

08-0370
MOTOR VEHICLE
SIGNED 12/03/08

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, v. MOTOR VEHICLE ENFORCEMENT DIVISION, UTAH STATE TAX COMMISSION, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</p> <p>Appeal No. 08-0370</p> <p>Tax Type: Motor Vehicle Salesperson's License</p> <p>Judge: Chapman</p>
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Presiding:

Marc B. Johnson, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REP 1, Assistant Attorney General
RESPONDENT REP 2, from Motor Vehicle Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on October 15, 2008. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. PETITIONER (the "applicant") is appealing Motor Vehicle Enforcement Division's (the "Division") denial of his application for a motor vehicle salesperson's license ("license").
2. PETITIONER submitted a Motor Vehicle Salesperson Application ("Application") for a license on January 15, 2008. Exhibit R-1.
3. On the Application, PETITIONER disclosed that he had been convicted of bank

robbery within the past 10 years.

4. After receiving PETITIONER's application, the Division issued a letter dated January 15, 2008, in which it informed PETITIONER that his Application had been denied because of his criminal convictions within the last 10 years. Exhibit R-2.

5. PETITIONER timely appealed the Division's denial of his Application.

6. Although PETITIONER objected, the Commission received as evidence a copy of his complete criminal history report. Exhibit R-3. The criminal history report confirmed that within the past 10 years, the applicant's only conviction was one for armed bank robbery.

7. PETITIONER admits that he served approximately six and one-half years in prison due to his 2002 conviction for armed bank robbery and that he was released from prison in December 2007. Although PETITIONER is on probation until 2012, he believes there is a chance that his probation could end in 2010.

8. The Division asserts that PETITIONER's 2002 conviction for armed bank robbery qualifies as reasonable cause to deny his application for a license, pursuant to Utah Code Ann. §41-3-209(2). The Division asks the Commission to sustain its action not only because PETITIONER was released from prison less than one year ago and is still on probation, but also because of the severity of the crime.

9. PETITIONER contends that the Commission should overturn the Division's decision and grant him a license for several reasons. First, he asserts that he needs the license in order to earn more income than he has been able to earn at jobs he has gotten since his release from prison. PETITIONER provides evidence showing that he has worked since his release from prison, but that his salary is insufficient for him to pay off obligations concerning spousal and child support and restitution associated with his bank robbery conviction. Exhibits P-1 and P-2.

10. Second, PETITIONER contends that he has had a successful history of employment in

the automobile sales industry. Because he is now 63 years of age and has health issues, the applicant states that it would be difficult for him to find a job in a different field in which he could earn enough to satisfy his obligations. The applicant submits letters from his brother and a friend in which they encourage the Commission to grant him a license. Exhibit P-2.

11. Third, PETITIONER asserts that he has served his debt to society and is not a risk to the public. He also states that he would not commit another crime because it would result in him going to prison for the rest of his life.

12. Fourth, PETITIONER asserts that because “bank robbery” is not one of crimes specifically enumerated in Section 41-3-209(2), the Division was incorrect in determining that “reasonable cause” existed to deny him a license.

13. Finally, PETITIONER asserts that he should receive a license because the Division has given licenses to other persons who have committed felonies. Pursuant to this argument, PETITIONER asks the Commission to review the file of a specific person who the applicant contends was convicted of attempted murder and, yet, received a license.¹ The Commission denies PETITIONER’s request, as each case is considered on its own merits and because it does not believe that a review of this person’s file is material to a decision concerning PETITIONER’s appeal.

APPLICABLE LAW

1. Utah Code Ann. §41-3-209 provides statutory guidance concerning the issuance of motor vehicle salesperson’s 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

¹ PETITIONER admits that he submitted a request to obtain this person’s license information under the Government Records Access and Management Act and the Freedom of Information Act. He also admits that his request was denied.

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

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(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;

(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.

CONCLUSIONS OF LAW

1. The Commission finds that PETITIONER's conviction for armed bank robbery qualifies as "reasonable cause" to deny him a motor vehicle salesperson's license in accordance with Section 41-3-209(2). The Commission notes that Subsection (2)(b) uses the word "includes" before listing specific crimes that constitute reasonable cause. Because of the word "includes," the Commission has previously found that the list of enumerated crimes is not exclusive. For these reasons, the Commission believes that conviction of a crime as serious as armed bank robbery qualifies as "reasonable cause" to deny a license under Section 41-3-209. Accordingly, the Commission finds that the Division properly denied PETITIONER's Application for a license.

2. Although the Division had reasonable cause to deny PETITIONER's Application, the Commission may consider all circumstances before deciding whether to grant or revoke a license. In this case, the Commission recognizes that PETITIONER has obtained employment since his release from prison and that he has not been charged with another criminal offense. It also appears from the letters of support that PETITIONER is making an effort to make a gainful living. The Commission recognizes that PETITIONER's circumstances have led to him having significant financial liabilities that involve restitution for his crime and

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for spousal and child support. The Commission further recognizes that PETITIONER's current income appears insufficient to cover these obligations. Nevertheless, it is the Commission's general policy not to issue a license to a person still on probation. Relating to this policy, the Commission is also concerned that PETITIONER's release from prison is relatively recent, approximately ten months prior to the Formal Hearing. Finally, the Commission believes that the probation policy is particularly apt in this case because of the relative severity of the crime. For these reasons, the Commission declines to grant PETITIONER a license at this time. Once PETITIONER's probation is terminated, he may reapply for a license, at which time a decision will be made based on the circumstances present at that time.

DECISION AND ORDER

Based upon the forgoing, the Commission denies PETITIONER's appeal and sustains the Division's decision to deny PETITIONER's Application for a motor vehicle salesperson's license. It is so ordered.

DATED this ____ day of _____, 2008.

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 _____, 2008.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson

D'Arcy Dixon Pignanelli

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Commissioner

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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