15-1388
TAX TYPE: MOTOR VEHICLE SALESPERSON'S LICENSE
TAX YEAR: 2015
DATE SIGNED: 1-11-2016
COMMISSIONERS: J. VALENTINE, R. PERO, R. ROCKWELL
EXCUSED: M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION** Appeal No. 15-1388 Tax Type: Motor Vehicle Salesperson's License Judge: Chapman

Presiding:
John L. Valentine, Commission Chair
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER, Licensee
For Respondent: RESPONDENT, from MVED

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on December 7, 2015. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. This appeal arose after the Motor Vehicle Enforcement Division ("Respondent," "MVED," or "Division") issued a July 21, 2015 Notice of Intent to Suspend Business Owner ("Notice") to PETITIONER ("Petitioner" or "Licensee") and BUSINESS-1("BUSINESS-1"). In the Notice, the Division informed PETITIONER that "[w]e intend to suspend your Business Owner, number- ##### on August 20, 2015" and

that "[i]f your license is suspended the business license for BUSINESS-1 will also be suspended."[1]

2. On August 13, 2015, PETITIONER timely filed an appeal of the Division's suspension action.

3. At the Formal Hearing, RESPONDENT explained that its Notice was initially intended to suspend PETITIONER "no-fee license," which RESPONDENT described as a license that allows a person who is the sole owner of a dealership to sell motor vehicles at his or her dealership. PETITIONER was the sole owner of BUSINESS-1 when the Division issued its Notice in July 2015. As a result, RESPONDENT explained that its Notice was a suspension of both PETITIONER salesperson's license and BUSINESS-1 dealer's license. The Division also explained that the suspensions are stayed while PETITIONER appeal remains open.

4. In August 2015, NAME-1 was added as a second owner of BUSINESS-1.[2] Because there is now another owner of the BUSINESS-1 dealership, the Division explained that it is no longer asking the Commission to take any action in regards to the BUSINESS-1 dealer's license. The Division is now asking the Commission to only suspend PETITIONER salesperson's license. The Division asks the Commission to suspend PETITIONER salesperson license until such time that PETITIONER is no longer on probation. PETITIONER asks the Commission not to suspend his salesperson's license. Accordingly, the only issues before the Commission are whether PETITIONER salesperson's license should be suspended and, if so, for what period of time.

5. The Commission previously held an Initial Hearing in this matter. On September 21, 2015, the Commission issued its Initial Hearing Order. PETITIONER timely requested to proceed to a Formal Hearing.

6. In its suspension Notice, the Division explained that it was suspending PETITIONER license

1 Respondent's Exhibit 1 ("Exhibit R-1"), pp. 1-2.
2 PETITIONER stated that NAME-1 is his girlfriend.

because the Utah State Bureau of Criminal Identification ("BCI") had informed the Division "of a recent arrest or conviction." The Division submitted a BCI report showing that in the spring of 2015, PETITIONER was arrested and charged with two crimes, specifically: 1) a Class B Misdemeanor for theft by deception; and 2) a 3rd Degree Felony for attempted forgery.[3] PETITIONER claims that he has not been charged with any crimes before or since, which appears to be supported by the Division's BCI report.

7. The parties agree that the theft by deception and forgery charges with which PETITIONER was charged arose out of a 2011 motor vehicle transaction in which PETITIONER was the seller of the motor vehicle.

8. On June 15, 2015, the two charges were resolved in 3rd District Court. The 3rd Degree Felony charge for forgery was dismissed, and PETITIONER pleaded guilty to a Class A Misdemeanor for attempted theft by deception, which the 3rd District Court agreed to hold in abeyance for 18 months.[4] As a result, on the July 21, 2015 date that the Division issued its Notice, all charges against PETITIONER had already been resolved, and there were no pending charges against him. RESPONDENT explained that the Division waited to see if PETITIONER was convicted of any of the charges before it took its suspension action.

9. The 3rd District Court records the Division submitted indicate that as part of PETITIONER plea in abeyance, he was ordered to complete 50 hours of community service and pay $$$$$ of restitution to the victim (i.e., the buyer of the motor vehicle). The court records, however, were printed less than a month after PETITIONER entered his guilty plea in June 2015 and do not indicate whether these two requirements

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3 Exhibit R-1, pp. 3-6. It appears that the theft by deception offense had been classified as a felony at some point before it was reduced to a misdemeanor.

