

12-1258
SALESPERSON LICENSE
YEAR: 2012
SIGNED: 06-01-2012
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: R. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER Petitioner,</p> <p>v.</p> <p>MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 12-1258</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 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 sixty-day suspension of his motor vehicle salesperson license imposed by Respondent (“Division”). The suspension was issued by letter dated April 13, 2012. It was set to be in effect from May 13, 2012 to July 12, 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 December 13, 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 “No”. Question number three of the application asks if the applicant is “currently on probation or parole.” Again the Applicant checked the box indicating “No”.

Based on these representations on the application form, the Division issued the license to the applicant pending the criminal background check. The Applicant has now been working at DEALERSHIP as a motor vehicle salesperson since December 2011. When the Division received the Applicant’s Criminal History Record from the Bureau of Criminal Identification on March 20, 2012, the Division issued the suspension on the basis that the Applicant had failed to disclose a criminal conviction.

The Applicant’s Criminal History showed one criminal incident with an arrest date of June 11, 2011, and a disposition date of September 8, 2011. It was a Misdemeanor–B conviction for Traffic Offense-Impaired Driving. It shows a sentence of 18 months probation and a fine of \$\$\$\$\$. The Division representative also had pulled the Court docket for the case which confirmed a court supervised probation period.

The Applicant stated that he did not disclose this because he thought it was a traffic infraction. When he filled out the application form he did not have a copy of his criminal history. The application form does state, “You are not required to disclose simple traffic infractions.” He also indicates that he did not have an attorney on this case and that he had negotiated the plea arrangement himself and thought he had been convicted of something like reckless driving. He

states that he did not think he was on probation because he was never told to meet with a probation officer. He had been told that he needed to make his installment payments to the court and he had not been required to report in otherwise. He states that he did pay off the fine of \$\$\$\$ in January 2012.

The Applicant also explained that this was just a onetime mistake, which was confirmed by the criminal history which showed no other arrests or convictions. He indicated that it was the night of (WORDS REMOVED). PERSON 1 had called him for a ride because she had been drinking. He said he made a mistake in driving. It was also his position that the suspension would be a serious financial hardship and that he did not think that his current employer would hold his job for him for the sixty-day period.

It was the Division's position that the Applicant had made a false statement on the application form by representing he had no charges or convictions and by stating that he was not on probation or parole. 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. In this matter, because the conviction was recent and the Applicant was still on an informal probation at the time he filled out the form, had the Applicant filled out the form accurately the Division may have denied the application.

Due to the Applicant's failure to list the recent conviction, fine and court probation on his application form, the Division's sixty-day suspension was not inappropriate in this matter. The applicant was aware he was charged with a DUI and should have known this charge was a criminal action and not a mere traffic infraction. Question two on the form asked if there had been both charges and convictions. However, upon review of the additional information presented in this matter, including the nature of the conviction, that it was the only conviction listed on the Applicant's Criminal History Report and that it is not entirely implausible the applicant thought that he had plead guilty to something that fell into the category of "traffic infraction" it would also not be inappropriate for the Commission to reduce the suspension to a period of thirty-days. The Applicant failed to list a very recent misdemeanor conviction or note that he was on informal court supervised probation. There should be a suspension of the license, but for a period of thirty-days.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing the Commission imposes a thirty-day suspension. The suspension is to begin thirty-days from the date that this Order is issued and end sixty-days from the date this order is issued. Further, before the license is reinstated the Applicant will need to resubmit a new application form that lists all convictions and is signed by his employer. 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