07-0841
Salesperson License
Signed 08/07/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioners, vs. MOTOR VEHICLE ENFORCEMENT DIVISION, UTAH STATE TAX COMMISSION, Respondent.	**ORDER** Appeal No. 07-0841 Tax Type: Salesperson License Judge: Jensen

Presiding:
Clinton D. Jensen, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER, by telephone
For Respondent: RESPONDENT REPRESENTATIVE, from the Motor Vehicle Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on August 2, 2007 in accordance with Utah Code Ann. §59-1-502.5.

As a threshold issue, the Commission notes that the Petitioner filed the Motor Vehicle Salesperson Application at issue in this case on July 7, 2006. Division mailed its letter to Petitioner providing its notice of suspension on March 7, 2007. Petitioner testified that within 30 days of that letter, he mailed a Petitioner for Redetermination to the Division. Neither the appeals unit nor the Division has record of receiving that Petition. The parties agree that the next action taken on this matter was a July 3, 2007 telephone call from Petitioner inquiring about the status of his appeal. The Division instructed Petitioner to file a Petition immediately and Petitioner did so that same day. The Petition currently on file with the Commission bears this July 3, 2007date and is thus beyond the 30 days for filing an appeal as described in

the March 7, 2007 letter from the Division. Under the facts of this case, however, it is not necessary to decide whether Petitioner filed a timely appeal or not. It appears that Petitioner's July 7, 2006 Motor Vehicle Salesperson Application is for a dealer other than Petitioner's current employer. Thus, Petitioner will have to complete a new Motor Vehicle Salesperson Application to transfer his license under any circumstance. Accordingly, to further the speedy administration of justice in regard to this application, this order will provide a discussion of the facts determined at the initial hearing and a decision that will guide the actions of the parties with regard to Petitioner's current employment and licensure for that employment.

Petitioner filed his Motor Vehicle Salesperson License on July 7, 2006. In response to Question 3 on the application asking, "During the past 10 years, have you been convicted of any state or federal charges?" Petitioner had indicated "yes." Then in the space provided where it said, "If yes, please explain," Petitioner made the following disclosures:

> 7-24-96 - Uttering false RX CITY 1 UT F-3
> 7-25-96 - Uttering false RX CITY 2, UT F-3
> 12-7-99 - DUI CITY 3 Class B. Misd.
> 12-9-99 – DUI, Possession controlled sub. Class B CITY 2
> 3-30-00 – Uttering false RX CITY 1 F-3
> 5-5-00 – Uttering false RX CITY 4 F-3
> 2001 – CITY 5 wrongful App [copy partially obscured]
> 10-18-02 – Theft CITY 5 UT, DUI CITY 6 UT F-3 Class B
> 11-9-04 – DUI CITY 1 Att Burg F-3 Class B

In response to this July 7, 2006 application, the Division issued a license to Petitioner. The Division then completed a criminal background check for Petitioner and suspended Petitioner's license. Although the results of the criminal background check were not that different from Petitioner's disclosures in his application, the Division's investigation made clearer the relationship between drug problems and Petitioner's criminal history.

At hearing, Petitioner acknowledges both the extent of his criminal record as well as the nature of his convictions as offenses that would prevent him from obtaining a motor vehicle salesperson license. Petitioner testified that all of his convictions came as a result of drug related behaviors that he has now overcome. At the initial hearing in this matter, the Petitioner testified that he had a severe and longstanding addiction to prescription pain medications and did not gain control of his addiction until he was sentenced to jail in January 2005. During his time in jail, Petitioner held employment through work release. Although sentenced for one year, Petitioner obtained full release in late August 2005. He successfully completed his probation for the January 2005 sentencing and was released from probation in or near May 2007. In that time, he completed a drug treatment program at the (X). Although he is not required to do so, Petitioner continues to receive aftercare with the (X). This aftercare includes random urinary analysis. Petitioner takes steps to make sure that his doctors never prescribe any kind of narcotic pain medication and is an active speaker for the at least one organization providing care and treatment for drug addictions. He has built a support network through his church and indicates that his activity there is a crucial step in avoiding past problems and those associated with those problems. Petitioner testified that he has made full disclosure of his criminal past to his employers.

APPLICABLE LAW

(2)(a) If the administrator finds that there is a 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 . . . (vii) a violation of any state or federal law involving motor vehicles; (viii) a violation of any state or federal law involving controlled substances; . . . (x) violation of any state or federal law involving fraud; . . . . (Utah Code Ann. § 41-3-209(2).).

DECISION AND ORDER

Upon review of the file, the Commission notes that the Petitioner is not on parole, probation, or any other type of continuing court supervision. The Petitioner has been successful in avoiding drug problems and has built a positive support network. On the basis of these factors, the Commission directs Petitioner to make application with the Division for a Motor Vehicle Salesperson license listing his current employer. The Commission directs the Division to issue a license on the basis of that application and to perform a criminal background check at the next renewal of that license as would be done for a new license. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2007.

_____
Clinton D. Jensen
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

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