

07-1362
Motor Vehicle
Signed 02/08/2008

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, v. MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 07-1362</p> <p>Tax Type: Motor Vehicle Salesperson License</p> <p>Tax Year: 2007</p> <p>Judge: Marshall</p>
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Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, *Pro Se*

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, from the Motor Vehicle
Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 10, 2008. On December 10, 2007 the Commission issued an Order, in which it denied Petitioner's request to receive a motor vehicle salesperson's license because Petitioner was still on probation. Based on the testimony and evidence presented at the Formal Hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. On November 14, 2007, the Petitioner submitted a Motor Vehicle Salesperson Application ("application") with the Motor Vehicle Enforcement Division ("Division").

2. Question number three of the application asks, "During the past 10 years, have you been convicted of any misdemeanors or felonies in Utah or any other state?" Petitioner checked the "Yes" box, and in the space provided, wrote the following:

Possession of a controlled substance
Sexual exploitation of a minor (non-violent not involving young
children) Involved NO contact with another person

3. Based on the Petitioner's convictions listed on the application the Division denied Petitioner a motor vehicle salesperson license in a letter dated November 14, 2007.

4. Petitioner's Utah Criminal History Report, dated November 27, 2007, verified the convictions listed by Petitioner, and did not show any other convictions.

5. The sexual exploitation of a minor conviction referred to on Petitioner's application relates to a 2004 second-degree felony committed when Petitioner was 18-years old. At the Initial Hearing, Petitioner explained that he was arrested after a 17 year-old girl with whom he had been having sex for several years told her LDS bishop of their relationship. Petitioner had sexually explicit photographs of the 17-year old girl on his computer, and indicated that he had had the photographs on his computer since he, too, was 17-years old.

6. The Petitioner submitted a Memorandum, dated December 21, 2007, from his probation officer, WITNESS, which states, "PETITIONER has successfully completed his supervised probation for the 4th District Court in CITY 1. He has complied with all terms and conditions including the required treatment program. He has shown that he can be a productive member of the community."

7. Petitioner also submitted a Progress/Violation Report from Adult Probation and Parole, dated December 19, 2007, which recommended that Petitioner be successfully terminated from supervised probation. The termination was Approved and Ordered by the Fourth District Court of COUNTY on December 21, 2007.

8. The possession of a controlled substance conviction referred to on Petitioner's application relates to a 2005 misdemeanor charge for possession of marijuana/paraphernalia. At the formal hearing, Petitioner testified that he underwent drug testing for two years as a condition of his probation.

9. The Petitioner submitted a "Ruling on Probation", dated May 31, 2007, from the 4th District Court in CITY 2 that indicates that Petitioner successfully completed the "(X)" course and probation through (X).

10. Petitioner's employer, COMPANY, is aware of Petitioner's criminal history as it was disclosed on Petitioner's application and the employer is required to sign the application.

11. For the division, RESPONDENT REPRESENTATIVE 2 testified at the Formal Hearing that the Petitioner's application was denied because Petitioner has been convicted of crimes involving a registerable sex offense under Utah Code Ann. §77-27-21.5 and a violation of a state or federal law involving a controlled substance. The Division submitted verification that the Petitioner was in fact registered. Further, RESPONDENT REPRESENTATIVE 2 stated that

the Division objects to the issuance of a license based on the relevant statutory authority; but acknowledges that the Commission has discretion in this matter.

APPLICABLE LAW

The denial, suspension, or revocation of a salesperson license is governed by Utah Code Ann. §41-3-209(2), as follows:

- (a) If the administrator finds that there is 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, in relation to the applicant or license holder or any of its partners, officers, or directors:
 - (viii) a violation of any state or federal law involving controlled substances;
 - (xi) a violation of any state or federal law involving a registerable sex offense under Section 77-27-21.5.

Utah Code Ann. §41-3-209(2) (2007).

CONCLUSIONS OF LAW

The Commission finds that the Division had reasonable cause to deny the Petitioner a motor vehicle salesperson license. Utah Code Ann. §41-3-209(2)(b)(vi) provides that both a violation of a state or federal law involving a registerable sex offense and a violation of state law involving a controlled substance are reasonable cause to deny a license. Petitioner has been convicted of second-degree felony for the sexual exploitation of a minor, a registerable sex offense; and a misdemeanor possession of a controlled substance/paraphernalia.

Although the Division had reasonable cause to suspend the Petitioner's license, the Commission may consider other factors, such as the passage of time since the most recent conviction, the payment of restitution, and termination of probation or parole. It has been approximately two and one-half years since Petitioner's most recent conviction. In the past, the Commission has consistently used clearing parole or probation as a general guideline to allow salesperson licenses to individuals who are no longer on parole or probation.

Although Petitioner has been released from probation for both convictions, he remains on the sex offender registry. The undersigned Commissioners are not aware of anything in the statute, or Commission policy that requires a person to be removed from the sex offender registry before being allowed to sell cars. Further, in the past, the Commission has granted a salesperson license to other applicants on the Utah Sex Offender Registry.

DECISION AND ORDER¹

Based on the foregoing the Commission abates the Division's action and grants the Petitioner his motor vehicle salesperson license. It is so ordered.

DATED this ____ day of _____, 2008.

Jan Marshall
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 _____, 2008.

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 and §63-46b-13 et. seq.

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¹ In the instance of a tie vote between the Commissioners, the decision is deemed to be in favor of the Petitioner. See Utah Code Ann. §59-1-205.

DISSENT

We respectfully dissent from our colleagues. In making its decision in this matter the Tax Commission must apply the law, which has been adopted by the legislature. The applicable statute, Utah Code Ann. §41-3-209(2)(xi), makes it clear that Petitioner's offense is cause for denial of the license. The legislature has not given the Commission authority to consider mitigating factors and certainly the Commission does not have jurisdiction to review or reconsider the court's decision that placed Petitioner on the registry in the first place. The undersigned Commissioners conclude that Respondent's interpretation of the statute is correct. It is our position that as long as Petitioner remains on the Utah Sex Offender Registry, Respondent should deny issuance of a salesperson license.

Pam Hendrickson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner