
BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, v. MOTOR VEHICLE ENFORCEMENT DIVISION, UTAH STATE TAX COMMISSION, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</p> <p>Appeal No. 10-0164</p> <p>Tax Type: Salesperson License</p> <p>Judge: Phan</p>
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Presiding:

Marc Johnson, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REP. 1, Assistant Attorney General
RESPONDENT REP 2., Assistant Director, MVED

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing pursuant to Utah Code Sec. 63G-4-206, on February 18, 2010. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (the "Applicant") is appealing Respondent's decision to deny him a Motor Vehicle Salesperson License.
2. The Applicant's Motor Vehicle Salesperson Application was denied on January 13, 2010 as evidenced by a letter issued on that date from RESPONDENT REP. 2, Assistant Director of the Motor Vehicle Enforcement Division. The letter explained the application was denied due to the Applicant's answer to question #3 on the salesperson application form.
3. The Applicant timely appealed the denial of the license and the matter has now proceeded to the Formal Hearing before the Commission.
4. The Applicant had submitted his Motor Vehicle Salesperson Application form on or near

December 29, 2009. Question No. 3 on that form asks if there have been any felony or misdemeanor convictions in the past ten years, and if so requires the applicant to list the convictions. The Applicant checked ‘Yes’ indicating he had convictions and he listed the convictions as follows:

Theft by receiving stolen property 2005
Possession 05 false info to a police officer 04
Burglary 05 criminal mischief 04
Simple Assault 04 theft by deception 04
ID theft 99 – 05
Transfer or receiving stolen vehicle property 2004, 2000

5. The Division offered a report from the Third District Court that showed thirteen criminal convictions in that court stemming from what appeared to be seven separate incidents. The convictions were as follows:

Offense Date	Conviction	Disposition Date
9/14/01	Felony Attempted Receive/Transfer Stolen Vehicle	11/20/01
6/15/04	Felony Attempted Theft	3/15/05
6/15/04	Felony Attempted Theft	3/15/05
6/15/04	Felony Burglary	3/15/05
7/27/04	Felony Attempted Theft by Receiving Stolen Property	2/15/05
8/7/04	Felony Attempted Theft	2/15/05
11/10/04	Felony Receiving Stolen Property	2/15/05
11/10/04	Felony Possession of a Controlled Substance	2/15/05
11/10/04	Misdemeanor Criminal Mischief	2/15/05
11/10/04	Misdemeanor False Info to PO	2/15/05
8/20/04	Felony Attempted Theft by Receiving Stolen Property	2/15/05
8/20/04	Felony Theft by Deception	2/15/05
11/24/04	Felony Attempted Theft by Receiving Stolen Property	4/5/05

6. In addition to the State Court convictions, the Applicant had also been convicted in U. S. Federal Court of identity theft.

7. For these convictions the Applicant was sentenced to and served four and a half years in state prison and an additional six months in federal prison. When the Applicant was released from prison in November 2009 he still had to complete concurrent sentences of 3 years state probation and 2 years federal probation. The Applicant indicates that there is a possibility of early release from the state probation after a period of eighteen months for good behavior and if he pays a restitution of approximately \$\$\$\$\$. It was his understanding that there was no possibility of early release for the federal probation.

8. The Applicant explained that he had a substance abuse problem. While in prison he

participated in and graduated from Con-Quest, which is an extensive substance abuse program. He also became a mentor to other inmates in the program.

9. The Applicant testified that he wanted a license to sell vehicles as it provided a better opportunity to meet his financial responsibilities. He still had to pay restitution, fines and legal fees and to support his family. He indicated he could not meet these responsibilities working at minimum wage. He wanted to be able to get his life back on track and earn enough to be a contributing member of society. He had been given a chance at CAR DEALERSHIP and has participated in of number of training courses so that he would be prepared to sell cars if he were issued the license.

10. The Applicant provided a letter from EMPLOYEE 1, the New Car Manager at CAR DEALERSHIP, who indicated the Application was a positive example and asked that he be given a salesperson license. In addition the store General Manager, EMPLOYEE 2, testified at the hearing on the Applicant's behalf as a character witness.

11. Also at the hearing OFFICER, U.S. Probation Officer, testified on behalf of the applicant asking that the Commission allow the license. He testified that he was the federal probation offer assigned to monitor the Applicant and pointed out that there was also a state probation officer monitoring the Applicant at the same time. The Applicant would be subject to drug testing while on probation and supervision. He stated that the Applicant needed the opportunity to earn more than minimum wage to support himself and pay the restitution. It was his position that the inability of offenders to find employment was a factor that led to recidivism. He also discussed a recently formed joint task force to break down barriers for employment for offenders once they have been released from prison.

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)).

CONCLUSIONS OF LAW

The Utah Legislature has adopted the applicable provision in this matter that requires that the Division “shall” deny or suspend a motor vehicle salesperson license to an applicant for reasonable cause. The provision then specifies certain violations are to be construed as reasonable cause. These provisions expressly state that violations of laws involving motor vehicles, controlled substances and fraud all constitute reasonable cause to suspend or deny a license. In this case the Applicant has convictions in all three areas. Additionally he has a large number of convictions of the type not specifically on the list, but due to the number could themselves constitute reasonable cause to deny the licenses. The Applicant is still on probation for his convictions. It is the Commission’s understanding that Utah Code Sec. 41-3-209 was adopted with input of motor vehicle dealers’ organizations. The Commission fully understands that there is a difficulty in trying to support oneself and pay restitution if employment is denied. The Applicant has made an effort to get his life back on track and he has the support of individuals who would employ him as a motor vehicle salesperson. At the same time, he was convicted of a number of serious offenses. The Commission must apply the laws as written. The law says the Division “shall deny, suspend, or revoke the license” for reasonable cause. Reasonable cause specifically includes certain violations of the law, as well as other factors. This Applicant has been convicted of these violations and a number of others and is still on probation. The Commission generally will not consider granting a license to a person who is still on parole or probation in actions under Utah Code Sec. 41-3-209 and there is no basis to do so in this matter.

Jane Phan
Administrative Law Judge

Appeal No. 10-0164

DECISION AND ORDER

Based upon the foregoing, the Tax Commission denies the Applicant's appeal. It is so ordered.

DATED this ____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Sec. 63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Sec. 59-1-601 et seq. and 63G-4-401 et seq.

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