

05-1161
Motor Vehicle
Signed 11/23/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Petitioner,)	AND FINAL DECISION
)	
v.)	Appeal No. 05-1161
)	
MOTOR VEHICLE ENFORCEMENT)	Tax Type: Motor Vehicle
DIVISION OF THE UTAH STATE TAX)	Sales Person License
COMMISSION,)	
)	Judge: Phan
Respondent.)	

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE, Assistant Director, Motor Vehicle Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on November 22, 2005. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing Respondent's decision to deny him a Motor Vehicle Sales Person license.
2. Petitioner's Motor Vehicle Salesperson Application was dated August 5, 2005. On the application form Petitioner disclosed that he had been convicted of a felony in October 2000 in STATE and that his Dealer License in STATE had been revoked.
3. On August 12, 2005, Respondent issued a letter indicating that the license had been

denied because of the criminal conviction during the last 10 years. The Division cited Utah Code Sec. 41-3-209.

4. Petitioner timely appealed the decision and the matter proceeded to the Formal Hearing.

5. Petitioner explained that he had been a motor vehicle sales person for approximately twenty years when in 1994 he opened his own dealership. He was under funded and things went bad in 1997 or 1998 when he sold his inventory and transferred title to the vehicles to another dealer. The other dealer had paid with a check, which later bounced. In the mean time Petitioner had written checks that he then could not cover and he no longer had the inventory.

6. By 1999 Petitioner had closed the dealership as the theft charge made its way through the court system in STATE. It was not resolved until October 2000 when he was convicted of felony grand theft of property. He was sentenced November 2000 to “two years at half time.” He spent a total of 13 months between jail, prison and a halfway house. Then he was paroled for a period of two years.

7. STATE revoked Petitioner’s Dealers License.

8. While on parole Petitioner was found to be in violation of the terms and he was sent back to jail for a period of six months. He indicates it was for being in possession of business checks, although the account had been closed for years. No information was presented to refute this testimony. No charges were filed with this incident. Petitioner was released in May 2005.

9. Respondent had Petitioner’s criminal history record pulled and agrees that Petitioner has no other relevant charges or convictions. Therefore, Petitioner is not a habitual or repeat offender. The conviction pertained to a violation of state law involving theft based on Petitioner’s action in writing checks without sufficient funds.

10. Petitioner acknowledges that he did something wrong and points out that has paid the

price. Now he just wants to be able to earn a living and car sales is what he knows. He does not want to be a dealer, just a sales person. He has physical conditions that would prevent him from doing manual labor and he indicates that he could not support himself financially with the other job options that he has as a convicted felon.

11. Petitioner provided a letter from the sales manager of a dealership which indicated that he understood Petitioner's past history and wanted him on the sales staff. Additionally the dealership is also required to sign, and did sign, the Motor Vehicle Salesperson Application form where the conviction was disclosed.

APPLICABLE LAW

(2)(a) 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. (b) Reasonable cause for denial, suspension, or revocation of a license includes . . . (iv) current revocation or suspension of a dealer, dismantler, auction, or sales person license issued in another state; . . . (vii) a violation of any state or federal law regarding motor vehicles; . . . (x) a violation of any state or federal law involving fraud . . . (Utah Code Sec. 41-3-209(2)).

CONCLUSIONS OF LAW

Petitioner's STATE dealers license was revoked and he was convicted of a crime involving felony theft in STATE. For those reasons the Division's action denying the license was not inappropriate. The Division indicates that the Commission, however, has the authority to determine if the license should be issued under the reasonable cause criteria indicated at Utah Code Sec. 41-3-209. Based on the factors presented the Commission concludes that a sales person license should be issued to Petitioner.

DECISION AND ORDER

Upon review of the information presented, Petitioner has had only one conviction which

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resulted from an incident in 1997 or 1998. He has now served the sentence stemming from the conviction. Additionally, the conviction involved duties as a motor vehicle dealer, not duties of a sales person. The Commission would note that Petitioner fully disclosed his conviction and the revocation of the dealer license on the application form. The dealership that he would work for is aware of the past history. From these factors the Commission does not find Petitioner to be a threat to the public if granted a sales person license.

Based upon the foregoing, the Tax Commission orders the Division to issue to Petitioner a Motor Vehicle Sales Person License. It is so ordered.

DATED this ____ day of _____, 2005.

Jane Phan
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 _____, 2005.

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.

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