

07-1161
Salesperson License
Signed 10/23/2007

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p> Petitioner,</p> <p>v.</p> <p>MOTOR VEHICLE ENFORCEMENT DIVISION, UTAH STATE TAX COMMISSION,</p> <p> Respondent.</p>	<p>ORDER</p> <p>Appeal No. 07-1161</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 17, 2007. Petitioner is appealing the suspension of his application for motor vehicle salesperson licenses. The license was suspended by letter from the Division, dated August 23, 2007. However, because Petitioner filed an appeal, the suspension was 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 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 not checked either the “yes” or “no” box, but had instead handed in with the application his complete Utah Criminal History Record. The Division’s employee at the counter interpreted from the face of the application that there were no criminal convictions and issued the license. Shortly after the issuance of the license, upon further review by the Division, the fact that there had been convictions related to controlled substances and fraud in the past ten years was noticed and the license suspended.

Although there had been convictions prior to the last ten years, during the last ten years alone the report indicated 21 separate incidents with convictions. Looking at the 10 year period most of the convictions were misdemeanors. There were many misdemeanor convictions regarding theft, retail theft, DUI and disorderly conduct. There were also numerous misdemeanor forgery convictions and misdemeanor controlled substance convictions prior to 2002. On October 31, 2002, Petitioner was convicted of felony forgery and was sentenced to felony probation. After this period there was a break in convictions until January 2006 when Petitioner was convicted of two separate misdemeanors related to controlled substances. Then in October 2006 Petitioner was again arrested and convicted of both felony and misdemeanor controlled

substance charges. Petitioner was arrested again in November 2006 and convicted of additional misdemeanor and felony controlled substance related charges.

Petitioner asks that he be issued a motor vehicle sales person license, as it would be a good career move for him. He explained that as a result of his last felony drug convictions he is now in the Drug Court program. While in Drug Court and in an outpatient drug rehabilitation program at (X), he has been able to be drug free. He indicates that he has changed and wants to be able to move forward with his life. While in the Drug Court program Petitioner is subject to random drug testing several times per week. He states that he has never had a relapse or tested positive for drugs. Petitioner indicates that he would be in the Drug Court program until March of 2008.

Petitioner provided letters of support from numerous individuals. Letters were provided from two Substance Abuse Counselors for (X), and stated that Petitioner had completed their intensive outpatient program, was currently in the aftercare program and had not relapsed since entering treatment. He submitted a letter from the General Manager at his current place of employment that indicated that Petitioner was hard working, reliable and dependable. He submitted a letter from a coworker who had a prior career as a narcotics agent and commander of a drug task force. It was this coworker's opinion that Petitioner had changed and that he is not the same person as his criminal history would indicate. Petitioner also submitted a letter from the Drug Court Tracker who indicated Petitioner had completed Phase 1 and 2 of the four-phase program. She confirmed that Petitioner was subject to random drug tests on a weekly basis and has been drug free on all tests. She indicated that Petitioner has been in the Drug Court Program since February 21, 2007.

DECISION AND ORDER

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Upon review of the applicable law in this matter and the information presented, Utah code Sec. 41-3-209 requires denial or suspension of a motor vehicle license where there have been convictions related to controlled substances or fraud. Petitioner has had two felony controlled substance convictions within the past year and has not yet been released from the jurisdiction of the criminal justice system for the most recent convictions. Although he appears to be making progress through the drug treatment activities and has support from counselors and co-workers, due to the number of convictions, the Commission would not issue a license to Petitioner while he is still under the jurisdiction of the criminal justice system. Once Petitioner graduates successfully from the Drug Court and is released from any type of court ordered supervision, he may then reapply for a salesperson license. The Commission will then make a determination based on the facts and circumstances at that time.

Based on the forgoing, Petitioner's appeal is denied. His salesperson license is hereby revoked. 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.

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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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