State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
RANDY ZAGARRI,	)	**Case No. 184444**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On April 24, 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 Randy Zagarri. 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. Randy Zagarri, ("Zagarri") is a Missouri resident with a residential address of record of 3341 Suncrest Avenue, St. Louis, Missouri, 63114.

2. On September 4, 2012, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Zagarri's incomplete Application for Motor Vehicle Extended Service Contract Producer License ("Application"). After Zagarri provided further information, but failed to provide all required information, the Application was treated as complete for purposes of processing on or about September 20, 2012.

3. Background Question No. 1 of the Application asks the following:

   Have you ever been convicted of a crime, had a judgment 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 judgment[.]

4. Zagarri marked "Yes" to Question No. 1.

5. With his Application, Zagarri included uncertified copies of a Plea of Guilty and a Sentence and Judgment, indicating that on December 3, 2010, Zagarri was convicted in the Circuit Court of St. Louis County of the Class B Felony of Discharge of a Firearm from a Motor Vehicle and the Class D Felony of Property Damage in the First Degree. *State of Missouri v. Randy M. Zagarri*, St. Louis Co. Cir. Ct., 10SL-CR04196-01.

6. With his Application, Zagarri also included a signed written statement that read, verbatim in its entirety:

Written Statement of Incident

> Incident took place in 2009, prior to that, a former friend was caught stealing my car with the spare keys through out 2008. Once I realized it was him early 2009. After confronting him we of course fell out, and he begun vandalizing my new car. After several police reports & them being able to do nothing without proof I took matters into my own hands. I in return vandalized his car & was caught & charged with a Class D Felony of Property Damage. Served prison time.

7. On September 24, 2012, Department investigator Karen Crutchfield mailed Zagarri a written inquiry requesting a more detailed explanation of the incident leading to Zagarri's felony convictions. In the inquiry, Crutchfield also requested certified copies of the Complaint, Information, Sentence and Judgment, Plea of Guilty and Order of Probation, as applicable, in *State of Missouri v. Randy M. Zagarri* and specifically requested an explanation of how Zagarri vandalized the car and why he used a firearm.

8. On September 27, 2012, Zagarri responded by email with a more detailed explanation of the incident, which nevertheless lacked an explanation of how Zagarri vandalized the car or why he used a firearm. In closing, Zagarri stated "If there is anyway or place I can go to get the documents you need, I am willing to listen to where, but I just not sure where."

9. On September 27, 2012, replying by email, Crutchfield further inquired about the details of the act of vandalism and again requested certified copies of the court documents she had previously requested. Crutchfield included an explanation of how Zagarri could obtain the certified documents.

10. On October 4, 2012, Zagarri replied by email to Crutchfield's emailed inquiry and provided additional detail of the act of vandalism, closing with an expression of his intention to provide the certified documents as requested.

11. On October 5, 2012, Crutchfield replied by email briefly to emphasize that the certified documents should be mailed.

12. By October 29, 2012, as Zagarri still had failed to provide the certified documents required by the Application and further requested by Crutchfield in her September 24 letter and subsequent emails, Crutchfield mailed an inquiry letter to Zagarri at his address of record, again requesting the certified documents. Crutchfield mailed the letter by regular mail with sufficient postage attached. The letter was not returned as undeliverable.

13. Zagarri failed to respond to Crutchfield's October 29 letter and has not demonstrated any reasonable justification for his failure to respond.

14. On November 21, 2012, Crutchfield sent a follow-up inquiry letter to Zagarri, again requesting the certified documents. Crutchfield mailed the letter by regular mail with sufficient postage attached. The letter was not returned to Crutchfield as undeliverable.[1]

15. Zagarri failed to adequately respond to Crutchfield's November 21 letter and has not demonstrated any reasonable justification for his failure to respond.

16. On January 10, 2013, Zagarri emailed Crutchfield, stating that he had obtained certified copies of the Indictment and the Judgment and Sentence.

17. Later on January 10, 2013, Crutchfield replied to Zagarri's email, in which reply she noted Zagarri's repeated failures to respond to her inquiries and the possibility that such failures to respond could provide grounds to refuse Zagarri's Application, and in which she again requested that Zagarri mail the certified documents to her.

18. On January 11, Zagarri replied briefly to describe the difficulty he had in successfully obtaining the documents.

19. Zagarri failed to ever mail or otherwise provide the certified documents to Crutchfield.

[1] Crutchfield also sent the letter by regular mail and certified mail to Zagarri's business address, which letters were returned as unable to forward, and by certified mail to Zagarri's address of record, which letter was signed for by Marie Zagarri.

20. Zagarri has not demonstrated any reasonable justification for his failure to provide the certified documents.

21. Crutchfield eventually obtained the certified records in *State of Missouri v. Randy M. Zagarri*. Those records showed that on December 3, 2010, Zagarri pleaded guilty in the Circuit Court of St. Louis County to the Class B Felony of Discharge of a Firearm from a Motor Vehicle, in violation of § 571.030, RSMo, and the Class D Felony of Property Damage in the First Degree, in violation of § 569.100, RSMo. *State of Missouri v. Randy M. Zagarri*, St. Louis Co. Cir. Ct., 10SL-CR04196-01.

22. On the Class B Felony, the court sentenced Zagarri to fifteen (15) years' incarceration, but suspended execution of the sentence and granted Zagarri five (5) years' probation. On the Class D Felony, the court sentenced Zagarri to four (4) years' incarceration, concurrent with the fifteen-year sentence. *State of Missouri v. Randy M. Zagarri*, St. Louis Co. Cir. Ct., 10SL-CR04196-01.

23. According to Zagarri's September 27, 2012 email, he served a prison term from December 3, 2010 to May 31, 2011, for the D Felony count.

CONCLUSIONS OF LAW

24. Section 385.209 RSMo, Supp. 2012, 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:
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> * * *
>
> (2) Violated any provision in sections 385.200 to 385.220, or violated any rule, subpoena, or order of the director;
>
> * * *
>
> (5) Been convicted of any felony[.]

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

> (2) Except as required under subsection (2)(B)—
>
> (A) 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.

(B) This rule shall not apply to any other statute or regulation which requires a different time period for a person to respond to an inquiry by the department. If another statute or regulation requires a shorter response time, the shorter response time shall be met. This regulation operates only in the absence of any other applicable laws.

26. 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.

27. Zagarri may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(5) because he has been convicted of two felonies:

    a. *State of Missouri v. Randy M. Zagarri*, St. Louis Co. Cir. Ct., 10SL-CR04196-01 (Discharge of a Firearm from a Motor Vehicle, a Class B Felony in violation of § 571.030, RSMo); and

    b. *State of Missouri v. Randy M. Zagarri*, St. Louis Co. Cir. Ct., 10SL-CR04196-01 (Property Damage in the First Degree, a Class D Felony in violation of § 569.100, RSMo).

28. Zagarri also may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(2) because he violated a rule of the Director, namely 20 CSR 100-4.100. Zagarri twice failed to adequately respond to written inquiries from Department investigator Karen Crutchfield without demonstrating a reasonable justification for the failures to respond, violating 20 CSR 100-4.100 each time.

29. The Director has considered Zagarri's history and all of the circumstances surrounding Zagarri's Application. Granting Zagarri 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 Zagarri.

30. This order is in the public interest.

ORDER

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

SO ORDERED.

WITNESS MY HAND THIS 1st **DAY OF** May **, 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 3 day of May, 2013, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by regular and certified mail at the following address:

Randy Zagarri
3341 Suncrest Avenue
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