

12-399  
TAX TYPE: SALESPERSON LICENSE  
TAX YEAR: 2012  
DATE SIGNED: 3-26-2012  
COMMISSIONERS: M. JOHNSON, M. CRAGUN  
EXCUSED: B. JOHNSON  
COMMISSIONER DIXON CONCURS  
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. 12-399
vs.	Tax Type: Salesperson License
MOTOR VEHICLE ENFORCEMENT DIVISION, UTAH STATE TAX COMMISSION,	Judge: Jensen
Respondent.	

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**Presiding:**  
Clinton Jensen, Administrative Law Judge

**Appearances:**  
For Petitioner: PETITIONER, Applicant  
For Respondent: RESPONDENT-1, for the Motor Vehicle Enforcement Division  
RESPONDENT-2, for the Motor Vehicle Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on February 16, 2012 in accordance with Utah Code Ann. §59-1-502.5. The Petitioner named above (the “Applicant”) is appealing the denial of a motor vehicle salesperson license by the Motor Vehicle Enforcement Division of the Utah State Tax Commission (the “Division”).

APPLICABLE LAW

(b) If the administrator finds that there is reasonable cause to deny, suspend, or revoke a license issued 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: . . . (iii) lack of a bond in effect as required by this chapter; . . . (vii) a violation of any state or federal law involving motor vehicles; . . . (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] (xii) having had a license issued under this chapter revoked within five years from the date of application. Utah Code Ann. § 41-3-209(2).

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 Ann. §41-3-201(7).

### DISCUSSION

On October 27, 2011, the Applicant submitted an application form for a motor vehicle salesperson license. On the form for the motor vehicle salesperson license, Question 2 asks, “During the past 10 years, have you been convicted of any state or federal charges?” The Applicant indicated “yes.” In the space indicating, “If yes, please list each conviction,” the Applicant listed “Class A Misdemeanor – Sold cars without a license, have a plea in abeyance to get licensed with the state to sell cars, so that is what I am doing. The whole reason as to why I could not renew my license is because my bond was expiring and they would not renew it because I was too small of a business. I had done nothing wrong. I had gone to many insurance companies to get bonded and because of the size of my net worth they would not help me so selling with someone else is the only way.” On the basis of the Applicant’s criminal conviction listed, the Division denied the application.

At hearing, the Applicant indicated that he had operated a car dealership for many years. In 2008, the Applicant’s bonding company informed the Applicant that it would not renew his bond. He tried many insurance companies, but those companies likewise refused to bond him. The applicant sold cars through his dealership while he was trying to renew his bond and continued to do so after the Division refused to renew his license without a bond. The Applicant’s selling without a license did not come to light until the Applicant’s bank dishonored a check that the Applicant had written to buy a car. The Applicant indicated that his resale of that car took longer than anticipated and that when he issued the check, he intended to cover it with proceeds from the sale of the car. As of the date of the hearing, the Applicant had fully satisfied the recipient of the check.

On January 10, 2012, the Third District Court in Salt Lake County dismissed the Applicant’s felony charge of issuing a bad check or draft in exchange for the Applicant entering a guilty plea to four counts of

acting as a dealer without a license. Under the terms of this plea agreement, the Third District Court agreed to hold the guilty pleas in abeyance for a period of 24 months and to dismiss the charges if the Applicant pays \$\$\$\$ fine, completes ##### hours of community service, and has no further violations.

The Applicant indicated that he knew he needed a license to sell cars. Nevertheless, he continued selling because his son needed an expensive medical procedure. The Applicant indicated that the car sales industry is all he has known for many years and thus requests licensure through the Division.

Two issues pose problems for the Commission exercising discretion to license the Applicant. First, the Applicant knowingly violated Utah laws meant to regulate motor vehicle commerce. These are recent violations. As such, there has not been adequate time for the Applicant to demonstrate that he has made a change in his desire to comply with Utah law regarding vehicle commerce. Second, the Applicant was still under court supervision as of the date of the Initial Hearing. On the basis of these factors, the Applicant has not shown good cause to support an exercise of discretion in light of the Applicant's four recent criminal violations.

