

11-1304
SALESPERSON LICENSE
TAX YEAR: 2011
SIGNED: 05-26-2011
COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON, M. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, v. MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 11-1304</p> <p>Tax Type: Salesperson License Tax Year: 2011</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP., Attorney at Law
PETITIONER

For Respondent: RESPONDENT REP., Assistant Director, Motor Vehicle
Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on May 23, 2011 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioner (“Applicant”) is appealing the denial of a salesperson license to sell motor vehicles by the Respondent (“Division”).

APPLICABLE LAW

The denial, suspension, and revocation of a salesperson license are governed by Utah Code §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:

* * *

- (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. §59-1-1417 provides, “[i]n a proceeding before the commission, the burden of proof is on the petitioner...”

DISCUSSION

The Applicant in this matter had originally applied for his Motor Vehicle Salesperson License in January 2004 and the license had been issued at that time and has been continually renewed by the Applicant up through the present. In this case, because of the new law that required license holders to submit finger prints for a background check from the Bureau of Criminal Identification, information was provided to the Division that the Applicant had been convicted in November 2005 of a Felony Securities Fraud. This conviction occurred after the Applicant had submitted his license application form in 2004.

At the hearing, the Division presented the BCI report and there was only this one conviction listed on the Applicant’s criminal history report. It also did not indicate that the Applicant was sentenced to either prison or probation stemming from the conviction.

The Applicant and his representative stated at the hearing that the Applicant had pled in abeyance to the fraud conviction and apparently the Applicant did not consider this to be a conviction. They state that they had not been able to obtain the court records to support the status of the charges. The Applicant stated that he was still paying monthly restitution and was ahead on the payments. The conviction had been a securities related fraud charge. The Applicant asked to be able to keep his license so that he could support himself, keep up with his extensive medical expenses and continue making the restitution payments.¹

The representative for the Applicant argued that the Division’s only information about the charge was the BCI report. He asserted it was hearsay and inferred the Division should have

¹ The restitution payments were not related to a motor vehicle related crime. Had they been, the Commission would be prohibited from issuing the license under Utah Code Sec. 41-3-201(7) which provides that “[a] person who has been convicted of any law relating to motor vehicle commerce or motor vehicle fraud may not be issued a license unless full restitution regarding those convictions has been made.”

obtained the court records. An additional argument offered by the representative was that the Applicant was aware of a number of other individuals who have been convicted of similar charges and still have their Motor Vehicle Salesperson Licenses.

The Division's representative pointed out that Utah Code Ann. §41-3-209 mandates that a license "shall" be denied, revoked, or suspended for reasonable cause, and has identified as "reasonable cause" several specific crimes. The Division's representative explained that when the Division received the information from BCI indicating the felony fraud conviction he felt the Division was required to suspend or revoke the license based on the Statutory Provisions. He also indicated that a plea in abeyance is considered a conviction until the charge is dismissed.²

After review of the information the Applicant had only the one conviction indicated on his criminal history report from BCI. The conviction does involve fraud, which is one of the crimes specified at Utah Code §41-3-209(2). However, it occurred in 2005. The Applicant was not incarcerated or sentenced to probation and there were no further convictions since that time. Regardless of whether the conviction was a felony or had been a plea in abeyance that may or may not have been dismissed, the license should be reinstated.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing the Commission reinstates the Applicant's 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

² This was the Tax Commission's findings in Appeal Nos. 05-1502, 05-1439 & 06-1399.

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

DATED this _____ day of _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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