad Check and for the Class C Felony of Passing a Bad Check in order to misrepresent to the Director that she had no criminal history, and, accordingly, in order to improve the chances that the Director would approve her Application and issue her an MVESC producer license.

CONCLUSIONS OF LAW

9. 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[.]

10. 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.
11. The Director may refuse to issue an MVESC producer license to Morton under § 385.209.1(5) because Morton has been convicted of a felony:
 - a. Passing a Bad Check, a Class C Felony in violation of § 570.120.³

³ *State of Missouri v. Kirsten Kay Morton*, St. Charles Co. Cir. Ct., No. 0611-CR04512-01.

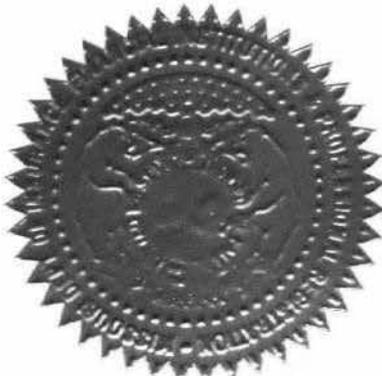
12. The Director may refuse to issue an MVESC producer license to Morton under § 385.209.1(3) because Morton attempted to obtain an MVESC producer license through material misrepresentation or fraud. Each of the following is a separate and sufficient factual basis for finding cause to refuse to issue Morton an MVESC producer license under § 385.209.1(3):
- a. Morton falsely answered "No" to Question No. 1 in order to misrepresent to the Director that she had no criminal history, and, accordingly, in order to improve the chances that the Director would approve her Application and issue her an MVESC producer license;
 - b. Morton failed to disclose her conviction for the Class C Felony of Passing a Bad Check in order to misrepresent to the Director that she had no criminal history, and, accordingly, in order to improve the chances that the Director would approve her Application and issue her an MVESC producer license;
 - c. Morton failed to disclose her conviction for the Class A Misdemeanor of Passing a Bad Check in order to misrepresent to the Director that she had no criminal history, and, accordingly, in order to improve the chances that the Director would approve her Application and issue her an MVESC producer license.
13. The Director has considered Morton's history and all of the circumstances surrounding Morton's Application. Granting Morton 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 Morton.
14. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Kirsten Kay Morton** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 19th DAY OF DECEMBER, 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 20th day of December, 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 addresses:

Kirsten Kay Morton
505 Sunflower Lane
O'Fallon, Missouri 63366

Certified No. 7009 3410 0001 9255 0745

Angie Gross

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