

03-0985  
Motor Vehicle  
Signed 01/26/2004

BEFORE THE UTAH STATE TAX COMMISSION

---

|                           |   |   |
|---------------------------|---|---|
| PETITIONER,               | ) |   |
|                           | ) | <b>FINDINGS OF FACT, CONCLUSIONS</b>        |
| Petitioner,               | ) | <b>OF LAW, AND FINAL DECISION</b>           |
|                           | ) |   |
| v.                        | ) |   |
|                           | ) | Appeal No.    03-0985                       |
| MOTOR VEHICLE ENFORCEMENT | ) |   |
| DIVISION OF THE UTAH      | ) | Tax Type:    Motor Vehicle Dealer's License |
| STATE TAX COMMISSION,     | ) |   |
|                           | ) | Judge:        Chapman                       |
| Respondent.               | ) |   |

---

**Presiding:**  
    Kerry R. Chapman, Administrative Law Judge

**Appearances:**  
    For Petitioner:    PETITIONER  
    For Respondent:    RESPONDENT REPRESENTATIVE 1, Assistant Attorney General (by telephone)  
                            RESPONDENT REPRESENTATIVE 2, from Motor Vehicle Enforcement Division  
                            RESPONDENT REPRESENTATIVE 3, from Motor Vehicle Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on November 6, 2003. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The Petitioner has applied for a motor vehicle dealer's license.
2. On June 30, 2003, the Respondent denied the Petitioner's application because of the Petitioner's prior criminal record. The Petitioner has appealed the Respondent's action.
3. The Petitioner applied for and received a Utah motor vehicle salesperson's license a number of

years ago. He recently decided to open his own car dealership in CITY, Utah. He reviewed the licensing information available to him, including information provided by the Respondent. He completed the required test and application processes, obtained the required bond and prepared to open the dealership. After his application was denied, his girlfriend went through the licensing process and the dealership opened under her dealer's license. The Petitioner now works for that dealership under his salesperson's license.

4. The Petitioner argued that he went through considerable effort to fulfill the dealer licensing requirements and to bond and open his dealership. At no time was he informed that his past criminal history could bar him from obtaining a dealer's license. He stated that he would never have made the investment of several hundred thousand dollars in the dealership had he been told that his criminal history would prevent his being issued a dealer's license. Furthermore, he stated that his investment is still at risk should he and girlfriend end their relationship or should his girlfriend die.

5. The Respondent admits that its dealer's license application does not indicate that a criminal history will disqualify an applicant from receiving a license. The Respondent explained that most people who can get a bond and money for a dealership do not have a criminal history. In addition, the Respondent indicated that most dealer's license applicants already have a salesperson's license, which itself would not be issued to one with a criminal history. For these reasons, the Respondent has not included information about criminal history on the dealer's license application.

6. The Petitioner admits that he has had a criminal past involving drugs, but states that he has not been convicted of a crime since 1998, for which he spent time in prison. The Petitioner's felony conviction record is based on a variety of charges, including drug violations, aggravated assault, domestic disputes and forgeries.

7. The Petitioner received his salesperson's license after serving time in prison for the 1998

conviction, which the Respondent stated was mistakenly issued. Although the Respondent has been made aware of Petitioner's criminal history, it has taken no action against his salesperson's license.

8. The Petitioner also admits that he was arrested in July 2003, on a charge for possession of a controlled substance with intent to distribute. He stated that the charge has not yet been resolved and that he expects to be cleared of the charge. He does not believe this charge should influence the Commission's decision because it has not resulted in a conviction. Because he has not been convicted of a crime in over five years, has had a motor vehicle salesperson's license for a number of years without any problems, and, upon reliance on instruction provide by the Respondent, has risked several hundred thousand dollars to open his dealership, the Petitioner asks the Commission to grant him a motor vehicle dealer's license.

9. The Respondent presented evidence that confirmed the numerous convictions of the Petitioner in 1998 and prior years (Exhibit R-1) and the arrest of the Petitioner in July 2003 (Exhibit R-2).

10. The Petitioner testified that his criminal record will be expunged in a little over a year from the date of the hearing and that, since his last conviction in 1998, he has had a complete change in lifestyle and in the manner in which he conducts his life. The Petitioner presented a number of testimonial letters from associates and friends who vouched for his character and noted his reform (Exhibit P-1).

11. The Respondent stated that it mistakenly issued the Petitioner his salesperson license several years ago, but has allowed him to retain it even though the past convictions exist. However, for the dealer's license, the Respondent asks the Commission to sustain its denial based on the prior convictions and the recent arrest. Although there is no time period in statute as a guideline, the Respondent states that it usually employs a ten-year lookback period in determining whether an applicant has a criminal history.

