



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

IN RE:)
)
MICHAEL JOSEPH MCGEE,) **Case No. 161110482C**
)
Applicant.)

ORDER REFUSING TO ISSUE MOTOR VEHICLE
EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On January 26, 2017, the Consumer Affairs Division submitted a Petition to the Acting Director alleging cause for refusing to issue a motor vehicle extended service contract producer license to Michael Joseph McGee. After reviewing the Petition, Investigative Report, and supporting documentation, the Acting Director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Michael Joseph McGee ("McGee") is a Missouri resident with a residential and mailing address of 11828 Bellefontaine Road, St. Louis, Missouri 63138 and a business address of 1600 Heritage Landing, Suite 202, St. Charles, Missouri 63303.
2. On March 25, 2016, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received McGee'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.

* * *

5. I further certify, under penalty of perjury, that a) I have no child support obligation, b) I have a child support obligation and I am currently in compliance with that obligation, or c) I have a child support obligation that is in arrears, I am in compliance with a repayment plan to cure the arrears, and I have provided all information and documentation requested in Background Information Question [7].
4. McGee accepted the "Applicant's Certification and Attestation" section by signing the Application under oath and before a notary public.
5. Employment History Question No. 35 of the Application requests the following, in relevant part:

Account for all time for the past five years. List all employment experience starting with your current employer working back five years.
6. In response to Employment History Question No. 35, McGee answered, in part, that he has been working as a "Trainee" for "American Auto," located in Missouri, since March 2016.
7. American Auto Repair Coverage, LLC¹ is licensed by the Department as a motor vehicle extended service contract ("MVESC") business entity producer, License Number 8211587, to sell, offer, negotiate, or solicit motor vehicle extended service contracts.
8. An investigation by Special Investigator Andrew Engler ("Special Investigator Engler") of the Consumer Affairs Division ("Division") of the Department revealed that McGee had been performing job functions at American Auto Repair Coverage, LLC that require a MVESC producer license.
9. At no time since January 1, 2012² has the Director issued a MVESC producer license to McGee to sell, offer, negotiate, or solicit MVESCs with consumers.

¹ Although McGee's answer to Employment History Question No. 35 states that he is currently employed with "American Auto," McGee also states within the Application that his business entity name is American Auto Repair Coverage, LLC and, a letter sent to Special Investigator Andrew Engler of the Consumer Affairs Division from American Auto Repair Coverage, LLC states that McGee is an employee of American Auto Repair Coverage, LLC.

² Under SB 132, the licensing and general requirements to be a MVESC producer became effective on January 1, 2012. See §§ 385.206, 385.209 RSMo (Supp. 2013).

10. Background Question No. 1 of the Application asks:

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.

11. McGee answered “No” in response to Background Question No. 1.

12. Contrary to McGee’s response to Background Question No. 1, an investigation by Special Investigator Engler revealed that:

- a. On January 20, 2009, McGee pled guilty to Possession Of Up To 35 Grams

Marijuana, a Class A Misdemeanor, in violation of § 195.202 RSMo.³ The court suspended the imposition of sentence and placed McGee on two (2) years' supervised probation. *State v. Michael Joseph McGee*, Warren Co. Cir. Ct., Case No. 08BB-CCR01386.

