

Before the
Administrative Hearing Commission
State of Missouri



CHARLES S. HAMILTON 3 rd ,)	
)	
Petitioner,)	
)	
vs.)	No. 14-1948 DI
)	
DIRECTOR, DEPARTMENT OF)	
INSURANCE, FINANCIAL INSTITUTIONS)	
AND PROFESSIONAL REGISTRATION,)	
)	
Respondent.)	

ORDER

The Director of Insurance, Financial Institutions and Professional Registration (“the Director”) has cause to deny a motor vehicle extended service contract (“MVESC”) producer license to Charles S. Hamilton 3rd. We grant, in part, the Director’s motion for summary decision.

Procedure

On December 3, 2014, the Director denied Hamilton’s application for an MVESC producer license (“Second Application”). Hamilton filed a complaint with this Commission on December 11, 2014. The Director filed an answer to the complaint on January 8, 2015. The Director filed a motion to amend his answer on March 11, 2015, which we granted. The Director filed a motion for summary decision with attached exhibits, as well as accompanying suggestions in support, on March 13, 2015. Hamilton filed suggestions in opposition to the motion on March 30, 2015. The

Director filed a reply in support of his motion on April 7, 2015. Hamilton filed what he describes as a “letter brief” on April 13, 2015.

Regulation 1 CSR 15-3.446(6)(A) provides that we may decide this case without a hearing if the Director establishes facts that Hamilton does not dispute and entitle the Director to a favorable decision. The parties may establish facts through admissible evidence. 1 CSR 15-3.446(6)(B). In this case, the Director submitted copies of his records, authenticated by an affidavit of the manager and custodian of such records.

Findings of Fact

Hamilton’s Crimes and Convictions

1. On February 27, 1991, Hamilton went to the home of A.R. and his wife, L.R. According to the Court of Appeals’ summary of the ensuing events:

[Hamilton] came up behind L.R. and began to stroke her hair, while making suggestive remarks. L.R. ran to the door and opened it, gesturing for defendant to leave. Defendant slammed the door shut, punched L.R., threatened her and her son and forced her to disrobe. After brandishing scissors, he then committed acts that constituted rape and four counts of sodomies. Before he left, he told her about his use of drugs, his theft of some money, and a plan to kill himself.

State v. Hamilton, 892 S.W.2d 371, 374 (Mo. App. E.D. 1995).

2. On July 24, 1992, Hamilton was convicted in the Circuit Court of St. Louis County of the following offenses:
 - one count of the Class B felony of burglary in the first degree, in violation of § 569.160 RSMo 2000;
 - one count of the Class A felony of kidnapping, in violation of § 565.110 RSMo 2000;
 - four counts of the Class B felony of sodomy, in violation of § 566.060 RSMo Supp. 1990;

- one count of the Class B felony of rape, in violation of § 566.030 RSMo Supp. 1990; and
- seven counts of the unclassified felony of armed criminal action, in violation of § 571.015 RSMo 2000.

Hamilton’s Applications for MVESC Licensure

3. On October 13, 2014, Hamilton filed his first application (“the First Application”) for an MVESC producer license.
4. On May 9, 2014, the Director issued an order refusing to issue Hamilton an MVESC license.
5. Hamilton did not appeal the above-referenced decision of the Director.
6. On August 7, 2014, Hamilton filed the Second Application for an MVESC license.

Conclusions of Law

We have jurisdiction under § 621.045.¹ The Director argues that he was entitled to deny Hamilton’s application under § 385.209.1. That statute states, in relevant part:

The director may ... refuse to issue ... a registration or license under sections 385.200 to 385.220 for any of the following causes, if the applicant ... has:

* * *

(5) Been convicted of any felony; [or]

* * *

(9) Been refused a license or had a license revoked or suspended by a state or federal regulator of service contracts, financial services, investments, credit, insurance, banking, or finance[.]

¹Statutory citations are to the 2013 Cumulative Supplement to the Revised Statutes of Missouri unless otherwise noted.

A. Felony Convictions— Section 385.209.1(5)

The Director argues that he has grounds under § 385.209.1(5) to deny Hamilton an MVESC license due to his felony convictions. Hamilton does not deny the fact of his convictions, but raises several indirect arguments why we should ignore or minimize them.

Effect of § 324.029

First, Hamilton responds that the Director ignored § 324.029, which provides:

Except as otherwise specifically provided by law, no license for any occupation or profession shall be denied solely on the grounds that an applicant has been previously convicted of a felony.

