

07-0843
MOTOR VEHICLE
SIGNED 08-07-07

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

MOTOR VEHICLE ENFORCEMENT
DIVISION, UTAH STATE TAX
COMMISSION,

Respondent.

ORDER

Appeal No. 07-0843

Tax Type: Salesperson License

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REP, Assistant Director, Motor Vehicle Enforcement Division

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 August 2, 2007. Petitioner is appealing the suspension of his application for motor vehicle salesperson license. The license was suspended by letter from Respondent dated June 6, 2007. However, because Petitioner filed an appeal, the suspension is held in abeyance during the pendency of the appeal proceedings.

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

Petitioner had filled out an application for Motor Vehicle Salesperson License and submitted it to Respondent on April 26, 2007. Question 3 on that form asks if the applicant had any felony or misdemeanor convictions during the past 10 years. Petitioner had check “yes” and listed “criminal non-support.” As there were no other convictions listed on the application, Respondent issued Petitioner the license pending the criminal background check and Petitioner began working at DEALERSHIP. When Respondent received the criminal background check and determined that there had been another conviction in the past ten years that related to a controlled substance violation, Respondent issued the suspension of the license.

From the information presented by the parties and Petitioner’s criminal history report, Petitioner had been arrested in December 2000 for felony nonsupport and a misdemeanor simple assault. He was convicted of both and sentenced to probation for the felony nonsupport.

Then a few months later, on February 12, 2001, he was arrested again, this time for acquiring a controlled substance by altering a prescription. He pled in abeyance to this charge. Petitioner indicates that he paid the fine and completed everything that had been required under this conviction. Petitioner’s explanation for what happened was that he suffered a painful injury to his achilles tendon and had been prescribed pain medication. He indicates that he became addicted to the medication. He altered the

prescription when the doctor stopped prescribing it. He indicates that the arrest and threat of jail made him realize that it was an addiction and he needed to deal with it as such.

Petitioner had not listed this controlled substance conviction on the salesperson application. He stated that he knew when he submitted the salesperson license application there would be a criminal background check because he also had to submit his fingerprints, so he was not trying to hide this conviction. He just did not think through clearly that it was something that occurred within ten years that would still be on his report.

Petitioner indicates that he violated the terms of his felony nonsupport release and was, therefore, sent to prison for ten months in 2006. He was released from prison in December 2006 and is currently on parole for the felony nonsupport. As a condition of parole he needs to work to pay his child support responsibilities. Petitioner indicates that he wants to be able to earn a living, support his children and be a responsible contributor to society. To accomplish this he needs to be able to work.

DECISION AND ORDER

Upon review of the information presented, Petitioner essentially has had only two criminal incidents resulting in convictions in the past ten years, both occurring more than six years ago. One of those incidents related to a controlled substance, a crime specifically listed in the statute as cause for suspension of a license. Petitioner maintains that his current parole status is due to the other conviction, an assertion that Respondent did not refute and one that was not contrary to the information in the criminal history report.

Based on the fact that there have been no new convictions for many years, Petitioner's appeal is granted and Respondent is hereby ordered to issue 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

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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

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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