

05-1515
Motor Vehicle
Signed 03/15/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Petitioner,)	AND FINAL DECISION
)	
v.)	Appeal No. 05-1515
)	
MOTOR VEHICLE ENFORCEMENT)	Tax Type: Motor Vehicle
DIVISION OF THE UTAH STATE TAX)	Sales Person License
COMMISSION,)	
)	Judge: Phan
Respondent.)	

Presiding:

Palmer De Paulis
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
 RESPONDENT REPRESENTATIVE 2, Assistant Director, Motor Vehicle
 Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 2, 2006. Based upon the evidence and testimony presented at the hearing and the post-hearing evidence submitted by the parties at the Tax Commission's request, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing Respondent's decision to deny him a Motor Vehicle Salesperson License.
2. Petitioner's Motor Vehicle Salesperson Application was dated September 8, 2005. On the application form Petitioner disclosed that he had been convicted of the following: felony possession in 1996; felony possession in 1998; misdemeanor assault in 1998, felony possession in 2002; and felony

distribution and possession in 2003.

3. On September 8, 2005, Respondent issued a letter indicating that the license had been denied because of the criminal convictions 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 needed to be able to sell cars to earn a sufficient amount to support himself and his children. He explained that he had no college education, could not perform construction due to a physical injury and motor vehicle sales was the only work he could perform to earn a sufficient living. He had experience with car sales prior to his convictions and incarceration.

6. Petitioner also testified that he was resolving his drug addiction problem and had been completing a substance abuse program. He had entered the (X) program in October of 2004 while still incarcerated. In May of 2005 he was released from the in-house treatment facility into an aftercare program. During the aftercare program he was required to attend weekly meetings, remain alcohol and drug free and was subject to periodic drug testing. He successfully completed the aftercare program on March 8, 2006. The program counselor recommended that Petitioner be allowed to sell cars.

7. For the distribution and possession convictions in 2003, Petitioner had spent 21 months in prison. The time he spent in the in-house drug treatment was concurrent with his prison incarceration. Petitioner was released from prison in August 2005, and is currently on parole. He indicates it is possible he may be released from parole in August 2006. He provided a letter from his parole agent who stated, "I don't feel he would put potential customers in danger or at risk" and recommended that Petitioner be allowed to sell motor vehicles.

8. WITNESS 1, General Manager of COMPANY, testified on behalf of Petitioner and

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asked that he be granted a sales person license. Petitioner had been working for COMPANY in another position and it was WITNESS 1's recommendation that Petitioner be allowed to sell cars.

9. Additionally WITNESS 2, Financial Manager of COMPANY, testified at the hearing and recommended that Petitioner be granted the salesperson license. He indicated that he has been a good employee, providing training and other assistance to the sales staff and it would be nice to give him a second chance.

10. Respondent had Petitioner's criminal history record pulled and provided it after the hearing. The record regarding convictions in the past 10 years was fairly represented by Petitioner in his application for Salesperson License. Respondent's representative indicated that the Division had no discretion based on the statute and that he did not have a position on whether the license should be issued to Petitioner.

11. From the testimony and documentation provided in this matter the weight of the evidence would indicate that Petitioner is sincere in his efforts to overcome his drug addiction and begin a crime free life. However, the facts that he has been drugs free while not incarcerated only a little more than six months and that he is still on parole for drug offenses are significant and weigh against Petitioner for purposes of allowing a license.

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 . . . (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 regarding 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

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involving fraud; (xi) a violation of any state or federal law involving a registerable sex offense under Section 77-27-21.5. . . (Utah Code Sec. 41-3-209(2)).

CONCLUSIONS OF LAW

In this matter Petitioner has had a number of prior convictions involving controlled substance and Respondent's action in denying the license is clearly appropriate. The Tax Commission must enforce the law as adopted by the Utah Legislature. While there may be other crimes not specifically listed that would cause the Tax Commission concern regarding the safety of the public and which the Commission would consider to be reasonable cause for denial or suspension, the Legislature has specifically indicated that convictions involving controlled substances are cause for denial. Petitioner has been convicted on four separate occurrences of controlled substance violations within ten years and is still currently on parole for the latest conviction. Clearly he would be someone who the legislature intends to prevent from car sales under the statute, regardless of Petitioner's sincere intent to lead a crime free life and become a productive citizen.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission denies Petitioner's request in this matter at this time. However, the Commission may more favorably consider issuing the Salesperson License to Petitioner when he has successfully been released from parole, if Petitioner would like to reapply at that time. It is so ordered.

DATED this ____ day of _____, 2006.

Jane Phan
Administrative Law Judge

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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 _____, 2006.

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 Sec.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 Sec. 59-1-601 and 63-46b-13 et. seq.

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