



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

IN RE:)
)
MARC ALLEN TOBAR,) Case No. 161110483C
)
Applicant.)

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

On March 10, 2017, 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 Marc Allen Tobar. After reviewing the Petition and Investigative Report, the Director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Marc Allen Tobar ("Tobar") is a Texas resident with a residential address of 10613 Devinstone Drive, Fort Worth, Texas 76177.
2. On June 20, 2016, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Tobar's Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. The "Applicant's Certification and Attestation" section of the Application 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 revocation or denial of the license and may subject me to civil or criminal penalties.

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

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

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

6. Tobar answered "No" in response to Background Question No. 1.

7. Contrary to Tobar's response to Background Question No. 1, an investigation by Special Investigator Andrew Engler ("Special Investigator Engler") of the Consumer Affairs Division ("Division") revealed the following criminal history that Tobar failed to disclose:

- a. On February 24, 1999, Tobar pled guilty to Possession Of Marijuana Under Two Ounces, a Misdemeanor. The court sentenced Tobar to three (3) days' incarceration, but suspended the imposition of sentence and placed Tobar on six (6) months' probation and ordered him to pay a fine. *State of Texas v. Marc Tobar*, Wilbarger Co. Ct., Case No. 21729.

- b. On February 8, 2002, Tobar pled guilty to, and was later convicted of, Possession With Intent To Distribute Marijuana, a Felony, in violation of 21 U.S.C. § 841(a)(1).¹ The court sentenced Tobar to five (5) years' probation. *U.S. v. Marc Allen Tobar*, W.D.Tex., Case No. P-01-CR-432-F.
8. On June 24, 2016, after reviewing Tobar's Application and his criminal record, Special Investigator Engler sent an inquiry letter to Tobar requesting a statement regarding his charges/convictions, an explanation for failing to disclose his criminal history, and court records. The inquiry letter further requested a response within twenty (20) days, and warned Tobar that a failure to respond could result in the Department refusing to issue him a motor vehicle extended service contract ("MVESC") producer license.
9. The United States Postal Service did not return the June 24, 2016 inquiry letter to the Division as undeliverable, and therefore it is presumed received by Tobar.
10. Tobar failed to provide a written response to the Division's June 24, 2016 inquiry letter, and failed to demonstrate a reasonable justification for the delay.
11. On July 21, 2016, after receiving no response from Tobar, Special Investigator Engler sent a second inquiry letter to Tobar. The second inquiry letter requested the same information and documentation requested in the June 24, 2016 inquiry letter. The second inquiry letter further requested a response within twenty (20) days, and again warned Tobar that a failure to respond could result in the Department refusing to issue him a MVESC producer license.
12. The United States Postal Service did not return the July 21, 2016 inquiry letter to the Division as undeliverable, and therefore it is presumed received by Tobar.
13. Tobar failed to provide a written response to the Division's July 21, 2016 inquiry letter, and failed to demonstrate a reasonable justification for the delay.
14. It is inferable, and hereby found as fact, that Tobar failed to disclose his misdemeanor drug charge and felony drug conviction on the Application in order to misrepresent his criminal history to the Director, and accordingly, in order to improve the chances that the Director would approve his Application and issue him a MVESC producer license.

¹ All criminal statutory references are to those contained in the version of the United States Code or Texas Health and Safety Code under which the court rendered judgment.

CONCLUSIONS OF LAW

15. Section 385.209 RSMo² 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:

* * *

- (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; [or]

* * *

- (5) Been convicted of any felony[.]

16. 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.

17. "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).

**CAUSE FOR ORDER TO REFUSE TO ISSUE A
MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE**

18. The Director may refuse to issue a MVESC producer license to Tobar under § 385.209.1(2) because Tobar failed to adequately respond to two (2) inquiry letters from

² All civil statutory references are to the Revised Statutes of Missouri (2000) as updated by the 2013 Supplement.

the Division and failed to demonstrate a reasonable justification for the delay, thereby twice violating 20 CSR 100-4.100(2)(A), a rule of the Director.

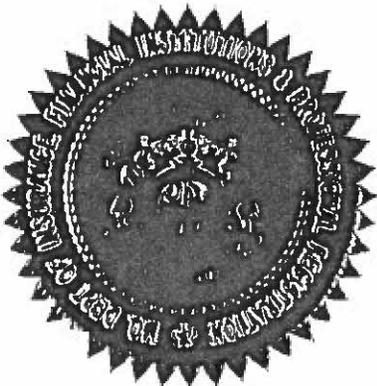
19. Each violation of a rule of the Director is a separate and sufficient ground for refusal pursuant to § 385.209.1(2).
20. The Director may refuse to issue a MVESC producer license to Tobar under § 385.209.1(3) because Tobar attempted to obtain a MVESC producer license through material misrepresentation or fraud by failing to disclose his misdemeanor drug charge and felony drug conviction on the Application in order to misrepresent his criminal history to the Director, and, accordingly, in order to improve the chances that the Director would approve his Application and issue him a MVESC producer license.
21. The Director may refuse to issue a MVESC producer license to Tobar under § 385.209.1(5) because Tobar has been convicted of a felony:
 - a. Possession With Intent To Distribute Marijuana, a Felony. *U.S. v. Marc Allen Tobar*, W.D.Tex., Case No. P-01-CR-432-F.
22. The Director has considered Tobar's history and all of the circumstances surrounding Tobar's Application. Issuing Tobar a MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises her discretion and refuses to issue Tobar a MVESC producer license.
23. This Order is in the public interest.

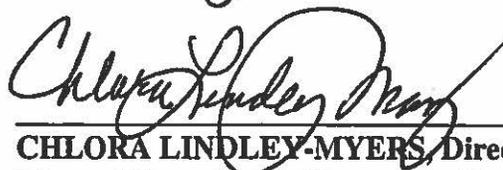
ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Marc Allen Tobar** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 13th DAY OF June, 2017.





CHLORA LINDLEY-MYERS, 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.

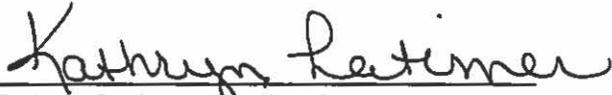
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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of June, 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:

Marc Allen Tobar
10613 Devinstone Drive
Fort Worth, Texas 76177

No. 1Z0R15W84297531213



Kathryn Latimer, Paralegal
Missouri Department of Insurance, Financial
Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: 573.751.6515
Facsimile: 573.526.5492
Email: kathryn.latimer@insurance.mo.gov