



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

RICHARD ROBERT HAGAN,

Renewal Applicant.

)
)
)
)
)

Case No. 140610498C

ORDER REFUSING TO RENEW MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On February 25, 2015, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to renew the motor vehicle extended service contract producer license of Richard Robert Hagan. 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. Richard Robert Hagan ("Hagan") is a Missouri resident with a residential and mailing address of 1057 Pearview, St. Peters, Missouri, 63376.¹
2. On December 16, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Hagan's Application for Motor Vehicle Extended Service Contract Producer License (the "2011 Application").
3. By signing the 2011 Application under oath before a notary, Hagan attested and certified that "all of the information submitted in this application and attachments is true and complete."
4. Background Question No. 1 of the 2011 Application asked 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

¹ Hagan provided this residential and mailing address in his most recent application (*see infra*, Paragraph 9 of this Petition).

license, reckless driving, or driving with a suspended or revoked license and 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 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").

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[.]

5. Hagan answered "Yes" to Background Question No. 1 of the 2011 Application.
6. Hagan attached a written explanation and an uncertified court docket sheet disclosing that he had been convicted in 2007 of the Class D Felony of DWI—Combined Alcohol and Drug Intoxication—Persistent Offender:
 - a) On April 20, 2007, Hagan pleaded guilty in the St. Charles County Circuit Court to the Class D Felony of DWI—Combined Alcohol and Drug Intoxication—Persistent Offender, in violation of § 577.010 RSMo.² The court sentenced Hagan to three years' imprisonment, but suspended execution of the sentence, placed Hagan on five years' probation, and ordered Hagan to serve ten days' shock incarceration to be served as 30 days' house arrest, pay costs, and complete DWI treatment programs.³
7. Hagan failed to disclose any further criminal history in his 2011 Application.
8. On January 1, 2012, relying on Hagan's response to Background Question No. 1 of the 2011 Application, the Director issued Hagan a motor vehicle extended service contract ("MVESC") producer license. That license expired on January 1, 2014.
9. On December 12, 2013, the Department received Hagan's Application for Motor Vehicle Extended Service Contract Producer License Renewal (the "2013 Renewal Application").
10. By signing the 2013 Renewal Application under oath before a notary, Hagan attested and certified that "all of the information submitted in this application and attachments is true

² References to criminal statutes are to the versions under which Hagan was convicted.

³ *State of Missouri v. Richard R. Hagan*, St. Charles Co. Cir. Ct., No. 0611-CR00868-01.

and complete.”

11. Background Question No. 1 of the 2013 Renewal Application asked:

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, which has not been previously reported to this insurance department?

“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.

12. Hagan falsely answered “No” to Background Question No. 1 of the 2013 Renewal Application. Hagan failed to disclose any criminal history in the 2013 Renewal Application.⁴
13. Investigation by the Consumer Affairs Division of the Department (“Division”) revealed that Hagan had three additional criminal convictions, which convictions Hagan has never

⁴ Because Hagan had disclosed his Class D Felony DWI on his 2011 Application, the 2013 Renewal Application did not require him to disclose such felony again as it had “previously been reported to this insurance department[.]” See 2011 Application and Paragraphs 5 & 6, *supra*.

reported to the Department:

