

11-3214  
SALESPERSON LICENSE  
TAX YEAR: 2011  
SIGNED: 12-21-2011  
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN  
EXCUSED: R. JOHNSON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	<b>INITIAL HEARING ORDER</b>
Petitioner,	Appeal No. 11-3214
v.	Tax Type: Salesperson License
MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION,	Tax Year: 2011
Respondent.	Judge: Phan

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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REP., Attorney at Law

PETITIONER

For Respondent: RESPONDENT REP. 1, Assistant Attorney General

RESPONDENT REP. 2

RESPONDENT REP. 3, Office Manager, Motor Vehicle Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on December 20, 2011, for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioner (“Applicant”) is appealing Respondent’s (“Division’s”) decision to deny the Applicant a salesperson license to sell motor vehicles.

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:
- (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 §41-3-201(7) provides, “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.”

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

#### DISCUSSION

The Applicant submitted a Motor Vehicle Salesperson Application to the Division on or about November 21, 2011. Question number two of the application asks if the Applicant has “been charged with, found in violation of, or convicted of any misdemeanors or felonies in Utah or any other state,” in the past ten years. In response, the Applicant checked the box indicating YES, and in the space provided, the Applicant wrote, “Misdemeanor-Criminal Mischief-Fourth District Court CITY 1” and “Plea in Abeyance-5 counts theft \$\$\$\$ or less-Fourth District Court CITY 2-dismissed” Then he attached to the application the court dockets for both of these incidents. Upon review of the application, the Division denied the license by letter dated November 30, 2011.

In the letter denying the license, the Division explained that under Utah Code §41-2-209 it was required to deny or suspend a license if charges were filed against an applicant for a violation of state or federal law involving a motor vehicle, noting, “Multiple counts were filed against applicant in the Fourth district Court, Utah County, involving motor vehicles.” The letter went on to state that the Applicant had not finished paying restitution and was under the

supervision of the court. In addition to Utah Code §41-2-209, the Division cited to §41-3-201(7) which states that a person convicted of any law relating to motor vehicle commerce or motor vehicle fraud may not be issued the license until they have made full restitution.

At the Initial Hearing in this matter the Applicant was able to provide information that the charges had been dismissed in the Fourth District CITY 2 case. This was the case involving motor vehicle related offenses, stemming from the Applicant's failure to deliver title. The Applicant had been a partner in DEALERSHIP, which had been a successful business until the economic downturn and then there had been some failures to deliver title. The Applicant had entered a Plea in Abeyance on these charges in August 2010, and had paid the \$\$\$\$\$ in restitution that was ordered in that plea. He was under informal court supervision until the plea was dismissed on September 6, 2011.

The other conviction had been Intentional Damage/Deface/Destroy Property-Class A Misdemeanor. The Applicant had entered into a no contest plea in this case on August 16, 2011. It was the Applicant's representation that this was a property crime and not a crime involving either motor vehicle or fraud. The explanation provided was that someone had made an investment in the Applicant's business and the when the funds were not repaid the victim filed charges against the Applicant. Additionally, it was the Applicant and his representative's contention that when working out the plea deal, the County Prosecutor had specifically sought to avoid charges that involved fraud or motor vehicles and that is why they had worked out the destruction of property misdemeanor. The Applicant's representative referred to the conviction as a legal fiction. The Applicant entered a no contest plea. He was ordered to informal court supervision and to make monthly payments towards the restitution. He is still under this informal supervision and making the restitution payments ordered with this conviction.

The Applicant provided a copy of the plea arrangement in this property misdemeanor offense which indicated that he plead to one count of, "Criminal Mischief."

The Applicant explained that up until the financial problems with DEALERSHIP, he had been a licensed motor vehicle salesperson for twenty years. He wanted to continue in this occupation and indicated that this would enable him to continue paying the restitution on the property misdemeanor conviction. In addition the Applicant was able to provide a number of letters of recommendation or support from various individuals in the motor vehicle sales business, including lenders and persons to who he had paid restitution as well as customers.

It was the Division's position that they had originally denied the license as it was unclear at that time whether or not all the restitution in the motor vehicle title matter had been paid. Based on the information presented at the Initial Hearing, the Division left it up to the Commission to

determine whether the property misdemeanor conviction was a conviction of any law relating to motor vehicle commerce or motor vehicle fraud for the purposes of Utah Code §41-3-201(7), or if the facts constituted reasonable cause under Utah Code §41-3-209. The Division did commend the Applicant for making a significant effort to pay all the \$\$\$\$ in restitution in the case involving motor vehicles, so that purchasers or lenders were made whole in that matter.

Utah Code §41-3-209 mandates that a license “shall” be denied, revoked, or suspended for reasonable cause, and has identified as “reasonable cause” several factors including violations or charges involving motor vehicles. Additionally, a violation involving fraud is specifically listed. As of the date of the hearing, the motor vehicle title charges had been dismissed based on a plea in abeyance arrangement and the restitution paid. Once the plea in abeyance is dismissed the Commission no longer considers this to be a violation and this incident would no longer bar the Applicant from obtaining a license.

However, the applicant is still under court supervision and making restitution payments on the property conviction. This is a misdemeanor conviction and, with the dismissal of the other conviction, is the only remaining conviction on the Applicant’s criminal history. Utah Code §41-3-201(7) provides that the Division may not issue a license to someone “who has been convicted of any law relating to motor vehicle commerce or motor vehicle fraud” unless the restitution is paid in full. Although the action related to an investment in a motor vehicle business, the law under which the applicant was convicted did not relate to motor vehicle commerce or fraud and the Applicant is not barred from receiving a license under this section.

As the Applicant has only one remaining conviction, that conviction is a misdemeanor and is not technically a conviction of any law relating to motor vehicle commerce, motor vehicles generally or any of the other specifically listed crimes identified in Utah Code Ann. §41-3-209, the license should be issued to the Applicant. The Applicant is still under informal court supervision until the restitution is complete, but considering the factors noted, this should not bar applicant from obtaining the license.

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Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing the Commission orders the Division to issue to a motor vehicle salesperson license to the Applicant. 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

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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 \_\_\_\_\_, 2011.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner