



State of Missouri

**DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND
PROFESSIONAL REGISTRATION**

IN RE:)
)
MATTHEW ERIC SARFF,) **Case No. 1902140282C**
)
Applicant.)

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

On June 13, 2019, the Consumer Affairs Division (“Division”) submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract producer license to Matthew Eric Sarff. After reviewing the Petition and the Investigative Report and other relevant documents, the Director issues the following findings of fact, conclusions of law and order:

FACTUAL BACKGROUND

1. Matthew Eric Sarff (“Sarff”) is a Missouri resident with a residential address of 10002 Livingston Ave., St. Ann, Missouri, 63074.
2. On August 31, 2018, the Department of Insurance, Financial Institutions and Professional Registration (“Department”) received Sarff’s Application for Motor Vehicle Extended Service Contract (“MVESC”) Producer License (“Application”) along with attachments.
3. Background Information Question Number 1 of the Application asks, in relevant 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. Sarff answered “Yes” to Background Information Question Number 1 on his Application. Sarff provided a letter of explanation regarding his criminal past including an Illinois 2010 felony conviction for Aggravated Battery, and a misdemeanor conviction for Assault. He did not disclose any other charges or convictions.

- a. On January 6, 2010, the State's attorney charged Sarff with Count I, Aggravated Battery in violation of § 720 I.L.C.S. 5/12-4(b)(18)¹. *State of Illinois v. Matthew E. Sarff*, Menard Co. Cir. Ct., Case No. 10-CF-3. Sarff was also charged with the following misdemeanors: Count II, Assault (Class C) in violation of § 720 I.L.C.S. 5/12-1(a), and Count III, Disorderly Conduct (Class C) in violation of § 720 I.L.C.S. 5/26-1(a)(1). *Id.*
 - b. On March 2, 2010, Sarff pled guilty to Counts I and II and Count III was dismissed. The court ordered a four (4) year sentence on Count I Aggravated Battery. On September 19, 2011, the court revoked his probation, with credit for time served in custody. *Id.* Sarff ultimately served three (3) years. He is no longer on probation for these offenses.²
5. The Division's investigation further revealed that Sarff had two misdemeanor convictions that he did not disclose in response to Background Information Question Number 1 on his Application:
- a. On July 1, 2008, the State's Attorney charged Sarff with misdemeanor Theft, a Class A misdemeanor, in violation of § 720 I.L.C.S., 5/16-1(a)(1)(A). *State of Illinois v. Matthew E. Sarff*, Menard Co. Cir. Ct., Case No. 08-CM-42. On September 22, 2018, Sarff was sentenced to pay a fine of \$200, court costs and restitution and six (6) months' probation. *Id.*
 - b. On February 9, 2011, Sarff pled guilty to misdemeanor Possession of Drug Paraphernalia. *City of Springfield, Illinois v. Matthew Sarff*, Sangamon Co. Cir. Ct., Case No. 2011-CM-000040. Sarff was fined \$755. *Id.*
6. On September 10, 2018, Division Special Investigator Andrew Engler ("Engler") sent an inquiry letter via first class mail, postage prepaid, to Sarff at the address provided on the Application. In his letter, Engler asked Sarff to provide an explanation for his failure to disclose his other misdemeanor charges, including Possession of Drug Paraphernalia and Theft. Engler asked for a response within twenty days and stated that, "[f]ailure to respond could result in a refusal to issue your MVEESC license."
7. The inquiry letter dated September 10, 2018 was not returned as undeliverable to the Division and therefore it is presumed received.
8. Sarff did not respond timely or at all to Engler's September 10, 2018 inquiry letter and he did not demonstrate reasonable justification for any delay.

¹ 720 ILCS 5/12-4(a)(3)(i) defines Aggravated Battery as causing great bodily harm or permanent disability or disfigurement to an individual whom the person knows to be a peace officer...performing his or her official duties[.] 720 ILCS 5/12-4(h) indicates that, unless otherwise provided, Aggravated Battery as defined in subdivision (a)(3)...is a Class 1 felony. This and all criminal statutory citations are to that version of the Illinois Compiled Statutes in effect at the time of the commission of the crime.

² It is unclear what sentence Sarff received for Assault, but under 720 ILCS 5/12-1(a), Assault is a Class C Misdemeanor punishable by a fine and/or community service.

9. On October 9, 2018, Engler sent another inquiry letter to Sarff via first class mail, postage prepaid, to Sarff's residential address. In his letter, Engler again asked for Sarff for an explanation as to why he failed to disclose his misdemeanor Drug Paraphernalia and Theft charges. Engler stated that "[p]ursuant to 20 CSR 100-4.100, your response was due within twenty days. I will allow you to respond within an additional twenty days. Failure to respond could result in a refusal to issue your MVESC license."
10. The United States Postal Service did not return Engler's October 9, 2018 inquiry letter to the Division as undeliverable and it is presumed received.
11. Sarff did not respond timely or at all to Engler's October 9, 2018 inquiry letter and he did not demonstrate reasonable justification for any delay.
12. It is inferable, and hereby found as fact, that Sarff did not disclose his drug possession and theft convictions to increase his chances at receiving a license.

CONCLUSIONS OF LAW

13. 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 mail. *Hughes v. Estes*, 793 S.W.2d 206, 209 (Mo. App. S.D. 1990).
14. 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.

15. 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;

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

* * *

(5) Been convicted of any felony[.]

16. The Director may refuse to issue an MVESC producer license to Sarff under § 385.209.1(2) because Sarff violated 20 CSR 100-4.100(2)(A), a rule of the Director, in that Sarff failed to respond to two written inquiries from the Division from September 10, 2018, and October 9, 2018 and Sarff failed to demonstrate reasonable justification for any delay.
17. Each violation of 20 CSR 100-4.100(2)(A) constitutes a separate and sufficient ground for the Director to refuse to issue an MVESC producer license to Sarff under § 385.209.1(2).
18. The Director may refuse to issue an MVESC producer license to Sarff under § 385.209.1(3) because Sarff attempted to obtain a license through material misrepresentation or fraud because while he disclosed on his Application his felony aggravated battery conviction and his misdemeanor conviction for assault, *State of Illinois v. Matthew E. Sarff*, Menard Co. Cir. Ct., Case No. 10-CF-3, Sarff failed to disclose his 2008 misdemeanor conviction for theft. *State of Illinois v. Matthew E. Sarff*, Menard Co. Cir. Ct., Case No. 08-CM-42, and his 2011 conviction for possession of drug paraphernalia. *City of Springfield, Illinois v. Matthew Sarff*, Cir. Ct. Sangamon Co., Case No. 2011-CM-000040.
19. The Director may refuse to issue an MVESC producer license to Sarff under § 385.209.1(5) because Sarff has been convicted of a felony: Aggravated Battery, in violation of § 12-3 of Act 5 of Chapter 720, *State of Illinois v. Matthew E. Sarff*, Menard Co. Cir. Ct., Case No. 10-CR-3.
20. The Director has considered Sarff's history and all of the circumstances surrounding Sarff's Application and exercises her discretion to refuse to issue Sarff an MVESC producer license.
21. This Order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license Application of **MATTHEW ERIC SARFF** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 15th DAY OF August, 2019.



Chlora Lindley Myers
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 16th day of August, 2019, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, with signature required, at the following address:

Matthew Eric Sarff
10002 Livingston Ave.
St. Ann, Missouri 63074

No. 1ZE63A294296457809



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