

08-0008  
Motor Vehicle  
Signed 02/26/2008

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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. 08-0008</p> <p>Tax Type: Salesperson License Tax Year: 2007</p> <p>Judge: Marshall</p>
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**Presiding:**

Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER, *Pro Se*  
WITNESS

For Respondent: RESPONDENT REPRESENTATIVE, Motor Vehicle Enforcement  
Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for Formal Hearing on January 22, 2008. Petitioner is appealing the denial of her salesperson license to sell motor vehicles. Based on the testimony and evidence presented at the Formal Hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. On December 7, 2007, the Petitioner 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?” Petitioner checked the “Yes” box, and in the space provided, wrote the following:

2 Misdemeanor Theft, Felony Theft, Felony Prescription Fraud

3. Based on the Petitioner’s convictions listed on the application the Division denied Petitioner a motor vehicle salesperson license in a letter dated December 20, 2007. Petitioner’s

Utah Criminal History Report, dated January 18, 2008, verified the convictions listed by the Petitioner, and did not show any further convictions.

4. The felony prescription fraud conviction was June 4, 2002. At the formal hearing, Petitioner testified that she had altered prescriptions and was “doctor shopping.”

5. The two misdemeanor theft convictions took place on July 16, 2002 and November 20, 2003. When questioned by the Division at the Formal Hearing, Petitioner said that because she was on probation for the felony prescription fraud, the charge was heightened to a felony, and was listed on her application. Petitioner’s Utah Criminal History Report does not reflect a felony theft conviction.

6. Petitioner testified that she was released from probation in August of 2007, but provided no documentation to verify her release from probation. The Petitioner’s Utah Criminal History Report shows that her current legal status is “discharged” and then lists three separate periods that Petitioner was on probation.

7. Petitioner’s potential employer, COMPANY, is aware of Petitioner’s criminal history as it was disclosed on Petitioner’s application and the employer is required to sign the application.

8. Petitioner’s father, WITNESS, who is also the General Manager of COMPANY, testified that he believed all of Petitioner’s criminal problems stemmed from substance abuse. WITNESS also stated that Petitioner has been off drugs for approximately four years. Further, WITNESS proffered that he has a good reputation in the automobile industry, and that he would not be willing to risk that reputation just to help the Petitioner, but that he believes she has turned her life around and is willing to teach her so that she can further her career to better provide for her children.

9. For the Division, RESPONDENT REPRESENTATIVE testified at the Formal Hearing that the Petitioner’s application was denied because Petitioner has been convicted of crimes involving a fraud and a controlled substance. RESPONDENT REPRESENTATIVE stated that based on the relevant statutory authority, the Division had no choice but to deny the application for license.

#### 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...

- (viii) a violation of any state or federal law involving controlled substances
- (x) a violation of any state or federal law involving fraud...

Utah Code Ann. §41-3-209(2) (2007).

CONCLUSIONS OF LAW

The Commission finds that the Division had reasonable cause to deny the Petitioner a motor vehicles salesperson license. Utah Code Ann. §41-3-209 provides that both a violation of state or federal law involving a controlled substance and a violation of state or federal law involving fraud are reasonable cause to deny a license. Petitioner has been convicted of a felony for prescription fraud.

Although the Division had reasonable cause to deny Petitioner a license, the Commission may consider other factors, such as the passage of time since the most recent conviction, the payment of restitution, and termination of probation or parole. It has been more than four years since Petitioner's most recent conviction, she has been released from probation, and appears to have been off drugs for the past four years. Based on the information before it, the Commission finds that there is cause to grant Petitioner a salesperson license.

DECISION AND ORDER

Based on the foregoing the Commission abates the Division's action and grants the Petitioner her motor vehicle 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.

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