

11-2949
SALESPERSON LICENSE
SIGNED: 03-15-2012
COMMISSIONERS: M. JOHNSON, D.DIXON, M. CRAGUN
EXCUSED: R. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, vs. MOTOR VEHICLE ENFORCEMENT DIVISION, OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 11-2949</p> <p>Tax Type: Salesperson License</p> <p>Judge: Phan</p>
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Presiding:

D'Arcy Dixon, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REP. 1, Assistant Attorney General, By Telephone
RESPONDENT REP. 2, Assistant Director Motor Vehicle Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 1, 2012, in accordance with Utah Code §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner had timely filed an appeal of Respondent's (Division's) action to suspend Petitioner's motor vehicle salesperson license. The matter proceeded to a Formal Hearing before the Utah State Tax Commission.
2. The Division had suspended the license by letter dated October 25, 2011, issued by RESPONDENT REP. 2, Assistant Director of the Motor Vehicle Division. The suspension was for an indefinite period.

3. The reason provided by the Division for the suspension in the letter was “a discrepancy in your salesperson application concerning criminal convictions during the last 10 years.” The letter went on to note that information from the Bureau of Criminal Identification indicated that the Petitioner’s response to a question on the application was inaccurate.

4. The Petitioner had filled out, signed and submitted a Motor Vehicle Salesperson Application on, or around July 8, 2011. On the form Question 2 asks, “During the past 10 years, have you been charged with, found in violation of, or convicted of any misdemeanors or felonies in Utah or in any other state?” Petitioner checked the box for “No.” There was a space provided to list any charges or convictions, none were listed.

5. The BCI report showed three charges with one conviction during the last 10 years. There had been a charge for Assault Domestic-Misdemeanor, which was dismissed on August 10, 2006. There had been a charge for Fraud-Illegal use Credit cards-Misdemeanor which had been dismissed on December 11, 2007. However, there had also been plea in abeyance conviction entered on December 11, 2007 for Attempt to Commit Fraud-Illegal Use Credit Cards-Misdemeanor-B.

6. Petitioner was sentenced to 12 months of probation on the conviction. He has served that period and was released. He also completed a Misdemeanor Theft Class at COUNSELING CENTER.

7. There were no additional convictions or charges listed on the BCI report.

8. Petitioner stated that he had not disclosed the conviction on the application form as he thought the conviction was dismissed or dropped. Additionally, when asked why he had not listed the charges, he stated that he had just whipped through the application. Petitioner did acknowledge that he should have disclosed the charges and convictions.

9. After the hearing, Petitioner submitted letters of reference from five managers or coworkers at DEALERSHIP where he has been working since June 2011. The letters recommended that he be issued the license. He also submitted a Certificate of Completion from the counseling class.

10. The Division testified that the license had been denied based on the failure to disclose charges and convictions on the application form under Utah Code 41-3-209. At the hearing the Division recommended that the suspension be set for a period of 6 months.

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; or
 - (xii) having had a license issued under this chapter revoked within five years from the date of application.

CONCLUSIONS OF LAW

1. Utah Code §41-3-209(2) provides that the Division shall deny, suspend or revoke a license for reasonable cause and specifically provides that making a false statement on the application is reasonable cause. In this appeal it is unrefuted that the Petitioner made a false statement on his application. Instead of checking “yes” that he had been charged with and convicted of crimes he had checked “no” and did not list his charges or conviction. The Division’s action to suspend the license was appropriate under Utah Code §41-3-209.

2. Although Utah Code §41-3-209 requires a suspension, the length of the suspension is not dictated by that section. Therefore, the Commission has discretion to set the length of the suspension. Given that Petitioner had only one conviction and two additional charges which were dismissed, and that Petitioner had been released from probation in 2008, had he fully disclosed this information on his application form the Tax Commission would have issued the license to him. The charges and conviction are not the issue in this matter, it is the lack of disclosure that dictates the suspension. Disclosure is required, in part, so that the dealership is aware of an applicant’s criminal history. A representative for the dealership employing the applicant is required to review and sign the application form.

Based on the unique circumstances in this matter, the suspension should be upheld but limited to a period of thirty-days conditioned on Petitioner submitting a new application form that

fully discloses charges and convictions occurring over the past ten years and has been reviewed and signed by his employer.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's suspension of Petitioner's Motor Vehicle Salesperson License, but limits the suspension to a period of thirty-days conditioned on Petitioner submitting a new application in which full disclosure is made by Petitioner and the application has been reviewed and signed by Petitioner's employer. The thirty day period is to begin ten calendar days from the date of this order and to end forty calendar days from the date of this order. It is so ordered.

DATED this _____ day of _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
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 Ann. §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 Ann. §59-1-601 et seq. and §63G-4-401 et seq.