

07-1150
Salesperson License
Signed 10/16/2007

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. 07-1150</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 October 10, 2007. Petitioner is appealing the denial of his application for a motor vehicle salesperson license. The license was denied by letter from Respondent dated September 14, 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

Petitioner had filled out an application for a Motor Vehicle Salesperson License dated September 12, 2007 and submitted it to Respondent. Question 3 on that form asks if the applicant had any felony or misdemeanor convictions during the past 10 years. Petitioner had checked “yes” and listed “1998 Agg. Robbery, Possession, Forgery 2004 Failure to stop & possession.” Respondent had reviewed the application and denied the license based on the information Respondent had at that time.

Petitioner indicated that Respondent had previously issued a license to him when he had been working at a dealership in CITY 1 in 2006. However, as he resided in CITY 2 the commute had been difficult. He was not employed as a sales person for a period of a few months and then he was hired at COMPANY A in CITY 3. This was much closer to where he lived. However, when he applied for the current license it was denied. Petitioner was confused why the license had been issued in 2006 and then denied in 2007.

Petitioner explained that he is currently attending (X) and working toward a degree in technical sales. He states that he has put the past behind him and has a new direction in his life. It is important to Petitioner that he be able to work and support his family while obtaining his degree. Working at the dealership will help him accomplish this and provides a daily routine that is important to him. He is currently on parole. He points out that he meets with his parole officer every two weeks and is subject to random drug testing. He also feels he has a lot of support at this time to help make sure he keeps going in the right direction.

Petitioner indicates that he is a good salesperson and never has had a problem with customer complaints. He asks that he be issued the license now and if he makes a mistake later, the license could be revoked.

Respondent points to the applicable statutory code provisions that govern the issuance of a salesperson license and to Petitioner's criminal history. Respondent's representative acknowledged a license had been issued to Petitioner in the summer of 2006. He explained that the 2006 license had been issued in error at that time. It was his position that based on Petitioner's criminal history it should have been denied in 2006, but there had been some issues with employee training that had resulted in the license being issued. When Petitioner reapplied in 2007 the application was given the proper review and the license denied based on the criminal history information provided.

Respondent provided a copy of Petitioner's Utah Criminal History Record. During the past ten years Petitioner had been convicted of a felony dangerous drug charge resulting from an arrest in 1998. He was sentenced to prison and was an inmate until February 2004, when he was paroled. While on parole he was arrested and convicted of a felony dangerous drug charge and a felony obstructing police charge. He was incarcerated and then paroled in April 2006. Their record did indicate a parole violation that resulted in incarceration for the period of May 1, 2007 through July 10, 2007. He is still currently on parole and indicates it will be at least eight more months before he will be released from parole.

DECISION AND ORDER

Upon review of the information presented, the Commission must take into consideration that Petitioner is still on parole for a felony conviction relating to a controlled substance. Based on this, the denial of motor vehicle sales person license is required by Utah Code Sec. 41-3-209 at this time. Petitioner has essentially been under the jurisdiction of the criminal justice system, either as an inmate or parolee for the past ten years. Although Petitioner indicates he has a new direction in his life, he does not yet have a proven record

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of compliance with the law to demonstrate this change. Petitioner may reapply for the license once he as been released from parole. The Commission then may consider issuing the license based on the facts and circumstances at that time.

Based on 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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