

09-1028
MOTOR VEHICLE
SIGNED 07-13-2009

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION Appeal No. 09-1028 Tax Type: Motor Vehicle Salesperson’s License Judge: Chapman
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Presiding:

D’Arcy Dixon Pignanelli, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, Applicant
For Respondent: RESPONDENT REP 1, Assistant Attorney General
 RESPONDENT REP 2, from MVED

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 24, 2009. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. PETITIONER (the “applicant”) submitted an application to receive a motor vehicle salesperson’s license (“application”) on or about March 2, 2009 (Exhibit P-2).

2. The Motor Vehicle Enforcement Division (“Division”) denied PETITIONER application in a letter dated March 10, 2009 (Exhibit R-2). In the letter, the Division explained that it was denying PETITIONER’s application because of criminal charges that “have been filed [against you] with the Salt Lake District Attorney’s Office, concerning your activities at your prior dealership (DEALERSHIP).”

3. On his application, PETITIONER checked the “No” box in response to Question #3, which asked “[d]uring the past 10 years, have you been convicted of any misdemeanors or felonies in Utah or in any other state?” Accompanying Question #3 was an explanation that “[y]ou are not required to disclose simple traffic infractions.”

4. The Division submitted a document from the DISTRICT, Salt Lake (Utah), which showed that on April 7, 2008, PETITIONER entered a guilty plea to an “attempted false evidence – title/registration/plates” offense, as established in Utah Code Ann. §41-1a-1315 (Exhibit R-3). PETITIONER explained that he did not believe he was required to disclose this offense on his application because it was a plea in abeyance he understood would be deleted from his record after one year from the plea. PETITIONER explained that this offense concerned a vehicle that he had sold and that he pled guilty upon the advice of his attorney. PETITIONER does not know if his guilty plea for this offense has been deleted from his record.

5. The Division also submitted another document from the DISTRICT, Salt Lake (Utah) to show that additional charges related to motor vehicles are currently pending against PETITIONER (Exhibit R-1). The following charges are pending against PETITIONER in the DISTRICT: 1) two second degree felony charges for “theft by deception,” as established in Utah Code Ann. §76-6-405; and 2) one third degree felony charge for “equity skimming of a vehicle,” as established in Utah Code Ann. §76-6-522. As of the hearing date, PETITIONER had not been arraigned on the charges.

6. For the Division, DISTRICT testified that prior to DEALERSHIP closing, it had sold 19 vehicles for which the buyers did not receive their titles within the statutory timeframe. The Division acknowledges that all buyers have since received their titles and that no charges were filed in connection with the late-delivered titles, but asked the Commission to consider these events, as well, when it reached a decision in this matter.

7. The charge for which PETITIONER entered a guilty plea in abeyance and the three

pending charges stem from PETITIONER's activities as the owner and operator of DEALERSHIP, which closed in 2008. PETITIONER submitted a summary of the circumstances that gave rise to his current situation and reasons why the Commission should grant him a salesperson's license (Exhibit P-1). PETITIONER explained that he had been in automobile sales for approximately 30 years with few or no complaints until 2008 when a series of events impacted the automobile industry. PETITIONER also stated that credit issues with his bank resulted in a series of events that gave rise to all charges described earlier and, in addition, resulted in a number of titles being delivered late. PETITIONER contends, however, that he never had any criminal intentions and that he fully expects to be found innocent of all charges currently pending. He also contends that granting him a salesperson's license would not put the public in jeopardy because he would be working under a supervisor in a dealership he does not own or control. In addition, PETITIONER asked the Commission to grant him a license so that he would be able to support his family.

