

BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,  Petitioner,  v.  MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b></p> <p>Appeal No. 07-1275</p> <p>Tax Type: Salesperson License Tax Year: 2007</p> <p>Judge: Marshall</p>
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**Presiding:**

Jan Marshall, Administrative Law Judge

STATEMENT OF THE CASE

This matter was scheduled for Formal Hearing before the Utah State Tax Commission on July 2, 2008. The parties jointly requested that in lieu of hearing, the Commission issue a decision based on the documentation previously submitted. Based on the documentation in the file, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. In October of 2007, the Applicant submitted a Motor Vehicle Salesperson Application (“application”) to the Motor Vehicle Enforcement Division (“Division”).
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?” the Applicant checked box indicating “Yes”, and in the space provided, wrote the following:
  - 2 Felony Counts (Possession or use of a C/S Felony)
  - 1 – NCIC Code 3599 – Dangerous Drugs – Felony 3<sup>rd</sup> Degree
  - 2 – NCIC Code 3599 – Dangerous Drugs – Felony 3<sup>rd</sup> Degree
3. The Applicant’s Criminal History Report was obtained by the Division on October 17, 2007, and identifies the following violations:

DATE

CONVICTION

11/16/05

Falsely obtaining/dispensing prescription (3<sup>rd</sup> Degree Felony)

11/16/05

Falsely obtaining/dispensing prescription (3<sup>rd</sup> Degree Felony)

4. Based on the nature of the convictions, the Division issued a letter dated October 24, 2007 denying the Applicant's application for a salesperson license.
5. At the Initial Hearing on November 8, 2007, the Applicant testified that he was in an automobile accident in 2004 and became addicted to prescription pain medication. He indicated that he was arrested on November 14, 2005 and pled in abeyance to one count that would be dismissed pending successful treatment. He went into an outpatient treatment program where there was one weekly drug test and one weekly group meeting. He stated that he was still struggling with addiction and asked to be transferred into the ( X ) Drug Court program, which he started on June 6, 2006. The Drug Court program provided more extensive treatment with four random drug tests weekly, four classes per week, and a court appearance. As a way to get into drug court, the Applicant plead guilty to the second felony count stemming from the original arrest in November 2005. The applicant indicated that when he graduated from Drug Court, that one of the felonies would be dismissed, and the other reduced to a Class A Misdemeanor.
6. An Interim Order dated November 13, 2007 was issued on the Initial Hearing. The Commission ordered the Division to issue a salesperson license to the Applicant, and the Commission would hold the denial of the license in abeyance for a period of sixty days. At which time, the Commission would reconvene the hearing to determine if the Applicant had successfully completed the Drug Court program, and then issue a final decision.
7. The Commission reconvened on January 17, 2008 to determine whether the Applicant had successfully completed Drug Court. The Applicant failed to appear at the January 17, 2008 hearing, and an Order of Default was issued on February 1, 2008 that denied the Applicant's salesperson license. The Order of Default provided, "[t]his decision does not limit Petitioner's right to a Formal Hearing. However, this Order will become final unless any part to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing."
8. A timely "Request for Formal Hearing" was received by the Commission on February 21, 2008.
9. In anticipation of the upcoming Formal Hearing, the Commission requested an updated copy of the Applicant's Criminal History Report. The Applicant's Criminal History Report dated June 13, 2008 reflects only the two November 2005 dangerous drug convictions.

10. This matter was scheduled for a Formal Hearing on June 17, 2008. At that hearing, the Division requested the matter be continued, explaining that the Applicant had a hearing scheduled for June 24, 2008 with the ( X ) Drug Court. The Commission granted the Continuance.
11. The Commission was provided a copy of the Minutes from the Applicant's Drug Court Graduation on June 27, 2008. The minutes indicate that the Applicant had successfully completed the program, and that all fees had been paid. Further, the State made a motion to reduce the charge to a Class A Misdemeanor, which was granted by the Court.
12. On June 30, 2008 a telephone conference was held with the parties, where they requested that a decision be made based on the documentation in the file and the Minutes from the Applicant's Drug Court Graduation.

APPLICABLE LAW

The denial, suspension, and revocation of a salesperson license are governed by Utah Code Ann. §41-3-209(2) as follows:

- (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:
  - (i) lack of a principal place of business;
  - (ii) lack of a sales tax license required under Title 59, Chapter 12, Sales and use Tax Act;
  - (iii) lack of a bond in effect as required by this chapter;
  - (iv) current revocation or suspension of a dealer, dismantler, auction, or salesperson license issued in another state;
  - (v) nonpayment of required fees;
  - (vi) making a false statement on any application of 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;
- (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 Ann. §41-3-209 (2007).

#### CONCLUSIONS OF LAW

- A. The Applicant did not file a motion to set aside the Default that was entered February 1, 2008. However, the Order of Default included language that allowed the Applicant to request a Formal Hearing. As the Applicant did request a Formal Hearing in a timely manner, under the circumstance, the Commission will consider that to also be a request to set aside the Order of Default. The Commission sets aside the February 1, 2008 Default.
- B. The Commission finds that the Motor Vehicle Enforcement Division had reasonable cause to deny the Applicant a salesperson license. Utah Code Ann. §41-3-209 provides that a violation of state or federal law involving controlled substances constitutes “reasonable cause” for the denial, suspension, or revocation of a salesperson license. The Applicant had been convicted of a 3<sup>rd</sup> degree felony involving a controlled substance, and entered a plea in abeyance for a crime involving a controlled substance.
- C. Although the Division had reasonable cause to deny the Applicant’s salesperson license application, the Commission may consider other factors. The Applicant had only one arrest on his criminal history report, with two charges. He plead guilty to one charge, and entered a plea in abeyance on the other. The Applicant has successfully completed Drug Court, and the 3<sup>rd</sup> degree felony conviction has been reduced to a misdemeanor. The Applicant testified at the Initial Hearing that he requested to be transferred into the Drug Court Program to receive more extensive treatment for his addiction. As the Applicant has successfully completed Drug Court,

and there are no subsequent violations on his criminal history, the Commission finds that there is good cause to grant the applicant his salesperson license.

DECISION AND ORDER

Based on the foregoing the Commission grants the Applicant his 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.

*JM/07-1275.fof*