

07-0739

MOTOR VEHICLE SALESPERSON'S LICENSE

SIGNED: 06-23-2008

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

EXCUSED: R. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. MOTOR VEHICLE ENFORCEMENT DIVISION, UTAH STATE TAX COMMISSION, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION Appeal No. 07-0739 Tax Type: Motor Vehicle Salesperson's License Judge: Chapman
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Presiding:

D'Arcy Dixon Pignanelli, Commissioner

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REP. 1, Assistant Attorney General
 RESPONDENT REP. 2, from MVED

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on December 5, 2007. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The Petitioner is appealing Motor Vehicle Enforcement Division's ("Division") decision to suspend his motor vehicle salesperson's license, which is identified as License No. #####.
2. The Petitioner submitted an application to receive a motor vehicle salesperson's license ("application") on December 22, 2006 (Division's Exhibit 1).

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 may check either “Yes” or “No” and a space where the applicant is required to list all misdemeanor and felony convictions within the past 10 years. The Petitioner checked the “No” box and failed to list any convictions in the space provided. The application 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 the Petitioner based on the information that he had provided on the application, including the “No” answer concerning criminal convictions. Later, the Division received the results of the Petitioner’s criminal background check and discovered that the Petitioner had been convicted of crimes during the past 10 years, including a third degree felony involving the unauthorized use of a motor vehicle. Because of this conviction and because the Petitioner failed to disclose the felony on his application, the Division suspended the Petitioner’s license in a letter dated May 8, 2007 (Division’s Exhibit 3).

5. The Petitioner timely appealed the Division’s decision to suspend his license. Because the Petitioner failed to attend the Initial Hearing, the matter proceeded to the Formal Hearing.

6. The Petitioner’s Criminal History Report dated November 30, 2007 (Division’s Exhibit 2”) shows that the Petitioner has been convicted of the following crimes within the past 10 years:

04/25/03	Misdemeanor - Bail Jump
05/07/04	3 rd Degree Felony - Unauthorized Use of Vehicle (Joyriding)

The report shows the felony offense for unauthorized use of a vehicle listed several times for different dates from 2004 through 2007. The Petitioner explains that he has only been charged with and convicted of one count involving the unauthorized use of a motor vehicle.

7. The Petitioner testifies that he did not intentionally omit his convictions from his application. He states that he neglected to provide the information because he filled the application out in a hurry at a time when he was busy.

8. The Petitioner explains that prior to his 2003 arrest for the unauthorized use of the motor vehicle, he worked for a DEALERSHIP. Around this time, his son was involved in an accident that resulted in personal financial problems. The Petitioner states that the general sales manager at the DEALERSHIP loaned him a demonstration vehicle to drive, even though the Petitioner had taken leave from his position at the dealership. The Petitioner states that when the dealership discovered the vehicle was missing, it reported it stolen, the general sales manager denied that he had loaned the vehicle to the Petitioner, and the Petitioner was arrested. Based on the advice of a public defender, the Petitioner pleaded guilty to the third degree felony and was placed on three years' probation

9. The Petitioner also testified that after his conviction for the felony, the DEALERSHIP group determined that he was not at fault and hired him to be its Internet Director in August 2006. However, as of the date of the Formal Hearing, the Petitioner no longer works for the DEALERSHIP group or in the motor vehicle industry.

10. The Petitioner states that his probation should be terminated by March 2008, after he pays off the remaining \$\$\$\$\$\$ in fines and costs that he owes (out of the \$\$\$\$\$\$ in total fines and costs he owed). The Petitioner also stated that once his probation is terminated, he has been told that his felony conviction will be reduced to a misdemeanor.

11. The Petitioner asks the Commission to grant him the license so that he will have it if he decides to work in the motor vehicle industry in the future.

APPLICABLE LAW

1. Utah Code Ann. §41-3-209 provides statutory guidance concerning the issuance of motor vehicle salesperson's licenses, as follows in pertinent part:

- (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 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;

CONCLUSIONS OF LAW

1. The Commission finds that the Division had reasonable cause to suspend the Petitioner's license. Section 41-3-209(2)(b)(vi) provides that making a false statement on an application for a license is reasonable cause to suspend or revoke a license. The Petitioner failed to disclose his felony conviction for unauthorized use of a motor vehicle on the application. Although the Petitioner claims that the omission was a mistake, the Commission finds that the omission is, at the very least, negligent. Accordingly, the Commission finds that the Petitioner made a false statement on his application.

Furthermore, Section 41-3-209(2)(b)(vii) provides that a violation of a law involving motor vehicles is reasonable cause to suspend or revoke a license. The Petitioner's felony conviction involves a motor vehicle. For these reasons, the Division had reasonable cause to suspend the Petitioner's license.

2. Although the Division had reasonable cause to suspend the Petitioner's license, the Commission may consider all circumstances before deciding whether to grant or revoke a license. It is the Commission's general policy not to issue a license to a person still on probation. Furthermore, the Commission is concerned about issuing a license to an applicant who makes a false statement on an

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application, even if the statement is due to negligence. For these reasons, the Commission declines to grant the Petitioner a license at this time. Once the Petitioner's probation is terminated, the Petitioner may submit a new application for consideration.

DECISION AND ORDER

Based upon the forgoing, the Commission revokes the Petitioner's motor vehicle salesperson's license. Once the Petitioner's probation is terminated, he may reapply for a license, at which time a decision will be made based on the circumstances present at that time. It is so ordered.

DATED this ____ day of _____, 2007.

Kerry R. Chapman
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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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 et seq. and §63-46b-13 et seq.

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