

BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p><b>ORDER</b></p> <p>Appeal No. 07-1111</p> <p>Tax Type: Motor Vehicle Salesperson License</p> <p>Judge: Chapman</p>
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**Presiding:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER  
WITNESS, Sales Manager of COMPANY  
For Respondent: RESPONDENT REPRESENTATIVE, 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 Ann. 59-1-502.5, on October 25, 2007.

The Petitioner filed an application to receive a motor vehicle salesperson license on August 1, 2007. On September 4, 2007, the Division denied the Petitioner's application. The Petitioner is appealing the Division's action and requests that the Commission grant him a license.

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

- (x) a violation of any state or federal law involving fraud;

#### DISCUSSION

On his application, the Petitioner disclosed that he had been convicted on the following crimes: 1) a 3<sup>rd</sup> degree felony for forgery; and 2) a 3<sup>rd</sup> degree felony for fraud for writing checks without sufficient funds. A review of the Petitioner's criminal history report confirms that these are his only convictions. Section 41-3-209(2)(b)(x) provides for the denial, suspension, or revocation of a license if the applicant or licensee has committed a violation involving fraud. Accordingly, the Commission finds that the Division's action to deny the Petitioner's application for a license complies with Section 41-3-209.

Although the Division had cause to deny the Petitioner's request for a license, the Commission may consider all factors surrounding the Petitioner's circumstances before determining whether to grant the license. The Petitioner explained that the forgery conviction involved his taking a check from his grandfather and forging the signature. The forged check was in the amount of \$\$\$\$\$. The Petitioner also explained that the other felony resulted from his writing checks on his own account when he did not have sufficient funds to cover the amounts of the checks.

The Petitioner, who is 23 years old, was convicted of these crimes on June 5, 2007. The Petitioner was sentenced to 60 days in jail and three years probation. The Petitioner is currently on probation and expects to complete probation in March 2009. The Petitioner explained that he committed these crimes because a drug problem and that since his arrest, he was completed an intensive outpatient drug rehabilitation program at the ( X ). He continues to attend a weekly meeting associated with the program. As a condition of his probation, the Petitioner is required to submit to random drug testing, and he proffers that he has not tested

positive on any drug test. The Petitioner asks the Commission to grant him a salesperson license because of the changes he has made in his lifestyle since his arrest and because he would be better able to provide for his the family he wants to start once he and his finacee marry.

WITNESS also proffered testimony on behalf of the Petitioner and stated that he has been impressed with the Petitioner's abilities and work ethic during the time he was worked for him as a salesperson trainee. WITNESS believes the Petitioner would be as asset to his firm and asks the Commission to grant the Petitioner a salesperson license. For the Division, RESPONDENT REPRESENTATIVE proffered that the Division is concerned that the Petitioner's arrest and conviction occurred earlier this year and that it usually does not like to issue a license when so little time has elapsed.

The Commission's general policy is to deny a license to persons who are still on probation. In addition, it appears that less than a year has elapsed since the Petitioner committed the above-listed crimes because of a drug problem. For these reasons, the Commission denies the Petitioner's request to grant him a license at this time.

#### DECISION AND ORDER

Based on the foregoing, the Commission denies the Petitioner's appeal to grant him a motor vehicle salesperson license. Once the Petitioner's probation is terminated, he may then reapply for a salesperson license. The Commission will then make a determination based on the facts and circumstances at that time. 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:

Appeal No. 07-1111

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.

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Kerry R. 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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