

07-0529
Sales Person License
Signed 07/10/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

vs.

MOTOR VEHICLE ENFORCEMENT DIVISION,
UTAH STATE TAX COMMISSION,

Respondent.

ORDER

Appeal No.: 07-0529
Tax Type: Sales Person License

Judge: Jensen

Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
PETITIONER REPRESENTATIVE, COMPANY A
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, Officer, MVED
RESPONDENT REPRESENTATIVE 3, Officer, MVED

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on May 23, 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 April 13, 2007. Petitioner filed a Petition for Redetermination on May 3, 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 December 18, 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, internal poss. of C/S petty theft Class A [misdemeanor]."

Notwithstanding Petitioner's disclosure of criminal convictions for vehicle-related offenses, the Division issued a motor vehicle salesperson license to Petitioner. Following normal procedure, the Division then completed a criminal record search, which disclosed criminal convictions on March 31, 2003 for "Illegal Possession/Use of Controlled Substance" and "Driving Under Influence Drugs, Misdemeanor – B." The record also disclosed a July 11, 2002 case involving theft in CITY, STATE, but the parties agree that this charge was resolved without a conviction and thus should not be considered by the Commission

At hearing, Petitioner explained that each of the above charges was as a result of a drug problem that has not repeated itself since 2002. Petitioner attended drug classes through COMPANY B and completed all classes required as a part of his probation. He has paid all fines and was released from probation

in the summer of 2005. He testified that he has had no further drug problems or criminal convictions and had made a request of the First District Court to reduce the Controlled Substance charge from a 3rd Degree Felony to a Class A Misdemeanor and the DUI from a Class B Misdemeanor to a Class C Misdemeanor.

DECISION AND ORDER

The documents submitted and the information provided by Petitioner's counsel indicates that Petitioner has taken positive steps to overcome drug problems and to prevent the repeat of past mistakes. He has successfully completed drug classes and completed his probation approximately two years ago. Since that time, there is no evidence of drug use or criminal problems. On the basis of the evidence submitted, the Commission concludes that there is 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:

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

Appeal No. 07-0529

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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