

09-3736
MOTOR VEHICLE
05-06-2010

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

MOTOR VEHICLE ENFORCEMENT
DIVISION, UTAH STATE TAX
COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 09-3736

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 April 1, 2010. Petitioner is appealing the suspension of his application for motor vehicle salesperson licenses. The license was denied by letter from the Motor Vehicle Enforcement Division (the "Division") dated November 23, 2009. The Division suspended the license after receiving information from the Bureau of Criminal Identification regarding convictions.

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

Petitioner had filled out an application for Motor Vehicle Salesperson License and submitted it to the Division on or around August 19, 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 “Communication Fraud, Theft by Deception, Possession, Retail theft, Theft by receiving stolen property, Forgery, DV Assault, Theft of Services.” Despite this disclosure the license was issued to the Petitioner. After the background check came back from BCI a further review of the application was made and the Division determined that there was cause pursuant to Utah Code Sec. 41-3-209 to suspend the license.

Petitioner explained that he had been selling cars for many years and it was his livelihood. He also felt that he could do a good job at this and had never had any problems or complaints from his customers. Additionally, he needed to continue employment to maintain his medical insurance. He explained that he had been sober for a long time, but had a relapse. He then had gotten into the drug court program and the charges would have been dismissed if he had been able to follow through with the terms and conditions of the program. However, he failed to do so and went to prison for a year. He was released from prison in August 2008. He had not been sentenced to parole or probation, so after his release he was no longer under the supervision of the criminal justice system. He said that he did get into a residential substance abuse treatment program and that he completed the first program of treatment at the facility. However, he acknowledged that he was continuing to stay in the program. He stated this was on a voluntarily basis because it helps him and he does not want another relapse. He did submit a letter from a counselor at the program, which indicates he is still participating, but has transitioned to lower levels of care as a result of his progress. It also indicate he is subject to random drug testing.

Additionally, he acknowledged there were now two pending charges indicated on his criminal history report. He alleges that he did not commit either of these crimes and is contesting the charges. He asked that instead of denying his license for the pending charges the Commission give him a probationary period during which he could continue to work. The Commission could then check back to make sure these new charges were dismissed.

The representative for the Division explained that based solely on the disclosures listed on the Petitioner’s application for the Salesperson License, the application should have been denied up front. He

acknowledged that in comparing the BCI with the Petitioner's disclosure on the application, the Petitioner had reasonably included the convictions. The additional pending charges did cause some concern.

The Division provided a copy of the BCI report. There had been some convictions that were more than 10 years old, but those convictions that occurred within the last ten years were as follows:

Arrest Date	Conviction	Disposition Date
4/10/03	Felony Dangerous Drugs-Poss/Use	7/29/03
6/07/03	Felony Retail Theft	7/29/03
4/25/05	Felony Obstructing Police	7/18/05
1/01/07	Felony Stolen Property	4/16/07
1/14/07	Felony Larceny	4/16/07
1/14/07	Misdemeanor Fraud-Theft of Services	7/10/07

The criminal history report does confirm that Petitioner was released from prison in August 2008 and that he was not on parole or probation after his release. The two pending charges were based on an arrest date of December 17, 2008, for which the charge is felony receiving stolen property and an arrest date of March 18, 2009, for which the pending charge is a misdemeanor hit and run.

Of Petitioner's convictions in the last ten years, there were two that were of the type specifically listed in Utah Code Sec. 41-3-209(2) as cause for denial or suspension of a salesperson license. There was the 2003 felony drug possession/use conviction and the 2007 misdemeanor fraud-theft of services conviction. It has been seven years since the arrest on the drug related conviction, a significant period of time. Further, one of the primary factors considered when determining whether to allow a salesperson license is whether the persona has been released from criminal justice supervisions, including release from parole or probation. Petitioner was released from all supervision in August of 2008. Should Petitioner be convicted of either of the pending charges, the Commission would reconsider this decision, as it would tend to show a pattern of behavior that was unchanged. The Division is hereby ordered to review the Petitioner's criminal history record every three months from the date of this order for a one-year period. Should there be convictions, the Division is to make a determination at that time whether to suspend the license based on the past history and the new convictions. Should the Division suspend the license at that point, the Petitioner would then have the right to appeal the decision at that time.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the forgoing, the Commission reinstates Petitioner's motor vehicle salesperson license. And orders the Division to perform the periodic review of the Petitioner's criminal history record at that time. 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 _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner