

09-2009  
MOTOR VEHICLE  
SIGNED 06-29-09

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,

Petitioner,

v.

MOTOR VEHICLE ENFORCEMENT  
DIVISION OF THE UTAH STATE TAX  
COMMISSION,

Respondent.

**INITIAL HEARING ORDER**

Appeal No. 09-2009

Tax Type: Salesperson License

Tax Year: 2009

Judge: Marshall

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**Presiding:**

Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER, *Pro Se*

For Respondent: RESPONDENT REP, Assistant Director, Motor Vehicle  
Enforcement

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 June 11, 2009. Petitioner (“Applicant”) is appealing the denial of his salesperson license to sell motor vehicles by the Respondent (“Division”).

APPLICABLE LAW

The denial, suspension, and revocation of a salesperson license are 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:
  - (i) lack of a principal place of business;

- (ii) lack of a sales tax license required under Title 59, Chapter 12, Sales and use Tax Act;
- (iii) lack of a bond in effect as required by this chapter;
- (iv) current revocation or suspension of a dealer, dismantler, auction, or salesperson license issued in another state;
- (v) nonpayment of required fees;
- (vi) making a false statement on any application of 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

Utah Code Ann. §41-3-209(2) (2008).

A license may not be issued to a person who has been convicted of any law relating to motor vehicle commerce or motor vehicle fraud may not be issued unless full restitution has been made under Utah Code Ann. §41-3-201(5), below:

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 Ann. §41-3-201(5) (2008).

DISCUSSION

The Applicant submitted a Motor Vehicle Salesperson Application to the Division in April of 2009. In response to question number three on the application, asking if the Applicant had “been convicted of any misdemeanors or felonies in Utah or any other state” in the past ten years, the Applicant checked the box indicating “Yes.” In the space provided, the Applicant wrote,

4 Failure to Payoff vehicles in timely manner [*sic*] (Felony’s)  
[*sic*], 2 Failure to provide titles. (Felony’s) [*sic*]

The Applicant’s criminal history report was obtained and reviewed. During the past ten years, the Applicant has been convicted of the following violations:

<u>DATE</u>	<u>VIOLATION</u>
8/23/04	Unlawful Dealing With Property By Fiduciary (3 <sup>rd</sup> Degree Felony)
8/23/04	Unlawful Dealing With Property By Fiduciary (3 <sup>rd</sup> Degree Felony)
8/23/04	Unlawful Dealing With Property By Fiduciary (3 <sup>rd</sup> Degree Felony)
8/23/04	Unlawful Dealing With Property By Fiduciary (3 <sup>rd</sup> Degree Felony)
9/24/04	Acting as a Dealer Without a License (Class A Misdemeanor)
3/7/05	Communications Fraud (2 <sup>nd</sup> Degree Felony)

The Applicant previously owned and operated a dealership. His convictions stem from the failure of that dealership in 2004. The Applicant testified that the dealership failed for a number of reasons. His daughter was sick and had a heart transplant, which caused him to take time away from the dealership and due to declining auto sales after September 11, 2001, the manufacturer offered a number of incentives that devalued the inventory on the lot. The Applicant testified that he has paid all restitution, approximately \$\$\$\$\$, and has been off probation for several years.

The Applicant has been working as a car salesman in STATE. His family has already moved back to Utah, and he wants to return to Utah as well. The Applicant was diagnosed with Leukemia, and is currently on disability. He testified that he wants to work part-time to supplement his income, and only wants to do wholesale, not resale.

The Division’s representative stated that they were required to deny the Applicant a license based upon his convictions under Utah Code Ann. §41-3-209, which specifically identifies motor vehicle crimes as reasonable cause to deny, suspend or revoke a license. The Division’s representative stated that the Investigator verified that all restitution had been paid.

Utah Code Ann. §41-3-209 mandates that a license “shall” be denied, revoked, or suspended for reasonable cause, and has identified violations of state or federal law involving motor vehicles as “reasonable cause”. The Applicant has been convicted of unlawful dealing with property by a fiduciary, acting as a dealer without a license, and communications fraud, all of which were related to the failure of a dealership owned by the Applicant. Thus, the Commission finds that the Division properly denied the Applicant a salesperson license. However, the Commission may also consider other factors, such as the passage of time since the most recent conviction, the payment of restitution, and termination of probation or parole. In the past, the Commission has used clearing parole or probation to grant salesperson licenses to individuals who have been convicted of the crimes identified in Utah Code Ann. §41-3-209. As it has been more than four years since the Applicant’s most recent conviction, he has been released from probation, and has paid all restitution, the Commission finds there is good cause to abate the Division’s denial of a salesperson license.

DECISION AND ORDER

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

This decision does not limit a party’s right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless either party to this case files a written request within thirty (30) days of the date of this decision to proceed to a formal decision. Such request shall be mailed to the address listed below and must include the Petitioner’s name, address, and appeal number:

Utah State Tax Commission  
Appeals Division  
210 North 1950 West  
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Jan Marshall  
Administrative Law Judge

Appeal No. 09-2009

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 \_\_\_\_\_, 2009.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

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