

07-0402
Motor Vehicle Salesperson License
Signed 04/27/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
)	ORDER	
Petitioner,)		
)	Appeal No.	07-0402
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
 WITNESS, General Manager, COMPANY A
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 April 25, 2007.

The Petitioner filed a renewal application for a motor vehicle salesperson license on March 21, 2007, which the Division denied in a letter dated March 27, 2007. The Petitioner has appealed the denial.

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

. . .

(x) a violation of any state or federal law involving fraud;

DISCUSSION

The Division denied the Petitioner's renewal application because he was convicted in 2002 of two federal charges, one involving wire fraud and the other involving misrepresentations on a tax form. Section 41-3-209(x), which was enacted in 2005, provides that a violation of a state or federal law involving fraud is reasonable cause to deny an application for a salesperson's license. Accordingly, the Division's denial complies with Utah law.

Nevertheless, the Commission may consider all factors surrounding the Petitioner's circumstances before determining whether to sustain the Division's denial or to grant the license. The Petitioner explains that his convictions arose from a skiing accident that left him disabled. He further explains that the convictions were associated with the worker's compensation claims he filed regarding his disability and that he served 19 months in federal prison in STATE for the crimes. The Petitioner also proffered evidence that he has completed his supervised release from prison and is not now on probation.

The Petitioner was first granted a Utah motor vehicle salesperson license in 2001, working at COMPANY B until he was convicted of the federal crimes. Upon release from prison, the Petitioner applied for a renewal of his Utah salesperson license so that he could work at COMPANY C. The Division granted the 2004 renewal application because Subsection 41-3-209(x), which addresses fraud crimes, had not yet been enacted. The Petitioner worked at these two Utah dealerships without incident and has recently been hired by COMPANY A. WITNESS, the general manager of COMPANY A, proffered that the Petitioner was recommended to him by a long-time acquaintance and that he has been pleased with the Petitioner's performance at the dealership thus far.

The Commission has a duty to ensure that a salesperson license is not issued to a person who may endanger the public. In this case, the Commission notes that the Petitioner's fraud crimes occurred a

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number of years ago. Furthermore, the Commission notes that the Petitioner has completed his sentence and is no longer on supervised release or probation. The Division proffered no evidence or testimony contradicting the Petitioner's statements. For these reasons and based on the information provided at the Initial Hearing, the Commission finds that the Petitioner should be granted a renewal of his Utah motor vehicle salesperson license.

DECISION AND ORDER

Based on the foregoing, the Commission grants the Petitioner's appeal. Accordingly, the Commission orders the Division to issue the Petitioner a renewal of his Utah motor vehicle 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.

Kerry Chapman
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 _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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