09-2288
MOTOR VEHICLE
SIGNED 01-28-2010

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 09-2288 Tax Type: Motor Vehicle Business License Tax Year: 2009 Judge: Jensen

Presiding:
Clinton Jensen, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER, Applicant
For Respondent: RESPONDENT REP, Assistant Director, MVED

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on November 30, 2009 in accordance with Utah Code Ann. §59-1-502.5. Petitioner (the "Applicant") is appealing the Respondent's ("Division's") denial of a business license to sell motor vehicles.

APPLICABLE LAW

As a general rule, a person may not act as a motor vehicle dealer in Utah without having a license from the Motor Vehicle Enforcement Division. Utah Code Ann. §41-3-201(2)(a).

For all times after June 30, 2006, Utah law required motor vehicle dealers to carry a bond in the amount of $75,000.[1] Utah Code Ann. §41-3-205. Among the requirements for the bond is that the "form of the bond . . . shall be approved by the attorney general." Utah Code Ann. §41-3-205(1)(c)(i).

Utah Code Ann. §41-3-209(2) provides for the denial, suspension, or revocation of motor vehicle dealer licenses as follows:

[1] Before 2006, Utah law required a $50,000 bond.

(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(2).

DISCUSSION

In approximately 2002, the Applicant began operating a business as a motor vehicle dealer in CITY 1, Utah. The parties agree that until 2008, the Applicant had a valid motor vehicle sales license and held a valid bond. But in June or July of 2008, the Applicant changed

bonding companies. The Applicant's new bonding company issued the Applicant's bond on an old form. The Utah Attorney General had not approved the old form. The Division agrees that the bond was for the proper amount and was valid other than being on an old form.

At hearing, the Division's representative testified that the Division's normal practice upon learning that a licensee had a bond on a non-approved form would be to notify the licensee of the problem by mail. The representative thought that the Division likely made notification to the Applicant in this case, but did not provide documentation of this at the hearing. The Division's representative indicated that an agent of the Division visited the Applicant's place of business in September 2009 to discuss a possible incorrect bond form but was unable to locate anyone at the Applicant's address in CITY 1, Utah. Accordingly, the Division suspended the Applicant's license. The Division's representative testified that the Division's normal practice upon suspending or revoking a license would be to notify the licensee by mail. The representative thought that the Division likely made notification to the Applicant in this case, but did not provide documentation of this at the hearing.

The Applicant testified that he did not receive notice from the Division of either the bond problem or of the license suspension. He indicated that he did not learn of any licensing problem until an officer with the CITY 2 Police Department stopped him to tell him that his dealer plates were suspended. He did not know when this occurred, but his best guess was in early 2009. He testified that as soon as he learned of the bonding problem, he had his bonding company put his bond on the correct form and submit it to the Division. The Division does not dispute that the Applicant corrected the bonding problem. The Division makes no claim that the Applicant's bond was not valid other than being on an old form.

On June 4, 2009, the Applicant filed an application requesting a motor vehicle dealer's license for a location in CITY 3, Utah. The Division denied the license because the application indicated that the Applicant's previous license had been suspended and notified the Applicant of its decision by mail in a June 25, 2009 letter. The Division produced a copy of that letter and the Applicant indicated that he received the original. From the Division's June 25, 2009 denial, the Applicant filed the appeal in this case.

The parties agree that the appeal before the Commission depends at least in part on the outcome of an action from the Second District Court in Davis County in which the Division charged the Applicant with selling motor vehicles without a license. The Applicant resolved that case on November 9, 2009. The Court dismissed all charges for selling motor vehicles without a license and allowed the Applicant to enter into a plea in abeyance to three charges of deceptive business practices under Utah Code Ann. §76-6-507. The parties agree that the elements of a

charge for deceptive business practices do not include any elements that necessarily involve motor vehicles.

Utah Code Ann. §41-3-209 mandates that a license "shall" be denied, revoked, or suspended for reasonable cause, and has identified "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" as "reasonable cause." At the time the Division denied the Applicant's June 4, 2009 application, there is no question that there were charges filed for a violation of a state law involving motor vehicles. On that basis, the Division acted properly in denying a license to the Applicant. This issue now before the Commission is whether the Commission should now grant the Applicant a license in light of the resolution of those charges.

The Commission first notes that for purposes of making an administrative determination on a license, there is no difference between a plea in abeyance and a guilty plea. *See Salzl v. Dept. of Workforce Services*, 2005 UT 399 (entering into plea in abeyance constitutes admission of all elements of offense to which plea is entered). However, the Commission notes that the charges to which the Applicant entered a plea do not include motor vehicle involvement as a necessary element. At hearing, the Division did not present evidence other than the plea itself to introduce elements involving motor vehicles. Even if it had, the Division did not show that it provided notice of any suspension to the Applicant. The Applicant has resolved any problems with his previous bond. Finally, the Commission notes that the root causes of any problems with the bond that led to a previous suspension were technical rather than substantive given the parties' agreement that the Applicant has always had a collectible bond, albeit on an old bond form. On the basis of these factors, there is good cause to exercise discretion to grant a license to the applicant in accordance with the Applicant's application of June 4, 2009.

_____
Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

On the basis of the foregoing, the Commission overturns the Division's denial of the Applicant's motor vehicle business license. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless either party to this case files a written request within thirty (30) days of the date of this decision to proceed to a formal decision. Such 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
CITY 3, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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