

07-0472
MOTOR VEHICLE
SIGNED 07-10-07

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

vs.

MOTOR VEHICLE ENFORCEMENT DIVISION,
UTAH STATE TAX COMMISSION,

Respondent.

ORDER

Appeal No.: 07-0472

Tax Type: Sales Person License

Judge: Jensen

Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REP, Officer, MVED

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on May 14, 2007 in accordance with the provisions of Utah Code Sec. 59-1-502.5. Petitioner is appealing the suspension of his motor vehicle salesperson license. The Division suspended the license by letter dated March 28, 2007. Petitioner filed a Petition for Redetermination on April 25, 2007

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 . . . (vi) making a false statement on any application for a license under this chapter or for special license plates; (vii) a violation of any state or federal law involving motor vehicles; (viii) a violation of any state or federal law regarding controlled substances; (ix)

charges filed with any county attorney, district attorney, or U.S. attorney in any court of competent jurisdiction for a violation of any state or federal law involving motor vehicles; (x) a violation of any state or federal law involving fraud; or (xi) a violation of any state or federal law involving a registerable sex offense under Section 77-27-21.5. . . (Utah Code Sec. 41-3-209(2)).

DISCUSSION

Respondent suspended Petitioner’s license on the basis of Petitioner’s criminal history as contained in the Bureau of Criminal Identification records.

Petitioner applied for a motor vehicle salesperson license on November 22, 2006. In response to question 3 on the application asking if Petitioner been convicted of any misdemeanors or felonies in Utah or any other state, Petitioner checked the box for “yes.” In the areas provided to list each conviction, Petitioner disclosed “DUI – reduced to ARR.”

In response to Petitioner’s application, the Division issued a motor vehicle salesperson license to Petitioner. Following normal procedure, the Division then completed a criminal record search, which disclosed the following felony or misdemeanor criminal convictions from Utah:

October 19, 2000	Misdemeanor Possession of Marijuana
March 27, 2001	Misdemeanor Possession of Marijuana
August 24, 2004	DUI Reduced to Alcohol Related Reckless Driving
March 3, 2005	Three Felony Convictions for Forged or Altered Prescription
March 3, 2005	Unlawful Sale of Alcohol to a Minor

Petitioner’s criminal history also showed the following misdemeanor convictions from STATE:

December 16, 1998	Purchase, Use, or Possession of Alcohol by Minor
December 16, 1998	Minor Loitering in Gaming Establishment

Petitioner is currently on probation for a Felony Forgery charge stemming from matters related to altered prescription matters and an Alcohol-Related Reckless Driving charge.

At hearing, Petitioner explained that he is currently working to complete the terms of his probation. He is attending AA meetings and is enrolled in a drug class. He anticipates that the courts will dismiss some of the charges against him following completion of probation. As for failing to disclose all of his criminal convictions, Petitioner explained that he did not think of the older charges and hoped that the rest of the more recent charges would be either dismissed or expunged before they came to light. He did not inform his employer, DEALERSHIP, of his criminal history because he was concerned that they would not hire him if they knew about his criminal history.

Considering the evidence presented, the Commission notes positive steps in Petitioner's plans and current direction. However, it also notes a history of drug problems. Petitioner is still under court supervision for those problems and has not yet had the opportunity to demonstrate his resolve to turn his life around when he is not under court or probation supervision. His convictions for forging or altering prescriptions have an element of fraud. These elements of fraud, together with Petitioner's lack of candor in completing his application, are a cause of concern. The weight of the evidence suggests that to protect employers and members of the auto-buying public, the Commission should not exercise its discretion in licensing Petitioner to sell motor vehicles notwithstanding his criminal record.

DECISION AND ORDER

On the basis of the evidence submitted, the Commission concludes that there is not sufficient good cause to grant a motor vehicle salesperson license to Petitioner.

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:

Appeal No. 07-0472

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.

Clinton Jensen
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

D'Arcy Dixon Pignanelli
Commissioner

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