

12-1253  
SALESPERSON LICENSE  
SIGNED: 06-01-2012  
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN  
EXCUSED: R. JOHNSON

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 12-1253</p> <p>Tax Type: Salesperson License</p> <p>Judge: Phan</p>
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**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 May 22, 2012, for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioner (“Applicant”) is appealing a thirty day suspension of his motor vehicle salesperson license imposed by Respondent (“Division”). The suspension was issued by letter dated April 4, 2012. It was set to be in effect from May 4, 2012 to June 3, 2012, but because the Applicant has filed an appeal, the suspension is stayed until the Tax Commission issues its decision.

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 November 9, 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 then in the space provided to list each conviction, the Applicant wrote, “misdemeanor possession of stolen property.” He states that his employer had done a criminal background check on him at that time and he had been told that he had passed. He states that they did not provide him a copy of the report. He also represented that he was told by this person that what he had listed was okay.

Based on the statement and conviction listed on the application form, the Division issued the license to the applicant pending the criminal background check. The Applicant has now been working at the DEALERSHIP since November 2011. He also indicated that three days before the Division had sent him the suspension notice, he had been offered a management position. He stated, however, that if he was suspended the employer would not hold his job for him and he would be out of work.

When the Division received the Applicant’s Criminal History Record from the Bureau of Criminal Identification on April 3, 2012, the Division issued the suspension on the basis that the Applicant had failed to disclose criminal convictions or charges. The Criminal History showed two incidents. The first with an arrest date of March 11, 2003, and disposition date of September 8, 2004, in Third District Court. There were two Misdemeanor A convictions from this incident, one for burglary and one for larceny. The second incident on the report listed an arrest date of August 20, 2003 and a disposition date of June 4, 2003, in Fourth District Court. The convictions

listed were also two Misdemeanor A convictions, one for larceny-attempted theft and one for burglary-forced entry-attempted burglary. It was the Division's position that the Applicant had not fully listed these convictions on the application form.

The representative for the Division pointed out that Utah Code §41-3-209 mandates that a license "shall" be denied, revoked, or suspended for reasonable cause. The statute identifies as "reasonable cause" a number of considerations including making a false statement on the application. It was the Division's position that the Applicant had made a false statement by failing to fully disclose all of the convictions.

Despite the different arrest and disposition dates on the Criminal History Report, the Applicant did state that both criminal incidents stemmed from the same event and the same arrest, that the reason they showed up as two separate incidents was that he was charged in two different jurisdictions.

After review of the information submitted in this matter by the parties, the Division's thirty-day suspension for making a false statement on the application is not inappropriate. The form requires the Applicant to "list each conviction." The Applicant listed "misdemeanor possession of stolen property." The Applicant had been convicted of misdemeanor larceny and burglary and misdemeanor attempted larceny and burglary, four convictions. However, because of the time that has passed since these convictions and that the applicant is no longer on probation, the license would have likely been issued to the Applicant had these things been fully disclosed. Further, the Applicant had put his employer on notice that he had criminal convictions by checking "Yes" in answer to Question two and he had listed something related in the space provided. The convictions had occurred seven years prior to the application and he did not have his Criminal History Report in front of him at the time he filled out the application. He represented at the hearing that it was his understanding that his employer had obtained a copy of his criminal record, had reviewed it and was aware of the convictions before the application was submitted to the Division. The failure to fully disclose is basis for some period of suspension, but the mitigating factors noted support a reduction to a period of ten-days.

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Jane Phan  
Administrative Law Judge

**DECISION AND ORDER**

Based on the foregoing the Commission suspends the Applicant's license for a period of ten calendar days. The suspension is to begin thirty-days from the date that this Order is issued and end forty-days from the date this order is issued. Further, before the license is reinstated the

Applicant will need to resubmit a new application form listing all convictions that is signed by the dealership. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. If either party requests a Formal Hearing this decision and order is stayed until the Commission issues its Formal Decision. 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