

07-0659
Salesperson License
Signed 09/13/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioners, vs. MOTOR VEHICLE ENFORCEMENT DIVISION, UTAH STATE TAX COMMISSION, Respondent.	ORDER Appeal No. 07-0659 Tax Type: Salesperson License Judge: Jensen
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Presiding:

Clinton D. Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
 WITNESS

For Respondent: RESPONDENT REPRESENTATIVE, from the Motor Vehicle Enforcement
 Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on June 28, 2007 in accordance with Utah Code Ann. §59-1-502.5. Petitioner is seeking reinstatement of his motor vehicle salesperson license following its suspension by the Division.

On December 14, 2006, Petitioner submitted an application form for a motor vehicle salesperson license. On the form for the motor vehicle salesperson license, Question 3 asks, "During the past 10 years, have you been convicted of any state or federal charges?" Petitioner had indicated "no." In the space indicating, "If yes, please explain," Petitioner listed nothing.

In accordance with normal procedure, the Division made an investigation into Petitioner's background. This investigation included a review of Petitioner's criminal history, which disclosed the following criminal convictions:

September 17, 2003	ALCOHOL RELATED RECKLESS MISDEMEANOR – B
December 6, 2004	DUI/ALCOHOL OR DRUGS MISDEMEANOR – B

November 15, 2006	THEFT LARCENY, FELONY – THIRD DEGREE
November 15, 2006	THEFT LARCENY, FELONY – THIRD DEGREE
November 15, 2006	THEFT LARCENY, MISDEMEANOR – A

At the hearing for this matter, Petitioner explained that the first two charges relate to the same arrest. Petitioner explained that the original DUI charge was resolved by his pleading guilty to a charge of alcohol related reckless driving. Petitioner indicated that the last three charges relate to a single arrest for helping a friend to sell stolen furniture. As for his failure to disclose these charges, Petitioner indicated that at the time he filled out his application, he thought that his alcohol related reckless driving charge was a traffic offense that he did not have to disclose. He indicated that at the time, he did not understand the legal significance of an infraction compared to the misdemeanor to which he plead guilty. As for the theft charges, Petitioner indicated that his convictions for this arrest did not come until February 2007 and thus were not convictions in December 2006 when he submitted his application to the Division.

Petitioner indicated that he was now making good progress toward paying approximately \$\$\$\$ in restitution and completing the terms of his probation. He anticipated completion of his probation in January 2008.

WITNESS from Petitioner's employer testified on Petitioner's behalf. WITNESS indicated that Petitioner had been outstanding as an employee. He was never late for work, often worked on his day off, and was not one to make excuses. In response to questions at the hearing, WITNESS indicated that he could not say that Petitioner disclosed his criminal history when applying for a job.

Because the evidence presented at hearing was in conflict as to the date of Petitioner's theft convictions, the Administrative Law Judge ordered the Division to supply further detail regarding the date of convictions for the theft charges. The Judge likewise ordered Petitioner to supply a copy of his employment application and provided the opportunity to supply any information that would support his statements regarding the timing of his criminal convictions.

After the hearing, the Division supplied a docket sheet from the Second District Court in CITY, Utah dealing with Petitioner's theft arrest. The Second District Court's docket indicated that the prosecutor in the case had originally charged Petitioner with eight counts of theft. Three were felony counts and five were misdemeanors. The court issued search warrants on May 20, 2006. Following several continuances and the

issuance of a bench warrant for failure to appear, Petitioner appeared with counsel on November 15, 2006 and plead guilty to three of the eight counts of theft. The court dismissed the other five and set sentencing for January 10, 2007. At sentencing, the court imposed prison sentences for the two felony counts and a jail sentence for the remaining misdemeanor count but suspended these sentences and imposed a 3-year probation. The court set a restitution hearing for February, which was postponed several times. When the court held the restitution hearing on May 30, 2007, it imposed restitution of \$\$\$\$.

Petitioner submitted documentation from the (X) Court in support of his testimony at hearing that his DUI had been dismissed upon his guilty plea for alcohol related reckless driving. That record is ambiguous in that it lists both a DUI reduced to alcohol related reckless and a guilty plea to a DUI. The date for both guilty pleas is listed as September 17, 2003.

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 involving controlled substances [or] (x) violation of any state or federal law involving fraud. (Utah Code Ann. § 41-3-209(2)).

DECISION AND ORDER

Upon review of the file, the Commission notes that Petitioner has been convicted of crimes that would require denial or suspension of his license to sell motor vehicles. Even if the Commission disregards his DUI conviction, any one of the remaining four convictions would be grounds for license denial. Petitioner made a false statement on his application for a salesperson's license when he indicated that he had not been convicted of any misdemeanors or felonies in Utah or any other state when, in fact, he had. He compounded that misrepresentation when in hearing he claimed that the dates of his theft convictions were in February 2007 when those convictions actually took place on November 15 2006. Petitioner is still under court supervision for his theft convictions. According to Petitioner's testimony, his probation will last until January 2008. If the probation lasts for the full time for which it was imposed, it will last until January 2010. On the basis of these factors, the Commission finds that the Petitioner has not presented evidence that would persuade the

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Commission to exercise its discretion to grant Petitioner a motor vehicle salesperson license in spite of his criminal history.

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 _____, 2007.

Clinton D. Jensen
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

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