

12-2293
TAX TYPE: SALESPERSON LICENSE
TAX YEAR: 2012
DATE SIGNED: 5-3-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. MOTOR VEHICLE ENFORCEMENT DIVISION, UTAH STATE TAX COMMISSION, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER Appeal No. 12-2293 Tax Type: Salesperson License Judge: Jensen
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Presiding:

R. Bruce Johnson, Commission Chair
Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, Applicant
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
 RESPONDENT, for the Motor Vehicle Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 7, 2013. On the basis of the evidence and testimony presented at the hearing, the Tax Commission makes its:

FINDINGS OF FACT

1. Petitioner (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”).

2. On August 8, 2012, 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 charged with, found in violation of, or convicted of any misdemeanors or felonies in Utah or in any other state?” The Applicant indicated “yes.” In the space indicating, “If yes, list each, including dates,” the Applicant wrote “see attached.” The Applicant attached a criminal history report from the Utah Bureau of Criminal Identification (“BCI”). The BCI report listed a single arrest on

August 27, 2006 for “issuing a bad check x4, felony; failure to delivery [sic] title x7, misdemeanor; and failure to pay off lien x4, misdemeanor. The BCI report indicated that on December 3, 2007, the Fourth District Court in CITY, Utah accepted a guilty plea under a plea in abeyance agreement for “fraud – insuff funds check, felony – third degree and fraud – swindle, felony – third degree.” In response to Question 3 on the application, the Applicant indicated that he was not on probation or parole but did owe restitution.

3. On the basis of the information provided in the application, the Division denied the application in a letter dated August 15, 2012.

4. At hearing, the Applicant testified that in 2006, he was in the process of buying an auto dealership. After the purchase, the dealership was unable to cover several checks it had written and was likewise unable to deliver titles for several vehicles.

5. The Applicant testified that the bad checks at issue were to auto dealers for the purchase of vehicles for resale by the Applicant’s dealership.

6. The Applicant testified that although the seller of the dealership was primarily to blame for the problems that led to the inability to cover checks and deliver titles, he bore the brunt of criminal prosecution.

7. The Applicant testified that he did not fight the charges against him and was sentenced to three years on probation and ordered to pay restitution.

8. The Applicant testified that he completed his probation in January 2012.

9. The Applicant testified that he did not know the exact amount of restitution ordered, but did state that a bonding company paid approximately \$\$\$\$\$, that he had made payments totaling approximately \$\$\$\$\$, and that the balance was not paid as of the hearing date.

10. The Applicant testified that at the time that he entered into his plea in abeyance, the prosecutor had agreed to a condition that his automobile salesperson license would not be revoked as a result of the plea in abeyance.

11. The Division’s representative indicated that the Division did not suspend the Applicant’s license when the authorities charged the Applicant in 2006 or when the Fourth District Court sentenced him in 2007. However, in 2010, a new law required that the Applicant submit a renewal application with fingerprints. The Division denied renewal and the Applicant was not licensed to sell motor vehicles at the time of his August 8, 2012 application.

12. The Applicant did not provide evidence to indicate that a provision that a salesperson license not be revoked was made part of the Fourth District Court’s final order in 2007.

13. The Applicant noted that as a salesperson, he would be under supervision and would not be directly handling payments, financing, or vehicle titles. He indicated that he needed to be able to sell cars to continue paying restitution from his previous criminal charges.

APPLICABLE LAW

Under Utah Code Ann. § 41-3-209(2)(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.

Utah Code Ann. § 41-3-209(2)(c) provides that 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: (i) lack of a principal place of business; (ii) lack of a sales tax license required under Title 59, Chapter 12, Sales and Use Tax Act; (iii) lack of a bond in effect as required by this chapter; (iv) current revocation or suspension of a dealer, dismantler, auction, or salesperson license issued in another state; (v) nonpayment of required fees; (vi) making a false statement on any application for 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; (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.

Utah Code Ann. §41-3-201(7) provides that 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.

DISCUSSION

Utah Code Ann. §41-3-201(7) provides that 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. This Section has application to this case, in which the Applicant entered a guilty plea to charges of check and motor vehicle fraud, owes restitution, and has not paid that restitution.

The Commission notes the Applicant's concern regarding a prosecutor statement that his convictions would not result in revocation of his license. However, the Applicant has not provided independent proof that a prosecutor made the statement, that this statement was memorialized as an agreement, that the court made it part of its order, or that the Fourth District Court would have the authority to issue a ruling that would contradict the requirement in Utah Code Ann. §41-3-201(7) that a

license not be issued to one who has not paid full restitution for automobile commerce. Because the Applicant has not provided evidence or legal citation for these propositions, there is no basis for the Commission to consider whether an agreement or order to not revoke a license would require the issuance of a new or renewal license.

CONCLUSIONS OF LAW

1. The Applicant entered guilty pleas to a charge of fraud on an insufficient funds check, a felony. He also entered a guilty plea to a charge of issuing a back check for less than \$\$\$\$\$.
2. As of the hearing date, the Applicant had not paid restitution on the charges against him for bad checks relating to automobile commerce.
3. Because the bad checks related to automobile commerce and had elements of fraud and because the Applicant had not paid full restitution on the charges, the Division acted properly in denying an automobile salesperson license to the Applicant on August 15, 2012.
4. On the basis of the evidence presented, there is not sufficient good cause for the Commission to exercise its discretion to grant a salesperson license to the Applicant.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

The Commission does not find error in the Division’s actions in denying a license and 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.

DATED this _____ day of _____, 2013.

R. Bruce Johnson
Commission Chair

D’Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
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 in accordance with Utah Code Ann. §63G-4-302. 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

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action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 and 63G-4-401 et. seq.