

06-1426
Salesperson License
Signed 03/14/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	ORDER	
)		
Petitioner,)	Appeal No.	06-1426
)		
v.)		
)	Type:	Salesperson License
MOTOR VEHICLE ENFORCEMENT)		
DIVISION OF THE UTAH STATE)		
TAX COMMISSION,)	Year:	2006
)		
Respondent.)	Judge:	Jensen

Presiding:
Clinton D. Jensen, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE, from the Motor Vehicle Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Section 59-1-502.5 on December 12, 2006.

Petitioner is appealing the denial of his salesperson license to sell motor vehicles. On June 19, 2006, the Petitioner submitted a Motor Vehicle Salesperson Application to the Division. In response to the question on the Application asking if the Petitioner had “been convicted of any misdemeanors or felonies in Utah or any other state” during the past 10 years, the Petitioner checked the box for “Yes.” In the following blank requesting a listing of each conviction, the Petitioner listed “[2002] charged possession of paraphernalia, [1999 – 2000] charged with paraphernalia possession, [1996] charged with distribution of marijuana and possession of methamphetamine.” The Petitioner also filled out and submitted a renewal form to the Division on June 19, 2006 because he was not sure if he should apply for a new license or renew an old one. The

renewal application made disclosure of the same criminal convictions as the new application. In accordance with standard procedure, the Division made an investigation regarding the Petitioner's criminal background. In addition to the drug charges disclosed in the applications, the Division's investigation revealed an assault conviction on August 28, 2006. On the basis of the disclosures in the Petitioner's application and the matters discovered through investigation, the Division suspended the Petitioner's salesperson license.

At hearing, the Petitioner explained that the drug charges have been resolved and he is not under any court supervision in connection with these charges. The Petitioner explained that the 2006 assault stemmed from a fight that got out of hand between himself and his wife of approximately one month as of the May 2006 altercation involving throwing of plastic cups. Police responding to the dispute ticketed both the Petitioner and his wife. The Petitioner did not indicate why police were summoned for the throwing of plastic cups. The Petitioner did indicate that he was charged with a violation of a protective order shortly after the assault because he did not understand that he was supposed to stay away from his home in addition to staying away from his wife. On August 28, 2006, the Petitioner entered into a six-month plea in abeyance in which he entered a guilty plea to a charge of simple assault in exchange for a dismissal on the protective order violation. As of the date of the hearing in this matter, he was still under court supervision on the assault charge.

APPLICABLE LAW

Utah Code Ann. §41-3-209, provides in part as follows:

(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 . . .
- (vii) a violation of any state or federal law involving motor vehicles;
- (viii) a violation of any state or federal law involving controlled substances;

* * *

(3) If the administrator finds that the license holder has been convicted by a court of competent jurisdiction of violating any of the provisions of this chapter or any rules made by the administrator, or finds other reasonable cause, the administrator may, by complying with the emergency procedures of Title 63, Chapter 46b, Administrative Procedures Act:

- (a) suspend the license on terms and for a period of time he finds reasonable, or
- (b) revoke the license.

DISCUSSION

The Petitioner has made substantial strides toward sobriety and correction of past problems. The Petitioner had demonstrated a record of completing one drug treatment program and is currently involved in ongoing counseling and support for both drug and marriage issues. There is reason to hope that the Petitioner will continue in this direction when he is no longer under court supervision. But given the statutory mandate that a license “shall” be denied for reasonable cause, and the legislative determination that “a violation of any state or federal law involving controlled substances” constitutes reasonable cause, the Commission is unwilling to exercise discretion in granting a license to the Petitioner until he has fully completed all requirements that the Salt Lake County Justice Court imposed in connection with the assault charge.

DECISION AND ORDER

Based upon the foregoing, the Commission upholds the Division's suspension of the motor vehicle salesperson license.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission

Appeal No. 06-1426

Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Appeal No. 06-1426

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2007.

Clinton D. Jensen
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 _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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