



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

MARK M. MALAMUT,

Applicant.

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Case No. 169107

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On March 6, 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 M. Malamut. 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 M. Malamut, ("Malamut") is a Missouri resident with a residential address of record of 1329 Sunny Trail Court, O'Fallon, Missouri, 63366.
2. On December 30, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Malamut's incomplete 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:
 1. 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. Malamut signed the Application in the "Applicant's Certification and Attestation" section under oath before a notary.
5. 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[.]

6. Malamut marked “Yes” to Question No. 1. With his Application, Malamut included uncertified copies of a Plea of Guilty and a Judgment and Sentence from *State of Missouri v. Mark M. Malamut, St. Louis Co. Cir. Ct.*, 11SL-CR00340, a case in which Malamut pled guilty to the Class A Misdemeanor of Criminal Nonsupport.
7. Malamut did not include any written explanation of his conviction for Criminal Nonsupport, nor did Malamut include any documents or descriptions of any other criminal history with his application.
8. On January 6 and 26, 2012, an attorney for Malamut faxed to the Department letters containing further information regarding Malamut’s conviction for Criminal Nonsupport, including copies of checks apparently showing Malamut’s payment of child support obligations. Malamut’s attorney asserted in the January 26, 2012 letter that Malamut had become current on his child support obligations.
9. The January 26, 2012 letter advised that Malamut “used the name Jason Bisson one time in order to obtain an airline ticket, many years ago,” but neither of the letters contained information about any further criminal history for Malamut.
10. Subsequent investigation by the Department revealed that Malamut had been convicted in the United States District Court for the Eastern District of Missouri on April 2, 2009, of Felony Possession With Intent to Distribute Cocaine, in violation of 21 U.S.C.

§ 841(a)(1), and was sentenced to 16 months in the custody of the United States Bureau of Prisons. *U.S. v. Mark Michael Malamut*, U.S. Dist. Ct. (E.D. Mo.), 4:08CR00067ERW.

11. At no time did Malamut disclose his federal felony conviction to the Department.
12. Malamut's conviction of a federal felony, which carried a sentence of 16 months and supervised release that was still scheduled to be in effect at the time Malamut submitted his Application, was too memorable and recent for Malamut's failure to disclose it on his Application to have been inadvertent.
13. Malamut intentionally failed to disclose his federal felony conviction in his Application, and did so in order to deceive the Director and thereby improve his chances of being granted a motor vehicle extended service contract producer license.
14. Background Question No. 4 of the Application asks 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?
15. Malamut marked "No" to Background Question No. 4.
16. Contrary to Malamut's answer to Background Question No. 4, a judgment was entered against him and in favor of the Missouri Department of Revenue on or about October 12, 2010, in the Circuit Court of St. Charles County, in the total amount of \$1,329.55 as an assessment of individual income tax, interest, additions to tax, penalties and fees. *Department of Revenue v. Mark M. Malamut*, St. Charles Co. Cir. Ct., 1011-MC04232.
17. As of March 1, 2013, according to Missouri Case.net¹ electronic docket information for *Department of Revenue v. Mark M. Malamut*, St. Charles Co. Cir. Ct., 1011-MC04232, no satisfaction of the judgment is yet on file.

CONCLUSIONS OF LAW

18. Section 385.209 RSMo, Supp. 2012,² 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

¹ Missouri Case.net, located at: <https://www.courts.mo.gov/casenet/base/welcome.do>, is a website maintained by the State of Missouri Office of the State Courts Administrator that provides docket and other information concerning cases filed in Missouri circuit courts.

² Statutory references are to the 2012 version of the Revised Statutes of Missouri unless otherwise noted.

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;

* * *

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

19. 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.
20. Malamut 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:
 - a. *U.S. v. Mark Michael Malamut*, U.S. Dist. Ct. (E.D. Mo.), 4:08CR00067ERW (Possession With Intent to Distribute Cocaine, in violation of 21 U.S.C. § 841(a)(1)).
21. Malamut may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(13) because he has failed to comply with an administrative or court order directing payment of state income tax.
22. Malamut may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(3) because he failed to disclose his recent federal felony conviction and failed to disclose his unsatisfied judgment for delinquent state taxes, and through each failure to disclose he attempted to obtain a license through misrepresentation or fraud.
23. The Director has considered Malamut's history and all of the circumstances surrounding Malamut's Application. Granting Malamut 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 Malamut.

24. This Order is in the public interest.

ORDER

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

SO ORDERED.

WITNESS MY HAND THIS 12TH 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's attorney in this matter by regular and certified mail at the following address:

Dennis J. Curland
Attorney for Mark M. Malamut
225 South Meramec, Suite 1123
Clayton, MO 63105

Certified No. 7009 3410 0001 9254 4799

A copy was also sent by regular mail to the Applicant at:

Mark M. Malamut
1329 Sunny Trail Court
O'Fallon, MO 63366



Hailey Boessen
Senior Office Support Assistant
Agent Investigation Section
Missouri Department of Insurance, Financial
Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: 573.751.2640
Facsimile: 573.526.4898
Email: hailey.boessen@insurance.mo.gov