- a) On July 15, 1998, Hagan pleaded guilty in the St. Charles County Circuit Court to the Class A Misdemeanor of Stealing, in violation of § 570.030. The court initially suspended the imposition of sentence and placed Hagan on two years' probation. However, on September 27, 2000, the court found Hagan had violated his probation, sentenced him to one year's incarceration in the St. Charles County Jail, suspended execution of the sentence, and continued Hagan's probation to run concurrently with his probation in Case No. 11R019901172-01.⁵
 - b) On February 14, 2000, Hagan pleaded guilty in the St. Charles County Circuit Court to the Class C Felony of Stealing, in violation of § 570.030. The court initially suspended the imposition of sentence and placed Hagan on five years' probation. However, on May 12, 2003, the court revoked Hagan's probation, sentenced Hagan to seven years' imprisonment, suspended execution of the sentence, and placed Hagan on three years' probation.⁶
 - c) On February 7, 2005, Hagan pleaded guilty in the St. Louis County Circuit Court to the Class D Felony of Operating a Motor Vehicle on a Highway While Driver License/Privileges Revoked (Revoked for Points/Failure to Submit to Chemical Test), in violation of § 302.321. The court sentenced Hagan to two days' incarceration in the Department of Justice Services.⁷
14. On January 2, 2014, Division Investigator Andrew Engler ("Engler") mailed an inquiry letter to Hagan requesting that Hagan provide a statement explaining the circumstances surrounding his "misdemeanor/felony Stealing" and Hagan's failure to disclose such on his 2011 Application.
 15. Engler mailed the January 2, 2014 inquiry letter by first class mail to Hagan's residential and mailing address of record, with sufficient postage attached.
 16. The United States Postal Service did not return the January 2, 2014 inquiry letter as undeliverable; therefore, Hagan is presumed to have received it.
 17. Hagan never responded to the January 2, 2014 inquiry letter, nor demonstrated a reasonable justification for his delay or failure to respond.
 18. On January 22, 2014, Engler mailed a second inquiry letter to Hagan requesting the same explanation.

⁵ *State of Missouri v. Richard Robert Hagan*, St. Charles Co. Cir. Ct., No. 11R019800364.

⁶ *State of Missouri v. Richard R. Hagan*, St. Charles Co. Cir. Ct., No. 11R019901172-01.

⁷ *State of Missouri v. Richard Robert Hagan*, St. Louis Co. Cir. Ct., No. 2104T-06560.

19. Engler mailed the January 22, 2014 inquiry letter by first class mail to Hagan's residential and mailing address of record, with sufficient postage attached.
20. The United States Postal Service did not return the January 22, 2014 inquiry letter as undeliverable; therefore, Hagan is presumed to have received it.
21. Hagan never responded to the January 22, 2014 inquiry letter, nor demonstrated a reasonable justification for his delay or failure to respond.
22. It is inferable that Hagan failed to disclose in his 2011 Application that he had been convicted of the Class A Misdemeanor of Stealing, the Class C Felony of Stealing, and the Class D Felony of Operating a Motor Vehicle on a Highway While Driver License/Privileges Revoked (Revoked for Points/Failure to Submit to Chemical Test), in order to misrepresent the extent of his criminal history to the Director and, accordingly, in order to improve the chances that the Director would approve his 2011 Application and issue him an MVESC producer license.
23. It is inferable that Hagan falsely answered "No" to Background Question No. 1 of the 2013 Renewal Application and failed to disclose in his 2013 Renewal Application that he had been convicted of the Class A Misdemeanor of Stealing, the Class C Felony of Stealing, and the Class D Felony of Operating a Motor Vehicle on a Highway While Driver License/Privileges Revoked (Revoked for Points/Failure to Submit to Chemical Test), in order to misrepresent to the Director that he had no undisclosed criminal history, and, accordingly, in order to improve the chances that the Director would approve his 2013 Renewal Application and renew his MVESC producer license.

CONCLUSIONS OF LAW

24. Section 385.209 RSMo (Supp. 2013)⁸ 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:
 - (1) Filed an application for license in this state within the previous ten years, which, as of the effective date of the license, was incomplete in any material respect or contained incorrect, misleading, or untrue information;
 - (2) Violated any provision in sections 385.200 to 385.220, or violated any rule, subpoena, or order of the director;

⁸ References to civil statutes are to the Revised Statutes of Missouri as supplemented in 2013.

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

* * *

(5) Been convicted of any felony[.]

25. Regulation 20 CSR 100-4.100(2)(A) states:

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.

26. Under Missouri law, there is a rebuttable 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. E. D. 2000).

27. 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 licensees or applicants for an MVESC producer license, but to protect the public.

28. The Director may refuse to renew Hagan's MVESC producer license under § 385.209.1(5) because Hagan has been convicted of three felonies:

a) Class D Felony of DWI—Combined Alcohol and Drug Intoxication—Persistent Offender;

b) Class C Felony of Stealing; and

c) Class D Felony of Operating a Motor Vehicle on a Highway While Driver License/Privileges Revoked (Revoked for Points/Failure to Submit to Chemical Test).

29. Each felony is a separate and sufficient cause to refuse to renew Hagan's MVESC producer license under § 385.209.1(5).

30. The Director may refuse to renew Hagan's MVESC producer license under § 385.209.1(1) because Hagan filed an application for license in this state within the previous ten years, which, as of the effective date of the license, was incomplete in a material respect and contained incorrect, misleading, and untrue information. Hagan failed to disclose three of his criminal convictions in his 2011 Application, which

rendered the 2011 Application incomplete in a material respect. Additionally, Hagan's disclosure of only one out of his four convictions constituted incorrect, untrue and misleading information, especially in light of his attestation and certification under oath that "all of the information submitted in this application and attachments is true and complete."

31. The Director may refuse to renew Hagan's MVESC producer license under § 385.209.1(3) because Hagan obtained his MVESC producer license through material misrepresentation or fraud. Hagan failed to disclose in his 2011 Application that he had been convicted of the Class A Misdemeanor of Stealing, the Class C Felony of Stealing, and the Class D Felony of Operating a Motor Vehicle on a Highway While Driver License/Privileges Revoked (Revoked for Points/Failure to Submit to Chemical Test), in order to misrepresent to the Director the extent of his criminal history, and, accordingly, in order to improve the chances that the Director would approve his 2011 Application and issue him an MVESC producer license. In fact, relying upon Hagan's material misrepresentations on his 2011 Application, the Director issued Hagan an MVESC producer license.
32. The Director may refuse to renew Hagan's MVESC producer license under § 385.209.1(3) because Hagan attempted to obtain a license through material misrepresentation or fraud. Hagan falsely answered "No" to Background Question No. 1 of the 2013 Renewal Application and failed to disclose that he had been convicted of the Class A Misdemeanor of Stealing, the Class C Felony of Stealing, and the Class D Felony of Operating a Motor Vehicle on a Highway While Driver License/Privileges Revoked (Revoked for Points/Failure to Submit to Chemical Test), in order to misrepresent to the Director that he had no undisclosed criminal history, and, accordingly, in order to improve the chances that the Director would approve his 2013 Renewal Application and renew his MVESC producer license.
33. The Director may refuse to renew Hagan's MVESC producer license under § 385.209.1(2) because Hagan twice violated a rule of the Director, in that Hagan failed to respond to two inquiry letters duly mailed to him by the Division—on January 2, 2014, and January 22, 2014—without demonstrating reasonable justification for his delay or failure to respond, each time thereby violating 20 CSR 100-4.100(2), which is a rule of the Director.
34. The Director has considered Hagan's history and all of the circumstances surrounding his Application. Renewing Hagan's MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to renew Hagan an MVESC producer license.
35. This Order is in the public interest.

ORDER

IT IS THEREFORE ordered that the motor vehicle extended service contract producer license renewal application of Richard Robert Hagan is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 26TH DAY OF FEBRUARY, 2015.




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 27th day of February, 2015 a copy of the foregoing Order and Notice was served upon the Renewal Applicant by UPS, signature required, at the following address:

Richard Robert Hagan
1057 Pearview
St. Peters, MO 63376

Tracking No. 1Z0R15W84296897983



Kathryn Latimer

Paralegal

Missouri Department of Insurance, Financial
Institutions and Professional Registration

301 West High Street, Room 530

Jefferson City, Missouri 65101

Telephone: 573.751.2619

Facsimile: 573.526.5492

Email: kathryn.latimer@insurance.mo.gov