

07-1635
Motor Vehicle
Signed 04/09/2008

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

MOTOR VEHICLE ENFORCEMENT
DIVISION, UTAH STATE TAX
COMMISSION,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND FINAL DECISION**

Appeal No. 07-1635

Tax Type: Salesperson License

Judge: Jensen

Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 25, 2008. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing Respondent's decision to suspend his Motor Vehicle Sales Person license, license no. #####.
2. Petitioner had filled out a license for Motor Vehicle Salesperson Application, which he signed and dated on July 20, 2007 ("Application"). A representative for the prospective employer also signed the Application form on July 20, 2007. The Application was stamped as received by the Division on August 3, 2007.
3. Question 3 of the Application asks, "During the past 10 years, have you been convicted of any misdemeanors or felonies in Utah or any other state?" There are boxes where the applicant would check "Yes" or "No". Petitioner checked the "Yes" box. The Application form goes on to state, "If yes, please list each conviction." In the space provided to list each conviction, Petitioner listed the following offenses:

class B Misd - Thft
Theft by Decpt. (F3) 2

4. The Division did not recognize the offenses listed as offenses that might require denial of a license. On that basis, the Division issued the license to Petitioner. Later, the Division made further investigation into Petitioner's criminal charges and discovered that some of Petitioner's criminal convictions involved fraud and motor vehicles. On that basis, the Division issued a letter, dated December 5, 2007, suspending the license.

5. Petitioner timely appealed the Division's decision to suspend the license and the matter proceeded to the Formal Hearing.

6. Petitioner had been convicted of drug related, fraud related and other charges in the past ten years. His criminal history report indicated the following convictions:

September 24, 2002	Theft by deception (Fraud, Felony – Third Degree) (Second District CITY 1 case)
September 24, 2002	Theft by deception (Fraud, Felony – Third Degree) (Second District CITY 1 case)
May 23, 2005	Theft by deception (Fraud, Felony – Third Degree) (Third District CITY 2 case)
March 8, 2005	Theft (Theft, Misdemeanor – B) (COUNTY 1 Justice Court case)

7. Petitioner's criminal convictions all involve an element of fraud and one was a crime involving a motor vehicle.

8. Petitioner presented a March 24, 2008 letter from his Adult Probation/Parole Agent (the "AP&P Agent"). The AP&P Agent, working from an CITY 1, Utah field office, explained in the letter that she had been supervising Petitioner on two cases, one from COUNTY 2 and one from COUNTY 1. The letter also indicated that Petitioner had been terminated from probation on September 27, 2007.

9. Petitioner provided further testimony regarding the letter from the AP&P Agent. Petitioner testified that he was being supervised under a single AP&P Agent for all charges against him and that his termination of probation by the single AP&P agent represented a complete and full termination of all probation. The Division did not dispute this. On the basis of the evidence in Petitioner's AP&P Agent letter and Petitioner's testimony under oath in this proceeding, the Commission finds that Petitioner was terminated from all probation on September 27, 2007.

10. Petitioner presented testimony from his father. Petitioner's father testified that at the time of Petitioner's arrests for his criminal convictions in 2002 and 2005, Petitioner was suffering from a bipolar disorder. Petitioner's father made this statement on the basis of his own observations as well as information he had learned in speaking with the doctors treating his son. Through treatment from medical professionals, Petitioner is now on medication, which he takes daily.

11. Petitioner has made a routine to make certain that he takes medication for bipolar disorder. Although Petitioner agrees that he is the one responsible for daily taking his medication, he did testify that his girlfriend reinforces his daily routine. Petitioner understands the importance of strict adherence to his regimen of daily medication. Before Petitioner received treatment and became properly medicated, Petitioner was prone to rash judgment. However, when properly medicated, Petitioner is energetic, hard working, and obedient. In addition to testimony from Petitioner and his father, the Commission received testimony from both Petitioner's employer and a letter from his girlfriend's father to support testimony indicating that Petitioner is now responsible and hard working.

12. Although Petitioner is no longer on probation, he does owe restitution for his offenses. He is currently making payments and has a balance remaining that exceeds \$\$\$\$\$.

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 . . . (vii) a violation of any state or federal law involving motor vehicles [or] (x) a violation of any state or federal law involving fraud. Utah Code Sec. 41-3-209(2).

A person who has been convicted of any law relating to motor vehicle commerce or motor vehicle fraud may not be issued a license unless full restitution regarding those convictions has been made. Utah Code Sec. 41-3-201(5).

CONCLUSIONS OF LAW

1. Petitioner's criminal history includes charges involving fraud and at least one charge related to motor vehicles. However, Petitioner's probation for all charges has been terminated. The Commission generally gives some deference to the criminal justice system's determination to release someone from parole or probation. On that basis, there is reason to consider licensing Petitioner notwithstanding appropriate action by the Division in suspending Petitioner's license.

2. One concern in licensing Petitioner is unpaid restitution. Utah Code Sec. 41-3-201(5) indicates that a person may not be issued a license until all restitution has been paid if the applicant has been convicted of a crime "relating to motor vehicle commerce or motor vehicle fraud." While there is no finding of fact in this matter to indicate that that Petitioner's unpaid restitution relates to a crime relating to motor vehicle commerce

Appeal No. 07-1635

or motor vehicle fraud, the Commission wishes to ensure full restitution. Accordingly, any exercise of discretion to grant a license to Petitioner shall include provision for monitoring of Petitioner's restitution payments.

DECISION AND ORDER

On the basis of the foregoing, the Commission exercises its discretion to grant a salesperson's license, subject to supervision by the Division regarding continued payment of Petitioner's previous restitution. The Division is ordered to monitor Petitioner's payment of restitution by requesting proof of continued payments. The Division is further ordered to suspend Petitioner's license should Petitioner fail to continue in regular restitution or payments or respond to requests for proof of those payments. This monitoring of restitution payments shall be at least every six months and shall continue until the restitution amounts are paid in full. It is so ordered.

DATED this ____ day of _____, 2008.

Clinton Jensen
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.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
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 Sec. 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 Sec. 59-1-601 et seq. and Sec. 63-46b-13 et seq.

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