Hamilton further argues that § 324.029 was enacted in 2008, while § 385.209 was enacted in 2007. The Director responds that Hamilton’s argument is factually erroneous, in that § 385.209 was enacted in 2011. The Director is correct. Section 324.029 was enacted by 2008 S.B. 788, which became effective August 27, 2008. Section 385.209 was enacted by 2011 S.B. 132, which became effective January 1, 2012.

While Hamilton does not specifically argue why the dates of enactment are relevant, we (and the Director) believe he is arguing that the later-enacted statute should take precedence over the earlier one. In response to that argument, the Director cites *Parktown Imports, Inc. v. Audi of America, Inc.*, 278 S.W.3d 670, 673 n.2 (Mo. banc 2009), as holding that “a later-enacted statute, which functions in a specific manner, will prevail over an earlier-enacted statute of a general nature.” In response, we note that where two statutory provisions covering the same subject matter are unambiguous standing separately but are in conflict when examined together, we must first attempt to harmonize them and give them both effect. *South Metro. Fire Prot. Dist. v. City of Lee's Summit*, 278 S.W.3d 659, 666 (Mo. banc 2009). Only if harmonization is impossible will a later, more particular statute prevail over an earlier, more general one. *Id.*

In this case, the statutes are easily harmonized because the Director is not alleging, and we are not concluding, that Hamilton's felony convictions are the sole reason for denying him a license. As we show below, because the Director has proved another reason for denying the license, § 324.029 applies here.

Effect of Levinson v. State

Hamilton also cites *Levinson v. State*, 104 S.W.3d 409 (Mo. banc 2003), for the proposition that the Supreme Court has disapproved the use of blanket disqualifications. *Levinson*, however, stands for something far narrower than what Hamilton suggests. In that case, Levinson had been working as a bartender since 1997. In 2000, he was convicted of the federal felony offense of using a false social security number. His probation officer told him that under § 311.060.2(2) and 11 CSR 70-2.140(11), his conviction prevented him from bartending. He filed a declaratory judgment action challenging, among other things, the validity of the regulation. The Supreme Court reversed the circuit court's dismissal of Levinson's case. The Court held that the regulation, which barred felons from working for retail liquor licensees (such as bars) unless they did not directly participate in retail sales of liquor, was invalid because it was inconsistent with § 311.060.2(2).² *Levinson*, 104 S.W.3d at 413.

We believe that the Court's declaration that the regulation was invalid is what Hamilton was referring to as the "disapproval of a blanket disqualification," which the regulation purported to do. However, the Court's holding was not to disapprove blanket disqualifications as Hamilton argues, but to point out that the regulation was inconsistent with the statute because the statute barred denial, suspension, revocation, or otherwise affecting a liquor license *based solely* on conviction of a felony that was unrelated to the manufacture or sale of liquor. The holding in

² Section 311.060.2(2) reads in relevant part: "No license issued under this chapter shall be denied, suspended, revoked or otherwise affected *based solely* on the fact that an employee of the licensee has been convicted of a felony unrelated to the manufacture or sale of intoxicating liquor." (Emphasis added.)

Levinson, therefore, is irrelevant to this one because the Director is not seeking to deny Hamilton a license based solely on his felony convictions. Finally, Hamilton refers to the “factors” in *Levinson* that we should apply here. However, he does not identify what those factors might be, and a close reading of the opinion has not exposed them. Accordingly, Hamilton’s argument – that the Director’s motion for summary decision did not consider the factors set out in *Levinson*, fails.

Effect of § 561.016

Hamilton also argues that the Director’s motion did not consider the factors set out in § 561.016, RSMo 2000. That statute reads:

1. No person shall suffer any legal disqualification or disability because of a finding of guilt or conviction of a crime or the sentence on his conviction, unless the disqualification or disability involves the deprivation of a right or privilege which is
 - (1) Necessarily incident to execution of the sentence of the court; or
 - (2) Provided by the constitution or the code;³ or
 - (3) Provided by a statute other than the code, when the conviction is of a crime defined by such statute; or
 - (4) Provided by the judgment, order or regulation of a court, agency or official exercising a jurisdiction conferred by law, or by the statute defining such jurisdiction, when the commission of the crime or the conviction or the sentence is reasonably related to the competency of the individual to exercise the right or privilege of which he is deprived.
2. Proof of a conviction as relevant evidence upon the trial or determination of any issue, or for the purpose of impeaching the convicted person as a witness, is not a disqualification or disability within the meaning of this chapter.

