

07-1383  
SALESPERSON LICENSE  
SIGNED: 12-10-2007  
COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON  
ABSENT: P. HENDRICKSON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,      Petitioner,  v.  MOTOR VEHICLE ENFORCEMENT DIVISION, UTAH STATE TAX COMMISSION,      Respondent.</p>	<p><b>ORDER</b></p> <p>Appeal No. 07-1383</p> <p>Tax Type: Salesperson License</p> <p>Judge: Phan</p>
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**Presiding:**  
Jane Phan, Administrative Law Judge

**Appearances:**  
For Petitioner: PETITIONER  
For Respondent: RESPONDENT REP. 1, Investigator, Motor Vehicle Enforcement Division  
RESPONDENT REP. 2, Investigator, Motor Vehicle Enforcement Division

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 December 6, 2007. Petitioner is appealing the denial of his application for motor vehicle salesperson licenses. The license was suspended by letter from the Division dated November 15, 2007. The Division suspended the license based on Petitioner's criminal convictions in the past ten 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)).

A person who has been convicted of any law relating to motor vehicle commerce or motor vehicle fraud may not be issued a license unless full restitution regarding those convictions has been made. (Utah Code Sec. 41-3-201(5).)

#### DISCUSSION

Petitioner had filled out an application for Motor Vehicle Salesperson License and submitted it to the Division on August 22, 2007. Question 3 on that form asks if the applicant had any felony or misdemeanor convictions during the past 10 years. Petitioner had checked “yes” and listed “Please see attachment” on the form. The attachment explained that he had five misdemeanor convictions for failing to provide title or paying for extended warranties and also provided Petitioner’s explanation regarding these convictions. Despite the attachment listing convictions the license was issued. However, after further review, on October 31, 2007, the Division asked that Petitioner resubmit a new application and list the convictions on the application form. Petitioner did so. The Division subsequently made the determination that the license should be suspended, issuing notice of the suspension by letter dated November 15, 2007.

At the hearing the Division explained that there were two grounds for suspension of the license. Utah Code Sec. 41-3-209 indicates that a violation of any state or federal law involving motor vehicles

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is cause for suspension or revocation; and Sec. 41-3-201(5) which provides that a license may not be issued to someone convicted of any law relating to motor vehicle commerce or motor vehicle fraud unless full restitution regarding those convictions has been made.

Petitioner explained that he was a partner and general manager in the business DEALERSHIP, which was located in CITY. After a few good years the business failed. Petitioner attributed this in part to other partners taking money from the business to pay other interests. As it became apparent to Petitioner that the business was unable to deliver titles for vehicles it had sold, Petitioner voluntarily came forward to Division employees to let them know what was going on and to determine the best way to proceed. Based on these discussions Petitioner made the decision to voluntarily close the business. Titles were not delivered and Petitioner was eventually charged in the matter. On August 13, 2007, he plead guilty and was convicted of five Class A Misdemeanor charges of Failure to Deliver Title. He was sentenced to eighteen months of court probation and ordered to pay \$\$\$\$\$ in restitution.

Petitioner has started making payments of \$\$\$\$\$ per month in restitution but at this rate it will be several years before the \$\$\$\$\$ is paid in full. He also points out that he has been in the motor vehicle profession for over twenty years and it is the only profession he knows. He indicated that working as a motor vehicle salesperson was the only way for him to earn enough money to pay the court ordered restitution and support his family.

Upon review of the facts in the matter, the Commission notes that this event regarding failure to deliver titles is the only incident on Petitioner's Criminal History Record. Furthermore, Petitioner is not asking for a dealer license, but is instead requesting a salesperson license. Based on his limited criminal history, the Commission would generally concluded that he presented little risk to the public working as a motor vehicle salesperson. However, regardless of lack of risk, or any other factor or circumstance, Utah Code

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Sec. 41-3-201(5) prohibits Petitioner from obtaining a license until he has paid the restitution. That section does not give the Commission the discretion to consider whether there is reasonable cause to allow or deny a license when restitution is unpaid. Until restitution is paid, the Division may not issue a license to Petitioner regardless of circumstances.

DECISION AND ORDER

Based upon the forgoing, Petitioner's motor vehicle salesperson license is hereby revoked. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file 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.

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Jane Phan  
Administrative Law Judge

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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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