

07-1162
Motor Vehicle Salesperson License
Signed 10/23/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

MOTOR VEHICLE ENFORCEMENT
DIVISION OF THE UTAH STATE
TAX COMMISSION,

Respondent.

ORDER

Appeal No. 07-1162

Tax Type: Motor Vehicle
Salesperson License

Judge: Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
WITNESS

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 Sec. 59-1-502.5, on October 17, 2007.

In a letter dated September 12, 2007, Motor Vehicle Enforcement Division (“Division”) suspended the Petitioner’s motor vehicle salesperson license “due to [his] criminal convictions during the last 10 years.” The Petitioner is appealing the Division’s suspension of his 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

. . . .

(xi) a violation of any state or federal law involving a registerable sex offense under Section 77-27-21.5.

DISCUSSION

On August 6, 2007, the Petitioner submitted a renewal application for a motor vehicle salesperson's license, at which time the Division issued a license to him. On his application, the Petitioner listed two crimes for which he had been convicted in the past ten years, specifically: 1) a Class A misdemeanor assault in 2001; and 2) 3rd degree felony for unlawful misconduct with a 17 year old in 2005.

The Division confirms that the Petitioners' Criminal History Report shows that these two crimes are the Petitioner's only convictions during the past ten years. RESPONDENT REPRESENTATIVE stated, however, that the application should have been denied because of the felony the Petitioner listed, but that personnel issues in the Division resulted in the matter not coming to his attention until weeks later. Once he became aware of the felony conviction, RESPONDENT REPRESENTATIVE suspended the Petitioner's license.

The Petitioner's Utah Criminal History Report shows that the Petitioner was convicted of the following two crimes in the past ten years:

Date of Arrest	Crime
Sept. 15, 2003	Class A Misdemeanor Attempt to Commit Aggravated Assault
May 4, 2005	Third Degree Felony Unlawful Sexual Activity with a Minor

Because of the last offense, the Petitioner is currently listed on the Official State of Utah Sex Offender Registry. Section 41-3-209(2)(b)(xi) provides for the denial, suspension, or revocation of a license if the applicant or licensee has committed a violation involving a registerable sex offense listed under Section 77-

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27-21.5. For these reasons, the Commission finds that the Division's action to suspend the Petitioner's license complies with Section 41-3-209.

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 explained that his misdemeanor conviction for attempted aggravated assault resulted from an argument with his stepfather. The Petitioner states that his stepfather approached him as he was trying to leave the house on his mountain bike and that he pushed the bike at his stepfather, causing minor injuries.

The Petitioner also explains that the 2005 felony sex conviction arose when he had consensual sex with a girl he knew three days before her 18th birthday. The Petitioner claims that the event soon became known in the small town in which they lived, which led to his arrest. He states that until the time of the arrest, he did not know the girl was underage. The Petitioner was sentenced not only to 180 days in jail, which he was allowed to serve in a work release program, but also to probation, which the Petitioner proffers should end in either June or July 2008. The Petitioner also states that his classification type on the sex registry allows him to go to parks and other places where children are often in attendance, as opposed to the classification type that does not permit such contacts.

The Petitioner also proffers that prior to his 2005 arrest, he worked as a motor vehicle salesperson in CITY 1 and that after he completed his work release, he wanted to move away from CITY 1. In July 2007, the Petitioner applied for and received a job as a salesperson at COMPANY in CITY 2, where he has been working since the Division approved the renewal of his license in August. Because of his new job, the Petitioner has moved himself, his girlfriend and her two children from CITY 1 to CITY 3, where they now reside.

The Petitioner also submitted three letters on his behalf: 1) one from his parole officer, who states that the Adult Probation and Parole Agency believes “that PETITIONER presents a minimal risk to the community and should maintain his license;” 2) another letter from his sales manager at COMPANY, who ask the Commission to allow the Petitioner to retain his license; and 3) a letter from WITNESS, PETITIONER’S girlfriend, who explains that she is a registered nurse and a very protective mother of her two children, that the Petitioner is a trustworthy individual who has created a positive family with her and her children, and that their lives would be disrupted if they had to move on account of the Petitioner losing his job.

Since the Legislature enacted Subsection 41-3-209(2)(b)(xi), the Commission has granted motor vehicle salesperson licenses to other applicants who are on the Utah Sex Offender Registry, but has not yet granted a license to a person on the registry who is still on probation. *See* USTC Appeal No. 07-0539 and Appeal No. 07-0840. The Commission’s general policy is to deny a license to persons who are still on probation for crimes listed in all subsections of Section 41-3-209(2)(b). Because the Petitioner’s probation will not be terminated for another eight to ten months, 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 and revokes his 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

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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.

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.

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

CONCURRENCE

Although I agree with my respected colleagues' decision to revoke the Petitioner's license, I would revoke his license not only because he is still on probation, but also because he is currently listed on the Utah Sex Offender Registry. I recognize that the Commission regularly uses its discretion to grant licenses to applicants who have been convicted of one of the violations listed in Section 41-3-209(2)(b). Nevertheless, I believe that the Commission should not use its discretion and grant a license to a person who has been convicted of a violation involving a registerable sex offense under Section 77-27-21.5, as described in Subsection 41-3-209(2)(b)(xi). I believe that the nature of such crimes warrants different use of the Commission's discretion, and I would not grant a license to a person listed on the Utah Sex Offender Registry, even if that person had completed probation for the offense.

D'Arcy Dixon Pignanelli
Commissioner

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