

10-2523
MOTOR VEHICLE- SALESPERSON LICENSE
TAX YEAR: 2010
SIGNED: 12-20-2010

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. 10-2523

Tax Type: Salesperson License

Tax Year: 2010

Judge: Marshall

Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, *Pro Se*

For Respondent: RESPONDENT REP., 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 Ann. §59-1-502.5 on October 12, 2010. Petitioner (“Applicant”) is appealing the Respondent’s (“Division’s”) suspension of his salesperson license to sell motor vehicles.

APPLICABLE LAW

The denial, suspension, and revocation of a salesperson license are governed by Utah Code Ann. §41-3-209(2), as follows in relevant part:

- (b) If the administrator finds that there is reasonable cause to deny, suspend, or revoke a license under this chapter, the administrator shall deny, suspend, or revoke the license.
- (c) 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:
 - (x) a violation of any state or federal law involving fraud...

DISCUSSION

The Applicant filled out a Motor Vehicle Salesperson Application, which was submitted to the Division on or about May 6, 2010. The Division issued a letter dated August 24, 2010 suspending the Applicant's salesperson license because of a discrepancy concerning criminal convictions in the last ten years. In response to question number three on the application asking if the Applicant had been convicted of any misdemeanors or felonies in Utah or any other state within the past 10 years, he checked the box indicating "No." The Applicant's criminal history indicates that he entered into a plea in abeyance on May 4, 2010 on a third-degree felony charge for issuing a bad check.

The Applicant testified that at the time he prepared the application he had not been convicted of any charges at the time he filled out the application, nor had he entered into the plea in abeyance. He explained that he had two personal checking accounts and a business account and that he had issued a check with insufficient funds to himself to deposit into the business account. The Applicant stated that he was told by his attorney that entering the plea in abeyance would be less expensive and time consuming than going to trial. He entered into the plea in abeyance for a period of thirty-six months.

The Division's representative stated that when they received the Applicant's criminal history report it indicated he had entered into a plea in abeyance for issuing a check with insufficient funds. The Division considers the plea in abeyance to be a "violation" of state or federal law that involves fraud, and thus, the Division's representative argued, mandates that Applicant's license be suspended.

Utah Code Ann. §41-3-209 mandates that a license "shall" be denied, revoked, or suspended for reasonable cause, and has identified a violation of any state or federal law involving fraud as "reasonable cause." The Applicant has entered a guilty plea, which is being held in abeyance by the Court for a period of thirty-six months. The question is whether the plea in abeyance establishes a violation of law that constitutes "reasonable cause" for the denial of a salesperson license.

The Court in *Salzl v. Dept. of Workforce Services*, 2005 UT 399, provides guidance on whether a plea in abeyance is a "violation" of law. In *Salzl*, the Petitioner, an employee of the Utah State Development Center, was charged with abuse of a vulnerable adult and attempted witness tampering. The abuse charge was based on allegations that the Petitioner had used an improper technique to move a non-compliant disabled adult across the carpet. The tampering charge was based on allegations that in order to stop the police investigation, the Petitioner contacted the medical director of the Utah State Development Center and asked him to make a statement that it was medically necessary for her to drag the patient. The Petitioner pled no

contest to both charges, and the court held the pleas in abeyance. The Petitioner was later allowed to withdraw her pleas, and have the criminal charges dismissed. At issue in *Salzl* is whether under the circumstances, Ms. Salzl was eligible for unemployment benefits.

The statute at issue in *Salzl* was Utah Code Ann. §35A-4-405(2)(b):

For the week in which the claimant was discharged for dishonesty constituting a crime or any felony of class A misdemeanor in connection with the claimant's work as shown by the facts, together with the claimant's admission, or as shown by the claimant's conviction of that crime in a court of competent jurisdiction and for the 51 next following weeks.

The Court in *Salzl*, concluded:

Finally, Petitioner argues that Respondent unreasonably concluded that the class A misdemeanor was "[a]dmitted or established by a conviction in a court of law," Utah Admin. Code R994-405-210(1)(c), because a plea in abeyance that ultimately results in a dismissal does not constitute an admission to or a conviction of a crime. We disagree, and conclude that entering into a plea in abeyance for a class A misdemeanor constitutes an admission, if not a conviction, to that crime for the purposes of section 35A-4-405(2)(b).

The Applicant's guilty plea, though being held in abeyance by the court, is an admission the Applicant violated a law involving fraud. His plea establishes a violation and constitutes reasonable cause to suspend his salesperson license. Although the Division had reasonable cause to suspend the Petitioner's license, the Commission has discretion to consider other factors, such as the passage of time since the most recent violation, completion of probation or parole, and payment of all fines and restitution. In the past, the Commission has used clearing parole or probation to allow salesperson licenses to individuals who have been convicted of the crimes enumerated in Utah Code Ann. §41-3-209. While the Applicant was not formally placed on probation, the Commission believes the three-year abeyance period is akin to probation, as the Applicant must meet certain requirements, and could be sentenced for the guilty plea in the event he fails to meet those requirements. Under the circumstances, the Commission finds there is not good cause to abate the Division's suspension of a motor vehicle salesperson license to the Applicant.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission upholds the Division's suspension of the Applicant's motor vehicle salesperson 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
Salt Lake City, 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