- b. On January 20, 2009, McGee pled guilty to Unlawful Use Of Drug Paraphernalia, a Class A Misdemeanor, in violation of § 195.233 RSMo. The court suspended the imposition of sentence and placed McGee on two (2) years' supervised probation. *Id.*
 - c. On July 16, 2015, McGee pled guilty to, and was convicted of, Unlawful Use Of Drug Paraphernalia, a Class A Misdemeanor, in violation of § 195.233 RSMo. The court sentenced McGee to one (1) year of incarceration, but suspended the execution of sentence and placed McGee on two (2) years' supervised probation. *State v. Michael J. McGee*, St. Louis Co. Cir. Ct., Case No. 13SL-CR06293-01.
13. On April 21, 2016, Special Investigator Engler mailed an inquiry letter to McGee asking him why he failed to disclose his charges/convictions for "Unlawful Use Of Drug Paraphernalia" and "Possession Of Up To 35 Grams Marijuana."
 14. On April 29, 2016, Special Investigator Engler received court records and a letter from McGee admitting to the 2008 misdemeanor charges for Possession Of Up To 35 Grams Marijuana and Unlawful Use Of Drug Paraphernalia in *State v. Michael Joseph McGee*, Warren Co. Cir. Ct., Case No. 08BB-CCR01386. McGee, however, again failed to disclose his 2015 conviction for Unlawful Use Of Drug Paraphernalia in *State v. Michael J. McGee*, St. Louis Co. Cir. Ct., Case No. 13SL-CR06293-01.
 15. On April 29, 2016, Special Investigator Engler contacted McGee asking him why he failed to disclose his 2015 conviction for Unlawful Use Of Drug Paraphernalia. McGee did not provide Special Investigator Engler with a response.
 16. On May 13, 2016, McGee provided a response for his failure to disclose his 2015 conviction and the circumstances surrounding that conviction. McGee's response also contained court records for *State v. Michael J. McGee*, St. Louis Co. Cir. Ct., Case No. 13SL-CR06293-01.
 17. Background Question No. 7 of the Application asks:

Do you currently have or have you had a child support obligation?

³ All criminal statutory references are to those contained in the version of the Revised Statutes of Missouri under which the court rendered judgment.

If you answer yes:

- a) are you in arrearage?
- b) by how many months are you in arrearage? ____ months
- c) what is the total amount of your arrearage? _____
- d) are you currently subject to a repayment agreement to cure the arrearage? (If you answer yes, provide documentation showing an approved repayment plan from the appropriate state child support agency.)
- e) are you in compliance with said repayment agreement? (If you answer yes, provide documentation showing proof of current payments from the appropriate state child support agency.)
- f) are you the subject of a child support related subpoena/warrant? (If you answer yes, provide documentation showing proof of current payments or an approved repayment plan from the appropriate state child support agency.)
- g) have you ever been convicted of a misdemeanor or felony for failure to pay child support?

18. McGee responded "No" in response to Background Question No. 7.
19. Contrary to McGee's sworn answer to Background Question No. 7 on his Application, during his investigation, Special Investigator Engler discovered that McGee had a child support obligation that was in arrearage. As of March 2016 when McGee attested to the accuracy of the Application, he owed \$21,663.00 in child support arrears. As of January 2017, McGee's arrears totaled \$24,273.00. *State of Missouri ex rel. Singer v. Michael McGee*, St. Charles Co. Cir. Ct., Case No. 0911-MC00509.
20. It is inferable, and hereby found as fact, that McGee falsely answered "No" in response to Background Question No. 1 in order to misrepresent to the Director that he had no criminal history and, accordingly, in order to improve the chances the Director would approve his Application and issue him a MVESC producer license. This inference is further supported by the fact that, when given the opportunity to explain his conviction history and provide documentation, McGee again failed to fully disclose his criminal history.
21. It is inferable, and hereby found as fact, that McGee falsely answered "No" in response to Background Question No. 7 in order to misrepresent to the Director that he had no child support obligation and, accordingly, in order to improve the chances the Director would approve his Application and issue him a MVESC producer license.

CONCLUSIONS OF LAW

22. Section 385.209 RSMo⁴ provides, 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;

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

* * *

(11) Unlawfully acted as a producer without a license; [or]

(12) Failed to comply with an administrative or court order imposing a child support obligation[.]

23. Section 385.206 states, in relevant part:

1. It is unlawful for any person in or from this state to sell, offer, negotiate, or solicit a motor vehicle extended service contract with a consumer, other than the following:

* * *

(6) A business entity producer or individual producer licensed under section 385.207[.]

24. Section 385.207.3 states:

⁴ All civil statutory references are to the Revised Statutes of Missouri (2000) as updated by the 2013 Supplement.

An individual, prior to selling, offering, negotiating, or soliciting a motor vehicle extended service contract with a consumer under subdivision (6) of subsection 1 of section 385.206, shall apply for and obtain licensure with the director as an individual producer in accordance with this section.

25. The Director may refuse to issue a MVESC producer license to McGee pursuant to § 385.209.1(2) because McGee violated a provision in §§ 385.200 to 385.220, namely § 385.206.1(6), when he unlawfully, in or from this state, sold, offered, negotiated, or solicited motor vehicle extended service contracts with consumers during his employment with American Auto Repair Coverage, LLC.
26. The Director may refuse to issue McGee a MVESC producer license pursuant to § 385.209.1(3) because McGee attempted to obtain a MVESC producer license through material misrepresentation or fraud when he falsely answered “No” to Background Question No. 1 and failed to disclose the following charges or convictions:
 - a. Possession Of Up To 35 Grams Marijuana, a Class A Misdemeanor. *State v. Michael Joseph McGee*, Warren Co. Cir. Ct., Case No. 08BB-CCR01386.
 - b. Unlawful Use Of Drug Paraphernalia, a Class A Misdemeanor. *Id.*
 - c. Unlawful Use Of Drug Paraphernalia, a Class A Misdemeanor. *State v. Michael J. McGee*, St. Louis Co. Cir. Ct., Case No. 13SL-CR06293-01.
27. The Director may refuse to issue McGee a MVESC producer license pursuant to § 385.209.1(3) because McGee attempted to obtain a MVESC producer license through material misrepresentation or fraud when he failed to disclose his child support obligation and arrearage in response to Background Question No. 7. *State of Missouri ex rel. Singer v. Michael McGee*, St. Charles Co. Cir. Ct., Case No. 0911-MC00509.
28. Each attempt to obtain a license through material misrepresentation or fraud is a separate and sufficient ground for refusal pursuant to § 385.209.1(3).
29. The Director may refuse to issue a MVESC producer license to McGee pursuant to § 385.209.1(11) because he unlawfully acted as a producer without a license during his employment at American Auto Repair Coverage, LLC., a MVESC business entity producer.
30. The Director may refuse to issue a MVESC producer license to McGee pursuant to § 385.209.1(12) because McGee failed to comply with an administrative or court order imposing a child support obligation. *State of Missouri ex rel. Singer v. Michael*

McGee, St. Charles Co. Cir. Ct., Case No. 0911-MC00509 (arrearage in the amount of \$21,663.00 when McGee's attested to the accuracy of the Application; arrearage of \$24,273.00 as of January 201y).

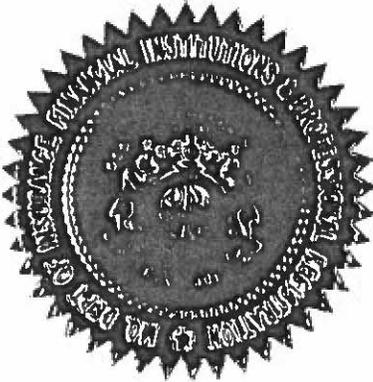
31. The Director has considered McGee's history and all of the circumstances surrounding McGee's Application. Issuing McGee a MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue McGee a MVESC producer license.
32. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Michael Joseph McGee** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 27th DAY OF January, 2017.





JOHN M. HUFF, ACTING 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.

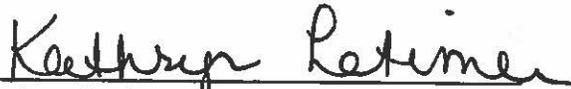
[The remainder of this page intentionally left blank]

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of January, 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:

Michael Joseph McGee
11828 Bellefontaine Road
St. Louis, Missouri 63303

Tracking No. 1Z0R15W84290277805



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

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 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:

Michael Joseph McGee
582 Leeton Ave
St. Louis, Missouri 63137

Tracking No. 1Z0R15W84294652008



Kimberly Landers
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