

05-1502
SALES PERSON LICENSE
TAX YEAR: 2005
SIGNED 01-01-2006
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, P. DEPAULIS, M. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
Petitioner,)	
)	Appeal No. 05-1502
v.)	
)	Tax Type: Sales Person License
MOTOR VEHICLE ENFORCEMENT)	
DIVISION OF THE UTAH STATE TAX)	Tax Year: 2005
COMMISSION,)	
)	Judge: Robinson
Respondent.)	

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, *pro se*, via telephone
For Respondent: RESPONDENT REP., Assistant Director, MVED

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. 59-1-502.5, on November 15, 2005. Petitioner is challenging the Respondent's denial of his application for a license to sell motor vehicles.

On September 29, 2005, Petitioner applied for a motor vehicle salesperson license. His application listed four convictions. He listed a felony conviction for possession or use of a controlled substance, a misdemeanor conviction for possession of drug paraphernalia, a class A misdemeanor conviction for larceny, and a class B misdemeanor for selling liquor. Respondent denied Petitioner's application. Petitioner appealed that denial on October 14, 2005.

Respondent submitted information from the 2nd District Court. The court record shows that on October 4, 2005, Petitioner entered a guilty plea to a third degree felony charge of illegal possession or use of a controlled substance, in violation of §58-37-8 (2)(a)(i). The court is holding that plea in abeyance for thirty-six months. Petitioner is on probation. The conditions of his probation are no new violations of law, complete all the requirements of drug court, pay all fees associated with drug court, and submit to a DNA test and pay the associated fee. The record also shows class B misdemeanor charge of use or possession of drug paraphernalia was dismissed. As of November 15, 2005, the court record shows Petitioner in compliance with the conditions of his probation.

APPLICABLE LAW

Utah Code Ann. §41-3-209 states, in pertinent part

••••
(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:

••••
(viii) a violation of any state or federal law involving controlled substances;

DISCUSSION

Salzl v. Dept. of Workforce Services, 2005 UT App 399; 2005 Utah App. LEXIS 382, provides guidance on whether a plea in abeyance establishes a violation. In Salzl, the Petitioner, Pat Salzl, employed by the Utah State Developmental Center, was charged with abuse of a vulnerable adult, a class C misdemeanor, and attempted witness tampering, a class A misdemeanor. The abuse charge was based on allegations she used an improper technique to move a non-compliant disabled adult across new carpet. The tampering charge was based on allegations she called the USDC medical director and asked him to “make a statement on the record that it was medically necessary to

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drag the patient, as this would stop the police investigation.” She pled no contest to both charges and the court held the pleas in abeyance. She was later allowed to withdraw her pleas and have the criminal charges dismissed. At issue in Salzl was whether, under the circumstances summarized above, Ms. Salzl was eligible for unemployment benefits.

§35A-4-405 (2)(b) was the statutory language at issue. It states,

For the week in which the claimant was discharged for dishonesty constituting a crime or any felony or class A misdemeanor in connection with the claimant's work as shown by the facts, together with the claimant's admission, or as shown by the claimant's conviction of that crime in a court of competent jurisdiction and for the 51 next following weeks.

The Salzl court said,

Finally, Petitioner argues that Respondent unreasonably concluded that the class A misdemeanor was "admitted or established by a conviction in a court of law," Utah Admin. Code R994-405-210(1)(c), because a plea in abeyance that ultimately results in a dismissal does not constitute an admission to or a conviction of a crime. We disagree, and conclude that entering into a plea in abeyance for a class A misdemeanor constitutes an admission, if not a conviction, to that crime for the purposes of section 35A-4-405(2)(b).

Utah Code Ann. §41-3-209(2)(b)(viii) states that violations of the law involving controlled substances constitute reasonable cause for suspending a license. Petitioner is currently on probation to the court for a controlled substance violation. The question is whether Petitioner's guilty plea establishes a violation of the law constituting reasonable cause for suspending his license.

The Commission finds Petitioner's guilty plea, though being held in abeyance by the court, is an admission Petitioner violated the law involving controlled substances. His plea establishes a violation and constitutes reasonable cause to deny his application for a license to sell motor vehicles. Petitioner may reapply on successful completion of his probation and dismissal of the criminal case.

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Based on the foregoing, the Commission sustains the Administrator's decision to deny Petitioner's application for a license to sell motor vehicles. 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 _____, 2006.

R. Spencer Robinson
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 _____, 2006.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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