4 Exhibit R-1, pp. 10-15. It is unknown why the theft by deception offense was shown to have been reduced to a Class B Misdemeanor on BCI records, but shown to have been reduced to a Class A Misdemeanor on 3rd District Court records. It is also unknown why BCI records showed the charges to be theft by deception and *attempted* forgery, while the 3rd District Court records show that the court resolved charges for forgery and *attempted* theft by deception. Regardless, 3rd District Court records show that PETITIONER pleaded guilty to

have been satisfied in the intervening period. PETITIONER testified that he has already completed the 50 hours of community service and paid the entire $$$$$ amount of restitution. The Division did not contest PETITIONER testimony that both of these requirements have been fully satisfied. As a result, the Commission finds that PETITIONER has completed his community service and fully paid the restitution required by the court.[5]

10. The 3rd District Court records the Division submitted also do not specify whether PETITIONER was placed on probation after entering his plea in abeyance on June 15, 2015. PETITIONER, however, testified that he is on probation and is expected to remain on probation for 18 months until December 15, 2016. On the basis of PETITIONER testimony, the Commission finds that PETITIONER is currently on probation.

11. PETITIONER asks the Commission not to suspend his salesperson's license because of the hardships that such an action will cause for him and his family and because he would not have entered a guilty plea had he known that his salesperson's license would be suspended as a result. PETITIONER also stated that it is his understanding that his plea in abeyance does not constitute a conviction.

12. In prior cases, the Commission has relied on a ruling by the Utah Court of Appeals to find that a plea in abeyance constitutes a "violation" of the law establishing the crime to which a person has pleaded guilty.[6] In *Salzl v. Dept. of Workforce Services*, 122 P.3d 691 (Utah App. 2005), the Utah Court of Appeals considered a crime for which a guilty plea was entered and held in abeyance and which the court later

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a Class A Misdemeanor for *attempted* theft by deception and that the court dismissed a forgery charge.

5 UCA §41-3-201(8)(a) 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." Because the Commission finds that PETITIONER has fully paid the restitution the court required, this provision has no impact on the Commission's decision.

6 *See USTC Appeal No. 05-1502* (Order Jan. 10, 2006). Redacted copies of this and other selected decisions can be viewed on the Commission's website at http://www.tax.utah.gov/commission-office/decisions.

dismissed. In that case, the Petitioner argued that "a plea in abeyance that ultimately results in a dismissal does not constitute an admission to or a conviction of a crime." The Court disagreed, finding "that entering into a plea in abeyance for a class A misdemeanor constitutes an admission, if not a conviction, to that crime. . . ." The Court further explained that "if Petitioner pleaded guilty to [the crime], she 'acknowledged committing an act in violation of the law,' . . . and admitted the crime. . . , even though the plea was held in abeyance and ultimately dismissed." For these reasons, PETITIONER guilty plea to attempted theft by deception constitutes a "violation" of that provision.[7]

13. PETITIONER also asks the Commission to consider the circumstances of the motor vehicle transaction that led to his pleading guilty to attempted theft by deception. PETITIONER stated that he came to Utah from FOREIGN COUNTRY around 10 years ago. It is not known when PETITIONER first began to buy and sell motor vehicles in Utah, but he stated that he may have sold between three and five motor vehicles in 2011. It is one of these 2011 transactions that led to charges being filed against PETITIONER in May 2015 and to his current probationary status.

14. PETITIONER explained that this 2011 transaction involved a motor vehicle that he purchased from "Individual A." Individual A signed the back of the motor vehicle's title as the "seller." However, the "buyer" area on the back of the title where PETITIONER name should have been entered was left blank.[8] PETITIONER did not enter his name as the buyer and did not obtain a new title for the vehicle.

15. Later in 2011, Petitioner sold this motor vehicle to Individual B. Because the buyer area on

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7 It is noted that in *USTC Appeal No. 06-1399* (Findings of Fact, Conclusions of Law, and Final Decision Jun. 29, 2007), the Commission concluded that "[a]lthough a plea in abeyance is treated by this Commission as an admission of a violation, once the charge that was the subject of the plea has been withdrawn and dismissed by the court system, the Tax Commission no longer considers the incident to be a 'violation' within the meaning of Utah Code Ann. §41-3-209. . . ." In the instant case, however, the charge to which PETITIONER pleaded guilty has not yet been withdrawn and dismissed by the court. Accordingly, PETITIONER has admitted to "violation" of attempted theft by deception.

8 The Division referred to such a title as an "open title."

the back of the motor vehicle's title was still blank, PETITIONER entered Individual B as the buyer. As a result, the title indicated that Individual A transferred ownership of the motor vehicle to Individual B and did not show that PETITIONER had any involvement with either of the transactions that actually occurred. In addition, when Petitioners old the motor vehicle to Individual B, Individual B requested a bill of sale. PETITIONER prepared a bill of sale to "match" the title, thus indicating on the bill of sale that Individual A sold the motor vehicle to Individual B. PETITIONER signed Individual A's name on the bill of sale.

16. PETITIONER stated that after Individual B began to have problems with the motor vehicle some months after their transaction, Individual B wanted PETITIONER to repurchase the motor vehicle. When PETITIONER declined Individual B's request, Individual B brought a complaint to the Division, which led to an investigation and eventually to charges.

