

12-313
SALESPERSON LICENSE
TAX YEAR: 2012
SIGNED: 02-23-2012
COMMISSIONERS: R. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: M. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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| PETITIONER, | INITIAL HEARING ORDER |
| Petitioner, | Appeal No. 12-313 |
| v. | Tax Type: Salesperson License |
| MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION, | Tax Year: 2012 |
| Respondent. | Judge: Phan |

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: 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 February 14, 2012, for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioner (“Applicant”) is appealing the decision by Respondent (“Division”) to suspend the Applicant’s salesperson license.

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:

. . .

- (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.

DISCUSSION

The Applicant submitted a Motor Vehicle Salesperson Application to the Division on October 20, 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, “DUI 2005.”

The representative for the Division explained that when the Division received the Applicant’s criminal history report from the Bureau of Criminal Identification, it indicated that there had been an additional conviction which the Applicant had failed to disclose. The Applicant had been convicted of a felony Attempt to Commit Unemployment Compensation-False Statement on May 5, 2008. The criminal history indicated that she was sentenced to 36 months probation for this conviction. Utah Code §41-3-209 states that a license “shall” be denied, revoked, or suspended for reasonable cause. The Division representative pointed out that one of the items identified as reasonable cause was making a false statement on the application. The Division suspended the license because of the false statement on the application.

The Applicant explained that she had not meant to be deceitful in not disclosing the unemployment compensation crime, but had been ashamed to have her employer find out about this conviction. She stated that she had been working for this employer for several years, but not as a motor vehicle salesperson, and she indicated that he was not aware of the conviction. She stated that she had completed the probation. She also asked that she be allowed the license because she had worked very hard to get her life back together and get back on her feet. She stated that she was a single mom and the job was her only source of income. She had submitted a letter with the appeal that detailed the traumatic period in her life around the time she committed this crime and indicated that it was hard for her to acknowledge.

The representative for the Division pointed out that the application form requires applicants to list all criminal convictions or charges and then requires the dealership to sign the application, so that the dealership is aware of every conviction or charge. He indicated that this was done based on requests from the industry. He also indicated that if it was decided that the Applicant would be reissued the license, she should be required to fill out a new application with full disclosure, and the dealership should be given the application to review and sign. He also indicated that there was nothing on the criminal history to indicate that the Applicant was still on probation.

The Division properly suspended the Applicant's salesperson license based on the false statement she had intentionally made on the application form. The Division's suspension is for an indefinite period of time. As it appears that the Applicant is no longer on probation, the conviction occurred several years ago and there appears to have been only the Unemployment False Statement and a DUI conviction, had the Applicant fully disclosed her criminal history, the Commission would likely have issued her the license. In this case, the Applicant did not disclose because she did not want her employer to know about the second conviction. The Commission may consider factors, such as the passage of time since the most recent conviction, the number of, and nature of, convictions and whether the applicant has been released from probation or parole. With these factors and the false statement on the application a suspension of the license for a period of thirty-days is appropriate. However, before the license is reinstated, the Applicant must submit a new application that provides full disclosure. The new application must be given to the dealership for review and signature and then filed with the Division. The Division's request that the dealership be made aware of the Applicant's full criminal history before the Division reinstates the license is appropriate based on the law and current practise.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing the Commission suspends the Applicant's license for a period of thirty-days conditioned on the applicant submitting a new application with full disclosure of her criminal history that has been reviewed and signed by the dealership for which she is employed. The new application must be submitted within thirty-days from the date this order is issued. If neither party appeals this decision to a Formal Hearing, the suspension will begin thirty-days after the date on which this Order is issued and continue until sixty days from the date that this Order is issued. Once the thirty-day suspension period has expired the Division is to reinstate the

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Applicant's license as long as the new application has been submitted. However, should the Applicant fail to submit the new application, the license is to remain suspended. 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 _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner