

12-1982
TAX TYPE: SALESPERSON LICENSE
TAX YEAR: 2011 and 2012
DATE SIGNED: 12-6-12
COMMISSIONERS: M. JOHNSON, M. CRAGUN
EXCUSED: B. JOHNSON
COMMISSIONER DIXON CONCURS IN PART AND DISSENTS IN PART
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. MOTOR VEHICLE ENFORCEMENT DIVISION, UTAH STATE TAX COMMISSION, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION Appeal No. 12-1982 Tax Type: Salesperson License Judge: Phan
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Presiding:
Michael Cragun, Commissioner
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Utah Attorney General
RESPONDENT, Assistant Director, Motor Vehicle Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission pursuant to Utah Code Sec. 63G-4-204 through 63G-4-302, for a Formal Hearing on November 19, 2012. Petitioner (the "Applicant") had timely filed an appeal of Respondent's ("Division") action to deny a license to the Applicant. The matter proceeded to a Formal Hearing before the Tax Commission. On the basis of the evidence and testimony presented at the hearing, the Tax Commission makes its:

FINDINGS OF FACT

1. The Applicant is appealing an action by the Division to deny the Applicant a Motor Vehicle Salesperson License. The letter from the Division denying the license had been issued on July 26, 2012.
2. The Applicant had filled out an application for a Motor Vehicle Salesperson License, which he signed and dated on June 25, 2012.

3. 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. There are boxes where the applicant would check “Yes” or “No”. The Applicant checked the “Yes” box. The application form goes on to state, “If yes, list each including dates” and provides a space to do so. The Applicant had listed “False Insurance information” in the space provided, without a date.

4. Question number three of the application asks if the Applicant was currently on probation or parole. The Applicant had checked “Yes” as the answer to this question. The second part of that question asked if the applicant still owed restitution. The Applicant answered “No” to that question.

5. This application was returned by the Division on June 29, 2012 with a form TC-457, which is used when an applicant has failed to provide all required information. The Division’s reason indicated to the Applicant for returning the application was checked as “Other” and the explanation provided by the Division, “Please have PETITIONER list his conviction verbage exactly as it is stated on his criminal history and return so we may review his application for licensing. Also because his application will be returned after July 1 you will only need to submit a total of \$\$\$\$\$.”

6. The Applicant did not submit a new application form with new date and signatures, but instead added to the June 25, 2012 form, in the space to list each conviction the statement, “false fraudulent insurance claim.” It was unclear when this was resubmitted.

7. On July 26, 2012 the Division issued its denial of the license. The Division stated in the denial, “This action is being taken in response to your answer to question #2 and/or #3 on the salesperson application concerning criminal convictions within the last 10 years or probation/restitution.” The letter goes on to state, “Utah state law 41-3-209 requires the division to deny or suspend licenses if an applicant has violations of state or federal law regarding controlled substances, fraud, registerable sex offense, or motor vehicle related crimes.”

8. Applicant had started working as a motor vehicle salesperson at least by 2004. The Division had records of issuing the Applicant a license in 2004 and he had remained licensed up through November 2011.

9. The Applicant had pled guilty to a 3rd Degree Felony, False or Fraudulent Insurance Claim and the conviction was entered on December 17, 2009. He was ordered to report to Adult Probation and Parole for a period of 36 months.

10. On May 20, 2010, Applicant had submitted an application form to transfer to

DEALERSHIP. On that form he listed that he had no convictions. Then he terminated from that employment one month later. He reapplied for a motor vehicle salesperson license in November 2010. He also stated on this application form that he had no convictions. Because of the law change new fingerprints were submitted to the Bureau of Criminal Identification at this time. An additional application form had been submitted in July 2011 and again he had stated that there were no convictions on this form.

11. The Applicant testified that he did not disclose the conviction on the three application forms because he was embarrassed about the conviction. He said he had been working with his father and he did not want him to find out.

12. In December 2011 BCI reported that they had received fingerprints due to the conviction, but also in December 2011 the Division had received notification that the applicant was no longer employed as a salesperson.

13. There had been warrants issued against the Applicant for failure to comply with probation. On January 24, 2012 the Applicant's probation was revoked and reinstated for a period of 36 months beginning January 24, 2012.

14. The Applicant testified that he had been a motor vehicle salesperson for about 9 years. He said that he loves selling cars and that he knows cars. To take away the license was a big thing for him. He indicated that he needs to continue to work to take care of his kids. He also said that he would not do anything wrong again. It was his testimony that if he could get his license he would have a good job as a salesperson at the DEALERSHIP.

15. The Applicant stated that the probation had been reinstated for the full three-years because he missed a probation hearing. He also testified that his probation officer was working to get him off probation. He stated that he had paid his restitution and did submit at the hearing a letter from NAME, dated August 14, 2012, which stated that the Applicant had "paid-in-full" the \$\$\$\$ of restitution to the Insurance Fraud Division for investigative costs.

16. When the Applicant submitted the most recent application form, the Division had denied that based on the disclosure provided the Applicant, and had not submitted the Applicant's fingerprints to BCI for a criminal history report. The Division did not, therefore, know if there were other convictions on the Applicant's criminal history report.

17. The Applicant had represented at the hearing that his probation officer was working to get

him off probation. He stated at the hearing that he could obtain a letter from his probation officer regarding this and offered to provide additional information in support of his position. The Applicant was given a deadline of November 26, 2012 to provide letter and additional information, but nothing was submitted by the Applicant in this matter.

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. The Division properly suspended the Applicant's salesperson license under Utah Code Utah Code §41-3-209(2). The Applicant was convicted of a 3rd Degree Felony False or Fraudulent Insurance Claim on December 17, 2009. This is a violation of a state or federal law involving fraud. Therefore, this conviction was one that was specifically listed as reasonable cause to suspend or deny the license under Utah Code §41-3-209(2). Additionally, at the time the Applicant had submitted the application for a motor vehicle salesperson license he was still on probation. The Applicant had been sentenced to three years probation with the original conviction. However, there was a probation violation or violations and

the Probation was revoked and reinstated for a period of 36 month period beginning January 24, 2012.

2. Although the Division's action to deny the license was consistent with the statutory provisions, the Commission may consider factors like the lapse of time from the most recent conviction, whether Applicant has been released from parole or probation and the payment of restitution. In this case, the original offense did occur several years ago and the original conviction December 17, 2009, but there were subsequent probation violations and the probation was reinstated for three years beginning in January 2012. While the Applicant had stated that he was going to be released from probation early, the Applicant failed to provide a letter from his probation officer or additional information to support his case. Additionally, there were prior instances of making a false statement on applications for a salesperson license or to transfer a salesperson license. Insufficient mitigating factors were provided by the Applicant for the Commission to overturn the Division's decision to deny this license. The applicant may reapply once he is released from probation, and a decision will be made on whether the license will be issued based on the facts and circumstances at that time.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

On the basis of the forgoing, the Commission denies Applicant's appeal. It is so ordered.

DATED this _____ day of _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

Michael J. Cragun
Commissioner

COMMISSIONER DIXON CONCURS IN PART AND DISSENTS IN PART

I concur in denying the license because the Petitioner failed to disclose his felony conviction for fraud on three prior transfer applications. In addition, not enough time has passed from the Petitioner's

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conviction for me to see a definite change in the Petitioner's behavior, decisions, and actions. However, I did not deny the license because the Petitioner is on probation; on that point I dissent.

D'Arcy Dixon Pignanelli
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 Sec. 63-46b-13. 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 Sec. 59-1-601 et seq. and Sec. 63-46b-13 et seq.