

06-1493
Motor Vehicle
Signed 01/18/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
)	ORDER	
Petitioner,)		
)	Appeal No.	06-1493
v.)		
)	Tax Type:	Motor Vehicle
MOTOR VEHICLE ENFORCEMENT)		Salesperson License
DIVISION, UTAH STATE TAX)		
COMMISSION,)	Judge:	Chapman
)		
Respondent.)		

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE, from MVED

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5, on January 3, 2007. The Petitioner filed an application for a motor vehicle salesperson license in November 2006, which the Division denied. The Petitioner has appealed the denial.

The Division denied the application because the Petitioner stated on the license that he had been convicted of forgery in 2004 and theft in 1999. Because these crimes had been committed within the past ten years, the Division denied the application.

The Petitioner explains that he had been involved in drug and alcohol use for a number of years until early 2005. During this period, he committed several offenses that resulted in charges and/or convictions, including:

- 1) in 2004, a Class C Felony forgery conviction and an eluding the police conviction, which resulted in a fine and a sentence for time served. The offenses involved the Petitioner selling his ex-wife's car without permission;
- 2) in 1999, a theft charge involving a car that he intended to purchase but did not return. The charges were eventually dropped; and
- 3) either in 2000, 2001, or 2002, a disturbing the peace misdemeanor charge for which he was convicted and fined.

The Petitioner states that since he decided to stop his drug and alcohol use in early 2005, he has turned his life around. He explains that since he stopped his substance use, he has worked for car dealerships in STATE 1 and STATE 2 without incident. He also explains that he decided to move back to Utah to be closer to his mother and daughter now that he has turned his life around. He currently works for COMPANY A, a computer company, and COMPANY B, a retailer and attends the (X). The Petitioner states that he has never been on probation and is not currently on probation. He asks the Commission to grant him a salesperson license so that he can provide a better living for his family.

APPLICABLE LAW

Utah Code Ann. §41-3-209 provides statutory guidance concerning the issuance of motor vehicle salesperson licenses, as follows in pertinent part:

- (1) If the administrator finds that an applicant is not qualified to receive a license, a license may not be granted.
- (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
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 - (vii) a violation of any state or federal law regarding motor vehicles;
 - (viii) a violation of any state or federal law regarding controlled substances;
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DISCUSSION

The Petitioner has been convicted of a crime involving a motor vehicle within the past ten years. Accordingly, the Division had sufficient grounds to deny the Petitioner's application. Nevertheless, the

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Commission is authorized to consider the Petitioner's total circumstances to determine whether it believes he should be granted the license.

The Petitioner states that he was never placed on probation for any of the charges for which he was convicted and, as a result, is not currently on probation. He also states that he does not have any current charges pending against him. The Commission has a duty to ensure that the public is not endangered by it issuing a salesperson license to a person who may be an endangerment to it. Nevertheless, in this case, the Petitioner appears to have taken steps to turn his life around and appears, currently, to be a law-abiding and productive member of society. The Division has proffered no evidence contradicting the Petitioner's statements. For these reasons and based on the information before it in the Initial Hearing, the Commission believes the Petitioner is qualified to be issued a motor vehicle salesperson license.

DECISION AND ORDER

Based on the foregoing and the information available at the Initial Hearing, the Commission grants the Petitioner's appeal. Accordingly, the Commission orders that the Petitioner's application for a motor vehicle salesperson license be approved and a license issued to him. It is so ordered.

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

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

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DATED this _____ day of _____, 2007.

Kerry 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 _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

DISSENT

I respectfully dissent from the Majority opinion. Although the Petitioner appears to be taking the appropriate steps to turn his life around, I am concerned the Class C Felony forgery conviction and eluding the police conviction were just two years ago. Due to the relatively recent time frame of the 2004 convictions, I would have denied the license.

D'Arcy Dixon Pignanelli
Commissioner

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