

12-1343
TAX TYPE: SALESPERSON LICENSE
TAX YEAR: 2012
DATE SIGNED: 6-7-2012
COMMISSIONERS: B. JOHNSON, M. JOHNSON, M. CRAGUN
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, v. MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>INITIAL HEARING ORDER Appeal No. 12-1343 Tax Type: Salesperson License Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT, Assistant Director, Motor Vehicle Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on June 5, 2012, for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioner (“Applicant”) is appealing the action of Respondent (“Division”) to suspend the Applicant’s license to sell motor vehicles. The Division had notified the Applicant of this action by letter dated April 18, 2012. Based on the letter the suspension was to begin effective May 18, 2012 and was for an indefinite period of time.

APPLICABLE LAW

Utah Code §41-3-201(7) provides the following restriction on the issuance of salesperson licensees as follows:

A person who has been convicted of any law relating to motor vehicle commerce or motor vehicle fraud may not be issued a license unless full restitution regarding those convictions has been made.

Additional provisions regarding the denial, suspension, and revocation of a salesperson license are governed by Utah Code §41-3-209(2), as follows in relevant part:

- (b) If the administrator finds that there is reasonable cause to deny, suspend, or revoke a license under this chapter, the administrator shall deny, suspend, or revoke the license.
- (c) 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:
 - (vi) making a false statement on any application of a license under this chapter or for special license plates;
 - (vii) a violation of any state or federal law involving motor vehicles;
 - (viii) a violation of any state or federal law involving controlled substances;
 - (ix) charges filed with any county attorney, district attorney, or U.S. attorney in any court of competent jurisdiction for a violation of any state or federal law involving motor vehicles;
 - (x) a violation of any state or federal law involving fraud; or
 - (xi) a violation of any state or federal law involving a registerable sex offense under Section 77-27-21.5; or
 - (xii) having had a license issued under this chapter revoked within five years from the date of application.

DISCUSSION

In this matter Petitioner had been licensed and working as a motor vehicle salesperson for more than one year and before that as a motor vehicle dealer. He explained that toward the end of 2010 his dealership was in serious financial trouble. His flooring lines tightened their lending and he was not able to acquire new cars. As he sold off the inventory, the amount went to the creditors. He stated that he was aware in September 2010 of a criminal investigation by Division being started on the business. When the business closed there was a debt of approximately \$\$\$\$ that he was unable to pay to one auto auction. After closing his business, he started working as a salesperson for other dealerships, of which he is not an owner.

Petitioner indicated that even though he had a bond in place, the bonding company would not pay the auto auction and it was his understanding that they did not pay on the bond unless there were criminal charges. It was his contention that because the auto action was unpaid, criminal charges were filed against him and he was arrested in June 2011. Eventually the case resulted in convictions on 2 counts of Misdemeanor A –Attempted Communications fraud. These were under Utah Code 76-10-1801. Petitioner was sentenced to 60 days home confinement and five years probation. He was also ordered to pay some \$\$\$\$ in restitution. Petitioner has been making payments of \$\$\$\$ per month towards the restitution.

Petitioner explained that his career is motor vehicle sales and if he could no longer sell cars he would be unable to repay the restitution. He stated that his current employer, NAME OF

DEALERSHIP of CITY, wanted him to continue working for them as a salesperson. Petitioner also alleged that criminal charges had been used in a manner to collect the debt he owed to the auto action and asserted that this was improper and in violation of federal bankruptcy provisions. However, he did not cite to any particular statute or legal precedent in support of this position.

It was the representative for the Division's contention that the Division was aware of the charges, but once Petitioner was convicted, the Division was required to suspend Petitioner's license under Utah Code §41-3-201(7). Utah Code §41-3-201(7) provides that "a person who has been convicted of any law relating to motor vehicle commerce or motor vehicle fraud may not be issued a license unless full restitution regarding those convictions has been made." Based on this provision it was the Division's position that the license could not be issued to Petitioner until the restitution has been paid. The Division's representative also pointed to the provisions at Utah Code §41-3-209 which mandates that a license "shall" be denied, revoked, or suspended for reasonable cause, and identifies as "reasonable cause" a violation of any state or federal law involving fraud.

Under the provisions Utah Code §41-3-209 the Division's action to suspend the license was appropriate because the Petitioner has had two recent misdemeanor fraud convictions. Technically, the provisions of Utah Code §41-3-201(7) would not bar the license. Although the actions taken by Petitioner for which the crimes were charged did involve motor vehicle commerce, Utah Code §41-3-201(7) would bar a salesperson who has been convicted of any law relating to motor vehicle commerce or motor vehicle fraud. The law under which Petitioner was convicted was Utah Code 76-10-1801 and related to communication fraud.

In determining whether a license should be suspended or denied under Utah Code §41-3-209 the Commission may consider factors such as the passage of time since the most recent conviction, the payment of restitution, and whether the applicant has been released from probation or parole. In this matter these factors weigh against Petitioner because the convictions were recent, he is still on probation and has not yet paid restitution. Generally, the Commission has allowed a license once the applicant is released from parole or probation for individuals who have been convicted of the crimes identified in Utah Code §41-3-209, although in some circumstances they may allow it before release from probation.

Petitioner had made some assertions that the charges against him may have been improper debt collection processes but provided no statutes or legal precedence to support this position. This issue before the Tax Commission in this case is limited to whether the Division's action to suspend the license was appropriate. The Division's actions comply with statutory provisions at Utah Code §41-3-209.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing the Commission sustains the Division's action in this matter. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. If either party requests a Formal Hearing this decision and order is stayed until the Commission issues its formal decision. However, this Decision and Order will become the Final Decision and Order of the Commission unless either party to this case files a written request within thirty (30) days of the date of this decision to proceed to a formal decision. Such 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 _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner