

10-3058
SALESPERSON LICENSE
TAX YEAR: 2010
SIGNED: 01-27-2011
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: R. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

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| <p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p> | <p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 10-3058</p> <p>Tax Type: Salesperson License Tax Year: 2010</p> <p>Judge: Marshall</p> |
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Presiding:

Jan Marshall, Administrative Judge

Appearances:

For Petitioner: PETITIONER, *Pro Se*

For Respondent: RESPONDENT REP., Assistant Director of Motor Vehicle Enforcement

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on January 11, 2011. Petitioner ("Applicant") is appealing the denial of his salesperson license to sell motor vehicles by the Respondent ("Division").

APPLICABLE LAW

The denial, suspension, and revocation of a salesperson license are governed by Utah Code Ann. §41-3-209(2), as follows in relevant part:

- (1) If the administrator finds that there is reasonable cause to deny, suspend, or revoke a license under this chapter, the administrator shall deny, suspend, or revoke the license.
- (2) 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:
 - (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;

Utah Code Ann. §41-3-201(7) prohibits the issuance of a license to a person convicted of a crime

involving motor vehicle commerce or fraud unless full restitution has been made, as set forth 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.

DISCUSSION

The Applicant submitted a Motor Vehicle Salesperson Application to the Division on or about December 7, 2010. Question number two of the application asks if the Applicant has “been convicted of any misdemeanors or felonies in Utah or any other state,” in the past ten years. In response, the Applicant checked the box indicating “Yes”, and in the space provided wrote, “5 counts of failure to provide title - Enhanced Auto. Class A Misdemeanors.”

The Applicant stated that in August 2007 he plead guilty to five class A misdemeanors for failure to provide title. He explained that the convictions were related to the voluntary closure of a dealership in which he was a partner and one of the managers. He was ordered to pay \$\$\$\$ in restitution, and sentenced to eighteen months probation. The Applicant has paid his restitution in full, and has been released from probation. He provided copies of his criminal history report, a receipt for the final payment of restitution, as well as several letters from employers, customers, and friends in support of him being granted a motor vehicle salesperson license.

The Division’s representative stated that under Utah Code Ann. §41-3-209, the Division is mandated to deny, suspend, or revoke a license if an applicant has been charged with or convicted of crimes involving motor vehicles. He stated that because the Applicant had been convicted of failure to deliver title, the Division was required to deny his application.

Utah Code Ann. §41-3-209 mandates that a license “shall” be denied, revoked, or suspended for reasonable cause, and has identified having charges filed for crimes involving motor vehicles as “reasonable cause”. Utah Code Ann. §41-3-201(5) further prohibits the issuance of a license to a person convicted of a crime involving motor vehicles unless full restitution has been made. As the Applicant has been convicted of five counts of failure to deliver title, the Division properly denied the Applicant a salesperson license. However, the Commission may also consider other factors, such as the passage of time since the most recent conviction, the payment of restitution, and termination of probation or parole. In the past, the Commission has used clearing parole or probation to grant salesperson licenses to individuals who have been convicted of the crimes identified in Utah Code Ann. §41-3-209. The Applicant has been released from probation, and has provided information to show that restitution has been paid. Under the circumstances, there appears to be reasonable cause to abate the Division’s denial and grant the Applicant a salesperson license.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing the Commission abates the Division's action and grants the Applicant his 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 any party to this case files 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 _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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