

07-0455
Motor Vehicle Salesperson License
Signed 05/18/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
)	ORDER	
Petitioner,)		
v.)	Appeal No.	07-0455
)	Tax Type:	Motor Vehicle
MOTOR VEHICLE ENFORCEMENT)		Salesperson License
DIVISION, UTAH STATE TAX)		
COMMISSION,)	Judge:	Robinson
)		
Respondent.)		

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Attorney at Law
 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 May 3, 2007.

The Petitioner filed an application for a motor vehicle salesperson license on April 5, 2007, which the Division denied in a letter dated April 13, 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

.....

(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

The Division denied the Petitioner's application because of the crimes for which he acknowledged he had been convicted within the last ten years. At the hearing, Petitioner submitted a background screening report, apparently obtained by the COMPANY A, listing the following convictions: possession of a controlled substance (May 30 1997); illegal use/possession of a controlled substance (August 6, 1998); joyriding with intent to temporarily deprive, use or possession of drug paraphernalia, and driving on a denied license, April 27, 1998; attempted stalking, January 31, 2001; and burglary, January 12, 2004. Petitioner listed these on his application. Respondent did not submit an official criminal history.

Petitioner served time in the Utah State Prison for the burglary conviction, and is currently on parole for that conviction.

Section 41-3-209(2)(b)(vii) and (viii), provides that a violation of a state or federal law involving either motor vehicles (vii) or controlled substances (viii) is reasonable cause to deny an application for a salesperson's license. Accordingly, the Division's denial complies with Utah law.

PETITIONER REPRESENTATIVE argued there is a conflict within 41-3-209. He pointed out subsection (1) states the administrator may not grant a license if the applicant is not qualified, and subsection (2)(a) states the administrator shall deny, suspend or revoke if there is reasonable cause.

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He interprets subsection (1) to grant discretion by use of the word “may,” while he interprets subsection (2) to take it away by use of the word “shall.”

He also took the position there is a conflict with 41-3-201(5), which states a person convicted of laws relating to motor vehicle commerce or fraud may not be issued a license unless full restitution has been made. He argued the use of the word “may” in 41-3-201(5) grants discretion, in conflict with the word “shall” used in 41-3-209 (2)(a).

The Commission is not persuaded by this argument. PETITIONER REPRESENTATIVE points to the word “may,” without acknowledging it is coupled with the word “not.” To say that one “may not” issue or grant a license (the language found in 41-3-209 (1)) has the same effect as saying one “shall deny” a license (the language found in 41-3-209 (2)(a)). The Commission sees no conflict in the statutes.

Nevertheless, the Commission has discretion the administrator does not. It may consider all factors surrounding the Petitioner’s circumstances before determining whether to sustain the Division’s denial or to grant the license.

The Commission has a duty to oversee the issuance of motor vehicle salesperson licenses. In this case, the Commission notes that Petitioner’s most recent conviction of a type listed in 41-3-209 occurred approximately nine years ago.

Petitioner explained his most recent conviction for burglary had nothing to do with motor vehicles or controlled substances. He said he saw someone he believed to be his estranged wife in a residence with another man. It was after he broke in with the intent to commit an assault that he discovered the woman he had seen was not his estranged wife.

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Petitioner acknowledged his past substance abuse problems. While in prison, Petitioner completed the Con-Quest program, a twelve to eighteen month residential therapeutic substance abuse program. Following his release from prison, he completed the Day Reporting Center's substance abuse program.

WITNESS 1, Petitioner's parole agent, wrote in support of Petitioner receiving a salesperson license. WITNESS 1 said Petitioner paroled on May 30, 2006, has remained in full compliance with the conditions of his parole, and completed all obligations. WITNESS 1 has submitted to the Board of Pardons and Parole a request for successful termination of Petitioner's parole.

WITNESS 2, General Manager of COMPANY B, also wrote a letter in support of Petitioner. He said Petitioner has been working as a Customer Greeter, and has demonstrated he would do well as a salesperson.

Petitioner also submitted letters from a counselor at COMPANY C, a company contracting with the Utah Department of Corrections, his LDS Bishop, and an acquaintance. All support his efforts to obtain a salesperson license.

Because Petitioner remains on parole, the Commission sustains the decision of the Administrator. Once Petitioner successfully terminates his parole, the Commission is willing to exercise its discretion in Petitioner's favor.

DECISION AND ORDER

Based on the foregoing, the Commission sustains the decision of the Administrator denying Petitioner his Utah motor vehicle salesperson license for the remainder of the time Petitioner is on parole. When Petitioner submits proof to the Division that he has successfully terminated parole,

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assuming no additional basis for denying the license becomes known, Petitioner may receive a 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.

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

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Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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