

15-928
TAX TYPE: SALESPERSON LICENSE
TAX YEAR: 2015
DATE SIGNED: 10-2-2015
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner,	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION
vs.	Appeal No. 15-928
MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION,	Account No. ##### Tax Type: Salesperson License Tax Year: 2015
Respondent.	Judge: Marshall

Presiding:

Rebecca L. Rockwell, Commissioner
Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, *Pro Se*
REPRESENTATIVE FOR PETITIONER
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
RESPONDENT, Assistant Director, Motor Vehicle Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on September 10, 2015, in accordance with Utah Code Ann. §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. On or about May 13, 2015 the Petitioner (“Applicant”) submitted a Motor Vehicle Salesperson Application. (Exhibit R-1).
2. Question number two of the application 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 checked the box indicating “Yes.” In the space provided, the Applicant wrote the following:

2nd degree felony arrested Dec. 2014 for theft of food & selling out of my car when @ COMPANY Plea in abeyance – For 3 years entered Feb 2, 2015.

3. Question number three of the application asks, “Are you currently on probation or parole, court supervision of any kind, or in a ‘plea an abeyance?’” The Applicant checked the box indicating “Yes,” and in response explained that he was paying \$\$\$\$ per month restitution for the next three years.
4. On May 20, 2015, the Respondent (“Division”) issued a letter denying the Applicant a motor vehicle salesperson license based on the answers to questions two and three of the application. (Exhibit R-1).
5. The Applicant developed an addiction to prescription pain medication. To support that addiction, the Applicant stole food from his employer, COMPANY, and sold it on the side to various food carts.
6. In June of 2011, the Applicant confessed his actions to the police. He had previously confessed to his employer, and had lost his job.
7. The police took no action on his confession until 2014, when the case was filed with the Third District Court. On February 2, 2015, the Applicant entered a guilty plea that was to be held in abeyance for a period of three years. (Exhibit R-1).
8. As part of the plea in abeyance, the Applicant is not to use, consume, or possess alcohol or illegal drugs; not to associate with any person using, possessing, or consuming alcohol or illegal drugs; not to frequent any place where drugs are used, sold, or distributed illegally; submit to breath and/or urine testing; refrain from the use of alcoholic beverages; not use, consume, or possess alcohol or frequent any place alcohol is the chief item of sale; submit to search of person and/or property upon the request of law enforcement officers; violate no laws; pay restitution in the amount of \$\$\$\$; complete a substance abuse evaluation and any recommended treatment; and be supervised by AP&P for 36 months. (Exhibit R-1).
9. The Applicant had previously held motor vehicle salesperson licenses, and stated that he did not receive any complaints during that time.
10. REPRESENTATIVE FOR PETITIONER spoke on behalf of the Applicant. He stated that he has known the Applicant for a year, and had worked with him at another dealership. He described the Applicant as a hard worker who is a good salesman. He believes the Applicant is trying to learn from his past and provide for his family.
11. RESPONDENT acknowledged that the Applicant had previously been granted motor vehicle salesperson licenses. He explained the licenses were granted because there were no violations listed on the application, and noted that the Division would not have been aware until the Applicant was convicted.

12. RESPONDENT explained that because it is a felony conviction and because of the amount of restitution involved, the Division believes there is reasonable cause to deny the license.

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 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:
 - (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; or
 - (xi) a violation of any state or federal law involving a registerable sex offense under Section 77-41-109; or
 - (xii) having had a license issued under this chapter revoked within five years from the date of application.

CONCLUSIONS OF LAW

The Division had reasonable cause to deny the Applicant a salesperson license under Utah Code Ann. §41-3-209. Utah Code Ann. §41-3-209 mandates that a license “shall” be denied, revoked, or suspended for reasonable cause. While the statute goes on to enumerate certain violations that constitute “reasonable cause,” the Commission has previously held that the list is not exhaustive, and that other convictions may constitute “reasonable cause” to deny a salesperson license.

In the past, the Commission has considered such factors as the nature of the conviction, passage of time since the most recent violation, completion of probation or parole, and payment of all fines and restitution in determining whether to issue a salesperson license when the Division has denied the license for “reasonable cause.” In this case, the Applicant entered into a plea in abeyance earlier this year, owes a significant amount of restitution, and is not scheduled for a review date of the plea in abeyance until February of 2018. Based on these factors, the denial of the license should be upheld.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission upholds the denial of a motor vehicle salesperson license to the Applicant. It is so ordered.

DATED this _____ day of _____, 2015.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
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 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 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 et seq. and §63G-4-401 et seq.