

06-1399
SALES PERSON LICENSE
SIGNED: 06-29-2007
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, M. JOHNSON, D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Petitioner,)	AND FINAL DECISION
)	
v.)	Appeal No. 06-1399
)	
MOTOR VEHICLE ENFORCEMENT)	Tax Type: Motor Vehicle
DIVISION OF THE UTAH STATE TAX)	Sales Person License
COMMISSION,)	
)	
Respondent.)	Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESONDENT REP. 1, Assistant Attorney General

 RESONDENT REP. 2, Assistant Director, Motor Vehicle Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 27, 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 suspend her motor vehicle salesperson license. Respondent's letter suspending the license was issued on October 19, 2006. The letter stated that the license would be suspended effective November 18, 2006.

2. Petitioner had submitted a Motor Vehicle Salesperson Application on June 29, 2006.

On the application form Petitioner disclosed that she had been convicted of a felony forgery and other forgery and theft charges. Respondent had a temporary employee working at the division counter at that time. The temporary employee issued the license to Petitioner without further review. Petitioner then began working as a motor vehicle salesperson for DEALERSHIP. She determined that she liked the work and was good at it, earning salesperson of the month and other awards.

3. It was not until after Petitioner began selling motor vehicles that Respondent received Petitioner's criminal background check and Petitioner's convictions were brought to Respondent's attention in a manner that they were acted on by Respondent. Respondent then suspended the license about five months after it had been issued because Petitioner had the prior convictions relating to fraud and theft charges.

4. Petitioner was clearly not a life-long criminal offender. Her criminal issues all occurred within a two-year period. Petitioner's criminal history began with arrests in May 2004, which resulted in two misdemeanor theft convictions and a felony fraud conviction. Then later that same year Petitioner was convicted of felony forgery charges from which she was sentenced to probation. In May and December 2005 Petitioner was arrested again on drug and larceny charges. For the 2005 incidents the charges were either dismissed or she entered a plea in abeyance, for which she was sent into the Salt Lake County Drug Court program. She also ended up spending a couple months in jail.

5. Petitioner explained that all the convictions really related to a drug addiction and she acknowledged that both the jail time and the Drug Court helped her get clean. She stated that spending the time in jail helped separate her from the drug long enough to recognize that she had a problem and make the decision that she wanted to change. She successfully graduated from the Salt Lake County Drug Court Program in MONTH 2006 and at that time the plea in abeyance convictions were all withdrawn and dismissed

by the court. While in Drug Court, Petitioner was subject to frequent random drug testing. The drug testing averaged about 3 times per week. Petitioner provided the test results which all indicated no drug use. Petitioner also had to complete a twelve-step drug recovery program and community service. After graduating from the drug court program, Petitioner remained on probation from the other conviction, but successfully completed probation on DATE.

6. After the time that Petitioner's license was suspended and during the pendency of the appeal process, Petitioner continued to work at DEALERSHIP. However, she has not worked as a salesperson since being notified about the suspension. She understood that she could have done so, but the business had offered her a different position. Petitioner felt that having the job had been very important to her recovery and in getting her life back to where she wanted it to be. She did want to be able to sell motor vehicles. She also provided letters of support from her managers and supervisors at the motor vehicle dealership.

APPLICABLE LAW

Utah Code Ann. §41-3-209, provides in part as follows:

(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 . . .

(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) a violation of any state or federal law involving fraud;

* * *

(3) If the administrator finds that the license holder has been convicted by a court of competent jurisdiction of violating any of the provisions of this chapter or any rules made by the administrator, or finds other reasonable cause, the administrator may, by complying with the emergency procedures of Title 63, Chapter 46b, Administrative Procedures Act:

(a) suspend the license on terms and for a period of time he finds reasonable, or

(b) revoke the license.

CONCLUSIONS OF LAW

1. At the time Respondent issued its letter suspending Petitioner's license, the suspension was appropriate under Utah Code Sec. 41-3-209. Petitioner at that time was still in the Drug Court system and on probation. She had numerous theft and fraud related convictions.

2. However, following the time that the suspension was issued there are different factors that need to be considered. Petitioner has now been successfully released from Drug Court and the convictions for incidents that occurred in 2005 have been withdrawn and dismissed by the Court. Although a plea in abeyance is treated by this Commission as an admission of a violation, once the charge that was the subject of the plea has been withdrawn and dismissed by the court system, the Tax Commission no longer considers the incident to be a "violation" within the meaning of Utah Code Sec. 41-3-209(2)(b).

3. In regards to the theft and felony forgery charges stemming from incidents that occurred in 2004, these were serious offenses. However, Petitioner has now served her sentence and the Court has released her from probation. The Tax Commission generally gives deference to the criminal court system in making the determination to release someone from probation and concludes on that basis, and the other facts indicated, it is appropriate to reinstate Petitioner's license to sell a motor vehicle at this time.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission orders the Division to reinstate Petitioner's motor vehicle salesperson license effective as of the date of this order. It is so ordered.

DATED this ____ day of _____, 2007.

Appeal No. 06-1399

Jane Phan
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

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 63-46b-13 et seq.

JKP/06-1399.fof.doc