17. The Commission does not review a person's acts to determine whether that person has violated a criminal law. Such determinations are the purview of the criminal courts, not the Tax Commission. As a result, the Commission accepts the outcome of a criminal proceeding. Because the 3rd District Court is holding PETITIONER guilty plea for attempted theft by deception in abeyance, PETITIONER is considered to have violated the criminal provision of attempted theft by deception.

18. The Division stated that it began its investigation of the transaction between PETITIONER and Individual B in 2012. The Division acknowledges that it took approximately three years for charges to be brought against PETITIONER, but indicated that it is not the Division that waited until 2015 to bring the charges.

19. In the interim between the 2012 date on which the investigation began and the 2015 date on which charges were brought, PETITIONER applied for a dealer's license in October 2012, which was granted. As already discussed, PETITIONER obtained a no-fee license that also allowed him to sell motor vehicles at

his dealership. PETITIONER explained that once he found out that he needed to be licensed as a dealer, he did so.[9] He also explained that once he became educated on how to properly document motor vehicle transactions, he has not documented a transaction like the one between himself and Individual B. PETITIONER also asks the Commission to consider that no complaints have been brought against him or his dealership since he became licensed in 2012, which the Division did not refute.

20. PETITIONER acknowledges that he "messed up," but asks the Commission to consider that he made this mistake many years ago and that he has been in compliance with the law since 2012. In addition, PETITIONER asks the Commission to consider that he has already complied with the court's community service and restitution requirements. He asks the Commission to give him a second chance and not suspend his salesperson's license. In the alternative, if the Commission is not inclined to completely reverse the Division's action, PETITIONER asks the Commission to allow him to continue to sell motor vehicles on a probationary basis.

21. The Division asks the Commission to find that it has properly suspended PETITIONER salesperson's license in accordance with Utah Code Ann. §41-3-209(2)(c)(ix) and (x). Subsection 41-3-209(2)(c)(ix) provides that reasonable cause to suspend a license includes "charges filed . . . for a violation of any state or federal law involving motor vehicles[,]" while Subsection 41-3-209(2)(c)(x) provides that reasonable cause to suspend a license includes "a violation of any state or federal law involving fraud[.]" The Division contends that it was required to suspend PETITIONER salesperson's license under Subsection 41-3-209(2)(c) because PETITIONER was charged with crimes involving motor vehicles and because the theft by

9 It appears that PETITIONER should have been licensed as a dealer in 2011 because he stated that he may have sold between three and five vehicles during that year. Utah Code Ann. §41-3-201(2)(a) provides that a person may not act as a dealer without having procured a license, while Utah Code Ann. §41-3-102(8)(a) provides that a person is considered a "dealer" if that person sells, displays for sale, or offers for sale or exchange three or more new or used motor vehicles or off-highway vehicles in any 12-month period.

deception crime to which he pleaded guilty involved fraud.

22. Furthermore, the Division asks the Commission to find that PETITIONER salesperson license should be suspended until his probationary period has ended, pursuant to Utah Admin. Rule R877-23V-20 ("Rule 20"). The Division contends that Rule 20 provides that a person may not have a license while he or she is on probation. Because PETITIONER is currently on probation, the Division asks the Commission to suspend his salesperson's license until such time that he is no longer on probation.

23. PETITIONER has not filed an application for a license since 2012. As a result, the Division's action to suspend PETITIONER license in 2015 did not arise because of any application PETITIONER submitted.

APPLICABLE LAW

1. Utah Code Ann. §41-3-201(2)(a) provides that a person may not act as a dealer without having procured a license, while Subsection 41-3-201(2)(c) provides that a person may not act as a salesperson without having procured a license.

2. Utah Code Ann. §41-3-102 defines "dealer" and "salesperson," as follows in pertinent part:

> . . . .
> (8) (a) "Dealer" means a person:
> (i) whose business in whole or in part involves selling new, used, or new and used motor vehicles or off-highway vehicles; and
> (ii) who sells, displays for sale, or offers for sale or exchange three or more new or used motor vehicles or off-highway vehicles in any 12-month period.
> (b) "Dealer" includes a representative or consignee of any dealer.
> . . . .
> (25) "Salesperson" means an individual who for a salary, commission, or compensation of any kind, is employed either directly, indirectly, regularly, or occasionally by any new motor vehicle dealer or used motor vehicle dealer to sell, purchase, or exchange or to negotiate for the sale, purchase, or exchange of motor vehicles.
> . . . .

3. Utah Code Ann. §41-3-209 provides statutory guidance concerning the denial, suspension, or revocation of motor vehicle licenses, including a license issued to a salesperson, as follows in pertinent part:

. . . .
(2) . . . .
(b) If the administrator finds that there is a 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:
. . . .
(vii) a violation of any state or federal law involving motor vehicles;
. . . .
(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; . . .
. . . .

