

12-1317
TAX TYPE: SALESPERSON LICENSE
TAX YEAR: 2012
DATE SIGNED: 9-11-2012
COMMISSIONERS: B. JOHNSON, M. JOHNSON, D. DIXON
EXCUSED: M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, v. MOTOR VEHICLE ENFORCEMENT DIVISION, UTAH STATE TAX COMMISSION, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</p> <p>Appeal No. 12-1317</p> <p>Tax Type: Salesperson License</p> <p>Judge: Jensen</p>
--	---

Presiding:

R. Bruce Johnson, Commission Chair
Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, Applicant, appearing by telephone
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Utah Attorney General
RESPONDENT, Assistant Director, Motor Vehicle Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on July 11, 2012. On the basis of the evidence and testimony presented at the hearing, the Tax Commission makes its:

FINDINGS OF FACT

1. The above-named Petitioner (the "Applicant") is appealing an action by the Motor Vehicle Enforcement Division (the "Division") to suspend his Motor Vehicle Salesperson license.
2. The Applicant had filled out an application for a Motor Vehicle Salesperson License, which he signed and dated on February 8, 2012 ("Application").
3. Question number two of the application asks if the Applicant has "been charged with, found in violation of, or convicted of any misdemeanors or felonies in Utah or any other state," in the past ten years. There are boxes where the applicant would check "Yes" or "No". The Applicant checked the "No" box. The

Application form goes on to state, "Failure to disclose any of the requested information may result in suspension of this license. A charge, violation of or criminal conviction for a motor vehicle or drug related crime, fraud or registered sex offense can be grounds for denial, suspension or revocation." Question number three asks, "Are you currently on probation or parole?" The Applicant had checked "No" in answer to this question as well.

4. The Division issued the license to Applicant on the basis of the information that the Applicant provided on the Application, including the "No" answer in regards to criminal convictions. Later, when the Division received the results of the Applicant's criminal background check, the Division determined that there had been convictions and issued a letter, dated April 26, 2012, suspending the license.

5. The Applicant timely appealed the Division's decision to suspend the license and the matter proceeded to the Formal Hearing.

6. The Applicant's Criminal History Record shows one criminal incident which had resulted in one conviction, a MISDEMEANOR. The date of the arrest was listed as August 25, 2011, and the disposition date of the conviction November 1, 2011. It also provides that the Applicant was sentenced to ##### months of probation.

7. The Applicant testified that he had been arrested and convicted of this charge because he was in a hurry and had gotten on the commuter train without first purchasing a ticket. He stated that purchasing the ticket would have been only \$\$\$\$\$. In addition to the probation, he had been sentenced with a fine in the amount of \$\$\$\$\$ and he states that he had been making payments towards the fine, but got behind on the payments and ended up being arrested on a warrant. He states that he has now paid the fine and has been released from probation.

8. The applicant testified that he did not list this conviction because it was such a small thing that he did not think it needed to be disclosed.

8. After the hearing, the Applicant supplied court documents to the Commission indicating that he had paid his fine and received a release from probation on June 4, 2012.

APPLICABLE LAW

(2)(b) 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. (c) Reasonable cause for

denial, suspension, or revocation of a license includes . . . making a false statement on any application [or] a violation of any state or federal law involving fraud. Utah Code Sec. 41-3-209(2).

CONCLUSIONS OF LAW

1. The Division properly suspended the Applicant’s salesperson license. The Applicant was convicted of a MISDEMEANOR charge and sentenced to ##### months probation in November 2011. In February 2012 he filled out an application form deliberately checking that he had “No” misdemeanors or felonies and representing that he was not on probation.

2. The imposing probation on the Applicant has now released the Applicant from that probation. While the Applicant still has a criminal conviction on his record, he is no longer on court supervision. The Commission recognizes the ending of probation and gives deference to the criminal court’s decision to end probation.

3. While the ending of the Applicant’s probation would otherwise support an exercise of discretion in granting a salesperson license, there remains the issue of a false statement on an application. Utah law, not the discretion of the applicant, governs criminal charges that need to be disclosed on a salesperson application. The Application itself makes this clear. Notwithstanding this clarity, the Applicant failed to disclose a criminal charge and his probation status regarding that criminal charge. On the basis of the Applicant’s false statement, there is good cause to sustain the Division’s suspension but to shorten it to ##### days.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

On the basis of the forgoing, the Commission suspends the Applicant’s Motor Vehicle Sales Person for a period of ##### days. That suspension shall commence ##### days following the issuance of this order and continue for ##### calendar days thereafter. It is so ordered.

DATED this _____ day of _____, 2012.

Appeal No. 12-1317

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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 Sec. 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 Sec. 59-1-601 et seq. and Sec. 63-46b-13 et seq.