

07-0066  
Denied Salesperson License  
Signed 02/15/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>ORDER</b>	
	)		
Petitioner,	)	Appeal No.	07-0066
	)		
v.	)		
	)	Tax Type:	Denied Salesperson License
MOTOR VEHICLE ENFORCEMENT	)		
DIVISION OF THE UTAH STATE	)		
TAX COMMISSION,	)	Tax Year:	2006
	)		
Respondent.	)	Judge:	Robinson

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**Presiding:**

R. Spencer Robinson, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER, *pro se*

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

STATEMENT OF THE CASE

In a letter dated December 14, 2006, Respondent informed Petitioner that the Division had suspended his motor vehicle salesperson license. From this decision, Petitioner appeals. The appeal came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on February 1, 2007.

Petitioner applied for a license to sell motor vehicles. In answer to paragraph three of the Motor Vehicle Salesperson Application, Petitioner acknowledged multiple convictions. He acknowledged being convicted of forgery, possession of marijuana (4 times), possession of paraphernalia (4 times) minor in possession of alcohol, and open container.

Petitioner listed the above noted crimes on his application. His application did not reach RESPONDENT REPRESENTATIVE. The Division issued a license. Relying on the license, Petitioner and his father opened a business selling trailers.

Per procedure, the Division requested Petitioner's criminal history. When the Division received Petitioner's criminal history, it notified him it had suspended his license.

Petitioner acknowledged his past problems. He pointed out he was released from probation on June 14, 2005. His felony forgery conviction was reduced to a Class A misdemeanor in December of 2006. Petitioner explained his conviction for forgery was based on his cashing a stolen and forged check for someone. He said the person for whom he cashed it received all of the money.

Petitioner said law enforcement approached him and asked him to identify the person for whom he cashed the check, telling Petitioner if he did so, the charge could be dropped. Petitioner said he feared the person for whom he cashed the check. He declined to identify that person and was convicted. Petitioner said the person for whom he cashed the check is now in prison for murder.

Petitioner's father said Petitioner is, in essence, the business. Petitioner's father said it would not be possible to run the business, which sells trailers, if Petitioner loses his license.

Respondent agreed Petitioner was candid on his application. It took three months to receive a copy of Petitioner's criminal history. When it arrived, Respondent notified Petitioner of the action suspending his license. Respondent based its decision on the forgery conviction and the drug related convictions, any one of which required the Respondent to act. Respondent noted that forgery and drug offenses are often related. Forgery is one way to obtain money to purchase drugs.

APPLICABLE LAW

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

(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 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, in relation to the applicant or license holder or any of its partners, officers, or directors:

(vii) a violation of any state or federal law involving motor vehicles;

(viii) a violation of any state or federal law involving controlled substances;

### DISCUSSION

Petitioner's most recent conviction was July 23, 2003, almost three and one-half years ago. He completed probation on June 14, 2005. He realized his convictions might prevent issuance of a license, but applied and was candid. When he received his license, the family started the business. He requests a favorable exercise of discretion in order to retain his license.

Petitioner stands convicted of violating laws involving forgery and controlled substances. In such cases, "the administrator shall deny, suspend, or revoke the license." 41-3-209 (2)(a), emphasis added.

Under 41-3-209, the Administrator had no choice but to deny Petitioner's application. His controlled substance convictions established one of the listed reasonable causes for denying, suspending or revoking a license. In addition, his forgery conviction establishes reasonable cause under the statute for denial of his license.

While there is no doubt the Administrator acted as required by the law, the Commission is able to consider other factors, such as the passage of time since the most recent conviction, termination of probation, and the reduction of the forgery conviction to a misdemeanor.

DECISION AND ORDER

Based upon the foregoing, the Commission reverses the administrator's decision suspending Petitioner's salesperson's license, and reinstates it. 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.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
R. Spencer Robinson  
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

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Dissent

I dissent from the majority's decision in this case. While I realize that Initial Hearings require no more than a proffer of evidence, I am concerned the Commission may be granting a license to someone contrary to the intent of the Legislature.

The Administrator acted as required by 41-3-209 when he received Petitioner's criminal history. In a perfect world, the Administrator would have denied the application based on the convictions Petitioner disclosed. However, that did not occur. Respondent issued Petitioner a license.

In this case, Petitioner stated he and his family relied on Petitioner receiving a license to sell motor vehicles as part of their decision to open their business. Petitioner seeks to invoke the doctrine of estoppel. He argues the State should not be allowed to give him a license, which was key to the family's decision to open the business, then suspend it after the business opened. While a more detailed exploration of the facts underlying this proffer may support this claim, (see Utah State University v. Sutro & Co., 646 P.2d 715 (1982)) all that is before the Commission at this time is a proffer.

Petitioner also asserted his forgery conviction was one where he was, in a sense, a victim. He stated someone he fears gave him a check and instructed him to cash it. He said he declined to cooperate with law enforcement and identify the person providing the check to him because of his fear. He said this person is now incarcerated for murder. Again, this information was proffered.

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Respondent did not know of this information prior to the hearing, and, therefore, lacked the opportunity to challenge the assertion.

Petitioner's father asserted that Petitioner is, in essence, the business. This may be true in the sense that Petitioner is the person who arrives at the location of the business every day to sell vehicles. It does not follow, as Petitioner's father argued, that it would be impossible to run the business if Petitioner loses his license to sell motor vehicles. Another person could be hired to sell the vehicles available for purchase at the business.

Because I believe the Commission should have more specific and detailed information, of the type that can be produced at Formal Hearing, I respectfully dissent.

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D'Arcy Dixon Pignanelli  
Commissioner