4. Utah Code Ann. §76-6-405 addresses the elements of "theft by deception," as follows in pertinent part:

. . . .
(2) (a) A person commits theft if the person obtains or exercises control over property of another person:
(i) by deception; and
(ii) with a purpose to deprive the other person of property.
(b) The deception described in Subsection (2)(a)(i) and the deprivation described in Subsection (2)(a)(ii) may occur at separate times.
(3) Theft by deception does not occur when there is only:
(a) falsity as to matters having no pecuniary significance; or
(b) puffing by statements unlikely to deceive an ordinary person in the group addressed.

5. Utah Code Ann. §76-6-501(2) addresses the elements of "forgery," as follows:

(2) A person is guilty of forgery if, with purpose to defraud anyone, or with knowledge that the person is facilitating a fraud to be perpetrated by anyone, the person:
(a) alters any writing of another without his authority or utters the altered writing; or
(b) makes, completes, executes, authenticates, issues, transfers, publishes, or utters any writing so that the writing or the making, completion, execution, authentication, issuance, transference, publication, or utterance:
(i) purports to be the act of another, whether the person is existent or nonexistent;
(ii) purports to be an act on behalf of another party with the authority of that other party; or
(iii) purports to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when an original did not exist.

6. Utah Admin. Rule R87-23V-20 ("Rule 20") provides, as follows:[10]

> There is a rebuttable presumption that reasonable cause to deny, suspend, or revoke a license issued under Title 41, Chapter 3 does not include a violation of a state or federal law that constitutes reasonable cause to deny, suspend, or revoke a license under Subsection 41-3-209(2) if the license applicant:
>
> (1) indicates on the license application that the applicant has been charged with, found in violation of, or convicted of a state or federal law that constitutes reasonable cause to deny, suspend, or revoke a license under Subsection 41-3-209(2);
>
> (2) has completed any court-ordered probation or parole;
>
> (3) if the license applicant has entered into a plea in abeyance, met the conditions of that plea in abeyance; and
>
> (4) paid any required restitution and fines.

7. For proceedings before the Commission, UCA §59-1-1417 provides guidance on burden of proof and statutory construction, as follows:

> (1) In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:
>
> (a) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
>
> (b) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
>
> (c) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income:
>
> (i) required to be reported; and
>
> (ii) of which the commission has no notice at the time the commission mails the notice of deficiency.
>
> (2) Regardless of whether a taxpayer has paid or remitted a tax, fee, or charge, the commission or a court considering a case involving the tax, fee, or charge shall:
>
> (a) construe a statute imposing the tax, fee, or charge strictly in favor of the taxpayer; and
>
> (b) construe a statute providing an exemption from or credit against the tax, fee, or charge strictly against the taxpayer.

CONCLUSIONS OF LAW

I. The first issue is whether the Division properly suspended PETITIONER salesperson's license.

10 The version of Rule 20 that is cited became effective on October 22, 2015. The recent amendments to

1. Subsection 41-3-209(2)(b) provides that the administrator "shall" deny, suspend, or revoke a license if it finds that "reasonable cause" to deny, suspend, or revoke a license exists. Subsection 41-3-102(1) defines "administrator" to mean "the motor vehicle enforcement administrator" (i.e., the Division). Accordingly, if "reasonable cause" exists to deny, suspend, or revoke PETITIONER salesperson's license, the Division is required to deny, suspend, or revoke his license unless another statute or rule authorizes an exception and does not require the Division to deny, suspend, or revoke the license.[11]

2. Rule 20 Exception. Rule 20 is the only statute or rule that authorizes an exception for the Division not to deny, suspend, or revoke a license when "reasonable cause," as set forth in Subsection 41-3-209(2)(c), exists. Rule 20 provides that "[t]here is a rebuttable presumption that reasonable cause to deny, suspend, or revoke a license . . . does not include a violation of a state or federal law that constitutes reasonable cause to deny, suspend, or revoke a license under Subsection 41-3-209(2) if the license applicant" satisfies certain specified requirements. As a result, if all of the requirements listed in Rule 20 are satisfied, there is a rebuttable presumption that the Division can invoke the exception and is not required to deny, suspend, or revoke a license where "reasonable cause," as set forth in Subsection 41-3-209(2)(c), would otherwise exist.[12]

3. The Division may not apply the Rule 20 exception in this case. One could argue that Rule 20 applies only to "license applicants" and has no applicability to PETITIONER because his suspension did not

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Rule 20 do not impact the outcome of this case.

11 The Commission has historically found that it is not bound by the same restrictions that are statutorily imposed on the administrator (i.e., the Division) by Subsection 41-3-209(2)(b). The Commission has found that it has discretion to grant a license even though "reasonable cause" exists that would require the Division to deny, suspend, or revoke a license.

