

07-1052
Salesperson License
Signed 09/18/2007

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>MOTOR VEHICLE ENFORCEMENT DIVISION, UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p>ORDER</p> <p>Appeal No. 07-1052</p> <p>Tax Type: Salesperson License</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE, 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 September 13, 2007. Petitioner is appealing the denial of his application for motor vehicle salesperson license. The license was denied by letter from Respondent dated August 21, 2007.

APPLICABLE LAW

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)(a)).

DISCUSSION

Petitioner had filled out an application for Motor Vehicle Salesperson License on August 14, 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 “1st degree felony: Aggravated armed robbery and 2 Second degree felonies: both theft.” Based on this representation from Petitioner, Respondent denied the license.

At the hearing, Petitioner explained that he had been sixteen when he had committed the crimes for which he was convicted. The matter was considered to be one incident on his criminal history, but from which the convictions ensued. Due to the nature of the crimes, Petitioner was charged and convicted as an adult. He was sentenced to one year in the County Jail, followed by three years of probation. Petitioner severed the jail time from September 2004 to September 2005. He indicates that he is currently still on probation until May 2008. Petitioner explained that he was trying to find a job where he could earn a living. He is now married and has a new baby. He indicated COMPANY A was the only dealership that would even talk to him about employment due to his criminal history.

Respondent’s representative pointed to the serious nature of the convictions and based on this had denied the claim. The statute indicates that the administration “shall” deny, suspend or revoke the license if the administration finds there is reasonable cause. See Utah Code Sec. 41-3-209. The convictions did involve theft of a motor vehicle and although aggravated armed robbery is not on of the items specifically listed, it is

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the Commission's interpretation of the state that the specified crimes are not all inclusive and certainly Respondent could deny the license for parties who had committed other types of crimes.

Although the convictions occurred when Petitioner was a juvenile, it was the District Court's conclusion that he be tried as an adult, and the Tax Commission does not have the authority or expertise to second guess the court. The Commission agrees with Respondent that a conviction for aggravated armed robbery and other theft charges, for which Petitioner is still on probation, is cause for denial of the license.

DECISION AND ORDER

Based upon the forgoing, Petitioner's appeal in this matter is denied. 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.

Jane Phan
Administrative Law Judge

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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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