

07-0807
Motor Vehicle Dealer Violation
Signed 11/05/2007

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>ORDER</p> <p>Appeal No. 07-0807</p> <p>Tax Type: Motor Vehicle Dealer Violation</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Owner, PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Director, MVED
RESPONDENT REPRESENTATIVE 2, Officer, MVED

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5, on July 12, 2007. The matter is before the Commission on Petitioner's appeal of a \$\$\$\$ penalty imposed by Respondent ("MVED") for displaying for sale a vehicle from an unlicensed location.

APPLICABLE LAW

Utah Code Ann. §41-3-105(4)(c)(iv) provides that an application for a motor vehicle dealer's license must include "a complete description of the principal place of business, including . . . any other places of business operated and maintained by the applicant in conjunction with the principal place of business[.]"

UCA §41-3-201(4) provides that "[a] supplemental license shall be secured by a dealer

... for each additional place of business maintained by him.”

UCA §41-3-210 prohibits a motor vehicle dealer from conducting certain acts, as follows in pertinent part:

- (1) The holder of any license issued under this chapter may not:
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 - n) sell, display for sale, or offer for sale motor vehicles at any location other than the principal place of business or additional places of business licensed under this chapter; this provision is construed to prevent dealers, salespersons, or any other representative of a dealership from selling, displaying, or offering motor vehicles for sale from their homes or other unlicensed locations;
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A penalty is imposed for a civil violation of the Utah Motor Vehicle Business Regulation Act in accordance with UCA §41-3-702, as follows in pertinent part:

- (1) The following are civil violations under this chapter and are in addition to criminal violations under this chapter:
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 - (c) Level III:
 - (iv) selling from an unlicensed location;
- (2) (a) The schedule of civil penalties for violations of Subsection (1) is:
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 - (i) Level III: \$250 for the first offense, \$1,000 for the second offense, and \$5,000 for the third and subsequent offenses.
 - (b) When determining under this section if an offense is a second or subsequent offense, only prior offenses committed within the 12 months prior to the commission of the current offense may be considered.
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DISCUSSION

On June 6, 2007, MVED imposed the \$\$\$\$ penalty after determining that Petitioner was displaying for sale a Dodge Durango at ADDRESS in CITY, which was not the dealership’s principal place of business. When the vehicle was discovered at the location by an MVED Investigator, written in large letters on the front, back and side windows of the vehicle were the sale price and telephone number. The vehicle was parked near and facing HIGHWAY where it would be visible to the passing traffic. The MVED Investigator

who spotted the vehicle took photographs of the vehicle which clearly indicate the position and location of the vehicle next to the highway and that it was being offered for sale. In addition the vehicle was parked a long way from a manufactured or modular home retail location, considering the empty parking lot, and as close to the highway as possible. The Case Report indicates that Investigator (X) had called the number on the vehicle and had spoken with PETITIONER REPRESENTATIVE. The report indicated that PETITIONER REPRESENTATIVE stated he had placed the vehicle there to sell with the consent of his brother who owned the manufactured home business. This was not a licensed location for Petitioner.

MVED determined that the \$\$\$\$ penalty was appropriate under Section 41-3-702 because the offense of selling from an unlicensed location is a Level III violation and because it was Petitioner's first offense.

Petitioner's representative did not contend that the dealership was not licensed to sell vehicles at that location on HIGHWAY or that the vehicle was parked there. Instead at the hearing, and in contradiction to the Case Report, he indicates that he had driven the vehicle to that location, which was the parking lot for the manufactured home business, because he was dining in a nearby restaurant. Petitioner did not provide a witness or other support for this position. With his appeal form it had been Petitioner's written representation that he had parked there because he was at the manufactured or modular home business inquiring about purchasing a home.

It was the Division's position that the manner in which the vehicle was parked, away from the business, across an empty parking lot and next to the highway constituted offering the vehicle for sale at an unlicensed location. The Division indicated that even if a salesperson were driving a vehicle for personal use and went, for example, to the grocery store, if the vehicle was parked away from the other vehicles, near the road to obviously be more visible than it would be a violation, but if the vehicle was parked in amongst the

other cars it would appear that it was just parked there while the driver was in the store and would not be considered as being offered for sale at that location.

In this matter the inconsistency of the later explanations on the part of the Petitioner, give credence to the Case Report and the original statement made by the Petitioner to the investigator, that Petitioner had placed the vehicle there to sell, with the consent of the owner of the business. For this reason the Commission sustains the Division's imposition of a penalty. However, the Commission instructs the Division that it disagrees with the Division's interpretation of the law to some extent in this matter, as the Commission would not give such significant weight in the determination on the manner in which a vehicle is parked, in and of itself, whether it was parked amongst the other vehicles, or at the edge of the parking lot.

DECISION AND ORDER

Based on the foregoing, the Commission sustains MVED's imposition of the \$\$\$\$ penalty at issue. Accordingly, the Petitioner's appeal is denied. It is so ordered.

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.

Jane Phan
Administrative Law Judge

Appeal No. 07-0807

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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