

07-1633
Motor Vehicle
Signed 04/14/2008

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, v. MOTOR VEHICLE ENFORCEMENT DIVISION, UTAH STATE TAX COMMISSION, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</p> <p>Appeal No. 07-1633</p> <p>Tax Type: Salesperson License</p> <p>Judge: Jensen</p>
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Presiding:

D'Arcy Dixon Pignanelli, Commissioner
Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, Assistant Director, Motor Vehicle
Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 31, 2008. On the basis of the evidence and testimony presented at the hearing, the Tax Commission makes its:

FINDINGS OF FACT

1. Petitioner is appealing Respondent's decision to suspend his Motor Vehicle Salesperson license, license no. #####.

2. Petitioner had filled out a license for Motor Vehicle Salesperson Application, which he signed and dated on June 27, 2007 ("Application"). A representative for the prospective employer also signed the Application form on June 27, 2007. The Application was stamped as received by the Division on July 16, 2007.

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 would check “Yes” or “No”. Petitioner checked the “Yes” box. In the space below indicating, “If yes, please list each conviction,” Petitioner wrote, “Tampering with a witness (1998) Theft (1998).”

4. The Division did not immediately recognize the convictions listed on the Application as convictions that would necessarily preclude the granting of a license. The Division noted that the convictions were almost at the end of the 10-year period for which the Application requested criminal convictions. On the basis of the information contained in the Application, the Division issued a license to Petitioner. Later, when the Division received the results of Petitioner’s criminal background check, the Division determined that there had been convictions requiring license suspension. Accordingly, it issued a letter, dated May 2, 2007, suspending the license.

5. Petitioner timely appealed the Division’s decision to suspend the license and the matter proceeded to the Formal Hearing.

6. The criminal history report indicated that Petitioner had been convicted of felony theft and felony burglary in February 2000. Additionally, he had a federal witness tampering conviction in July 1998 and had been in prison on that charge from July 12, 1998 to December 18, 2006.

7. Petitioner testified that the felony burglary and felony theft convictions in 2000 arose from a single incident in 1998. The burglary charge came from breaking and entering into a sporting goods store and the theft charge came from removing property from that store. Petitioner indicated that he misunderstood the difference between incident date and conviction date and that he did not mean to mislead when he used 1998 rather than 2000 for these convictions. The 1998 date was accurate for the federal witness tampering conviction. The burglary and theft convictions in 2000 and the witness tampering conviction in 1998 all relate to drug use in and before 1998. Petitioner testified that an associate of his had a federal drug case pending in 1998 and that Petitioner took it upon himself to shoot a witness who was going to testify in that drug case.

8. Petitioner testified that he has not had any drug use since 1998. He is paying restitution on the witness tampering charge, but this will take many years because the total restitution is over \$\$\$\$\$. The restitution is a large amount because it includes medical costs for the shooting victim.

9. Petitioner is currently on federal probation on the witness tampering charge. This was a three-year probation that began with Petitioner’s release from a halfway house in June 2007. It is unlikely that federal authorities will release Petitioner from probation before 2010 because early release from probation generally requires full payment of restitution. Petitioner testified that he will not have his restitution paid before the end

of his three-year probation period.

10. Petitioner asked that he be allowed to keep his license as he had put the drug addiction behind him and was now a different person. He felt motor vehicles sales was a good career for him and was a way for him to support himself. Petitioner's family provides support for his efforts to remain drug-free and to function in work and social settings.

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).).

CONCLUSIONS OF LAW

1. Suspension of Petitioner's license was appropriate on the basis of his criminal convictions during the past ten years and his probation status at the time that he completed his Application.

2. Although Petitioner may not have intended to misrepresent his criminal history on the Application for the purposes of misleading the Division, his criminal history was not true and accurate. This had the effect of causing the Division to issue a license to him when the Division likely would not have done so if the convictions had been more accurately disclosed.

3. Petitioner has made strides to right past wrongs and to live a drug-free life and receives support in these efforts from some of his family members. However, he has not yet successfully completed probation and has not been free of court oversight since 1998. It is unlikely that he will be free from probation until 2010. Giving proper deference to time of Petitioner's probation as determined by federal authorities, the Commission declines to exercise its discretion in granting a salesperson license to Petitioner at this time.

DECISION AND ORDER

Based upon the forgoing Petitioner's Motor Vehicle Sales Person License ##### is hereby revoked. It is so ordered.

DATED this ____ day of _____, 2008.

Clinton 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 _____, 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 Sec. 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 Sec. 59-1-601 et seq. and Sec. 63-46b-13 et seq.

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