

10-1877
MOTOR VEHICLE
SIGNED 09-02-2010

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, v. MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</p> <p>Appeal No. 10-1877</p> <p>Tax Type: Motor Vehicle Salesperson's License</p> <p>Judge: Chapman</p>
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Presiding:

Michael J. Cragun, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on September 21, 2010. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. PETITIONER ("Petitioner" or "applicant") submitted an application to receive a motor vehicle salesperson's license ("application") on or about June 7, 2010 (Exhibit R-1).
2. The Motor Vehicle Enforcement Division ("Division") denied PETITIONER's application in a letter dated June 10, 2010 (Exhibit R-1). In the letter, the Division explained that it was denying PETITIONER's application because of "your answer to question #3 on the salesperson application

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concerning criminal convictions within the last 10 years.”¹

3. On his application, PETITIONER checked the “Yes” box in response to Question #2, which asked “[d]uring the past 10 years, have you been convicted of any misdemeanors or felonies in Utah or in any other state?” Question #2 also asks the applicant to list each conviction. PETITIONER listed one conviction, identifying it to be a 3rd degree felony for “possession.”

4. The Division submitted a document from the Second District Court, CITY 1 (Utah), which showed that on February 22, 2010, PETITIONER entered a guilty plea to a 3rd degree felony for possession or use of a controlled substance (Exhibit R-2). This is the offense that the applicant listed on question #2 of his application.

5. PETITIONER is currently on probation for the possession offense he disclosed on his application. He indicated that he was on parole or probation on question #3 of the application. PETITIONER anticipates that he will remain on probation for at least one more year.

6. The Division also submitted a document from the Second District Court, CITY 2 (Utah), which showed that on December 4, 2008, PETITIONER entered a guilty plea to a Class A misdemeanor for failure to stop at command of law. (Exhibit R-2). PETITIONER did not list this offense on question #2 of his application. Accompanying Question #2 was an explanation that “[y]ou are not required to disclose simple traffic infractions.” PETITIONER explained that he did not believe he was required to disclose this offense on his application because of the instruction not to disclose simple traffic violations. He also contends that he was not “convicted” of this offense because he entered a guilty plea to resolve the matter.

7. The Division argues that PETITIONER’s application for a license should be denied because “reasonable cause” exists under Utah Code Ann. §41-3-209 to deny the license. The Division

¹ The question concerning convictions within the last 10 years is question #2 on the application that the applicant submitted.

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contends that the felony possession offense is sufficient cause to deny the license. Section 41-3-209(2)(c)(xiii) provides that “reasonable cause” to deny a license includes “a violation of any state or federal law involving controlled substances.”

8. In addition, the Division contends that PETITIONER’s application should be denied because he failed to disclose the Class A misdemeanor for failure to stop at command of law on question #2 of his application. Section 41-3-209(2)(c)(vi) provides that “reasonable cause” to deny a license includes “making a false statement on any application for a license” issued under the Motor Vehicle Business Regulation Act, including an application for a salesperson’s license.

9. RESPONDENT REP. 2 explained that a Class A misdemeanor or a Class B misdemeanor is never a “simple traffic infraction” and, as a result, may not be omitted from an application for a salesperson’s license. He also explained that Class C misdemeanor may or may not be a “simple traffic infraction.”

10. PETITIONER asks the Commission to grant him a salesperson’s license. He explained that the felony possession offense was his first and only felony offense and that it involved the possession of methamphetamines. PETITIONER explained that he was experimenting and that he is unlikely to do so again due to the consequences, including penalties and loss of opportunities. He explained that he served three months in county jail for the offense. He explains that while on probation, he is currently under supervision and is subject to drug testing. He has been attending outpatient drug treatment since his release from jail and submitted a letter showing that he entered “intensive outpatient treatment” at Davis Behavioral Health on April 29, 2010 (Exhibit P-1). The letter indicates that is attending treatment four nights a week for groups and has one individual counseling session a week. PETITIONER explains that he has nearly completed his treatment. He also stated that he currently has an opportunity to work for DEALERSHIP and that he does not know if the opportunity will still exist if he is required to wait until he is off probation to

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receive a license. He explained that he may be able to work in a finance position with DEALERSHIP and that he would be able to obtain benefits, including medical insurance, if granted a license so he can work at DEALERSHIP.

APPLICABLE LAW

1. Utah Code Ann. §41-3-209 provides statutory guidance concerning the issuance of motor vehicle salesperson's licenses, 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)

(b) 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.