12 There may be instances where a license applicant satisfies all of the requirements listed in Rule 20 and where the Division still believes that the license applicant should not be licensed. To accommodate such circumstances, the exception provided in Rule 20 is subject to a "rebuttable presumption." As a result, the Division may counteract the presumption and not implement the exception where the Division believes that a license should not be issued to a person who satisfies all requirements listed in the rule.

occur because of any application that he submitted.[13] On the other hand, one could argue that Rule 20 applies to anyone applying for a license or anyone currently holding a license because it refers not only to denials, but also to suspensions and revocations. If the latter interpretation is correct, Rule 20 still has no application to PETITIONER because all requirements necessary for the Division to invoke the exception have not been satisfied. Specifically, PETITIONER has not completed his court-ordered probation, as required under Rule 20(2). Accordingly, the exception provided by Rule 20 does not apply in this case, regardless of which of the above interpretations is correct. As a result, the Division is required to deny, suspend, or revoke PETITIONER license if "reasonable cause," as set forth in Subsection 41-3-209(2)(c), exists.

4. Reasonable cause – Violation Involving Fraud. The Division asserts that "reasonable cause" to deny, suspend, or revoke PETITIONER salesperson's license exists under either of two circumstances listed in Subsection 41-3-209(2)(c). The first to be addressed is Subsection 41-3-209(2)(c)(x), which provides that "reasonable cause" to deny, suspend, or revoke a license includes "a violation of any state or federal law involving fraud." The Division claims that PETITIONER attempted theft by deception violation is a violation of a state law involving fraud.[14] It is clear that an attempted theft by deception violation is a violation of a state

13 Such an interpretation is not frivolous. New applicants may have old violations on their records and may have completed all court-ordered supervision prior to applying for a license. As a result, it may be appropriate for the Division to grant a license to such a person instead of denying the application and requiring the applicant to go through the appeals process in order to obtain a license from the Commission. For someone who already holds a license (i.e., a licensee, not an applicant), however, any charge or violation that constitutes "reasonable cause" to deny, suspend, or revoke a license would most likely be a recent charge or violation. As a result, it may not be appropriate for the Division to allow such a licensee to keep his or her license without having the Commission review the recent charge or violation through the appeals process.

14 It was correct for the Division not to argue that PETITIONER'S forgery charge was a violation involving fraud, even though Subsection 76-5-501(2) provides that fraud is an element of this forgery offense. PETITIONER never pleaded guilty to the forgery charge, and the court dismissed the charge. Accordingly, PETITIONER is not considered to have a "violation" of this fraud provision.

law, specifically Section 76-6-405.[15] Remaining at issue is whether an attempted theft by deception violation is also a violation "involving fraud."

5. Some facts suggest that attempted theft by deception does not involve fraud. Crimes found in Title 76, Chapter 6, Part 4 of the Utah Code are designated as property "theft" crimes, while crimes found in Title 76, Chapter 6, Part 5 of the Utah Code are designated as property "fraud" crimes. The attempted theft by deception crime to which PETITIONER pleaded guilty, as found in Section 76-6-405, is listed in Utah law among property "theft" crimes, not property "fraud" crimes. In addition, "fraud" is not specifically listed in Section 76-6-405 as an element of theft by deception, whereas "fraud" is specifically listed as an element of numerous other crimes found throughout the Utah Criminal Code.

6. On the other hand, some facts suggest that attempted theft by deception does involve fraud. The BCI records the Division submitted not only show that theft by deception is found in Utah law at Section 76-6-405, but they also show that the crime is found in the NCIC Codes under "2699, FRAUD."[16] Moreover, Subsection 76-6-405(2)(a)(i) provides that "deception" is an element of theft by deception, and "deception" is defined in *Black's Law Dictionary*, in part, to be "[s]synonymous with fraud."[17]

7. In at least two prior cases, the Commission has found that theft by deception involves fraud. In *USTC Appeal No. 08-2680* (Findings of Fact, Conclusions of Law, and Final Decision Mar. 19, 2009), the Commission found that forgery and theft by deception both involved fraud.[18] In *USTC Appeal No. 07-1635*

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15 Exhibit R-1, p. 10. The 3rd District Court documents show that attempted theft by deception is an offense under Section 76-6-405.

16 Exhibit R-1, pp. 6-7. "NCIC Codes" means "National Crime Information Center Codes." The 3rd District Court records, however, did not identify the applicable NCIC Code.

17 *Black's Law Dictionary* 366 (5th ed. 1979).

18 To reach this conclusion, the Commission may have relied on its ruling in *USTC Appeal No. 09-0771* (Initial Hearing Order Apr. 6, 2009), which concerned a petitioner's arguments that his crimes did not meet the traditional definition of "fraud" and were not specifically identified as crimes of "fraud." This petitioner's crimes included the unlawful use of financial card/ATM. The Division pointed out that the illegal use of credit cards is classified under the NCIC Codes as "fraud." The Commission found that the illegal use of a credit

(Findings of Fact, Conclusions of Law, and Final Decision Apr. 9, 2008), the Commission found that theft by deception and theft violations "all involve an element of fraud[.]"[19] If the Commission follows the precedent set by these two decisions, it should find that PETITIONER theft by deception is a violation involving fraud and that the Division properly determined that "reasonable cause" to deny, suspend, or revoke PETITIONER salesperson's license existed.

8. However, in another case involving theft by deception and tax evasion violations, the Commission elected not to decide whether either of the violations involved fraud, even though the petitioner had argued that they did not involve fraud. In *USTC Appeal No. 08-1096* (Findings of Fact, Conclusions of Law, and Final Decision Aug. 19, 2008), the Commission instead determined that the petitioner's offenses would constitute "reasonable cause" to deny, suspend, or revoke a license because the list of crimes specified in Subsection 41-3-209(2)(c) is not an exhaustive list and because of the nature of the petitioner's crimes.[20] For the Commission to follow the precedent set by this decision, it must first determine whether PETITIONER theft by deception violation is a crime that would constitute "reasonable cause" to deny, suspend, or revoke his license.

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card is "fraud," concluding that "the plain language of [Subsection 41-3-209(2)(c)(x)] indicates the legislature intended something broader than what the Applicant's representative suggests, as indicated by the legislature's failure to specifically identify crimes of fraud and by using the word 'involving' as a modifier."

19 Although a "theft" offense is not at issue in this appeal, it is noted that the Commission has found in another case that a theft violation is not a violation involving fraud. In *USTC Appeal No. 09-2071* (Initial Hearing Order Aug. 27, 2009), the Commission considered that it had previously determined that a violation involving fraud is "something broader than only those crimes specifically identified as fraud." Nevertheless, the Commission determined that theft is not a violation involving fraud.

20 Historically, the Commission has determined that the Legislature's use of the word "includes" in Subsection 41-3-209(2)(c) means that the list of crimes and circumstances that follow and constitute "reasonable cause" is not an exhaustive list. *See USTC Appeal No. 12-2892* (Initial Hearing Order Jan. 10, 2013), in which the Commission stated that "the Division is not limited to finding reasonable cause only from the listed violations. The Division could consider other crimes as reasonable cause to deny a license."

9. PETITIONER theft by deception violation is a misdemeanor, whereas the theft by deception and tax evasion crimes considered in *Appeal No. 08-1096* were felonies. However, the crimes considered in *Appeal No. 08-1096* did not involve a motor vehicle transaction, whereas PETITIONER violation does. It is a serious matter that a person who is licensed to sell motor vehicles participated as a seller in an illegal motor vehicle transaction, even if the illegal transaction occurred more than four years ago and before he or she was licensed. As a result, PETITIONER theft by deception violation constitutes "reasonable cause" to deny, suspend, or revoke his license, even if the violation is not considered a crime that is specifically listed in Subsection 41-3-209(2)(c). Accordingly, if the Commission follows the precedent in *Appeal 08-1096*, it should find that regardless of whether PETITIONER theft by deception violation is a violation involving fraud, the Division properly determined that "reasonable cause" existed to deny, suspend, or revoke PETITIONER salesperson's license.

10. Reasonable Cause – Violations Involving Motor Vehicles. The Commission has already found that the Division properly determined that "reasonable cause" to deny, suspend, or revoke PETITIONER salesperson license existed. As a result, it is not imperative that the Commission address the Division's other argument as to why "reasonable cause" exists. Nevertheless, such a discussion may prove useful for future cases.

11. The Division also argued that "reasonable cause" to deny, suspend, or revoke PETITIONER license exists under Subsection 41-3-209(2)(c)(ix), which concerns "charges filed . . . for a violation of any state or federal law involving motor vehicles[.]" The Division argued that "reasonable cause" exists under this subsection because the crimes with which PETITIONER was charged arose out of a motor vehicle transaction. At issue, however, is whether Subsection 41-3-209(2)(c)(ix) applies to charges that have been resolved and are no longer pending.

12. First, it does not appear that Subsection 41-3-209(2)(c)(ix) would apply to PETITIONER charge for forgery, which the 3rd District Court dismissed about a month before the Division suspended PETITIONER license. As mentioned earlier, the Commission has ruled in *Appeal No. 06-1399* that a plea in abeyance is no longer considered a "violation" within the meaning of Subsection 41-3-209(2)(c) "once the charge that was the subject of the plea has been withdrawn and dismissed by the court system[.]"[21] If a charge to which a person pleaded guilty in a plea in abeyance is no longer considered a violation once the charge is withdrawn and dismissed, it does not seem logical that "reasonable cause" to deny, suspend, or revoke a license would exist for a charge that was dismissed or, for that matter, for a charge that a jury finds a person to be innocent of.

