



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

MARY JO McGUIRE,

Applicant.

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Case No. 202399

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On March __, 2014, 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 Mary Jo McGuire. After reviewing the Petition, the Investigative Report, and the entirety of the file, the Director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Mary Jo McGuire ("McGuire") is a Missouri resident with a residential address of record of 16 Juno Drive, St. Charles, Missouri, 63301.
2. On July 15, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received McGuire's Application for Motor Vehicle Extended Service Contract Producer License ("Application").
3. 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[.]

4. McGuire answered "Yes" to Question No. 1 and attached to her Application a written explanations and court documents disclosing that she had received suspended sentences in two cases:

- a. On April 29, 2009, McGuire pleaded guilty in the St. Charles County Circuit Court to the Class A Misdemeanor of Passing a Bad Check – Less than \$500, a violation of § 570.120, RSMo. The court sentenced her to 30 days' confinement in the St. Charles County Detention Center, but suspended execution of the sentence and placed McGuire on two years' probation and ordered her to pay restitution and fees of \$220.00. On January 27, 2010, the court suspended McGuire's probation.¹
- b. According to the Complaint filed by the St. Charles County Prosecuting Attorney in Case No. 0611-CR04766, McGuire "with the purpose to defraud, passed a check in the amount of \$149.53 drawn upon New Frontier Bank, payable to Cisco, knowing that it would not be paid."²
- c. On October 6, 2009, McGuire pleaded guilty in the St. Charles County Circuit Court to the Class C Felony of Theft – \$500 or More, but Less than \$25,000 – in violation of § 570.030, RSMo. The court suspended the imposition of sentence, placed McGuire on five years' probation, and ordered McGuire to pay \$6,500.00 in restitution.³
- d. According to the Complaint filed by the St. Charles County Prosecuting Attorney in Case No. 0511-CR04451-01, McGuire "appropriated U.S. currency, of a value of at least five hundred dollars and less than twenty-five thousand dollars, which property was owned by the State of Missouri Division of Employment Security, and [McGuire] appropriated such property from the State of Missouri and with the purpose to deprive it thereof by deceit in that [McGuire] represented to the State of Missouri Division of Employment

¹ *State of Missouri v. Mary J. McGuire*, St. Charles Co. Cir. Ct., No. 0611-CR04766.

² *Id.*

³ *State of Missouri v. Mary J. McGuire*, St. Charles Co. Cir. Ct., No. 0511-CR04451-01.

Security she did not earn any income, which representations were false and known by [McGuire] to be false and the State of Missouri Division of Employment Security relied on the representations and was thereby induced to part with such property.”⁴

5. McGuire did not disclose any further criminal history in her Application.
6. The Consumer Affairs Division’s investigation of McGuire’s Application revealed two more criminal matters involving McGuire that McGuire should have disclosed in response to Background Question No. 1:
 - a. On August 21, 2003, McGuire pleaded guilty in the St. Charles County Circuit Court to the Class A Misdemeanor of Passing a Bad Check – Less than \$500, in violation of § 570.120, RSMo. The court sentenced McGuire to 60 days’ incarceration in the St. Charles County Detention Center, but suspended execution of the sentence and placed McGuire on two years’ probation and ordered her to pay restitution, to refrain from using a checking account, and to take financial management classes. On July 10, 2009, after several continuances of a probation revocation hearing on a motion filed by the prosecutor in 2004, the court continued McGuire’s probation.⁵
 - b. On January 5, 2012, the St. Charles County Prosecuting Attorney filed an Information charging McGuire with the Class A Misdemeanor of Passing a Bad Check – Less than \$500, in violation of § 570.120, RSMo. McGuire was served with the criminal summons on January 24, 2012, and an attorney for McGuire entered his appearance in the matter on January 17, 2013. The matter is not yet resolved.⁶
7. Background Question No. 4 of the Application asked the following:

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): _____
8. McGuire answered “No” to Background Question No. 4, and did not disclose any tax delinquencies in her Application.
9. Contrary to McGuire’s answer to Background Question No. 4, McGuire had seven delinquent Missouri state tax obligations of which she had been notified:
 - a. On October 5, 2009, the Director of the Missouri Department of Revenue filed a

⁴ *Id.*

⁵ *State of Missouri v. Mary J. McGuire*, St. Charles Co. Cir. Ct., No. 03CR126236.

⁶ *State of Missouri v. Mary J. McGuire*, St. Charles Co. Cir. Ct., No. 1211-CR00103.

Certificate of Tax Lien – Individual Income Tax in the St. Louis County Circuit Court, certifying that McGuire owed \$16,583.90 in delinquent taxes for tax years 2002, 2003, 2004, 2005, and 2007, interest and penalties, which, upon filing, became the judgment of the court under § 143.902. The judgment remains unsatisfied.⁷

