

07-0216  
Sales Person License  
Signed 03/19/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)		
	)	<b>ORDER</b>	
Petitioner,	)		
	)	Appeal No.	07-0216
v.	)		
	)		
MOTOR VEHICLE ENFORCEMENT	)	Tax Type:	Sales Person License
DIVISION, UTAH STATE TAX	)		
COMMISSION,	)	Judge:	Phan
	)		
Respondent.	)		

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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE, Assistant Director, 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 March 14, 2007.

Petitioner is appealing the suspension of his motor vehicle salesperson license. The license had been issued in September 2006. Subsequently, on January 31, 2007, Respondent informed Petitioner the license would be suspended based on criminal convictions. Petitioner has appealed the suspension and the license remains in effect pending the outcome of the appeal proceeding.

Respondent bases its suspension on Utah Code Sec 41-3-209, which requires that Respondent deny, suspend or revoke a salesperson license for reasonable cause. The code section further specifies several types of criminal offenses that are considered to be reasonable cause. The two at issue in this appeal are

violations of state or federal law regarding controlled substances and violations of any state or federal law involving fraud.

In this matter Petitioner had disclosed his criminal convictions on his Motor Vehicle Salesperson Application Form. Respondent indicates the license should not have been issued without further review based on the statements made by Petitioner on the form, but the form was processed and license issued. When the information came back from the Bureau of Criminal Identification based on the fingerprint card it confirmed that Petitioner had been convicted of the crimes that he listed on the form.

Petitioner asks that he be allowed to continue as a motor vehicle salesperson. He points out that the crimes occurred when he was young and he has been out of trouble and off of probation for several years. He states he was released from probation one year early because of his behavior. He also indicates that he sustained injuries from a car accident that make it difficult for him to perform work that involves heavy lifting. Selling cars is something that he is able to do physically.

Upon review of the Petitioner's Utah Criminal History Record he was arrested in January 2002, when he was 18 years old. The arrest led to a conviction for felony forgery in March 2002. He was sentenced to 36 months of probation, but was released early, in April 2004. There were two other convictions listed, both misdemeanors involving controlled substances. The arrest dates for these convictions were August 2002 and April 2003. The Commission notes that the crimes for which Petitioner was convicted occurred when he was 18 or 19 years old. He has not been arrested or charged with a criminal violation for almost four years. He was released from probation almost three years prior to the date of the hearing. Based on these considerations the Commission determines that Petitioner should be allowed to retain his 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 . . . (viii) a violation of any state or federal law regarding controlled substances; . . . (x) a violation of any state or federal law involving fraud; . . .(Utah Code Sec. 41-3-209(2)).

DECISION AND ORDER

Based on the foregoing, the Commission grants Petitioner's appeal and reinstates Petitioner's salesperson license. 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.

\_\_\_\_\_  
Jane Phan  
Administrative Law Judge

Appeal No. 07-0216

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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