



## State of Missouri

### DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

MARK T. BERRY,

Applicant.

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Case No. 159155

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

On March 8, 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 Mark T. Berry. 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. Mark T. Berry, ("Berry") is a Missouri resident with a residential address of record of 5634 Dantonaire Place, St. Louis, Missouri, 63123.
2. On December 7, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Berry's incomplete Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. Background Question No. 1 of the Application asks the applicant has ever been convicted of a crime, had a judgment withheld or deferred, or is charged with committing a crime at the time the application is submitted.
4. Berry marked "Yes" to Question No. 1 and provided a written explanation for his criminal history but did not provide written documentation or the names or file numbers of the relevant criminal cases.
5. The Department's subsequent investigation clarified that on May 30, 1991, Berry pled guilty in the St. Louis County Circuit Court to Sale of a Controlled Substance, a Class B Felony; Possession of a Controlled Substance with Intent to Distribute, a Class B Felony; and Resisting Arrest, a Class D Felony. *State of Missouri v. Mark T. Berry, St. Louis County Cir. Ct.*, 90CR-008900.

6. The court suspended imposition of its sentence and placed Berry on five (5) years' probation. On November 18, 1994, the court revoked Berry's probation and sentenced Berry to six (6) years' imprisonment in the custody of the Department of Corrections, along with a concurrent five-year sentence.
7. The Department's investigation also clarified that on or about May 4, 2001, Berry pled guilty in the United States District Court, Eastern District of Missouri, to Conspiracy to Distribute and Possess with Intent to Distribute Methylenedioxymethamphetamine (MDMA), a federal felony under 21 U.S.C. §§ 841(a)(1) and 846. *United States v. Mark Berry*, U.S. Dist. Ct. (E.D. Mo.), No. 4:00CR519DJS.
8. The U.S. District court sentenced Berry to seventy-six (76) months' imprisonment in the custody of the United States Bureau of Prisons, followed by supervised release.
9. On May 14, 2010, the U.S. District Court found, upon Berry's admission, that Berry had violated the conditions of his supervised release, and the court ordered him to serve six (6) more months of imprisonment, followed by supervised release. Berry completed that supervised release on August 29, 2012.

#### **CONCLUSIONS OF LAW**

10. Section 385.209 RSMo, Supp. 2012,<sup>1</sup> 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:

\* \* \*

(5) Been convicted of any felony[.]
11. 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.
12. Berry may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(5) because he has been convicted of a felony:

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<sup>1</sup> Statutory references are to the 2012 version of the Revised Statutes of Missouri unless otherwise noted.

- a. *State of Missouri v. Mark T. Berry*, St. Louis County Cir. Ct., 90CR-008900 (Sale of a Controlled Substance, a Class B Felony under § 195.211, RSMo, Possession of a Controlled Substance with Intent to Distribute, a Class B Felony under § 195.211, RSMo, and Resisting Arrest, a Class D Felony under § 575.150, RSMo).
  - b. *United States v. Mark Berry*, U.S. Dist. Ct. (E.D. Mo.), No. 4:00CR519DJS (Conspiracy to Distribute and Possess with Intent to Distribute Methylenedioxymethamphetamine (MDMA), a federal felony under 21 U.S.C. §§ 841(a)(1) and 846).
13. The Director has considered Berry's history and all of the circumstances surrounding Berry's Application. Granting Berry a motor vehicle extended service contract producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue a motor vehicle extended service contract producer license to Berry.
  14. This order is in the public interest.

**ORDER**

**IT IS THEREFORE ORDERED** that the motor vehicle extended service contract producer license application of **Mark T. Berry** is hereby **REFUSED**.

**SO ORDERED.**

WITNESS MY HAND THIS 12<sup>TH</sup> DAY OF MARCH, 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 14 day of March, 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 address:

Mark T. Berry  
5634 Dantonaire Place  
St. Louis, Missouri 63123

Certified No. 7009 3410 0001 9254 4812



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