

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. 09-3103

Tax Type: Salesperson License
Tax Year: 2009

Judge: Marshall

Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REP, Assistant Director of 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 4, 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:
 - (vii) a violation of any state or federal law involving motor vehicles;

Utah Code Ann. §41-3-209(2) (2009).

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(7), 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(7) (2009).

DISCUSSION

The Applicant has been in Utah for approximately two years, selling motor vehicles at both DEALERSHIP 1 and DEALERSHIP 2. He had left his position at DEALERSHIP 1 to handle criminal charges in STATE 1, and serve his jail sentence. When he returned to Utah, he submitted a new application for a salesperson license.

The Division issued a letter dated October 1, 2009 that denied the Applicant's application for a motor vehicle salesperson license based on his criminal convictions. In August of 2009, the Applicant was convicted of a Class 6 felony in STATE 1 for unlawful use of a means of transportation. The Applicant entered into a plea agreement, served 15 days in jail, has to pay restitution in the amount of \$\$\$\$\$, and is on probation for a two-year period. He stated that if he pays his restitution in full, he can get off probation after one year. The Applicant believes that had he gone to trial and not entered a plea agreement, the outcome would have been different.

At the hearing, the Applicant explained the circumstances of his conviction. While in STATE 1, the Applicant had a business partner in a wholesale motor vehicle dealership. They were licensed to sell motor vehicles to other licensed dealers in the state, but also engaged in retail sales. The Applicant testified that he discovered that his partner had not been paying taxes, that his partner had not provided a \$\$\$\$\$ line of credit as promised, and that he suggested they sell the business assets and part ways. The Applicant testified his partner told him he would not get his money back. He then sold a motorcycle that was in his possession, and kept the proceeds in lieu of the money he had invested in the partnership. His partner filed a police report several months later that indicated the Applicant had stolen the motorcycle.

The Applicant submitted a letter from PERSON A, a detective with the STATE 1 Department of Transportation. In his letter, PERSON A indicated that the Applicant was not aware that his actions had been unlawful. He further noted that the Applicant's conviction is "one of the biggest miscarriages of justice" that he had been involved in during his 41 years as a police officer. He indicated that he would not hesitate to hire the Applicant. The Applicant stated that PERSON A was available by phone to offer testimony; however the Division's

representative stated he did not find it necessary, and that the Division did not dispute anything in PERSON A's letter.

In support of his application for a salesperson license, the Applicant also submitted a letter from PERSON B, the owner of DEALERSHIP 3. After the Applicant's partnership ended, he started working for PERSON B. He was PERSON B's representative at wholesale motorcycle auctions, and was responsible for the wholesale inventory for weeks at a time. In addition, the Applicant worked as a retail salesperson for PERSON B.

The Division's representative stated that the Division denied the Applicant a salesperson license because of the nature of his criminal conviction. He argued that Utah Code Ann. §41-3-209 requires the Division to deny a license upon a showing of reasonable cause, and that the felony conviction involving a motor vehicle is reasonable cause. He also pointed out that the motor vehicle crime was related to issues surrounding the wholesale dealer partnership. The Division's representative requested the Commission deny the Applicant a salesperson license.

Utah Code Ann. §41-3-209 mandates that a license "shall" be denied, revoked, or suspended for reasonable cause. The statute then specifically identifies violations of state or federal law involving motor vehicles as "reasonable cause." There is no dispute that the Applicant was convicted of a crime involving a motor vehicle. However, the Applicant maintains there are extenuating circumstances, and that if he had gone to trial, he would not have been convicted of a felony. The Commission finds that the Division had reasonable cause to deny the Applicant a salesperson license. However, the Commission may consider other factors, such as the passage of time since the most recent conviction, the payment of restitution, and termination of probation or parole. The Applicant's conviction was approximately two months ago, he continues to owe restitution, and is currently on probation. Further, Utah Code Ann. §41-3-201(7) prohibits the issuance of a license to someone who has been convicted of a crime involving motor vehicle commerce until restitution has been paid. 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

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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:

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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