13. Second, it also does not appear that Subsection 41-3-209(2)(c)(ix) would apply to the attempted theft by deception charge to which PETITIONER pleaded guilty about a month before the Division suspended his license. As discussed earlier, once PETITIONER pleaded guilty to the attempted theft by deception charge, he is considered to have committed a violation of that crime. The Division contends that PETITIONER attempted theft by deception violation involved motor vehicles.[22] If this is correct,

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21 *See also USTC Appeal No. 11-3214* (Initial Hearing Order Dec. 21, 2011), in which the Commission determined that "[o]nce the plea in abeyance is dismissed the Commission no longer considers this to be a violation and this incident would no longer bar the Applicant from obtaining a license."

22 In prior decisions, the Commission has considered whether a conviction for a crime that does not specifically refer to motor vehicles is, nevertheless, considered a conviction of a "law relating to motor vehicle commerce or motor vehicle fraud" for purposes of Subsection 41-3-201(8). Admittedly, the "relating to motor vehicle commerce or motor vehicle fraud" language of Subsection 41-3-201(8) is different from the "law involving motor vehicles" language of Subsection 41-3-209(2)(c)(vii). However, the Commission's rulings in these prior decisions could provide some insight on the proper interpretation of "law involving motor vehicles" for Subsection 41-3-209(2)(c)(vii).

In *USTC Appeal No. 11-3214* (Initial Hearing Order Dec. 21, 2011), the Commission considered a violation of an Intentional Damage/Deface/Destroy Property – Class A Misdemeanor. The petitioner explained that he was charged with this crime after someone invested funds in his former motor vehicle dealership that he did not repay. As of the hearing date, the petitioner was still under court supervision and was still making restitution payments, but argued that he should be granted a salesperson's license because this "property crime"

PETITIONER violation would constitute "reasonable cause" under Subsection 41-3-209(2)(c)(vii), which provides that "reasonable cause" to deny, suspend, or revoke a license a license exists for "a violation . . . involving motor vehicles" (even though the Division did not make this argument). If the Commission were to interpret Subsection 41-3-209(2)(c)(ix) as applying not only to *charges filed for violations* involving motor vehicles, but also to *violations* involving motor vehicles, such an interpretation would effectively render Subsection 41-3-209(2)(c)(vii) superfluous.

14. The Commission is precluded from interpreting statutes in a way that renders all or part of a statute superfluous or inoperative.[23] As a result, when considering Subsections 41-3-209(2)(c)(vii) and 41-3-209(2)(c)(ix) in concert with one another, Subsection 41-3-209(2)(c)(ix) applies after charges have been filed,

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did not involve fraud or motor vehicles. The Commission found that the petitioner's conviction related to an investment in a motor vehicle business and not to any law relating to motor vehicle commerce or motor vehicle fraud. As a result, the Commission granted a license to the petitioner.

In *USTC Appeal No. 12-2293* (Findings of Fact, Conclusions of Law, and Final Decision May 3, 2013), the Commission considered whether to issue a salesperson's license to a petitioner who had fraud violations and still owed restitution in regards to those violations. The fraud violations arose because the petitioner, who formerly owned a dealership, had written bad checks and was unable to deliver titles for several vehicles. The petitioner was no longer on probation, but still owed restitution. The Commission determined that the violations involved motor vehicle commerce and motor vehicle fraud and determined that it could not grant the petitioner a license while he still owed restitution.

The circumstances in the instant case are more similar to those in *Appeal No. 12-2293*, which also involved motor vehicle *transactions*. Because PETITIONER'S attempted theft by deception violation involved a motor vehicle transaction, it is considered a violation "involving motor vehicles," even if Section 76-6-405 is a "general" property crime that does not specifically mention motor vehicles.

23 In *Warne v. Warne*, 275 P.3d 238, 2012 UT 13 (Utah 2012), the Utah Supreme Court ruled that "[u]nder our rules of statutory construction, we must give effect to every provision of a statute and avoid an interpretation that will render portions of a statute inoperative" (*citing Hall v. Utah State Dep't of Corr.*, 2001 UT 34, ¶ 15, 24 P.3d 958). The Court further stated that in order "[t]o achieve this goal, we construe the provision at issue 'with every other part or section so as to produce a harmonious whole'" (*citing Sill v. Hart*, 2007 UT 45, ¶ 7, 162 P.3d 1099) (internal quotation marks omitted).

