

06-1188
Motor Vehicle Salesperson License
Signed 02/22/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Petitioner,)	AND FINAL DECISION
)	
v.)	Appeal No. 06-1188
)	
MOTOR VEHICLE ENFORCEMENT)	Tax Type: Motor Vehicle
DIVISION OF THE UTAH STATE TAX)	Salesperson License
COMMISSION,)	
)	Judge: Robinson
Respondent.)	

Presiding:
 R. Spencer Robinson, Administrative Law Judge

Appearances:
 For Petitioner: PETITIONER, *pro se*
 For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
 RESPONDENT REPRESENTATIVE 2, Director, Motor Vehicle
 Enforcement Division

STATEMENT OF THE CASE

Pursuant to Title 63, Chapter 46b of the Utah Code, this matter came before the Utah State Tax Commission for a Formal Hearing on February 5, 2007. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing Respondent's decision to revoke his Motor Vehicle Salesperson license.
2. Petitioner's Motor Vehicle Salesperson Application was dated February 23, 2006. On the application form Petitioner check the "Yes" box in response to question number three, asking whether he had been convicted of any misdemeanors or felonies during the past ten years.

3. Petitioner listed a conviction for possession of marijuana in response to question number three. He also listed a year. It is not clear whether that year is 1994 or 1997. He did not list any other convictions.

4. Petitioner said the Controller of the dealership hiring him advised him he did not need to list all of his convictions. He said he disclosed his entire criminal history to the dealer. At the hearing, he acknowledged reading and understanding question number three before he responded to it. He signed it immediately below this statement on the form. "I do solemnly swear (or affirm) that the statements contained in the foregoing application are true and correct." His signature was notarized.

5. Respondent, unable to determine whether the conviction Petitioner listed in response to question three was older than ten years, gave Petitioner the benefit of the doubt and granted him a license to sell motor vehicles.

6. Respondent's criminal history contains several convictions. The first conviction is for possession of a controlled substance with intent to distribute, a third degree felony. This conviction was entered, based on a guilty plea, on June 12, 1995. The second conviction is for also for possession of a controlled substance with intent to distribute, a third degree felony. Petitioner pled guilty to this charge on July 28, 1999.

7. Petitioner pled guilty to possession of drug paraphernalia, a Class B misdemeanor on November 12, 2003.

8. On August 9, 2005, Petitioner pled guilty to larceny, a Class B misdemeanor, and fraud, a Class B misdemeanor.

9. Petitioner pled guilty to theft, a Class B misdemeanor, on May 24, 2006.

10. Petitioner's criminal history shows he is no longer under probation or parole supervision.

11. Petitioner's license to sell motor vehicles has been revoked since October 25, 2006, by the Initial Hearing Order sustaining the decision of the Administrator to suspend Petitioner's license, and converting the suspension to a revocation.

12. Petitioner stated he has the support of his employer, and offered a letter of support from his employer. A letter from his sales manager said Petitioner had been completely honest about his criminal history. Petitioner has been successful selling cars. He has been commended by customers in telephone surveys, as reflected by records kept by his employer in the ordinary course of business.

APPLICABLE LAW

Utah Code Sec. 41-3-209 Administrator's findings - Suspension and revocation of license.

(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 . . . (vi) making a false statement on any application for a license under this chapter or for special license plates; . . . (viii) a violation of any state or federal law involving controlled substances;. . . (x) a violation of any state or federal law involving fraud;. . .

CONCLUSIONS OF LAW

Respondent acted in accordance with the law when it suspended Petitioner's motor vehicle sales license. Petitioner has a two felony convictions involving controlled substances. One is within the past ten years. He also has misdemeanor convictions involving drug paraphernalia. In addition, Petitioner has two misdemeanor theft convictions, and one misdemeanor fraud conviction. Moreover, Petitioner falsified his application by failing to list multiple convictions. The administrator had no option but to act as he did.

DECISION AND ORDER

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The Commission finds that Petitioner has now served the sentence stemming from the convictions and is no longer under supervision. He has been successful selling vehicles, and has the support of his employer.

The Commission also finds Petitioner falsified his application. Falsification of application is one of the statutory grounds for denial. It makes no difference, assuming he did so, whether the controller at the dealership instructed Petitioner he was not required to list all of his convictions. Petitioner completed the application wherein he solemnly swore the statements made were true and correct. His omissions made his response to question three false.

Petitioner stands convicted of two drug related felonies, one of which is within the past ten years. Drug related convictions are cited in the statute as a basis for denial. In addition to the drug related felonies, Petitioner has also been convicted of possession of drug paraphernalia. In 2005, Petitioner pled guilty to fraud. Offenses involving fraud are a basis for denial, suspension or revocation.

Either the falsification, or the convictions, standing alone, support revocation of Petitioner's license. Based on the foregoing, the Tax Commission sustains the revocation of Petitioner's Motor Vehicle Salesperson license. It is so ordered.

DATED this ____ day of _____, 2007.

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 _____, 2007.

Pam Hendrickson

R. Bruce Johnson

Appeal No. 06-1188

Commission Chair

Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
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 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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