



State of Missouri

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

IN RE:

JONATHAN C. MCCUTCHEEN,

Applicant.

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Case No. 181019922C

ORDER REFUSING TO ISSUE
MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On January 17, 2019, 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 Jonathan C. McCutchen. After reviewing the Petition, 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. Jonathan C. McCutchen (“McCutchen”) is a Missouri resident with a residential and mailing address of record of 201 Rebecca Drive, St. Charles, MO 63301.
2. On July 12, 2018, the Department of Insurance, Financial Institutions and Professional Registration (“Department”) received McCutchen’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:

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. I further certify, under penalty of perjury, that a) I have no outstanding state or federal income tax obligations, or b) I have an outstanding state or federal income tax obligation and I have provided all information and documentation requested in Background Information Question 36.4.

4. On June 15, 2018, McCutchen swore and signed the “Applicant’s Certification and Attestation” section of the Application before a notary public.

5. Background Information Question 36.4 of the Application asked the following, in relevant part:

Have you failed to pay state or federal income tax, which has not been previously reported to this insurance department?

Have you failed to comply with an administrative or court order directing payment of state or federal income tax?

Answer “Yes” if the answer to either question (or both) is “Yes.”

6. McCutchen answered “No” in response to Background Information Question 36.4 of his Application.

7. Contrary to McCutchen’s response to Background Information Question 36.4, an investigation conducted by the Consumer Affairs Division (“Division”) of the Department revealed that on December 1, 2017, the St. Charles County Circuit Court entered a Certificate of Tax Lien against McCutchen for unpaid state individual income tax for the 2014 and 2016 filing years. The Certificate of Tax Lien states the following, in part:

The Director of Revenue, under Section 143.902, RSMo, hereby certifies that the following assessment of tax, interest, additions to tax, penalties, and fees have been made and become final [in the amount of \$1,492.20]. Interest continues to accrue as provided by law until the full amount of the tax liability is paid.

Dep’t of Revenue v. Jonathan C. McCutchen, St. Charles Co. Cir. Ct., Case No. 1711-MC05496.

8. It is inferable that McCutchen failed to disclose his tax lien in response to Background Question No. 36.4 of the Application in order to misrepresent to the Director that he did not have any outstanding tax liens, and consequently improve the chances that the Director would approve his Application and issue him a motor vehicle extended service contract (“MVESC”) producer license.

9. Background Information Question Number 36.1 of the Application asks, in relevant part:

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?

10. McCutchen answered “No” to Background Information Question Number 36.1 on his application.
11. Contrary to McCutchen’s response to Background Information Question Number 36.1, an investigation conducted by the Consumer Affairs Division (“Division”) of the Department revealed that McCutchen had been charged in criminal matters at the time he filed his application. Specifically, the Division found the following criminal history:
 - a. On March 9, 2018, a probable cause statement was filed and a warrant was issued for McCutchen’s arrest. On September 6, 2018, McCutchen pled guilty to Stealing-\$750 or More, a Class D Felony, in violation of § 570.030¹. McCutchen stated in his Petition to Enter Plea of Guilt that, “I took more than \$750 from my place of employment – Valvoline.” The Court suspended imposition of sentence, and ordered that McCutchen be placed on probation for five years. McCutchen was also ordered to have “no employment involving cash or proceeds” as part of his probation. *State of Missouri v. Jonathan McCutchen*, St. Charles Co. Cir. Ct., Case No. 1811-CR00944-01.
 - b. On May 3, 2018, a probable cause statement was filed and a warrant was issued for McCutchen’s arrest. On September 6, 2018, McCutchen pled guilty to Forgery, a Class D Felony in violation of § 570.090. McCutchen stated in stated in his Petition to Enter Plea of Guilt that “I altered a check received by my business.” The Court suspended imposition of sentence, and ordered that McCutchen be placed on probation for five years. McCutchen was also ordered to have “no employment involving cash or proceeds” as part of his probation. *State of Missouri v. Jonathan McCutchen*, St. Charles Co. Cir. Ct., Case No. 1811-CR01680-01.
 - c. On May 1, 2018, McCutchen was charged with Passing a Bad Check, a Class A Misdemeanor in violation of § 570.120. On December 10, 2018, a warrant was issued for the arrest of McCutchen for failure to appear. This case is pending as of December 9, 2019. *State of Missouri v. Jonathan McCutchen*, St. Charles Co. Cir. Ct., Case No. 1811-CR03517.
12. On June 15, 2018, the date McCutchen signed his application, McCutchen had charges pending in *State of Missouri v. Jonathan McCutchen*, St. Charles Co. Cir. Ct., Case No. 1811-CR00944-01, and *State of Missouri v. Jonathan McCutchen*, St. Charles Co. Cir. Ct., Case No. 1811-CR01680-01.
13. It is inferable, and hereby found as fact, that McCutchen failed to disclose his two pending criminal cases in his response to Background Question No. 36.1 of the application in order to misrepresent to the Director that he did not have any criminal history or cases pending and consequently improve the chances that the Director would approve his Application and issue him an MVEESC producer license.

¹ All criminal statutory references are to those contained in the version of the Missouri Revised Statutes pursuant to which each judgment was rendered.

14. On July 19, 2018, Special Investigator Andrew Engler with the Division sent an inquiry letter by first-class mail to McCutchen at his address of record. The inquiry letter requested McCutchen provide a payment plan or letter of compliance from the Department of Revenue, as well as information regarding the felony charges. The inquiry letter cited 20 CSR 100-4.100, notified McCutchen that his response was due within twenty days, and warned that failure to respond could result in refusal of her Application for an MVESC producer license.
15. The United States Postal Service did not return the Division's July 19, 2018 inquiry letter as undeliverable.
16. McCutchen did not respond to the Division's July 19, 2018 inquiry letter, nor did he demonstrate a reasonable justification for the delay.
17. On August 13, 2018, Special Investigator Engler sent a second inquiry letter to McCutchen at his address of record. The second inquiry letter requested the same documents and information as requested in the first inquiry letter. The August 13, 2018 inquiry letter cited 20 CSR 100-4.100 and notified McCutchen that his response to the first inquiry letter was overdue but that he would be given an additional twenty days to respond. Special Investigator Engler further warned McCutchen that failure to respond could result in a refusal to issue his MVESC license.
18. The United States Postal Service did not return the Division's August 13, 2018 inquiry letter as undeliverable.
19. McCutchen did not respond to the Division's August 13, 2018 inquiry letter, nor did he demonstrate a reasonable justification for the delay.

CONCLUSIONS OF LAW

20. Section 385.209² states, in relevant 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;

² All civil statutory references are to the Revised Statutes of Missouri 2016 unless otherwise indicated.

(3) Obtained or attempted to obtain a license through material misrepresentation or fraud;

* * *

(6) Used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere [or]

* * *

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

21. 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.

22. Section 143.902.1(2) provides, in relevant part:

If any taxpayer fails to pay any tax, interest, additions to tax or penalties imposed by this chapter when due and the assessment for which has become final, the director may file ... [a] certificate of lien specifying the amount of the tax, interest, additions to tax and penalties due and the name of the liable taxpayer. ... From the time of the filing of the certificate of lien or certificate of delinquency with the clerk of the circuit court, the amount of the tax, interest, additions to tax and penalties specified therein shall have the full force and effect of a default judgment of the circuit court until satisfied.

23. "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).

24. The Director may refuse to issue McCutchen an MVESC producer license pursuant to § 385.209.1(2) because McCutchen violated 20 CSR 100-4.100(2)(A), a rule of the Director, when he failed to respond to each of two (2) inquiry letters from the Division within twenty (20) days and failed to demonstrate a reasonable justification for the delay.

25. Each instance in which McCutchen violated a rule of the Director, namely 20 CSR 100-4.100(2)(A), constitutes a separate and sufficient cause for refusal pursuant to § 385.209.1(2).
26. The Director may refuse to issue McCutchen an MVESC producer license pursuant to § 385.209.1(3) because McCutchen attempted to obtain a license through material misrepresentation or fraud when he answered “No” to Background Information Questions 36.1 and 36.4 of his Application and failed to disclose his pending criminal charges and his state income tax delinquency for the 2014 and 2016 filing years. *See State of Missouri v. Jonathan McCutchen*, St. Charles Co. Cir. Ct., Case No. 1811-CR01680-01; *State of Missouri v. Jonathan McCutchen*, St. Charles Co. Cir. Ct., Case No. 1811-CR00944-01; and *Dep’t of Revenue v. Jonathan McCutchen*, St. Charles Co. Cir. Ct., Case No. 1711-MC05496.
27. The Director may refuse to issue McCutchen an MVESC producer license pursuant to § 385.209.1(6) because McCutchen has used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere when he took more than \$750 from his Valvoline, his place of employment and when he forged a check received by his business. *State of Missouri v. Jonathan McCutchen*, St. Charles Co. Cir. Ct., Case No. 1811-CR01680-01; and *State of Missouri v. Jonathan McCutchen*, St. Charles Co. Cir. Ct., Case No. 1811-CR00944-01.
28. The Director may refuse to issue McCutchen an MVESC producer license pursuant to § 385.209.1(13) because McCutchen failed to comply with an administrative or court order directing payment of state income tax. *See Dep’t of Revenue v. Jonathan C McCutchen*, St. Charles Co. Cir. Ct., Case No. 1711-MC05496.
29. For all of the reasons given in this Petition, the Director should consider McCutchen’s history and all of the circumstances surrounding McCutchen’s Application and exercise her discretion to refuse to issue McCutchen an MVESC producer license.
30. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Jonathan C. McCutchen** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 14th DAY OF August, 2019.



Chlora Lindley-Myers

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.

CERTIFICATE OF SERVICE

I hereby certify that on this 16th of August, 2019, 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:

Jonathan McCutchen
201 Rebecca Drive
St. Charles MO, 63301

No. 1Z0R15W84297979008



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