

07-0582

MOTOR VEHICLE - SALESPERSON LICENSE

SIGNED: 01-14-2007

COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, M. JOHNSON, D. DIXON

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p> Petitioner,</p> <p>v.</p> <p>MOTOR VEHICLE ENFORCEMENT DIVISION, UTAH STATE TAX COMMISSION,</p> <p> Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</p> <p>Appeal No. 07-0582</p> <p>Tax Type: Salesperson License</p> <p>Judge: Phan</p>
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Presiding:

Marc Johnson, Commissioner

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REP. 1, Assistant Attorney General

RESPONDENT REP. 3, Assistant Director, Motor Vehicle Enforcement
Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on November 1, 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 his Motor Vehicle Sales Person license, license no. #####.

2. Petitioner had filled out a Motor Vehicle Salesperson Application for a license which he signed and dated on February 14, 2007 ("Application"). A representative for the prospective employer also

signed the Application form on February 14, 2007. The Application was stamped as received by the Division on March 1, 2007.

3. Question 3 of the Application asks, "During the past 10 years, have you been convicted of any misdemeanors or felonies in Utah or any other state?" There are boxes where the applicant would check "Yes" or "No". Petitioner checked the "No" box. The Application form goes on to state, "Failure to disclose any of the requested information may result in suspension of this license. A criminal conviction for a motor vehicle or drug related crime, fraud or registerable sex offense can be grounds for denial."

4. The Division issued the license to Petitioner based on the information that he had provided on the Application, including the "No" answer in regards to criminal convictions. Later, when the Division received the results of Petitioner's criminal background check, the Division determined that there had been convictions and issued a letter, dated May 2, 2007, suspending the license.

5. Petitioner timely appealed the Division's decision to suspend the license and the matter proceeded to the Formal Hearing.

6. Petitioner had been convicted of drug related, fraud related and other charges in the past ten years. His criminal history report indicated the following convictions:

July 19, 2000	Misdemeanor-Contributing to the Delinq. of a Minor (4/16/00 Arrest)
July 19, 2000	Misdemeanor-Dangerous Drugs
January 13, 2003	Misdemeanor-False Information to Police Officer
February 2, 2003	Felony-Dangerous Drugs
August 18, 2003	Misdemeanor-Contributing to the Delinq. of a Minor. (12/20/02 Arrest)
May 17, 2005	Felony-Forgery-6 Counts
May 17, 2005	Felony-Fraud-Illeg use of Credit Cards
May 17, 2005	Felony -Larceny

7. From the criminal history report Petitioner had been on felony probation from October 2003 through May 2004 and was then discharged. A second period of felony probation began on September

20, 2004, and Petitioner was still on probation when he submitted the Application. Petitioner's probation was successfully terminated on June 12, 2007. Petitioner's last arrest date was May 2005.

8. Petitioner testified that he had a drug problem, and he had committed the fraud, forgery and larceny crimes to obtain money for drugs. After the most recent convictions the judge had sentenced Petitioner into a drug rehabilitation program. Petitioner testified that through this he was able to change his life. It was the testimony at the hearing that he had been drug free for several years. He was subject to random drug testing throughout probation and more recently by his employer.

9. Petitioner testified that when he interviewed for employment with the dealership, he felt they would not hire him if he disclosed his criminal history. For this reason, he checked "No" on the Application in regards to prior criminal convictions. A representative for the dealership is required to review and sign the application. The dealership did offer Petitioner the job as salesperson and he began working. It was several months before the Division received the criminal background information and issued a letter suspending the license based on the results. Petitioner testified that when the license was suspended he explained his criminal history to his employer, and the employer had decided Petitioner could continue the employment, with the extra requirement of random drug testing. He said his employer was supportive of his continuing as a salesperson, but would not submit a letter indicating such support, due to liability concerns. A representative for the employer did not attend the hearing to testify in Petitioner's behalf, nor was there anything in writing to indicate that the employer was aware of the extent of Petitioner's criminal history.

10. Petitioner asked that he be allowed to keep his license as he had put the drug addiction behind him and was now a different person. He felt motor vehicles sales was a good career for him and was a way for him to support himself and family. Petitioner's mother and grandmother testified on his behalf, that he had been able to stay off drugs for several years.

APPLICABLE LAW

(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; (vii) a violation of any state or federal law involving motor vehicles; (viii) a violation of any state or federal law regarding 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. . . (Utah Code Sec. 41-3-209(2)).

CONCLUSIONS OF LAW

1. Petitioner had several drug and fraud related convictions during the past ten years and certainly suspension of the license was appropriate. At the time he submitted his Application, Petitioner was still on probation for the latest offenses. Petitioner has now successfully completed probation and it has been more than two years since his last arrest date. If these factors were the only consideration the Commission may have determined it would be appropriate to reinstate the license at this time. The Commission generally gives some deference to the criminal justice system's determination to release someone from parole or probation. However, these factors are not the only consideration.

2. Petitioner intentionally misrepresented his criminal history on the Application for the purposes of misleading his prospective employer into hiring him. It also facilitated the Division issuing a license to him when the Division may not have done so, had the convictions been disclosed.¹ The Utah

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.

Appeal No. 07-0582

Legislature has specifically provided that such an intentional misrepresentation is grounds for revoking a license under Utah Code Sec. 41-3-209. Petitioner represents that his employer now knows of his history and is supportive, but there was no affirmative statement from the employer at the hearing. On the basis of the intentionally false application the Commission revokes Petitioner's current licenses under Sec. 41-3-209.

DECISION AND ORDER

Based upon the forgoing Petitioner's Motor Vehicle Sales Person License is hereby revoked.

It is so ordered.

DATED this ____ day of _____, 2007.

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 Sec. 63-46b-13 et seq.

Appeal No. 07-0582

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