

08-1689
MOTOR VEHICLE
SIGNED 02-12-09

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

MOTOR VEHICLE ENFORCEMENT
DIVISION OF THE UTAH STATE
TAX COMMISSION,

Respondent.

INTERIM ORDER

Appeal No. 08-1689

Tax Type: Motor Vehicle
Salesperson's License

Judge: Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REP, 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 Ann. §59-1-502.5, on August 27, 2008.

PETITIONER (the "Petitioner" or "applicant") filed an application to receive a motor vehicle salesperson's license on July 1, 2008. The Motor Vehicle Enforcement Division ("MVED") denied the application in a letter dated July 25, 2008, on the basis of the applicant's criminal history within the past 10 years. The applicant is appealing the Division's action.

APPLICABLE LAW

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 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
 - (x) a violation of any state or federal law involving fraud;

DISCUSSION

On his application, the applicant stated that within the past ten years, he had been convicted of a “second degree felony for theft.” The applicant’s Criminal History Report confirms that his only criminal conviction is for second degree felony theft. The applicant pled guilty to this offense in May 2007 and was placed on probation for 36 months. Although the applicant has paid all restitution associated with his conviction, he will remain on probation another three months until December 2008.

The applicant explained that his theft conviction is the only crime for which he has ever been arrested. The crime involved him stealing merchandise from a retail store and returning it for cash. He further explained the circumstances that existed at the time he committed the crime. The applicant was in the business of selling and installing closet organizers. He explained that he stole the merchandise during a period when his business was experiencing financial difficulties as a result of two contractors who declared bankruptcy and failed to pay him for items he had already installed. He admits that he was guilty of the crime, but believes that his actions were an anomaly that will not happen again. Because of the harm his actions caused his wife and three children, he contends that he would not resort to such behavior should similar circumstances arise again. For these reasons and because the motor vehicle salesperson job he has been offered would enable him to support his family, the applicant asks the Commission to grant him a license, even if it is granted on a probationary basis.

The Division asserts that it was compelled to deny the license pursuant to Section 41-3-209(2)(b)(x), which provides that reasonable cause to deny a license includes a conviction of a crime involving fraud. However, the Division stated that the applicant's situation is unusual, in that most applicants who are denied a license have a history of substance abuse and a pattern of criminal activity. Because the applicant does not have a history of either, the Division stated that it is not as concerned with the Commission granting the applicant a license as it would be for most applicants in the appeal process.

The applicant does not dispute that the Division was authorized to deny him a license. However, he asks the Commission to consider his specific circumstances and grant him a license. If support of his request, the applicant proffered letters of recommendation from persons he has worked with both prior to and after his conviction.

Generally, the Commission does not grant a license to a person who is still on probation. However, the Commission believes that the unique circumstances in this case warrant further consideration. First, the applicant contends that he will complete his probation in December 2008. Second, given the nature of the applicant's crime and the fact that it is the applicant's only conviction, it is unlikely that he would be an endangerment to the public. Finally, the Commission is also influenced by the Division's statement that the applicant's circumstances are different from most applicants in the appeals process. For these reasons, the Commission will grant the applicant a salesperson's license on a temporary basis, subject to the Commission making a final decision concerning the license at a later date. The Commission will reevaluate the applicant's circumstances in early 2009. The Commission will set a telephonic status conference for early 2009, at which it will again review the applicant's criminal history and determine if the applicant has completed probation. After the status conference, the Commission will issue its final decision.

DECISION AND ORDER

Appeal No. 08-1689

Based on the foregoing, the Commission grants the applicant a salesperson license on a temporary basis. A final Initial Hearing decision will not be issued until the telephone status conference described above takes place in early 2009. In the interim, the applicant is authorized to sell motor vehicles. A notice of the date and time of the telephone status conference will be mailed separately. It is so ordered.

DATED this _____ day of _____, 2008.

Kerry 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
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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