

07-0356
Motor Vehicle Salesperson License
Signed 09/24/2007

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 07-0356</p> <p>Tax Type: Motor Vehicle Salesperson License</p> <p>License No. #####</p> <p>Judge: Chapman</p>
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Presiding:

R. Bruce Johnson, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, from the Motor Vehicle Enforcement
Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 27, 2007. On June 29, 2007, the Commission issued an Order, in which it declined to issue a ruling until a Telephone Status Conference could be held in approximately two months to “receive a progress report from the Petitioner concerning his completion of the Drug Court Program and the expungement of his 2006 felony.” The Telephone Status Conference was held on September 18, 2007. Based upon the testimony and evidence presented at the Formal Hearing and the information received at the Telephone Status Conference, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. On September 21, 2006, the Petitioner filed a Motor Vehicle Salesperson Application

(“application”) with the Motor Vehicle Enforcement Division (“Division”) and was issued license #####.

2. Based on the Petitioner’s past criminal history, the Division suspended his license in a letter dated March 7, 2007. However, the letter provided that the Petitioner’s license would remain in effect during the appeals process. As of the date of the Telephone Status Conference, the Petitioner remains employed as a motor vehicle salesperson at COMPANY A.

3. On his application, the Petitioner certified that in the past ten years, he had been convicted of the following misdemeanors and felonies, a “misdemeanor / possession” and a “plea in abeyance.”

4. The Petitioner’s Utah Criminal History Record, dated March 2, 2007, shows that the Petitioner has pleaded guilty to or been found guilty of the following offenses during the past ten years:

- a) a 1998 Class B misdemeanor for criminal mischief, for which he was fined \$\$\$\$ and placed on 12 months probation;
- b) a 2001 Class A misdemeanor for theft, for which he was fined \$\$\$\$ and placed on 12 months probation;
- c) a 2001 Class A misdemeanor for attempt to commit illegal use or possession of a controlled substance, for which he was fined \$\$\$\$ and placed on 12 months probation; and
- d) a 2006 third degree felony for illegal possession or use of a controlled substance, for which he was fined \$\$\$\$ and placed on 36 months probation.

5. Another copy of the Petitioner’s Utah Criminal History Record, dated September 12, 2007, was requested in anticipation of the Telephone Status Conference in order to compare it to the earlier record received in March 2007. The September 12, 2007 record indicates that the Petitioner had not been arrested or convicted of any additional crimes since the March 2, 2007 date of the earlier record.

6. The “plea in abeyance” to which the Petitioner referred on his application relates to the 2006 felony for illegal possession or use of a controlled substance. Upon pleading guilty to the 2006 offense, the Petitioner was accepted into the Salt Lake County Drug Court Treatment Program (“Drug Court Program”). The Petitioner’s Drug Court Agreement (“Agreement”) provides that his guilty plea will be held in

abeyance and not formally entered as a conviction while he is participating in the Drug Court Program. The Agreement also provides that if the Petitioner successfully completes the Drug Court Program, he will be allowed to withdraw his plea and the felony charge will be dismissed. In addition, he is eligible to file a motion to have the record of his arrest on the charge expunged by the Court. Furthermore, upon completion of the Drug Court Program, the Petitioner will be terminated from probation.

7. At the June 27, 2007 Initial Hearing, the Petitioner stated that he expected to graduate from the Drug Court Program on July 25, 2007. At the Telephone Status Conference, the Petitioner explained that he was unable to meet all deadline requirements in order to graduate in July 2007. He further explained, however, that he is now scheduled to graduate on November 11, 2007. The Petitioner also submits a September 14, 2007 letter from WITNESS 1, his Drug Court Case Manager, in which WITNESS 1 confirms that the Petitioner is a candidate to graduate from the program in November 2007. WITNESS 1 also states in the letter that the Petitioner is “doing an excellent job in the program” and “is ready to graduate from this program.”

8. The Petitioner also referred to the 2001 controlled substance misdemeanor on his application. However, he did not refer to either the 1998 criminal mischief misdemeanor or the 2001 theft misdemeanor. The Petitioner explained that the criminal mischief offense arose because he tore up wedding pictures during a divorce. He also explained that the theft charge arose because he did not repay a \$\$\$\$ loan to his cousin, which became a criminal matter after he failed to receive notice of and attend court dates associated with his cousin’s claim. He testified that he did not include these latter two offenses on the application because he considered the offenses to be minor in comparison to the drug offenses he listed.

