

07-1018
MOTOR VEHICLE
09-24-07

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

MOTOR VEHICLE ENFORCEMENT
DIVISION OF THE UTAH STATE
TAX COMMISSION,

Respondent.

ORDER

Appeal No. 07-1018

Tax Type: Motor Vehicle
Salesperson License

License No. #####

Judge: Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONR

For Respondent: RESPONDENT REP, 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 September 11, 2007.

The Petitioner submitted a motor vehicle salesperson license application on October 5, 2006, after which the Motor Vehicle Enforcement Division (“MVED”) issued a license to him. On his application, the Petitioner disclosed that he had been convicted of crimes involving forgery and the unlawful use of a transaction card. The Division asserts that because the Petitioner listed a forgery crime, it should have denied the application instead of issuing a license to him. The Division explains that Division personnel issues at the time resulted in the Petitioner being granted a salesperson license by mistake.

On January 24, 2007, MVED issued a letter to the Petitioner, in which it suspended his salesperson license due to his “criminal convictions within the last 10 years.” This letter informed the

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Petitioner that he could file an appeal of the suspension within 30 days and that if he did so, his salesperson license would remain in effect until the appeal was resolved.

On March 1, 2007, MVED issued a letter to DEALERSHIP, informing it that the Petitioner's salesperson license was "suspended as of, March 1, 2007, due to a discrepancy in the salesperson application regarding criminal convictions during the last 10 years." In this letter, MVED informed the dealership that "in order to reinstate [his] license, [the Petitioner] must file an appeal through the Utah State Tax Commission." No information about the timeframe to file an appeal, however, was included in this letter.

On August 10, 2007, the Petitioner submitted a Petition for Expedited Hearing in order to have his salesperson license reinstated.

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
 -
 - (vi) making a false statement on any application for a license under this chapter ;
 -
 - (x) a violation of any state or federal law involving fraud;

DISCUSSION

Before addressing the salesperson license issue, the Commission must first determine if the Petitioner lost his appeal rights by not filing an appeal within 30 days of either the Division's January 24, 2007 letter or its March 1, 2007 letter. The March 1, 2007 letter granted the Petitioner additional appeal rights, but failed to inform the Petitioner that he only had 30 days to file an appeal. Furthermore, the Petitioner states that

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after receiving the Division's letters, he submitted a new application, which he claims was denied at the time of submission. The Division states that it does not have any paperwork showing that the Petitioner submitted a new application.

The Division expressly declined to ask the Commission to dismiss this matter and, instead, states that it would be more efficient to hear the appeal at this time. It does so not only because it gave the Petitioner additional appeal rights in its March 1, 2007 letter, but also because the Petitioner would have new appeal rights if the Division denied the latest application the Petitioner supposedly submitted or if the Petitioner submitted another application after the dismissal of this appeal. Under these circumstances, the Commission finds that it would be inequitable and inefficient to dismiss this appeal. Accordingly, the Commission will address the underlying issue concerning whether to revoke or grant the Petitioner's salesperson license.

On the motor vehicle salesperson license application the Petitioner submitted on October 5, 2007, Question #3 asks "[d]uring the past 10 years, have you been convicted of any misdemeanors or felonies in Utah or any other state. If yes, please list each conviction." The Petitioner checked the "yes" box and listed his convictions as follows: "Forgery / unlawful use of a transaction card[.]"

The Division ran a Criminal History Report, which shows that the Petitioner was convicted of the following crimes:

11/13/2001	Fraud - Unlawful Acquisition, Possession, or Transfer of Credit Card, a Third Degree Felony Fraud - Unlawful Use of Financial Card/ ATM, a Third Degree Felony
12/16/2002	Forgery, a Third Degree Felony
01/02/2003	Forgery, a Third Degree Felony

After discovering the Petitioner's past criminal history, the Division suspended the Petitioner's license pursuant to two subsections of Section 41-3-209. First, Section 41-3-209(vi) provides that making a

false statement on any application for a license under this chapter is reasonable cause to suspend or deny a salesperson's license. In its letter of March 1, 2007 to the dealership, the Division states that it had suspended the Petitioner's license due to "a discrepancy in the salesperson application regarding criminal convictions during the last 10 years."

The Division admits that the Petitioner listed the types of crimes for which he had been convicted, but states that it expects an applicant to list the number of convictions for each crime, as well. The Division notes that the Petitioner's Criminal History Report shows that on November 13, 2001, the Petitioner was convicted of two counts of unlawful acquisition of a credit card and three counts of unlawful use of the card. Furthermore, the Division notes that the Petitioner was convicted of three counts of forgery in December 2002 and January 2003. Because the Petitioner did not disclose the number of the types of crimes for which he had been convicted, the Division believes that the Petitioner made a false statement on his application.

The Petitioner states that he had no idea he was charged with and convicted of multiple counts of each crime. He proffers that all of the convictions arose out of crimes that involved stolen credit cards and checks that occurred in 2001 when he was 17 years old. He proffers that a friend stole the credit cards and checks and that he accompanied the friend when the checks and cards were used to purchase merchandise. He states that he remembers pleading guilty to forgery and unlawful possession and use of the credit cards, but did not know that his convictions involved multiple charges for each offense.

Furthermore, the Petitioner states that when he filled out his most recent application, he listed the three offenses separately, believing this was the number of crimes for which he had been convicted. The Division stated that it could not, with certainty, determine whether some of the offenses were duplicated on the Petitioner's Criminal History Report or whether the Petitioner had actually been convicted of the number of counts separately shown on the report. The Commission is also unable to distinguish whether all of the convictions listed in the report are separate counts. Given these circumstances, the Commission finds that the

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Petitioner did not make a false statement on Question #3 of his October 5, 2006 application and that the Petitioner's license should not be revoked for this reason.

Nevertheless, Section 41-3-209(x) also provides that a violation of a state or federal law involving fraud is reasonable cause to suspend or deny a salesperson's license. All of the crimes for which the Petitioner was convicted within the past 10 years relate to fraudulent acts. As a result, the Commission finds that the Division's action to suspend the Petitioner's license is in compliance with Section 41-3-209(x).

Although the Division had cause to suspend the Petitioner's license, the Commission may consider all factors surrounding the Petitioner's circumstances before determining whether to revoke or grant the license. The Petitioner explains that all of the offenses for which he convicted were committed in 2001, when he was 17 years old. He further states that he has served time in jail and the Utah State Prison for the offenses and that he has not committed any crimes since 2001. In addition, the Petitioner's probation for these crimes was terminated in November 2004. Given the circumstances, the Commission finds that the Petitioner should be granted his salesperson license.

DECISION AND ORDER

Based on the foregoing, the Commission terminates the Division's suspension of the Petitioner's salesperson license. Moreover, the Commission grants the Petitioner his 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:

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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

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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