

08-0220  
Motor Vehicle  
Signed 05/28/2008

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,  Petitioner,  v.  MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b></p> <p>Appeal No. 08-0220</p> <p>Tax Type: Salesperson License Tax Year: 2008</p> <p>Judge: Marshall</p>
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**Presiding:**

D'Arcy Dixon Pignanelli  
Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER, *Pro Se*  
WITNESS  
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General  
RESPONDENT REPRESENTATIVE 2, Chief Investigator for  
MVED

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on May 1, 2008. The Applicant is appealing the Commission's Order of Default in this matter dismissing the denial of his application for a motor vehicle salesperson license. Based on the testimony and evidence presented at the Formal Hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. On or about January 8, 2008, the Applicant submitted a Motor Vehicle Salesperson Application to the Motor Vehicle Enforcement Division ("MVED"). (Exhibit R-1).
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?" Applicant checked the "Yes" box, and in the space provided, wrote, "Possession, theft, joyriding, unlawful use of credit card, forgery, shoplifting."

3. On January 11, 2008 the Motor Vehicle Enforcement Division sent a letter to the Applicant denying his salesperson license application due to the number and nature of the Applicant's criminal convictions. (Exhibit R-3).
4. Applicant's Utah Criminal History Report (Exhibit R-2) was subsequently obtained and showed the following convictions in the last 10 years:

<u>DATE</u>	<u>CONVICTION</u>
4/6/1999	Two Counts - Illegal Use of Credit Cards (Third Degree Felony)
4/15/1999	Joyriding (Third Degree Felony)
5/18/2004	Illegal Possession/Use of Controlled Substance (Third Degree Felony)
3/16/2004	Burglary of a Vehicle (Class B Misdemeanor)
8/26/2004	Larceny (Third Degree Felony)
8/27/2004	Unauthorized Control of a Vehicle (Class A Misdemeanor)
8/27/2004	Fraud – Illegal Use of Credit Cards (Class A Misdemeanor)

5. At the Formal Hearing, Applicant testified that for many years he was addicted to drugs, and that addiction caused him to take advantage of his family. He stated that the convictions for theft, joyriding, and unlawful use of a credit card were all crimes perpetrated against his parents. He has since made amends with his family and testified that they were very supportive of the changes he has made in the last few years.
6. The Applicant testified that he has been clean and sober for the past one and one-half years. He underwent an inpatient program at the COUNTY 1 Jail, and did the ( X ) for nine months, where he became a community leader within four months. He participates in the ( X ) program in COUNTY 2, attends one-on-one counseling once a week, and attends group counseling sessions twice a week. The Applicant stated that he is tested at least twice a week, and has not had a dirty test.
7. The Applicant served time in prison from August of 2004 through October of 2005 for his most recent convictions. The Applicant violated terms of his parole and returned to prison, being released on July 31, 2007. The Applicant remains on parole until October of 2009, with the possibility of being released early in ten months once he completes the ( X ).
8. The Applicant owes approximately \$\$\$\$\$ in restitution, and has to pay supervision fees of \$\$\$\$\$ per month. He testified that he did fall behind on his supervision fees, but should be current by next month.
9. Applicant's employer is aware of Applicant's criminal past. The applicant made reasonable efforts to fully disclose his criminal history on his Motor Vehicle Salesperson

Application, which was signed by the dealer. WITNESS, one of the Applicant's co-workers was present at the hearing and testified that he has known the Applicant for approximately fifteen years and that he believes the Applicant is very honest and has not done anything to raise questions regarding his integrity since the Applicant was released from prison.

10. For the division, RESPONDENT REPRESENTATIVE 2 testified at the Formal Hearing that MVED is required by Utah Code Ann. §41-3-209 to deny the Applicant a salesperson license because the nature of the Applicant's convictions constituted "reasonable cause".
11. Counsel for the Division argued that Utah Code Ann. §41-3-209 mandates that the Division deny a salesperson license if there is "reasonable cause" and further identifies violations of state or federal law involving motor vehicles, fraud, and controlled substances as "reasonable cause".

#### APPLICABLE LAW

The denial, suspension, and revocation of a salesperson license are governed by Utah Code Ann. §41-3-209 as follows:

- (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 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:
    - (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 involving controlled substances;
    - (x) a violation of any state or federal law involving fraud...

Utah Code Ann. §41-3-209 (2007).

#### CONCLUSIONS OF LAW

The Division had reasonable cause to suspend the Applicant's salesperson license under Utah Code Ann. §41-3-209. The Applicant has been convicted of crimes that involve motor vehicles, violations of state law involving controlled substances, and violations of state law involving fraud, all of which constitute "reasonable cause" for the denial of a salesperson license. Although the Division had reasonable cause to suspend the Applicant'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. While it has been nearly three years since the Applicant's most recent conviction; in the past, the Commission has used clearing parole or probation as a general guideline to allow salesperson licenses to individuals who have been convicted of the crimes identified in Utah Code Ann. §41-3-209. Because the Applicant remains on parole and has not yet paid full restitution, the Commission finds that the Applicant should not be granted a salesperson license.

DECISION AND ORDER

Based on the foregoing the Commission sustains the action of the Division. Once the Applicant has been released from Parole, he may reapply for a salesperson license and the Commission will make a determination based on the facts and circumstances as they exist at that time. 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.

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 Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of

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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.

*JM/08-0220..fof*