³ “Code” refers to the Criminal Code, Title XXXVIII, Missouri Revised Statutes, Chapters 556-600 RSMo 2000, 2013 Cum. Supp., and 2014 Noncum. Supp.

We see no “factors” in this statute; rather, subsection 1 sets out four exceptions to the general rule that “[n]o person shall suffer any legal disqualification or disability because of a finding of guilt or conviction of a crime or the sentence on his conviction.”

In response, the Director points us to *State v. Young*, 362 S.W.3d 386 (Mo. banc 2012), which, he argues holds that a person may suffer a legal disqualification or disability under a statute outside the Criminal Code, if the conviction is of a crime defined by the statute. In *Young*, the statute defining the crime was § 115.350, which provides: “No person shall qualify as a candidate for elective public office in the state of Missouri who has been convicted of or found guilty of or pled guilty to a felony under the laws of this state.” Young argued that § 115.350 did not sufficiently define the crime to satisfy § 561.016.1(3), but the Court disagreed, holding that defining the crime as a felony was enough; there was no need to enumerate each specific felony. *Young*, 362 S.W.3d at 395. The Director argues that we should apply *Young*’s analysis to this case and conclude that § 385.209.1(5) provides sufficient notice to applicants for an MVESC license that a felony conviction could result in disqualification. While we do not necessarily agree that notice to applicants is the strictly applicable criterion, we agree that *Young*’s holding is persuasive – just as in *Young*, § 385.209.1(5) sufficiently defines the crime to satisfy § 561.016.1(3) because it defines the crime as a felony.

Accordingly, we conclude that Hamilton’s felony convictions constitute grounds to refuse his application under § 385.209.1(5).

B. The Director’s Prior Refusal of Licensure— Section 385.209.1(9)

The Director also cites § 385.209.1(9) as a ground for denial of licensure because he had denied Hamilton’s First Application for an MVESC license. The Director cites *St. Louis Metro. Towing v. Director of Revenue*, 450 S.W.3d 303 (Mo. App. W.D. 2014), for the proposition that because Hamilton failed to appeal the denial of the First Application, the Second Application is

an impermissible collateral attack on the first one. Hamilton does not disagree with this assertion, but claims that the Director's reliance on *St. Louis Metro. Towing* is misplaced because the facts of that case differ from those of this one, specifically that in *St. Louis Metro. Towing*, the Director of Revenue refused to consider the applicant's second application,⁴ which was substantially similar to its first one. In this case, Hamilton argues, unlike *St. Louis Metro. Towing*, the Director did not refuse the Second Application, but accepted and acted on it before refusing to grant licensure. Also, Hamilton argues, the two cases differ because his two applications sought different things – the first one sought an unrestricted license, while the second sought a consent order allowing licensure.

We agree with Hamilton that *St. Louis Metro. Towing's* facts are different from the facts of this case. However, it does not matter because we think the Director's argument about the Second Application being a collateral attack on the denial of the First Application is unnecessary. Rather, we look to the plain words of the statute: the First Application was refused by the Director, a state regulator of service contracts. That refusal constitutes cause to deny his second application for licensure.

C. Unlawfully Acted as an Insurance Producer
without a License— Section 385.209.1(11)

In his motion to amend his complaint, the Director argued that Hamilton's answers to the Director's interrogatories included an admission that he had sold, offered, negotiated, and solicited motor vehicle extended service contracts after January 1, 2012, and that those admitted acts constituted unlawfully acting as [an insurance] producer without a license. If true, his

⁴ The application was for a salvage dealer license. *St. Louis Metro. Towing*, 450 S.W.3d at 304.

actions would be additional cause for the Director to refuse Hamilton's application for a MVESC license under § 385.209.1(11).⁵

However, the Director's motion for summary decision does not raise this ground for licensure refusal – which is no surprise, since the motion was filed on March 13, 2015, and we did not grant leave to amend the complaint until March 27, 2015. Because the issue was not raised in the motion for summary decision, however, we cannot rule on it here. See *Public School Retirement Sys. of Missouri v. Taveau*, 316 S.W.3d 338, 344-45 (Mo. App. W.D. 2010), citing *Creviston v. Aspen Prods., Inc.*, 168 S.W.3d 700, 707 (Mo. App. S.D. 2005) (court can only grant summary judgment on the basis of party's summary judgment motion). As we set out at the end of this decision, we are asking the Director whether he wishes to proceed to hearing on this ground.

D. Director's Discretion to Issue a License and Hamilton's Argument for a Hearing

The Director points out that under § 385.209.2, he “shall retain discretion in refusing a license or renewal and such discretion shall not transfer to the administrative hearing commission.” He states that he raises this issue partly out of a concern that Hamilton will try to show that, notwithstanding his multiple, violent felonies, he has rehabilitated himself. Whatever the reason for raising it, we acknowledge that we, and the Director, have our statutorily assigned roles in reviewing his decision not to issue an MVESC license. Section 621.120 requires us to hear appeals of the Director's refusal to issue a license, and § 385.209.2 grants him discretion to make the final decision whether to grant or refuse to issue the license.

⁵ Section 385.209.1(11) provides: “The director may suspend, revoke, refuse to issue, or refuse to renew a registration or license under sections 385.200 to 385.220...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...[u]nlawfully acted as a producer without a license.” The reference to January 1, 2012 in the interrogatory probably pertains to the effective date of the statute, January 1, 2012.

In a similar vein, Hamilton argues that we should not grant summary decision to the Director because eliminating the hearing will deprive the Director of the facts needed to make a decision. In support of his argument, however, he makes an erroneous legal argument – that we must determine whether his convictions are *relevant* under § 324.029. Neither that statute nor any other statute applicable to this proceeding makes any requirement that his convictions be relevant to the granting of a MVESC license. Section 385.209.1 states that one of the grounds for refusal to issue a license is a felony conviction, and § 324.029 states that except as specifically provided by law, his license may not be denied solely on the ground of a felony conviction. In this case, the Director has stated, and proved, two grounds for denial of licensure—the felony convictions and his prior refusal to grant Hamilton a license.⁶ Having satisfied the requirements of both statutes, we see no need for further evidence or argument.

Hamilton also contests the Director’s suggestion that § 389.209 is similar to § 590.100, the statute governing appeals from a decision of the Director of the Department of Public Safety to deny a peace officer license. The latter section, Hamilton argues, states that the Director must hold a hearing after this Commission finds cause to deny such a license. By contrast, Hamilton argues, § 385.209 does not mandate the sort of subsequent hearing required by § 590.100. However, in the absence of any other argument (such as § 385.209 denying him due process by failing to offer him a comparable hearing before the Director), the argument is unpersuasive.

E. Hamilton’s Argument that §§ 314.200,⁷ 324.029, and 561.016 are “Couched in the Singular, while [He] was Convicted of 14 Different Offenses”

⁶ Hamilton also argues that a hearing is needed to consider “the impact of the factors set out in [*Levinson v. State*].” We considered that case above, under “Effect of *Levinson v. State*” where, among other things, we noted that we did not find the “factors” to which Hamilton refers in the opinion.

⁷ RSMo 2000. We do not address the effect of § 314.200, RSMo 2000, in this order because it has no effect in this case. Hamilton could have raised his good moral character argument (and adduced any evidence in support) in response to the Director’s motion, but he did not do so.

Hamilton's last argument, made in the "letter brief" he filed on April 13, 2015, is accurately stated in the subheading to this section. He argues that because § 1.030 RSMo 2000 requires statutes with language in the singular to be interpreted as if the plural was also intended, and *vice versa*. His argument is, we believe, made in response to the emphasis the Director places on Hamilton's 14 felony convictions.

Section 1.030 is a rule of statutory construction, nothing more. *See State ex rel. BJC Health Sys. v. Neill*, 121 S.W.3d 528, 530 (Mo. banc 2003). Neither § 324.029 nor § 561.016 need any help construing whether more than one felony renders those statutes more effective than they would be otherwise.⁸ Hamilton mistakes the Director's zealous advocacy (reminding us how many felonies Hamilton committed) for yet another legal argument. Furthermore, the Director did not argue that either statute became ineffective due to Hamilton's multiple convictions. We assure Hamilton that neither statute was applied with any greater weight merely due to his multiple convictions.

Summary

We find cause to deny Hamilton's application for an MVESC license under § 385.209.1(5) and (9). We grant, in part, the Director's motion for summary decision. The Director shall inform us by April 22, 2015, whether he wishes to proceed to hearing on his allegation arising from § 385.209.1(11). If he does not wish to proceed, or if he does not respond by the date set out above, we will cancel the hearing.

SO ORDERED on April 15, 2015.

\s\ Nicole Colbert-Botchway
NICOLE COLBERT-BOTCHWAY
Commissioner

⁸ They do not.