9. At the Formal Hearing, the Petitioner submitted an undated letter from WITNESS 2, general sales manager of COMPANY A, who stated that he is “fully aware of [the Petitioner’s] current status

with legal affairs and his diligent efforts to comply with the State of Utah’s requirements for expungement[.]” He also stated that the Petitioner is “demonstrating excellent work ethic, productive sales accomplishments, excellent customer satisfaction, and positive interaction with fellow employees.” He also expressed a desire to retain the Petitioner as an employee.

10. For the Division, RESPONDENT REPRESENTATIVE 2 testified at the Formal Hearing that if the Petitioner graduates from the Drug Court Program and has the 2006 felony conviction expunged from his record, he would grant a license to the Petitioner should the Petitioner submit a new application that only lists the three misdemeanor offenses.

APPLICABLE LAW

Utah Code Ann. §41-3-209 provides, as follows in pertinent part:

- (1) If the administrator finds that an applicant is not qualified to receive a license, a license may not be granted.
- (2) (a) If the administrator finds that there is reasonable cause to deny, suspend, or revoke a license issued under this chapter, the administrator shall deny, suspend, or revoke the license.
- (b) Reasonable cause for denial, suspension, or revocation of a license includes, in relation to the applicant or license holder or any of its partners, officers, or directors:
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 - (vi) making a false statement on any application for a license under this chapter;
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 - (viii) a violation of any state or federal law involving controlled substances;
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 - (x) a violation of any state or federal law involving fraud;
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DISCUSSION

The Division argues that it was required to suspend or revoke the Petitioner’s salesperson license pursuant to Section 41-3-209(2) under any one of the following reasonable causes cited in that statute:

- 1) the Petitioner made a false statement on his salesperson license application for failing to list all

misdemeanors for which he had been convicted in the past ten years (Subsection 209(2)(b)(vi)); 2) the Petitioner committed a violation of a state law involving controlled substances (Subsection 209(2)(b)(viii)); and 3) the Petitioner committed a violation of a state law involving fraud because he was convicted of theft (Subsection 209(2)(b)(x)).

The Petitioner admits that he pleaded guilty to or was found guilty of the felony and the three misdemeanors described on his Criminal History Record. The Commission recognizes that pursuant to the Petitioner's Agreement with Drug Court, his 2006 felony plea will be held in abeyance until he completes the Drug Court Program. In *xxxxxxx v. Motor Vehicle Enforcement Division*, USTC Appeal No. 05-1502 (January 10, 2006), the Commission found that a "guilty plea, though being held in abeyance by the court, is an admission [that the petitioner] violated the law involving controlled substances." As a result, the Commission finds that the Petitioner has committed a *violation* of a state law involving controlled substances. Accordingly, the Commission finds that the Division properly suspended the Petitioner's license in accordance with Section 41-3-209.

Although the Division properly suspended the Petitioner's license, the Petitioner is afforded an opportunity to petition the Commission to reconsider the action. Pursuant to the Petitioner's testimony and the letters he submitted from his Drug Court Case Manager and his supervisor at COMPANY A, the Commission believes that the Petitioner is making reasonable efforts to rehabilitate himself. The Commission also notes that the fines associated with the Petitioner's misdemeanor offenses were relatively small and that the Petitioner was not sentenced to serve time in jail for any of the offenses. In addition, the Commission is not overly concerned that the Petitioner failed to list two of his misdemeanor convictions on his application. These charges seem relatively minor in comparison to the felony charge he disclosed on the application.

In addition, the Petitioner expects to complete the Drug Court Program and to have his felony

violation expunged from his record in the near future. Once these steps are completed, the Commission recognizes that the Petitioner would be entitled to submit a new license application on which he would only need to list his misdemeanor violations, assuming he had no future arrests. The Commission also notes that the Division indicated that under these circumstances, it would approve the Petitioner's new application. Given these specific circumstances, the Commission finds that the Petitioner should be granted his salesperson license.

DECISION AND ORDER

Based on the foregoing, the Commission abates the Division's action and grants the Petitioner his motor vehicle salesperson license. It is so ordered.

DATED this ____ day of _____, 2007.

Kerry R. Chapman
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION:

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this ____ day of _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Appeal No. 07-0356

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 and §63-46b-13 et seq.

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