- b. On September 27, 2010, the Director of the Missouri Department of Revenue filed a Certificate of Tax Lien – Individual Income Tax in the St. Louis County Circuit Court, certifying that McGuire owed \$3,628.98 in delinquent taxes for tax years 2006 and 2008, interest and penalties, which, upon filing, became the judgment of the court under § 143.902. The judgment remains unsatisfied.⁸
10. It is inferable, and is hereby found as fact, that McGuire failed to disclose her conviction in Case No. 03CR126236 of the Class A Misdemeanor of Passing a Bad Check – Less than \$500, and the pending charge in Case No. 1211-CR00103 of the Class A Misdemeanor of Passing a Bad Check – Less than \$500, in her Application in order to misrepresent to the Director the extent of her criminal history and to conceal the decade-long pattern of her fraudulent use of checks, and, accordingly, in order to improve the chances that the Director would approve her Application and issue her an MVESC producer license.
11. It is inferable, and hereby found as fact, that McGuire falsely answered “No” to Background Question No. 4 and failed to disclose her Missouri state income tax delinquencies in order to misrepresent to the Director that she had no tax delinquencies 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

12. Section 385.209 RSMo, Supp. 2013, 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;

* * *

⁷ *Department of Revenue v. Michael J. McGuire, et al.*, St. Charles Co. Cir. Ct., No. 0911-MC01586.

⁸ *Department of Revenue v. Michael J. McGuire, et al.*, St. Charles Co. Cir. Ct., No. 1011-MC03956.

(7) Been found in violation of law by a court of competent jurisdiction in an action instituted by any officer of any state or the United States in any matter involving motor vehicle extended service contracts, financial services, investments, credit, insurance, banking, or finance;

* * *

(13) Failed to comply with any administrative or court order directing payment of state or federal income tax[.]

13. A plea of guilty to a criminal charge is admissible as an admission against penal interest in any subsequent proceeding against the one who made it, for it is a solemn confession of the truth of the charge, though it is not conclusive and may be explained. *Pruett v. Wilform*, 477 S.W.2d 76, 80 (Mo. 1972).
14. 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. 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.
15. The Director may refuse to issue an MVESC producer license to McGuire under § 385.209.1(3) because McGuire failed to disclose her conviction in Case No. 03CR126236 of the Class A Misdemeanor of Passing a Bad Check – Less than \$500, and the pending charge in Case No. 1211-CR00103 of the Class A Misdemeanor of Passing a Bad Check – Less than \$500, in her Application in order to misrepresent to the Director the extent of her criminal history and to conceal the decade-long pattern of her fraudulent use of checks, and, accordingly, in order to improve the chances that the Director would approve her Application and issue her an MVESC producer license.
16. The Director may refuse to issue an MVESC producer license to McGuire under § 385.209.1(3) because McGuire falsely answered “No” to Background Question No. 4 and failed to disclose her Missouri state income tax delinquencies in order to misrepresent to the Director that she had no tax delinquencies and, accordingly, in order to improve the chances that the Director would approve her Application and issue her an MVESC producer license.
17. The Director also may refuse to issue an MVESC producer license to McGuire under § 385.209.1(7) because McGuire has been found in violation of law by a court of competent jurisdiction in an action instituted by an officer of the State of Missouri in a matter involving financial services, banking, and/or finance. McGuire was convicted the Class A Misdemeanor of Passing a Bad Check – Less than \$500, a violation of § 570.120, RSMo, in the St. Charles County Circuit Court, which matter involved financial services, banking and/or finance. The action was instituted by the Prosecuting Attorney of St. Charles County, who is an officer of the State of Missouri.

18. The Director also may refuse to issue McGuire an MVESC producer license under § 385.209.1(13) because McGuire has failed to comply with administrative and court orders directing payment of state income tax. On October 5, 2009, the Director of the Missouri Department of Revenue filed a Certificate of Tax Lien – Individual Income Tax in the St. Louis County Circuit Court, certifying that McGuire owed \$16,583.90 in delinquent taxes for tax years 2002, 2003, 2004, 2005, and 2007, interest and penalties, which, upon filing, became the judgment of the court under § 143.902. The judgment remains unsatisfied.
19. The Director also may refuse to issue McGuire an MVESC producer license under § 385.209.1(13) because McGuire has failed to comply with administrative and court orders directing payment of state income tax. On September 27, 2010, the Director of the Missouri Department of Revenue filed a Certificate of Tax Lien – Individual Income Tax in the St. Louis County Circuit Court, certifying that McGuire owed \$3,628.98 in delinquent taxes for tax years 2006 and 2008, interest and penalties, which, upon filing, became the judgment of the court under § 143.902. The judgment remains unsatisfied.
20. McGuire's criminal history reveals a decade-long pattern of using falsehood and deception for her own gain. Compounding that history is her attempt to minimize it to the Director by failing to completely disclose it in her Application. In still another example of using falsehood for personal gain, McGuire not only failed to disclose her tax delinquencies, but falsely answered the Application question about them. McGuire's long-established tendency to use falsehood and deception for personal gain signals unacceptably great danger for MVESC consumers. MVESC consumers rely on MVESC producers' truthfulness and trustworthiness in providing them with accurate information on which to base a decision to purchase or reject an MVESC, and in entrusting MVESC producers with their personal and financial information. As such, granting McGuire an MVESC producer license would not be in the interest of the public.
21. The Director has considered McGuire's history and all of the circumstances surrounding McGuire's Application. Granting McGuire 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 McGuire.

22. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Mary Jo McGuire** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 10th DAY OF MARCH, 2014.




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 12th day of March, 2014, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by certified mail at the following addresses:

Mary Jo McGuire
16 Juno Drive
St. Charles, Missouri 63301

Certified No. 7009 3410 0001 9254 7219



Angie Gross
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