Clinton Jensen  
Administrative Law Judge

DECISION AND ORDER

The Commission does not find sufficient good cause to exercise its discretion to grant a license to the Applicant under the facts of this case. On that basis, the Commission sustains the Division's denial of a 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 any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a 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

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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

Michael J. Cragun  
Commissioner

**COMMISSIONER DIXON CONCURS**

I concur with the majority in denying the license; **however, based on evidence provided in a formal hearing I may be willing to consider a probationary license.**

The Petitioner stated his plea agreement allows for the charges to be dismissed upon completion of the terms of the plea agreement. Under the terms of a plea in abeyance there may be reason for the Commission to grant a probationary salesperson license. In this situation the Petitioner would have every motivation and reason to meet the conditions of the plea in abeyance so there is not a conviction entered on his record. The plea is an incentive to comply with the laws and administrative rules and meet all the conditions and privileges of having a salesperson license. The 24 months of court supervision under the plea provides additional oversight of the Petitioner.

Further evidence is needed from the Petitioner to verify the pending charges under the plea in abeyance are based on a one-time situation in his life. The Petitioner should provide the plea in abeyance agreement and a Bureau of Criminal Investigation (BCI) report to verify he has not been charged with or been convicted of any other crimes beyond the charges related to the plea.

The Petitioner proffered he had owned a car dealership for years and selling cars is what he knows. The Petitioner is now seeking a salesperson license to work for another dealer. I would like to read letters from

his potential employer regarding why the Petitioner would be a good addition to the dealership sales team. I would want to know if the Petitioner has support networks either through family and friends or a religious or community group to help him through these challenges and changes in his life.

I note in the Petitioner's file there is a letter dated January 6, 2012, from NAME, Manager/ Owner of DEALERSHIP who was the recipient of a check from the Petition that did not clear the bank for lack of sufficient funds. NAME writes:

“...On January 4<sup>th</sup>, he [PETITIONER] came into the store and apologized for his delay in getting us paid but did pay the balance in full. It is my feeling that PETITIONER has endured some very tough financial times as well as extreme medical costs for a son. He has always struck me as a person of character and this most recent experience with him is certainly out of character...Based upon my 35+ years at DEALERSHIP, it is my belief that PETITIONER is a person who will try and do the right thing. I hope that he may find a suitable arrangement with your dept.”

On February 19, 2012, the Tax Commission made effective revised administrative rule **R877-23V-20. Reasonable Cause to Deny, Suspend, or Revoke a License Issued Under Title, 41, Chapter 3 Pursuant to Utah Code Ann. Section 41-3-209. The amended rule states:**

“There is a rebuttable presumption that reasonable cause to deny, suspend, or revoke a license issued under Title 41, Chapter 3 does not include a violation of a state or federal law listed under Subsection 41-3-209(2) if the license applicant:

- (1) indicates on the license application that the applicant has been charged with, found in violation of, or convicted of a state or federal law listed under Subsection 41-3-209(2);
- (2) has completed any court-ordered probation or parole;
- (3) if the license applicant has entered into a plea in abeyance, met the conditions of that plea in abeyance; and
- (4) paid any required restitution and fines.

This means in two years under the revised rule if the Petitioner has successfully completed the Plea in Abeyance including payment of the \$\$\$\$ fine and Petitioner has no further charges or convictions, the Petitioner could apply for a motor vehicle sales person license and the license would likely be granted by the Motor Vehicle Enforcement Division without a hearing before the Commission.

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In this situation, the compelling reasons to make the Petitioner wait two years to see if he successfully completes the plea may be too harsh. There may be reason to allow the Petitioner to have a probationary license while he is under the guidance of another licensed motor vehicle dealer and the Court.

With further evidence provided as suggested in this concurrence, I may be inclined to consider whether a probationary license would be appropriate. Terms for a probationary license would include: (a) the Petitioner provide a copy of the Commission order to the Third District Court prosecuting attorney and proof to MVED of providing the Order, (b) any violations of the plea agreement or any new entry under UCA 41-3-209 entered against the Petitioner would result in immediate revocation of the probationary license, (c) if the terms of the plea were fulfilled, and proof provided to that effect, the probationary status of the license would be removed.

D'Arcy Dixon Pignanelli  
Commissioner