



DEPARTMENT OF COMMERCE AND INSURANCE

P.O. Box 690, Jefferson City, Mo. 65102-0690

IN RE:

PHILLIP ANDREW RECKTENWALD,

Applicant.

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Case No. 1904290690C

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

On September 18, 2019, the Consumer Affairs Division (“Division”) of the Department of Commerce and Insurance (“Department”), submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract producer license to Phillip Andrew Recktenwald. After reviewing the Petition, the Investigative Report, and other relevant documents, the Director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Phillip Andrew Recktenwald (“Recktenwald”) is a Missouri resident with a residential address of 2123 Willow Way Ct., Chesterfield, Missouri 63017.
2. On February 4, 2019, the Department of Insurance, Financial Institutions and Professional Registration¹ received Recktenwald’s Application for Motor Vehicle Extended Service Contract Producer License (“Application”) along with attachments.
3. Background Information Question Number 1 of the Application asks, in relevant

¹ The Department of Insurance, Financial Institutions and Professional Registration is the predecessor agency of the Department of Commerce and Insurance. See Executive Order 19-02.

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?

4. Recktenwald answered “Yes” to Background Information Question Number 1 on his Application. Recktenwald provided a Complaint and a 120 Day Order of Probation in *State v. Phillip Andrew Recktenwald*, St. Charles Co. Cir. Ct., Case No. 1611-CR03967-01. The Complaint charged Recktenwald with the Class B Felony of Possession of a Controlled Substance with Intent to Distribute, in violation of § 195.211.² *Id.* Recktenwald also provided a letter of explanation regarding this conviction, wherein he indicated that he had received 120 days of treatment and was released to five years of probation. *Id.* Further investigation by the Division revealed that on August 7, 2017, Recktenwald pled guilty to Possession of a Controlled Substance with Intent to Distribute. *Id.* The court sentenced Recktenwald to eight years in the Missouri Department of Corrections and recommended that Recktenwald be placed in the Institutional Treatment Program pursuant to § 559.115.3. *Id.* Recktenwald completed the 120 day treatment program in prison and was released to five years of supervised probation on March 15, 2018. *Id.* Currently, Recktenwald remains on felony probation. *Id.*
5. The Division looked further into Recktenwald’s criminal background and found charges for possession of a controlled substance in *State v. Phillip Recktenwald*, Franklin Co. Cir. Ct., Case No. 07AB-CR00121, and charges for possession of a controlled substance and possession of drug paraphernalia with intent to use in *State v. Phillip A. Recktenwald*, St. Louis Co. Cir. Ct., Case No. 08SL-CR01919. Recktenwald was admitted into the St. Louis County Drug Court and on August 26, 2010, he graduated from the program. *Id.* Recktenwald then moved to withdraw his prior guilty plea and the state dismissed the case in *State v. Phillip A. Recktenwald*, St. Louis Co. Cir. Ct., Case No. 08SL-CR01919. On September 19, 2011, Recktenwald successfully moved to terminate his probation in *State v. Phillip Andrew Recktenwald*, Franklin Co. Cir. Ct., Case No. 07AB-CR00121.
6. On February 11, 2019, Division Special Investigator Andrew Engler (“Engler”) sent an inquiry letter via first class mail from the United States Post Office to Recktenwald at the residential address that Recktenwald provided on his Application, 2123 Willow Way Ct., Chesterfield, Missouri 63017. In his letter,

² This and all further criminal statutory citations are to that version of the Revised Statutes of Missouri in effect at the time of the commission of the crime.

Engler asked Recktenwald to explain why he did not disclose the charges in *State v. Phillip Recktenwald*, Franklin Co. Cir. Ct., Case No. 07AB-CR00121 and *State v. Phillip A. Recktenwald*, St. Louis Co. Cir. Ct., Case No. 08SL-CR01919, and to provide a statement explaining the circumstances surrounding the charges. Engler also asked Recktenwald to provide certified documents in these cases. Engler indicated that Recktenwald's response was due in twenty days and that "[f]ailure to respond could result in a refusal to issue" the license.

7. The United States Postal Service did not return Engler's February 11, 2019 letter to the Division as undeliverable and therefore it is presumed that Recktenwald received it.
8. Recktenwald did not timely respond to Engler's February 11, 2019 letter and Recktenwald did not provide reasonable justification for delay.

CONCLUSIONS OF LAW

9. Section 385.209.1, RSMo 2016, provides, in relevant part:

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; [or]

* * *

(5) Been convicted of any felony[.]

10. Title 20 CSR 100-4.100(2)(A), Required Response to Inquiries by the Consumer Affairs Division, 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.

11. Under Missouri law, when a letter is duly mailed by first class mail, there is a rebuttable presumption that the letter was delivered to the addressee in the due course of the mails. *Hughes v. Estes*, 793 S.W.2d 206, 209 (Mo. App. S.D. 1990).
12. The Director may refuse to issue a motor vehicle extended service contract producer license to Recktenwald under § 385.209.1(2) because Recktenwald violated a rule of the director, in that Recktenwald failed to respond to Engler's February 11, 2019 inquiry letter and Recktenwald failed to provide reasonable justification for delay.
13. The Director may refuse to issue a motor vehicle extended service contract producer license to Recktenwald under § 385.209.1(5) because Recktenwald has been convicted of a felony: Possession with Intent to Distribute, a Class B Felony, in violation of § 195.211. *State v. Phillip Andrew Recktenwald*, St. Charles Co. Cir. Ct., Case No. 1611-CR03967-01.
14. The above-described instances constitute grounds upon which the Director may refuse to issue Recktenwald a motor vehicle extended service contract producer license.
15. The Director has considered Recktenwald's history and all of the circumstances surrounding Recktenwald's Application. Issuing a motor vehicle extended service contract producer license to Recktenwald would not be in the interest of the public. Accordingly, the Director exercises her discretion to refuse to issue Recktenwald a motor vehicle extended service contract producer license.
16. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license Application of **Phillip Andrew Recktenwald** is hereby **REFUSED**.

SO ORDERED.
November, 2019.

WITNESS MY HAND THIS 19th DAY OF


CHLORA LINDLEY-MYERS
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.

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of November, 2019, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by United Parcel Service, with signature required, at the following addresses:

Phillip Andrew Recktenwald
2123 Willow Way Ct.
Chesterfield, Missouri 63017

Tracking No. 1Z0R15W84296999015



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