

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, v. MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 07-0376</p> <p>Tax Type: Salesperson License Tax Year: 2007</p> <p>Judge: Marshall</p>
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Presiding:

Pam Hendrickson, Commission Chair
Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Esq.
PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, Assistant Director of
MVED

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for Formal Hearing on April 15, 2008. The Applicant is appealing the Commission's Order from the Initial Hearing in this matter upholding the suspension of his salesperson license to sell motor vehicles. Based on the testimony and evidence presented at the Formal Hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. On November 15, 2006, the Applicant submitted a Motor Vehicle Salesperson Application to the Motor Vehicle Enforcement Division ("MVED") to renew his license. (Exhibit R-1).
2. Question number three of the application asks, "During the past 10 years, have you been convicted of any misdemeanors or felonies in Utah or any other state?" Applicant checked the "Yes" box, and in the space provided, wrote, "Felony DUI."
3. Applicant was granted a salesperson license, and resumed working for COMPANY.

4. Applicant's Utah Criminal History Report (Exhibit R-2) was subsequently obtained and showed the following convictions in the last 10 years:

<u>DATE</u>	<u>CONVICTION</u>
1/15/2002	DUI Reduced to Alcohol/Drug Related Reckless (Class B Misdemeanor)
8/6/2002	DUI (Class B Misdemeanor)
10/30/2002	DUI (Third Degree Felony)
10/30/2002	DUI (Third Degree Felony)
11/18/2005	Illegal Possession/Use of Controlled Substance (Class B Misdemeanor)
1/9/2006	Distribution of Dangerous Drugs (Third Degree Felony)

5. Based on the number and nature of the convictions, and on Applicant's failure to disclose his criminal history on the application, MVED issued a letter dated March 7, 2007 suspending Applicant's salesperson license. (Exhibit R-3).
6. At the Formal Hearing, Applicant testified that he did not intentionally mislead MVED by failing to disclose all of his convictions. Applicant stated that the form was confusing, that he believed the illegal possession and distribution of dangerous drug charges were dismissed as part of a plea bargain related to a parole violation for the 2002 DUI convictions and that he did not understand the difference between a traffic misdemeanor and a traffic infraction.
7. The Applicant submitted letters from WITNESS 1 and WITNESS 2 (Exhibits P-1 and P-5), two of the parole officer's involved in the Applicant's supervision since his release from prison. Both letters note that the Applicant has undergone substance abuse treatment, including therapy and classes; and that the Applicant has met his parole requirements without incident.
8. The Applicant provided a letter from WITNESS 3, a licensed clinical social worker from the Veteran's Administration outpatient clinic in CITY (Exhibit P-2). WITNESS 3 states that she has worked with the Applicant for months, that he completed a residential stay for substance abuse several years ago, and that the Applicant remains motivated to make changes in his life and continue working his recovery plan.
9. A letter was also submitted from WITNESS 4, a licensed substance abuse counselor with the (X) on behalf of the Applicant. WITNESS 4 states that the Applicant has established himself as a role model to other clients, that he has participated in the

- program since November of 2006, has no unexcused absences, and no positive urinalysis and breathalyzer tests. (Exhibit P-3).
10. Applicant's employer, is aware of Applicant's criminal past, and WITNESS 5, the President of COMPANY, submitted a letter on Applicant's behalf that states that Applicant "a valuable employee of my dealership." (Exhibit P-4). Further, the Applicant has been employed at the dealership for the last four years, and while the Applicant was incarcerated, the dealership held his position open for him.
 11. At the time of the hearing, the Applicant remained on parole for his most recent conviction. At the hearing, the Applicant represented that his parole officer had submitted a request for release from parole and that the Board of Pardons and Parole should be making its decision within two weeks. On April 25, 2008, the Commission received a copy of a letter from the Board of Pardons and Parole stating that the Applicant's parole would be terminated on April 29, 2008.
 12. For the division, RESPONDENT REPRESENTATIVE 2 testified at the Formal Hearing that MVED is required by Utah Code Ann. §41-3-209 to suspend Applicant's license because of the nature of the Applicant's convictions and his failure to fully disclose his criminal history. The undisclosed convictions included an additional driving under the influence of alcohol/drugs, alcohol related reckless driving, distribution of dangerous drugs, and illegal possession/use of a controlled substance.
 13. The Division argued that under Utah Code Ann. §41-3-209 the Applicant's DUI and alcohol related reckless convictions are violations involving motor vehicles, the possession/use of a controlled substance, and the failure to disclose his criminal history all constitute "reasonable cause" that would warrant the suspension of the Applicant's salesperson license.

APPLICABLE LAW

The denial, suspension, and revocation of a salesperson license are governed by Utah Code Ann. §41-3-209 as follows:

- (1) If the administrator finds that an applicant is not qualified to receive a license, a license may not be granted.
- (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:

- (vi) making a false statement on any application for 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;
- (x) a violation of any state or federal law involving fraud...

Utah Code Ann. §41-3-209 (2007).

CONCLUSIONS OF LAW

The Petitioner failed to disclose all of his prior convictions, which facilitated the Division issuing a license to him when the Division may not have done so, had all the convictions been disclosed.¹ It is the Commission's position that an applicant is required to disclose all felonies and misdemeanors for which the applicant was convicted within the past 10 years. The Applicant testified that he believed the illegal possession and distribution of dangerous drug charges were dismissed as part of a plea bargain related to a parole violation for the 2002 DUI convictions and that because he did not understand the difference between a traffic misdemeanor and a traffic infraction he did not disclose the alcohol related reckless charges. The Applicant's employer was aware of the Applicant's criminal history, and even held his job open while the Applicant served his prison sentence. For these reasons, the Commission does not find that the Applicant intentionally omitted his criminal history from his application.

The Division had reasonable cause to suspend the Applicant's salesperson license under Utah Code Ann. §41-3-209. The Applicant has been convicted of crimes that involve motor vehicles, violations of state law involving controlled substances, and failed to fully disclose his criminal history on the salesperson application, all of which constitute "reasonable cause" for the suspension of a salesperson license. Although the Division had reasonable cause to suspend the Applicant's license, the Commission may

¹ Utah Code Sec. 76-8-504(2) provides that it is a class B misdemeanor to make any written false statement, which one does not believe to be true, or knowingly create a false impression in a written application, with the intent to deceive a public servant in the performance of his or her official function.

consider other factors, such as the passage of time since the most recent conviction, the payment of restitution, and termination of probation or parole. It has been approximately one and one-half years since the Applicant's most recent conviction. In the past, the Commission has used clearing parole or probation as a general guideline to allow salesperson licenses to individuals who have been convicted of the crimes identified in Utah Code Ann. §41-3-209. The Applicant was released from parole on April 29, 2008. For these reasons, the Commission finds that the Applicant should be granted a salesperson license.

DECISION AND ORDER

Based on the foregoing the Commission abates the actions of the Division and grants the Applicant a salesperson license. It is so ordered.

DATED this _____ day of _____, 2008.

Jan Marshall
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 _____, 2008.

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 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.