(c) 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:

. . . .

(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 involving 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;

(xi) a violation of any state or federal law involving a registerable sex offense under Section 77-27-21.5 ; or

(xii) having had a license issued under this chapter revoked within five years from the date of application.

. . . .

CONCLUSIONS OF LAW

1. Question #2 of the salesperson's application requires an applicant to disclose all felony and misdemeanor convictions within the past 10 years that are not simple traffic violations. The

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applicant asserts that any offense for which he entered a guilty plea is not a conviction and need not be listed on the application. First, such an argument is inconsistent with the applicant's own actions. He pleaded guilty to the 3rd degree felony for possession, yet listed it as a "conviction" on his application. Second, the Commission has issued prior decisions that support a conclusion that an offense to which a person pleads guilty should be listed as a conviction on a salesperson's application. In *USTC Appeal No. 09-3048* (Int. Hearing Order Jul. 9, 2009), the Commission explained that "it has routinely concluded that the word 'violation' is synonymous with conviction as used in Utah Code Sec. 41-3-209(2)." In addition, the Commission has found that a plea of no contest or a guilty plea held in abeyance qualifies as a "violation" for purposes of Section 41-3-209.² Moreover, the Commission confirmed that a guilty plea held in abeyance constitutes a "violation" for purposes of Section 41-3-209(2) in *USTC Appeal No. 07-0356* (Formal Hearing Decision Sept. 24, 2007). If a guilty plea held in abeyance is a "violation," and thus a conviction for purposes of disclosure on the application, a guilty plea is as well. As a result, any felony or misdemeanor within the past 10 years that is not a simple traffic infraction should be disclosed on a salesperson's application.

2. As found above, an applicant for a salesperson's license is required to disclose on his application all felonies or misdemeanors within the past 10 years for which he or she has been convicted, including those to which the applicant entered a guilty plea. PETITIONER did not disclose on his application that he was convicted of a Class A misdemeanor for failure to stop at command of law. Regardless, PETITIONER's application should not be denied on the basis that he made a false statement on his application, which is one of the reasonable causes to deny an application under Section 41-3-209(2)(c)(vi).

² See *USTC Appeal No. 05-1502* (Int. Hearing Order Jan. 10, 2006) (finding "Petitioner's guilty plea, though being held in abeyance by the court, is an admission Petitioner violated the law involving controlled substances. His plea establishes a violation and constitutes reasonable cause to deny his application for a license to sell motor vehicles"); *USTC Appeal No. 05-1439* (Int. Hearing Order Jan. 10, 2006) (finding that a no contest plea constitutes a "violation" for purposes of Section 41-3-209(2)).

PETITIONER explained that he thought this offense was a simple traffic infraction that he did not need to disclose. PETITIONER's explanation does not appear to be unreasonable. First, PETITIONER listed the more serious felony for which he had been convicted. Second, the application does not clarify that a Class A misdemeanor involving a traffic stop is not a simple traffic violation. Third, testimony at the hearing indicates that it may be difficult to determine which offenses are simple traffic violations and which are not, as some Class C misdemeanors are simple traffic infractions and some are not. For these reasons, PETITIONER's application should not be denied on the basis that he made a false statement on his application.

3. UCA §41-3-209(2)(b) provides that a motor vehicle salesperson's license shall be denied, revoked or suspended for reasonable cause. In Section 41-3-209(2)(c)(viii), "reasonable cause" is defined to specifically include a violation of a state or federal law involving controlled substances. PETITIONER pleaded guilty to felony possession of a controlled substance earlier this year. Accordingly, the Division's action to deny PETITIONER's application is in compliance with Section 41-3-209. Although the Division had cause to deny PETITIONER's application, the Commission may consider all factors surrounding the applicant's circumstances before determining whether to grant or deny the license. The Commission's general policy is to deny a license to a person who is still on probation. In this case, PETITIONER's conviction was less than one year ago. In addition, he is still in drug treatment and will remain on probation for at least another year. The evidence is insufficient to show that the Commission should disregard its general policy in this case. As a result, PETITIONER's application for a salesperson's license should be denied.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

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Based upon the forgoing, the Commission denies PETITIONER's appeal and sustains the Division's denial of PETITIONER's application for a motor vehicle salesperson's license. PETITIONER may reapply for a license once he has completed his probation, at which time his application for a license would be reevaluated. 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 Secs. 59-1-601 et seq. and 63G-4-401 et seq.

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