

09-3093  
MOTOR VEHICLE  
SIGNED 11-17-2009

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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. 09-3093

Tax Type: Motor Vehicle  
Salesperson's License

Judge: Chapman

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**Presiding:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER, Applicant

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 November 3, 2009.

PETITIONER ("Petitioner" or "applicant") filed an application to receive a motor vehicle salesperson's license on or about September 16, 2009. The Motor Vehicle Enforcement Division ("MVED") denied the application in a letter dated September 21, 2009, due to "pending criminal cases regarding your Legacy dealerships." The applicant is appealing the Division's action and asks the Commission to grant him a license.

APPLICABLE LAW

Utah Code Ann. §41-3-209 provides statutory guidance concerning the issuance of a motor vehicle salesperson's license, 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:
  - .....
  - (v) nonpayment of required fees;
  - .....
  - (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;
  - .....

DISCUSSION

Until December 2008, PETITIONER owned and operated two DEALERSHIP 1s, one in Orem, Utah and the other in CITY 2, Utah. The dealerships were closed in February 2009. In connection with these dealerships, PETITIONER has been charged with a number of misdemeanor crimes in 4<sup>th</sup> District Court, Utah County and 5<sup>th</sup> District Court, Washington County. In total, PETITIONER has been charged with seven Class A misdemeanors and seven Class B misdemeanors, all involving motor vehicles. The crimes include charges concerning the failure to deliver title, charges concerning payoff liens and charges concerning the failure to pay warrant or service contracts. These charges had been filed and were pending when PETITIONER submitted his application for a salesperson’s license. PETITIONER claims that he is innocent of the crimes and that a jury trial is scheduled for December 2009 to determine whether he is guilty or innocent of the crimes.

Section §41-3-209(2)(a) provides that a motor vehicle salesperson’s license shall be denied, revoked or suspended for reasonable cause. In Section 41-3-209(2)(b)(ix), “reasonable cause” is defined to specifically include “charges filed . . . in any court of competent jurisdiction for a violation of any state or federal law involving motor vehicles.” The Division submitted evidence showing that charges have been filed and are currently pending against PETITIONER in Utah courts. It is not disputed that the charges involve

motor vehicles. For these reasons and in accordance with Section 41-3-209(2)(b)(ix), the Commission finds that reasonable cause exists to deny PETITIONER's application and that the Division's denial of his application was proper.

Although the Division had cause to deny PETITIONER's application, the Commission often considers the applicant's circumstances before determining whether to deny or grant the license. PETITIONER owned and operated the DEALERSHIP 1s for a number of years without incident. The Division confirmed that it had never had any problems with the dealerships until late 2008 or early 2009. PETITIONER states that in late 2008, the bank that had provided him in excess of \$\$\$\$ in financing informed him that he had a couple of weeks to move his financing to another bank. When PETITIONER could not find financing elsewhere in this time period, the bank "locked" the dealerships and prevented him from retrieving any documents associated with motor vehicles that had been sold. PETITIONER claims that at the time the bank closed the dealerships, approximately 74 motor vehicles had been sold for which the dealerships had not paid the financing and cleared title. PETITIONER worked with the Division to pay off the financing for many of the vehicles until his available funds were exhausted. The criminal charges currently pending involve approximately 14 vehicles for which financing was not paid or title was not cleared.

Due to these circumstances, PETITIONER asks the Commission to grant him a license. He states that he has had a long history of acting in a responsible and legally compliant manner in the automobile industry and that he believes he will be found innocent of the charges currently pending. In addition, PETITIONER is working as the General Manager of DEALERSHIP 2 of CITY 3. He asks the Commission to grant the license so that there is no question concerning his being able to continue in this position. Lastly, PETITIONER believes that other dealers have been able to keep their dealer's licenses, even after pleading guilty to charges similar to those pending against him.

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The Division states that in the past, dealers charged with crimes involving motor vehicles may not have had their licenses suspended. However, the Division states that in the past several years, it has suspended the license of any dealer charged with the crimes involving motor vehicles. Regardless, the Commission generally believes that a license should not be granted to a person against whom charges involving motor vehicles are currently pending. Accordingly, the Commission denies the application.

DECISION AND ORDER

Based on the foregoing, the Commission denies PETITIONER's application for a motor vehicle salesperson's 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 any party to this case files 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  
CITY 3 City, Utah 84134

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

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

\_\_\_\_\_  
Kerry Chapman  
Administrative Law Judge

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BY ORDER OF THE UTAH STATE TAX COMMISSION.

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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