In *Hall v. Utah State Dept. of Corrections*, 24 P.3d 958, 2001 UT 34 (Utah 2001), the Court also stated that "our primary goal when construing statutes is to evince 'the true intent and purpose of the Legislature [as expressed through] the plain language of the Act.'" (*citing Jensen v. Intermountain Health Care, Inc.*, 679 P.2d 903, 906 (Utah 1984)). The Court further stated that "[i]n doing so, we seek 'to render all parts thereof relevant and meaningful' . . . and we accordingly avoid interpretations that will render portions of a statute superfluous or inoperative (*citing Millett v. Clark Clinic Corp.*, 609 P.2d 934, 936 (Utah 1980), *Platts*

but before the charges have been resolved. Once the charges have been dismissed or have resulted in a violation, Subsection 41-3-209(2)(c)(ix) no longer applies. Because PETITIONER attempted theft by deception charge was already resolved and had resulted in a violation when the Division suspended his license, "reasonable cause" to deny, suspend, or revoke PETITIONER salesperson's license did not exist under Subsection 41-3-209(2)(c)(ix).

15. First Issue Summary. The Division properly determined that "reasonable cause" to suspend PETITIONER salesperson's license existed when it issued its Notice. As a result, the Division's action to suspend PETITIONER salesperson's license was proper.

II. The second issue is whether the Commission should suspend PETITIONER salesperson's license until such time that his probationary period has ended.

16. The Commission has historically found that it has discretion to grant a license to a person even if "reasonable cause" to deny, suspend, or revoke a license exists under Subsection 41-3-209(2)(c). The Division, however, argues that the Commission must suspend PETITIONER license until such time that his probationary period has ended, pursuant to Rule 20. As discussed earlier, Rule 20 provides an exception to the statutory requirement for the Division to deny, suspend, or revoke a license when "reasonable cause," as set forth in Subsection 41-3-209(2)(c), exists. Admittedly, the exception does not arise unless a "license applicant . . . has completed any court-ordered probation or parole[,]" pursuant to Rule 20(2). However, the rule does not preclude the Commission from using its discretion and granting a license to someone who is still on probation.

17. In fact, the Commission has used its discretion and granted a license to someone still on probation since Rule 20 was adopted and became effective on February 9, 2012. In *USTC Appeal No. 12-2888* (Initial Hearing Order Jan. 11, 2013), the Commission considered an applicant who, in 2004, had been

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*v. Parents Helping Parent*s, 947 P.2d 658, 662 (Utah 1997); *State v. Hunt*, 906 P.2d 311, 312 (Utah 1995)).

convicted of six felonies for securities fraud. The applicant was sentenced to 12 years of probation set to end in 2016.[24] The Commission granted this applicant a license, noting that the arrest date for his crimes was more than a decade earlier and noting that "[c]urrent law requires the Division of Public Safety to notify the Division of any subsequent convictions for all salespersons should there be any further incidents, which does appear unlikely based on the Applicant's history." Accordingly, it does not appear that Rule 20 precludes the Commission from issuing a license to a person who is still under court supervision, even if "reasonable cause" to deny, suspend, or revoke a license exists under Subsection 41-3-209(2)(c).[25]

18. With very rare exceptions, however, the Commission has not granted a license to a person who is still under court-ordered probation or parole. In the instant case, "reasonable cause" to deny, suspend, or revoke PETITIONER salesperson's license exists under Subsection 41-3-209(2)(c). Furthermore, unlike the applicant in *Appeal No. 12-2888*, whose violations occurred eight to nine years prior to the hearing date, PETITIONER attempted theft by deception violation occurred less than four years ago. In addition, PETITIONER only recently pleaded guilty to his crime, while the applicant in *Appeal No. 12-2888* was convicted eight to nine years prior to the hearing date. Finally, PETITIONER violation arose out of a motor vehicle transaction, whereas the violations in *Appeal No. 12-2888* did not. It is a serious matter where a person who is licensed to sell motor vehicles has entered into an illegal motor vehicle transaction, regardless of whether that transaction occurred before he or she was licensed. For these reasons, the Commission should not

24 The applicant in *Appeal No. 12-2888* was also ordered to pay restitution (for securities fraud not related to motor vehicle commerce or motor vehicle fraud). The applicant indicated that the lengthy probation period was "geared toward payment of the restitution" and that while he was making monthly restitution payments, he would never be able to pay the entire amount in his lifetime.

25 It is noted that in *USTC Appeal No. 15-1478*, the Commission recently granted a license to another person who was on probation. In that case, however, the Commission granted the license after determining that "reasonable cause" to deny, suspend, or revoke a license, as set forth in Subsection 41-3-209(2)(c), did not exist.

use its discretion to abate the Division's suspension in full or in part. The Commission should suspend PETITIONER salesperson license until such time that he has completed his probationary period.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's action and suspends PETITIONER salesperson's license. The suspension will begin thirty (30) days after the date on which this order is issued and will continue until such time that he has completed his probationary period. Furthermore, before PETITIONER salesperson's license is reinstated, he will need to submit a new application. It is so ordered.

DATED this _____ day of _____, 2016.

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 Sec. 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 Secs. 59-1-601et seq. and 63G-4-401 et seq.