

NOTICE OF APPEAL FROM THE DECISION OF THE
EXECUTIVE DIRECTOR, dated April 15, 2019
CASE # 19000875

LeRoy Wirz


Relief Sought: Obtain a copy of
The Closing Report in Case #19000875
Or other information arising out of
The Complaint in said case,
As originally requested on or about March 20, 2019,
And pursuant to Notice of Appeal date April 08, 2019.

INTRODUCTION

A complaint was filed against the automobile dealership: Crump-Reese Moab Ford, of Moab, Utah, dated March 15, 2019.

A copy of the Complaint and it's attachments (1 thru 4, A thru E) is attached hereto, inclusively marked Exhibit 1 and incorporated herein by this reference as though set forth at length at this point.

The Complaint was assigned Case #19000875.

The facts giving rise to the Complaint are stated in the body of the Complaint and it's attachments.

The basis of the Complaint are Fraud and Misrepresentation in the sale of a 2005 Ford F-250 pickup truck, by Crump-Reese to the Complainant/Appellant herein.

A request was made of the Commission for the investigators Closing Report and other information arising out of the Complaint.

By letter dated March 29, 2019, the Disclosure Officer denied the request. A copy of the letter without it's attachments is attached hereto, marked Exhibit 2 and is incorporated herein by this reference as though set forth at length at this point.

The basis for the denial was that the requested records were classified as "protected" under Utah Code, Section 63G-2-305, with no subsection specified. This Code, Section has 67 subsections.

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Notice of Appeal to the Utah State Tax Commission, Attn: Scott W. Smith, Executive Director followed.

A copy of the Notice of Appeal, dated April 08, 2019 is attached hereto, marked Exhibit 3 and incorporated herein by this reference as though set forth at length at this point.

By letter dated April 15, 2019, from the Executive Director of the Utah State Tax Commission, the appeal was denied stating "...The information is properly classified as protected under Utah Code, Section 63G-2-305 (15)".

No further explanation or analysis was offered as to how Utah Code, Section 63G-2-305 (15) applied to the requested document.

A copy of the Executive Director's letter of April 15, 2019 denying the Appeal is attached hereto, marked Exhibit 4 and is incorporated herein by this reference as though set forth at length at this point.

As is seen from a review of Exhibit 1 in its entirety, as well as that part of Exhibit 1 entitled "Original Complaint Report, TC-451, Rev 12/17", the case presented involves a claim against Crump-Reese for Fraud and Misrepresentation and does not in any way involve any issue regarding a tax matter.

Utah Code, Section 63G-2-305 in pertinent part states: "The following records are protected if properly classified by a governmental entity: "

"(15) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections." (emphasis added)

It would appear to go without saying, that Utah code, Section 63G-2-305 (15), as relied upon by the Executive Director in his denial, Exhibit 4, is simply not applicable to a Complaint based upon Fraud and Misrepresentation, where no tax matters are involved.

If, there were tax matters of Crump-Reese Moab incidentally involved with the investigation of my Complaint then, and in that event, any matters extraneous to the investigation of Fraud and Misrepresentation could be redacted and the portion of the report or information pertaining to Fraud and Misrepresentation, only, be provided.

What is not discussed in either denial of the production of the requested information are the competing interests of the public's right to know versus the interest of Crump-Reese in having the information not disclosed.

This issue is raised in the Notice of Appeal, Exhibit 3, at page 1, paragraph one under the heading "Discussion" and includes the citation to Utah Code, Section G63-2-102.

Utah Code, Section 63G-2-102, in pertinent part states:

"(1) In enacting this act, the legislature recognizes two constitutional rights:

(a) The public's right of access to information concerning the conduct of the public's business; and

(b) The right of privacy in relation to personal data gathered by governmental entities." ...

"(3) It is the intent of the legislature to:...

(c) prevent abuse of confidentiality by governmental entities by permitting confidential treatment of records only as provided in this chapter;...

(e) favor public access when, in the application of this act, countervailing interests are of equal weight...."

Otherwise stated: Is it more important to the people of the State of Utah that:

(1) business entities be allowed to conduct business with members of the public by whatever means they choose, honorable or dis-honorable, without fear that their methods will be disclosed to the public and that they be held accountable, or,

(2) that business entities conduct business with the public with knowledge that if they do so in a dis-honorable manner such conduct will be made public.

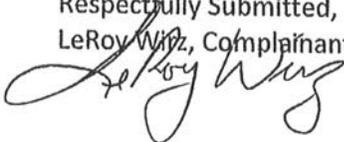
It is suggested that the deterrent effect of the fear of disclosure of dis-honorable conduct, alone, is persuasive in favor of disclosure and is more compatible with the legislative intent set forth in Utah Code, Section 62G-2-102, above.

CONCLUSION

Based upon the fact that the Complaint herein, Exhibit 1, has nothing to do with the audit, collection of taxes or the operational procedures or methods used by the State Tax Commission in its conduct of audits or collection of taxes and, based upon the deterrent effect of disclosure of conduct as stated in the Complaint, Exhibit 1, the requested closing report of the investigator and other information arising out of the investigation in Case # 19000875, with the exception of any matters relating to tax matters covered by Utah Code, Section 63G-2-305 (15), should be provided to the Complainant/Appellant.

I will submit this matter on this brief and any subsequent filings allowed or required. If a hearing is required I would ask to attend via telephone rather than in person.

Respectfully Submitted,
LeRoy Witz, Complainant/Appellant



Dated: May 06, 2019.