

12-2126
TAX TYPE: SALESPERSON LICENSE
TAX YEAR: 2012
DATE SIGNED: 9-28-2012
COMMISSIONERS: B. JOHNSON, M. CRAGUN
EXCUSED: M. JOHNSON
COMMISSIONER DIXON CONCURS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, v. MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 12-2126</p> <p>Tax Type: Salesperson License</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT, Assistant Director, Motor Vehicle Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on September 4, 2012 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioner (“Applicant”) is appealing Respondent’s (“Division”) denial to issue a motor vehicle salesperson license. The Division had denied issuance to the Applicant based on responses provided by the Applicant on the Motor Vehicle Salesperson Application form which he had submitted to the Division.

APPLICABLE LAW

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

- (b) 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.

- (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 of 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; or
 - (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.

DISCUSSION

The Applicant submitted a Motor Vehicle Salesperson Application to the Division on August 10, 2012. Question number 2 of the application asks if the Applicant has “been charged with, found in violation of, or 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, the Applicant had listed unlawful sex with a minor. Question number 3 asked, “Are you currently on probation or parole?” and the Applicant had checked the box indicating “Yes.” The Applicant acknowledged at the hearing that he was on the Sex Offenders Registry.

The Applicant asked that he be allowed a motor vehicle salesperson license as he felt it was it was a good career fit for him. He stated that he had been sentenced to three years of probation stemming from a June 2010 conviction, but that he expected to be released from probation early, once he is able to finish paying off the fine. He also indicated that based on new legislation he could apply to be removed from the Sex Offenders Registry in about two years. He indicated he has about \$\$\$\$\$ left to pay on the fine. He stated that the unlawful sex with a minor conviction was for an incident in 2008 when he was eighteen-years old and still in high school, involving his girlfriend who was a high school freshman at the time. He stated that had been sentenced to 45 days of probation from that incident and “broke” his probation which resulted in the 2010 conviction and sentencing.

He provided a letter dated September 4, 2012 from his probation officer. In the letter the Probation Officer provides the information, “PETITIONER is currently on probation for a Third Degree Felony. He has been on probation since June 22, 2010. He was incarcerated from June 22, 2010 to February 23, 2011. He was then transferred to CORRECTIONAL CENTER for a

residential treatment program. He successfully completed the program on March 20, 2012. He began aftercare treatment immediately after his release from the program. He successfully completed aftercare on August 30, 2012.” The letter goes on to explain that the Applicant was a “model resident” and had no probation violations. It also explains that the Applicant “is on track for early termination from probation as soon as his fine is paid.”

The representative for the Division explained that the license was denied based on Utah Code §41-3-209. When the Applicant had filed the application form he had disclosed a conviction involving a registerable sex offense under Section 77-27-21.5. The Applicant had also disclosed that he was still on probation. The Division representative pointed out that because of these factors the Division was required to deny the license and had no basis to grant one to the Applicant. The Division representative stated that he had checked the Sex Offender’s Registry and the Applicant was listed on that data base. The Division had not requested a Criminal History Report from the Bureau of Criminal Identification because the Division had denied the license based on the disclosure provided on the application form.

The Applicant was given the opportunity to provide letters of recommendation or a Criminal History Report from BCI to support his position after the hearing, but did not provide any additional information.

Upon review of the information presented by the parties at the hearing, Utah Code §41-3-209 provides that a license “shall” be denied, revoked, or suspended for reasonable cause, and identifies as “reasonable cause” along with other incidents, a conviction involving a registerable sex offense under Section 77-27-21.5. There is no dispute that the Applicant has this type of conviction, is still on probation and on the Sex Offender’s Registry. The Division properly denied the Applicant a salesperson license. The Commission may consider factors such as the passage of time since the most recent conviction, the payment of restitution, and termination of probation or parole to determine if a license may be issued. In this matter, the application is still on probation for a third degree felony conviction. The appeal should be denied under Utah Code §41-3-209.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing the Commission denies the Applicant’s appeal in this matter. It is so ordered.

This decision does not limit a party’s right to a Formal Hearing. If either party requests a Formal Hearing this decision and order is stayed until the Commission issues its formal decision.

However, this Decision and Order will become the Final Decision and Order of the Commission unless either party to this case files a written request within thirty (30) days of the date of this decision to proceed to a formal decision. Such 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 _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

Michael J. Cragun
Commissioner

COMMISSIONER DIXON CONCURS

Regardless of the Petitioner's probationary status, I would deny the license because the Petitioner is currently listed on the Utah Sex Offender Registry. I recognize the Commission regularly uses its discretion to grant licenses to applicants who have been convicted of one of the violations listed in Utah Code Annotated 41-3-209(2)(c)(xi); however, I believe a conviction involving a registerable sex offense under Section 77-27-21.5, and included in 41-3-209(2)(c)(xi), warrants a different use of the Commission's discretion. In general, a person listed on the Utah Sex Offender Registry should not be granted a motor vehicle sales person license.

D'Arcy Dixon Pignanelli
Commissioner