8. The Division believes that the Commission should deny PETITIONER's application for a license because "reasonable cause" exists under Utah Code Ann. §41-3-209 to deny the license. The Division specifically contends that the three pending charges for offenses involving motor vehicles is sufficient cause to deny the license pursuant to Subsection 41-3-209(2)(b)(ix). In addition, the Division contends that one of the pending charges, specifically the "equity skimming of a vehicle" charge, is a "fraud" charge. As a result, the Division argues that this charge may constitute a "violation" involving fraud, which would allow PETITIONER's application to be denied under Subsection 41-3-209(2)(b)(x). Finally, the Division contends that the Commission could also deny PETITIONER's application because titles were delivered late for 19 vehicles he sold. The Division argues that the list of circumstances constituting "reasonable cause" under Section 41-3-209(2) is a non-exclusive list and that other circumstances, such as the PETITIONER's failure to timely deliver 19 titles, could also constitute "reasonable cause" to deny PETITIONER's application.

APPLICABLE LAW

1. Utah Code Ann. §41-3-209 provides statutory guidance concerning the issuance of a motor vehicle salesperson’s license, as follows in pertinent part:

- (1) If the administrator finds that an applicant is not qualified to receive a license, a license may not be granted.
- (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:
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 - (vi) making a false statement on any application for a license under this chapter . . . ;
 - (vii) a violation of any state or federal law involving motor vehicles;
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 - (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;
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2. Utah Code Ann. §76-6-405 provides that “theft by deception” is a criminal offense and describes the offense as follows:

- (1) A person commits theft if he obtains or exercises control over property of another by deception and with a purpose to deprive him thereof.
- (2) Theft by deception does not occur, however, when there is only falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. “Puffing” means an exaggerated commendation of wares or worth in communications addressed to the public or to a class or group.

3. Utah Code Ann. §76-6-522 provides that “equity skimming of a vehicle” is a criminal offense and described the offense as follows in pertinent part:

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- (2) A dealer or broker or any other person in collusion with a dealer or broker is guilty of equity skimming of a vehicle if he transfers or arranges the transfer of a vehicle for consideration or profit, when he knows or should have known the vehicle is subject to a lease or security interest, without first obtaining written authorization of the lessor or holder of the security interest.
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CONCLUSIONS OF LAW

1. PETITIONER stated that in the Initial Hearing Order in this matter, the Commission denied his application for a salesperson's license, at least in part, because he had omitted two misdemeanor convictions from his application. Although PETITIONER omitted the two misdemeanors, the Commission does not believe that the omission was intentional. One of the misdemeanors was for reckless driving. The instructions on the application inform an applicant that "[y]ou are not required to disclose simple traffic infractions." The Commission does not find it unreasonable for an applicant to believe that a reckless driving conviction is a traffic infraction that need not be disclosed. Furthermore, for the second misdemeanor, PETITIONER entered a guilty plea that was being held in abeyance. The Commission does not find it unreasonable for an applicant to believe that a plea being held in abeyance might not constitute a conviction. As a result, the Commission would not deny PETITIONER's application, if the only reason to do so were based on his omission to disclose the two misdemeanors. However, as explained below, other circumstances exist for which the Commission denies PETITIONER's application for a license.

2. Utah Code Ann. §41-3-209(2)(a) provides that a motor vehicle salesperson's license shall be denied, revoked or suspended for reasonable cause. In Section 41-3-209(2)(b)(ix), "reasonable cause" is defined to specifically include "charges filed . . . in any court of competent jurisdiction for a violation of any state or federal law involving motor vehicles." The Division submitted evidence showing that charges have been filed and are currently pending against PETITIONER in the DISTRICT, Salt Lake (Utah). From the language of the law relating to the offenses for which PETITIONER has been charged and from the testimony given at the hearing, it is clear that the charges concern the violation of state laws and involve motor vehicles. For these reasons, the Commission finds that reasonable cause exists to deny PETITIONER's application and that the Division's denial of his application was proper.

DECISION AND ORDER

Based upon the forgoing, the Commission denies PETITIONER's appeal and sustains the Division's denial of PETITIONER's application for a motor vehicle salesperson's license. It is so ordered.

DATED this ____ day of _____, 2009.

Kerry R. Chapman
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 _____, 2009.

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. 63G-4-302. 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 Secs. 59-1-601 et seq. and 63G-4-401 et seq.