12. The Petitioner states that he knows of two motor vehicle dealers who have been charged with first-degree felonies and still have their dealer's licenses. In addition, he states that he knows one

dealer who received his dealer's license six years after his last conviction. For these reasons, the Petitioner asks the Commission to, at the very least, grant him a dealer's license for a probationary period.

APPLICABLE LAW

Utah Code Ann. §41-3-209(2)(a) provides that, upon the finding of reasonable cause, the motor vehicle enforcement administrator shall deny, revoke, or suspend a license issued under this chapter.

Subsection (2)(b) of this statute provides that "reasonable cause" includes:

- (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) a violation of any state or federal law regarding motor vehicles;
- (v) current revocation or suspension of a dealer, dismantler, auction, or salesperson license issued in another state;
- (vi) nonpayment of required fees;
- (vii) making a false statement on any application for a license under this chapter or for special license plates;
- (viii) a violation of any state or federal law regarding controlled substances;  
or
- (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 the use of a motor vehicle.

CONCLUSIONS OF LAW

The Motor Vehicle Business Regulations Act requires the Commission to evaluate an applicant and to deny, suspend or revoke a license if the applicant has violated, among other things, state and federal drug laws or violations of motor vehicle laws. Utah Code Ann. §41-3-209. An applicant's criminal history is not necessarily a ban on licensing for life, but it carries significant weight when measured against other relevant factors, including the lapse of time since the last conviction or violation and efforts on the part of the licensee or applicant to improve his standing in the community and his efforts to comply with the law.

In this case, the Petitioner has a significant felony conviction history for crimes ranging from distribution of controlled substances to forgery, which is reasonable cause to deny a license under Section 41-3-209(2). Because of the Petitioner's extensive number of convictions prior to 1999 and the lack of convictions since that date, it appears that the Petitioner has made positive changes in his life since then. Letters from four associates and friends also indicate that the Petitioner has achieved a certain degree of trust and respect within his community since his release from prison in 2000. The Commission does consider the length of time since an applicant's last conviction and his or her actions since his last conviction when determining whether to issue the applicant a license.

However, the Commission also considers what type of license the applicant is requesting when weighing all these factors. The Commission believes that extra caution is necessary when considering whether to issue a dealer's license than, for example, a salesperson's license because a dealer has a more significant role of public trust and a more significant opportunity to do public harm than a salesperson. Accordingly, the Commission takes a more conservative approach in its issuance of dealer's licenses.

In this case, the Commission is concerned that the Petitioner has only been out of prison four years. The Commission believes that this relatively short period of time, when considered in relation to the extensive and varied criminal past of the Petitioner, warrants it to exercise caution in its duty to protect the public. For these reasons, the Commission sustains the Respondent's denial of a dealer's license for the Petitioner and denies the Petitioner's appeal.

The Commission, however, has not and does not believe it is appropriate to consider the Petitioner's recent arrest in its decision concerning the denial of his license request. The Respondent has asked that the Commission base its decision at least partly on the recent arrest, arguing that the word "violations" in Section 41-3-209(2)(b)(viii) should be interpreted to include arrests, in addition to

convictions. Because the case regarding that arrest has not gone to trial, the Commission draws no conclusion as to the validity of the charge. In any event, an arrested person is presumed innocent until convicted and the Commission does not deny license applications on allegations or charges not yet prosecuted. For these reasons, the Commission does not interpret the word “violations” in Section 41-3-209(2)(viii) to include arrests as well as convictions, and it has disregarded the Petitioner’s 2003 arrest in its decision not to issue him a dealer’s license.

We also take this opportunity to comment on the Petitioner’s reliance upon the Respondent’s application forms and the information given to the Petitioner by the division. The Commission is concerned that the division’s forms did not warn the applicant that a criminal history could preclude the issuance of a license. We are also concerned that the division was aware of the Petitioner’s criminal history and allowed him to expend the effort and investment he did to obtain a dealer’s license without warning him that his criminal past would effect the license issuance. Nevertheless, we believe that the protection of the general public outweighs the inconvenience and investment risks incurred by the Petitioner upon his reliance on the division’s forms and information. We also note that advice and information receive from employees of the Commission are not binding on the Commission itself.

We are also concerned about testimony given by the Petitioner that other dealers he knows have been charged with first-degree felonies and still retain their licenses. Should this be the case, the Commission would encourage the division to investigate these dealers and take whatever action may be appropriate under the circumstances discovered.

#### DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds there is reasonable cause to sustain the Respondent’s denial of the Petitioner’s application for a motor vehicle dealer’s license. The Petitioner’s appeal

Appeal No.03-0985

is denied.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

---

Kerry R. Chapman  
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION:

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Palmer DePaulis  
Commissioner

Marc B. Johnson  
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. §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 Ann. §§59-1-601 and 63-46b-13 et. seq.

*KRC/03-0985 .fof.doc*