
BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

MOTOR VEHICLE ENFORCEMENT
DIVISION OF THE UTAH STATE TAX
COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 09-2071

Tax Type: Salesperson License

Tax Year: 2009

Judge: Marshall

Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, *Pro Se*
PETITIONER REP 1, Co-Owner of DEALERSHIP
PETITIONER REP 2, Salesman at DEALERSHIP
For Respondent: RESPONDENT REP, Motor Vehicle Enforcement Division

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 18, 2009. Petitioner (“Applicant”) is appealing the Respondent’s (“Division’s”) denial of his salesperson license to sell motor vehicles.

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).

DISCUSSION

The Applicant submitted a Motor Vehicle Salesperson Application to the Division on or about May 1, 2009. The Division issued a letter dated May 7, 2009 that denied the application based on the Applicant's criminal convictions. 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 within the past 10 years, he checked the box indicating "Yes." In the space provided, the Applicant wrote,

11/15/07 Aggravated Assault F-3
12/23/06 Attempted Theft – F3
6/8/06 Public Intoxication – misdemeanor
11/19/06 DUI/Open Container in Vehicle – misdemeanor
1/2/07 Public Intoxication - misdemeanor

A copy of Applicant's criminal history report was obtained; and lists the following violations within the past ten years:

<u>DATE</u>	<u>VIOLATION</u>
7/16/06	Public Intoxication (Class C Misdemeanor)
2/15/07	Attempted Theft (3 rd Degree Felony)
3/1/07	DUI (Class B Misdemeanor)
3/1/07	Open Container in Vehicle (Class C Misdemeanor)
3/1/07	Failure to Give Proper Signal (Class C Misdemeanor)
3/1/07	Improper Turn, Lane Travel, Signal (Class C Misdemeanor)
12/20/07	Aggravated Assault (3 rd Degree Felony)

The Applicant acknowledged his criminal history, but stated he is not a menace to society. He provided information from Salt Lake County ADC Mental Health Group showing that he has attended the following sessions: coping skills in jail, managing symptoms of anxiety, anger management, substance abuse, and medication effects and information. The Applicant was released from prison in March of this year. He testified that he is on parole, and that he expects to be released in 9 months to 1 year.

The Applicant explained that the 2007 attempted theft and aggravated assault convictions were domestic issues that got out of hand. The attempted theft stemmed from an argument he got into with his fiancé, during which he knocked a shopping bag off her arm, and she and her friend ran into her friend's apartment. The Applicant stated that he picked up the bag and put it in the apartment he shared with his fiancé. He provided a copy of the police report that shows his fiancé did retrieve the bag, and its contents, from their shared apartment. He stated the aggravated assault was the result of an incident PARK with his fiancé and her family that got out of hand.

The Applicant provided a list of character witnesses, providing their printed name, telephone number, and signature. He submitted a letter from PERSON A, a customer of DEALERSHIP. PERSON A, wrote that the Applicant went out of his way to detail her car, was very helpful, and very kind, even though he had nothing to gain because she was specifically working with another salesman. In addition, the Applicant provided a copy of the letter his fiancé submitted on his behalf in his criminal case. She wrote that he was a hard-working, independent, reliable man. In addition, she wrote of the Applicant's problems with alcohol, and her belief that with an intense program to control his alcohol abuse, he could return to being a responsible man in the community.

PETITIONER REP 1, co-owner of DEALERSHIP, attended the hearing and spoke on the Applicant's behalf. He stated that in 11 years in the business, this is the first time he has come to a hearing on behalf of an employee. PETITIONER REP 1 stated that both customers and employees of DEALERSHIP love the Applicant, and that he brings a lot of good to the dealership.

PETITIONER REP 2, a salesman at DEALERSHIP, also attended the hearing and spoke on behalf of the Applicant. He stated that he had nothing to gain by having another commissioned salesperson on the lot. PETITIONER REP 2 stated that there has been a lot of turnover on the sales floor, but that he believes the Applicant has a true gift when it comes to sales.

The Division's representative stated that the Division denied the Applicant a salesperson license because of the nature of his criminal convictions. He argued that Utah Code Ann. §41-3-209 requires the Division to deny a license upon a showing of reasonable cause, and specifically identifies violations of state or federal law involving fraud as reasonable cause. The Division considers the theft conviction, because it is a third degree felony, to be a crime involving fraud. The Division's representative pointed out that the Applicant did list all of his convictions within the past 10 years on his application. However, he noted that the Division has concerns because of how recent the Applicant's convictions are and because he is still on parole.

Utah Code Ann. §41-3-209 mandates that a license "shall" be denied, revoked, or suspended for reasonable cause, and identified a violation of any state or federal law involving fraud as "reasonable cause." The Division denied the Applicant a salesperson license on the basis of his felony conviction for theft, arguing at the hearing that the conviction involved elements of fraud. The theft statute is set forth in Utah Code Ann. §76-6-404, and provides, "A person commits theft if he obtains or exercises unauthorized control over the property of another with a purpose to deprive him thereof." The Commission has previously held that the legislature intended something broader than only those crimes specifically identified as fraud. However, based on the police report, Applicant's testimony, and the elements of fraud set forth in Utah Code Ann. §76-6-404, the Commission finds that the theft conviction at issue is not a violation of law involving fraud within the meaning of Utah Code Ann. §41-3-209.

Utah Code Ann. §41-3-209 provides some discretion, in that it mandates a license be denied, suspended, or revoked upon a finding of "reasonable cause." While the statute goes on to enumerate certain violations that constitute "reasonable cause," the Commission has previously held that the list is not exhaustive. In the past, the Commission has considered such factors as the nature of the conviction, passage of time since the most recent violation, completion of probation

or parole, and payment of all fines and restitution in determining whether to issue a salesperson license when it has been denied for reasonable cause. The Applicant's most recent conviction was for aggravated assault with a weapon, the Commission considers the offense to be serious enough to constitute "reasonable cause" for the denial, suspension, or revocation of a salesperson license. In addition, the Commission has concerns that the conviction occurred a year and a half ago, that the Applicant was released from prison in March of this year, and remains on parole. Under the circumstances, the Commission finds there is not good cause to abate the Division's denial of a motor vehicle salesperson license to the Applicant.

DECISION AND ORDER

Based on the foregoing, the Commission upholds the Division's denial of the 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

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

D'Arcy Dixon Pignanelli

Appeal No. 09-2071

Commissioner

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Commissioner