

State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

SHAKAR A. BUTLER,

Applicant.

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Case No. 141010690C

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On December 2, 2014, 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 Shakar A. Butler. After reviewing the Petition, the Investigative Report, and the entirety of the file, the Director issues the following findings of fact, conclusion of law, and order:

FINDINGS OF FACT

1. Shakar A. Butler ("Butler") is a Missouri resident with a residential address of 3754 Bismark Drive, St. Charles, Missouri 63301.
2. As of December 1, 2014, Butler currently resides in the St. Charles County Jail, 301 North 2nd Street, St. Charles, Missouri 63301.
3. On April 17, 2014, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Butler's Application for Motor Vehicle Extended Service Contract Producer License ("Application").
4. The "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. Butler accepted the "Attestation" section by signing the Application under oath before a notary public.

6. Background Question No. 1 of the 2014 Application asks the following:

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.

7. Butler answered "No" in response to Background Question No. 1.
8. During its investigation, the Division discovered the following that Butler failed to disclose on his Application:
- a. On October 7, 2013, Butler pled guilty to Passing Bad Check - Less Than \$500.00, a Class A Misdemeanor, in violation of § 570.120. The court ordered Butler to pay a fine in the amount of \$25.50. *State v. Shakar A. Butler*, Warren Co. Cir. Ct., Case No. 13BB-CR00457.
 - b. On December 29, 2011, by Felony Complaint, the Lincoln County prosecutor charged Butler with Robbery – 1st Degree, Class A Felony, in violation of

§ 569.020, Unlawful Use of a Weapon, Class D felony, in violation of § 571.030.1(4), and Felony Armed Criminal Action, in violation of § 571.015. *State v. Shakar A. Butler*, Lincoln Co. Cir. Ct., Case No. 12L6-CR00224-01.

- i. On March 20, 2012, Butler appeared at a hearing with counsel. *Id.*
 - ii. On May 2, 2012, the associate circuit court conducted a preliminary hearing and bound Butler over to the circuit court on the three felony charges. *Id.*
 - iii. On January 29, 2014, the court issued a warrant after Butler failed to appear. *State v. Shakar A. Butler*, Lincoln Co. Cir. Ct., Case No. 12L6-CR00224-01. The warrant remains unserved and pending.
 - c. On March 6, 2013, Butler was charged by Felony Complaint with Passing Bad Check - \$500 Or More, a Class C Felony, in violation of § 570.120. On June 11, 2013 Butler appeared by video arraignment. On October 24, 2013, the court issued a warrant after Butler failed to appear at his preliminary hearing. *State v. Shakar A. Butler*, Lincoln Co. Cir. Ct., Case No. 13L6-CR00396. The warrant remains unserved and pending.
 - d. On October 8, 2013, Butler was charged with Forgery, a Class C Felony, in violation of § 570.090. *State v. Shakar A. Butler*, St. Charles Co. Cir. Ct., Case No. 1311-CR05899.
 - e. On June 13, 2011, Butler pled guilty to Retail Theft of Merchandise valued at under \$300, a Class A Misdemeanor, in violation of 720 ILCS 5/16-25. The court ordered Butler to pay a fine and placed him on 12 months supervision. *State of Illinois v. Shakar A. Butler*, Bond Co. Cir. Ct., Case No. 2011CM42. The fine remains unpaid.
 - f. On February 8, 2012, Butler was charged with two counts of Criminal Non-Support, Class A Misdemeanors, in violation of § 568.040. *State v. Shakar A. Butler*, St. Charles Co. Cir. Ct., No. 1211-CR00733. As part of the Criminal Non-Support case, the judge issued several orders ordering Butler to pay child support.
9. Background Question No. 7 of the Application asks the following:

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

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, provided 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?
10. In response to Background Question No. 7, Butler answered that he does have a child support obligation, he is six months in arrearage, that he is currently subject to repayment agreement, and that he has been convicted of a misdemeanor or felony for failure to pay child support.
 11. With his Application, Butler submitted a written statement dated April 15, 2014 that states in part: "I have enclosed documents stating my current child support have been scheduled for repayment plan. I am currently paying on it." Butler also submitted a copy of a "Child Support Obligation Computation Worksheet" dated July 25, 2013.
 12. According to the records of the Family Support Division, Child Support Enforcement, Missouri Department of Social Services, as of November 17, 2014:
 - a. Butler is in arrears \$2,351.38 in child support in *State ex rel. Briana Williams v. Butler*, St. Charles Co. Cir. Ct., No. 1011-MC01377 (Administrative Case No. 31296392); and
 - b. Butler is in arrears \$329.65 in child support in child support in *Charna Hazel Prete v. Shakar Adair Butler*, St. Louis City Cir. Ct., No. 1322-AD00842 (Administrative Case No. 01496944).
 13. After reviewing Butler's Application and his criminal record, Special Investigator Andrew Engler ("Special Investigator Engler") sent an inquiry letter to Butler dated April 23, 2014. Said letter requested additional documentation and information about Butler's criminal background. The letter further requested a response by May 13, 2014, and warned Butler that a failure to respond could result in the Department refusing to issue him a motor vehicle extended service contract ("MVESC") license.
 14. The United States Postal Service did not return the April 23, 2014 inquiry letter to the Division, and therefore it is presumed delivered.
 15. Butler failed to provide a written response to the Division's April 23, 2014 inquiry letter by May 13, 2014, and failed to demonstrate a reasonable justification for the delay.

16. It is inferable and hereby found as fact that Butler failed to disclose his criminal background on his Application in order to misrepresent to the Director that he had no criminal history, and accordingly, in order to improve the chances that the Director would approve his Application and issue him a MVEESC producer license.
17. Butler only disclosed one pending child support matter when in fact he is subject to two court or administrative orders imposing child support obligations. It is inferable and hereby found as fact that Butler failed to disclose his complete child support obligation on his Application in order to minimize his obligations and thereby improve the chances the Director would approve his Application.

CONCLUSIONS OF LAW

18. Section 385.209 RSMo (Supp. 2013)¹ 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:

* * *

 - (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;

* * *

 - (12) Failed to comply with an administrative or court order imposing a child support obligation[.]
19. 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

¹ All statutory references are to the 2013 Supplement to the Revised Statutes of Missouri unless otherwise noted.

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.

20. "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).
21. 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.
22. The Director may refuse to issue an MVESC producer license to Butler under § 385.209.1(2) because Butler failed to adequately respond to an inquiry letter from the Division and failed to provide a reasonable justification for the delay, thereby violating 20 CSR 100-4.100(2)(A), a department regulation.
23. The Director may refuse to issue an MVESC producer license to Butler under § 385.209.1(3) because Butler attempted to obtain an MVESC producer license through material misrepresentation or fraud by failing to disclose two misdemeanor convictions, five pending felony charges, and two pending misdemeanor charges on his Application in order to misrepresent his criminal history to the Director, and, accordingly, to improve the chances that the Director would approve his Application and issue him an MVESC producer license.
24. Butler may also be refused an MVESC producer license pursuant to § 385.209.1(12) because he failed to comply with two administrative or court orders imposing a child support obligations. *State ex rel. Briana Williams v. Butler*, St. Charles Co. Cir. Ct., No. 1011-MC01377 (Administrative Case No. 31296392) and *Charna Hazel Prete v. Shakar Adair Butler*, St. Louis City Cir. Ct., No. 1322-AD00842 (Administrative Case No. 01496944). In fact, Butler is currently charged with two counts of Criminal Non-Support, a Class A Misdemeanor, in violation of § 568.040. *State of Missouri v. Shakar A. Butler*, St. Charles Co. Cir. Ct., Case No. 1211-CR00733.
25. Issuing an MVESC producer license to Butler would not be in the public's interest. Butler failed to respond to a Division inquiry letter, misrepresented his criminal history on his Application, and has failed to comply with administrative or court orders imposing child support obligations.

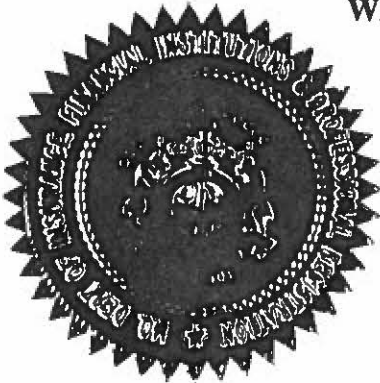
26. The Director has considered Butler's history and all of the circumstances surrounding his Application. Granting Shakar Butler an MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue Shakar Butler an MVESC producer license.
27. This Order is in the public interest.

ORDER

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

SO ORDERED.

WITNESS MY HAND THIS 3RD DAY OF DECEMBER, 2014.




JOHN M. HUF
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 3rd day of December, 2014 a true and accurate copy of the foregoing Order and Notice was served by certified mail, United States Postal Service, electronic tracking and signature required, at the following address:

Shakar A. Butler
c/o St. Charles County Sheriff's Office/Jail Certified No. 7014 1820 0484 2661
Attention: Joan Kennedy
301 North 2nd Street
St. Charles, MO 63301

Order and Notice to be personally served upon Shakar A. Butler by the St. Charles County Sheriff's Office/Jail

And by UPS, signature required, at the following address:

Shakar A. Butler Tracking No. 1Z0R15W84296907122
3754 Bismark Drive
St. Charles, MO 63301



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