

09-3048
MOTOR VEHICLE
SIGNED 07-09-2009

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

MOTOR VEHICLE ENFORCEMENT
DIVISION, UTAH STATE TAX
COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 09-3048

Tax Type: Salesperson License

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REP, Assistant Director, 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 Sec. 59-1-502.5, on July 6, 2009. Petitioner (the "Applicant") is appealing the suspension of his application for motor vehicle salesperson licenses. The license was suspended by letter from the Motor Vehicle Enforcement Division (the "Division"), dated June 3, 2009. The Division denied the license based on information from the Bureau of Criminal Identification ("BCI"), which indicated the Applicant had a felony conviction that would be a registerable sex offense. The applicant had not listed the felony conviction on the Motor Vehicle Salesperson Application form.

APPLICABLE LAW

(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 . . . (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 regarding 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 Sec. 41-3-209(2)).

DISCUSSION

The Applicant had filled out an application for Motor Vehicle Salesperson License and submitted it to the Division on or around March 17, 2009. Question 3 on that form asks if the applicant had any felony or misdemeanor convictions during the past 10 years. Petitioner had checked “yes” and listed an “06 D.U.I.” and a “99 Reckless Driving with Alcohol.” Based on this disclosure the Division issued a Salesperson License to the Applicant. After the BCI check came back, however, it indicated a conviction on February 13, 2006, of attempt to commit sex abuse of a child. As this is a crime involving a registerable sex offense and, therefore, one that by law is cause for denial or suspension of the license, the Division suspended the license pursuant to Utah Code Sec. 41-3-209. At the hearing the representative acknowledged that it appeared that the conviction was vacated. Further the Division’s representative had checked to see if the Applicant had been registered as a sex offender, but he was not on that list.

The Applicant explained that his conviction had been vacated by order of the Utah Court of Appeals and that was why he did not report it on the Salesperson License Application. The Court of Appeals had issued its original order on December 26, 2008, vacating the conviction and then an Amended Opinion on May 7, 2009. The Applicant had originally pled guilty to the crime in 2006 and it was disposed of as a conviction. Later the Applicant sought to withdraw his guilty plea. It was the Court of Appeals’ decision to allow the Applicant to withdraw his guilty plea, therefore, vacating the conviction. The matter may now proceed to trial. The Applicant explained that he had taken a copy of the Utah Court of Appeals decision to the Department of Public Safety and they had changed his Criminal Record to indicate the charges were still pending. He indicated that he would be able to work at DEALERSHIP, if he could be issued the license.

Upon review of the law and the circumstances in this matter, the Commission first notes that it has routinely concluded that the word ‘violation’ is synonymous with conviction as used in Utah Code Sec. 41-3-209(2). Section 209 provides the license should be revoked or suspended if there has been a ‘violation’ or conviction of several specified categories of law including a registerable sex offense. Charges alone do not

constitute a violation for these categories.¹ The status at this time is that the Applicant has not been convicted of such a crime. The one reckless driving conviction is 10 years old. The Applicant listed a more recent DUI that occurred in 2006. However, this was not on his Criminal History record and generally a DUI alone is not cause to suspend or revoke a Salesperson License.

DECISION AND ORDER

Based on the forgoing, the Commission reinstates the Applicant's Salesperson License pending the disposition of the charges related to sex abuse of a child. Should the Applicant be convicted of a crime that is a registerable sex offense, the Division may suspend the license at that time. The Division is to review the Applicant's record every six months until there has been a disposition of the charges that are now currently pending. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a 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.

Jane Phan
Administrative Law Judge

¹ Utah Code Sec. 41-3-209(2) does distinguish between the terms 'violation' and 'charges' making it clear that for certain categories of offenses, the license should be suspended or revoked if charges have been filed. For example Subsection 2(ix) requires revocation or suspension if there has been "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 . . ."

Appeal No. 09-3048

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

JKP/09-3048.int