

10-2960
SALESPERSON LICENSE
SIGNED: 08-17-2011
COMMISSIONERS: M. JOHNSON, D. DIXON
DISSENT: R. JOHNSON, M. CRAGUN

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. 10-2960</p> <p>Tax Type: Salesperson License</p> <p>Judge: Marshall</p>
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Presiding:

Marc B. Johnson, Commissioner
D'Arcy Dixon Pignanelli, Commissioner
Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
PETITIONER REP., General Sales Manager
For Respondent: RESPONDENT REP. 1, Assistant Attorney General
RESPONDENT REP. 2, Assistant Director, Motor Vehicle
Enforcement

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for Formal Hearing on February 8, 2011. The Applicant is appealing the denial of a salesperson license to sell motor vehicles. Based on the testimony and evidence presented at the Formal Hearing, the Tax Commission hereby makes its

FINDINGS OF FACT

1. On or about November 1, 2010, the Applicant submitted a Motor Vehicle Salesperson Application to the Motor Vehicle Enforcement Division ("Division"). (Exhibit R-1).
2. Question number three of the application asks, "During the past 10 years, have you been convicted of any misdemeanors or felonies in Utah or any other state?" Applicant checked the box indicating "Yes", and in the space provided wrote "See Attached".

3. On the sheet attached to the application, the Applicant listed two misdemeanor convictions in Utah for possession of marijuana and attempted possession of a controlled substance. He listed two felony and six misdemeanor convictions in the State of STATE 1 that included theft by receiving stolen property, possession of a controlled substance, and driving under the influence.
4. The Applicant testified he entered into a plea agreement on the charges in Utah. He stated he was sentenced to 24 months probation on September 15, 2009, as a part of the plea agreement, and that he has since been released from probation. The Applicant was given additional time to submit documentation of his release from probation. On February 14, 2011, the Commission received copy of a Probation summary report as well as a Motion and Order of Termination of Probation dated December 16, 2010. The Judge had not signed the Order; however, there was a hand-written notation that probation was successfully terminated on January 27, 2011.
5. The Applicant was also sentenced to six months in the COUNTY 1 Jail. He testified that since his release he has focused on his recovery. He has completed an intensive outpatient program, a relapse prevention program, and a cognitive change program. The Applicant was also the house manager of a safe/sober house in STATE 1. He submitted copies of his certificates of achievement for the outpatient and relapse prevention programs. (Exhibits P-2 and P-3).
6. The Applicant remains on probation. He was sentenced to seven years probation in STATE 1, and was allowed to return to Utah in February 2010 as part of an interstate compact. The Applicant's probation is currently being supervised by the Utah Department of Corrections. The Applicant submitted a letter from his probation officer that indicates as of December 20, 2010, the Applicant had completed all requested conditions of his probation. (Exhibit P-4).
7. The Applicant testified that because of the interstate compact, it is difficult to get an early release from probation. He explained that before Utah can release him from probation, the State of STATE 1 must approve the release. He stated that his probation officer has submitted such a request to the State of STATE 1, and was given additional time to provide a copy of that request to the Commission. On March 9, 2011, the Applicant submitted a letter from his probation officer indicating the Applicant has been submitted for early probation termination, and that a response was expected within the next two to three weeks on that request.

8. A telephone status conference was held on May 18, 2011 to review the Applicant's probation status. The Applicant stated at that time the State of STATE 1 had requested additional information, and that it could be up to a month before he received a decision on the request for early release from probation.
9. The Applicant has the support of his family, friends, and employer. He submitted letters from his general sales manager, his father, his former mother-in-law, and a friend on his behalf. All of whom note the positive changes the Applicant has made to his life in the past two years. (Exhibits P-1, P-5, P-6, and P-7).
10. REPTITIONER REP. spoke on behalf of the Applicant. He stated that there is a lot of alcohol and drug abuse in the car industry, and that he had been sober for seven and a half years. He opined that the Applicant is very honest, and would make a great salesperson.
11. For the Division, RESPONDENT REP. 2 testified the application was denied under Utah Code Ann. §41-3-209 because of the convictions involving controlled substances. He also noted that the Division considers the DUI convictions and driving without privileges to be crimes involving a motor vehicle.
12. RESPONDENT REP. 2 further noted that it is easier to enforce and monitor individuals who are granted a "conditional" salesperson license by the Commission due to the recently enacted statutory provisions that require Bureau of Criminal Identification ("BCI") continually monitor licensed salespersons for convictions.

APPLICABLE LAW

The denial, suspension, and revocation of a salesperson license are governed by Utah Code Ann. §41-3-209 as follows:

- (2) (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;
 - (viii) a violation of any state or federal law involving controlled substances...

CONCLUSIONS OF LAW

The Division had reasonable cause to deny the Applicant's salesperson license under Utah Code Ann. §41-3-209. Utah Code Ann. §41-3-209 mandates that a license "shall" be denied, revoked, or suspended for reasonable cause, and has identified a violation of any state or federal law involving motor vehicles, and violation of any state or federal law involving controlled substances as reasonable cause.

Although the Division had reasonable cause to suspend the Petitioner's license, in the past, the Commission has considered other factors, such as the passage of time since the most recent violation, completion of probation or parole, and payment of all fines and restitution. In the past, the Commission has used clearing parole or probation to allow salesperson licenses to individuals who have been convicted of the crimes enumerated in Utah Code Ann. §41-3-209.

Although the Applicant remains on probation, the Commission finds there to be good cause to grant him a salesperson license. It has been more than two years since his most recent conviction; he has completed the conditions of probation for both Utah and STATE 1 and been released from probation in Utah. He has the support of his family, employer, and probation officer.

While typically, as a matter of practice, the Commission has relied on release from probation as a condition for granting a license, this is not absolute. There may be situations where an applicant has taken sufficient steps to show that he or she is integrated into the community and paid his or her debt to society. Furthermore, the probation standard which has been relied on by the Commission has always been from the Utah court system; this is appropriate as the motor vehicle laws are in the Utah Code. To apply probation standards from another state that has different provisions and processes, as well as different motor vehicle laws, would invariably result in disparate treatment for identical crimes.

Finally, the Majority takes administrative notice of the State of STATE 1 Probation and Parole website and STATE 1's participation in the Interstate Compact. The STATE 1 website states, "***Interstate compact is a supervision process which contributes to the offender's success and reduces likelihood of future criminal activity by providing an opportunity to seek improved residence, employment and social circumstances.***"¹ We believe that this provision, although not dispositive, is consistent with our ruling.

We find that, given the totality of the Appellant's record, he should be granted the license. Finally, we note that the Applicant's criminal report will continue to be monitored by BCI, and is subject to suspension or revocation if there are further violations.

¹ http://www.idoc.STATE 1.gov/print/content/probation_and_parole/interstate_compact

DECISION AND ORDER²

Based on the foregoing the Commission abates the action of the Division, and grants the Applicant a salesperson license. It is so ordered.

DATED this _____ day of _____, 2011.

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

DISSENT

We respectfully dissent from our colleagues. The Tax Commission does not have jurisdiction to review or reconsider the STATE 1 court's decision that placed the Applicant on probation for a specified period of time, nor its determination on when the Applicant should be released from probation. We must give "full faith and credit" to those judicial proceedings. See U.S. Constitution, Art. IV, Sec. 1. In the past, the Commission has used clearing parole or probation to allow salesperson licenses to individuals who have been convicted of the crimes enumerated in Utah Code Ann. §41-3-209, and we no reason to deviate in this case. It is our position that as long as the Applicant remains on probation, the Division should deny issuance of a salesperson license.

R. Bruce Johnson
Commission Chair

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 Ann. §63-46b-13. 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 Ann. §59-1-601 and §63-46b-13 et. seq.

² In the instance of a tie vote between the Commissioners, the decision is deemed to be in favor of the Petitioner. See Utah Code Ann. §59-1-205.