

12-2356  
TAX TYPE: SALESPERSON LICENSE  
TAX YEAR: 2012  
DATE SIGNED: 11-7-2012  
COMMISSIONERS: B. JOHNSON, M. JOHNSON, M. CRAGUN  
EXCUSED: D. DIXON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,      Petitioner,  v.  MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION,      Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 12-2356</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  
                          REPRESENTATIVE FOR PETITIONER, General Sales Manager,  
                          BUSINESS  
For Respondent:    RESPONDENT, Lieutenant, Motor Vehicle Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on October 16, 2012 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioner (“Applicant”) is appealing the denial by Respondent (“Division”) to issue Applicant a Motor Vehicle Salesperson License.

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:

- (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) a violation of any state or federal law involving motor vehicles;
- (vii) a violation of any state or federal law involving controlled substances;
- (viii) 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;
- (ix) a violation of any state or federal law involving fraud; or
- (x) a violation of any state or federal law involving a registerable sex offense under Section 77-27-21.5; or
- (xi) having had a license issued under this chapter revoked within five years from the date of application.

Utah Admin. Rule R877-23V-20 provides guidance on what constitutes reasonable cause to deny, suspend or revoke a license as follows:

There is a rebuttable presumption that reasonable cause to deny suspend, or revoke a license issued under Title 41, Chapter 3 does not include a violation of a state or federal law listed under Subsection 41-3-209(2) if the license applicant:

- (1) indicates on the license application that the applicant has been charged with, found in violation of, or convicted of a state or federal law listed under Subsection 41-3-209(2);
- (2) has completed any court-ordered probation or parole;
- (3) if the license applicant has entered into a plea in abeyance, met the conditions of that plea in abeyance; and
- (4) paid any required restitution and fines.

### DISCUSSION

The Applicant submitted a Motor Vehicle Salesperson Application to the Division on September 6, 2012. Question number two 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 wrote:

Domestic Violence-Simple Assault March 2012<sup>1</sup>  
Driving Under the Influence 02-2008  
Burglary F2-Plea in [Abeyance] 11-23-2010 probation  
Larceny F3-Plea in [Abeyance] 11-23-2010 probation  
Criminal Mischief – dismissed 11-23-2010

The Applicant had also noted on the form that he was currently on probation and that he still owed restitution.

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<sup>1</sup> The copy provided at the hearing of the Application Form appears to indicate the year of 2012 on this conviction, but one of the numbers was written over and it is not clear exactly what year was meant by the Applicant when he wrote this.

The Applicant explained that he wanted to be able to work as a Salesperson because he needed to be able to provide for his wife and three children. He also indicated that he needed to pay off the court ordered fines so that he could be released from his probation through the Felony Drug Court Program. He states that he had a troubled past, but that he had been clean since 2010. He explained that he has been attending three AAA Meetings per week and is an active member of the 1<sup>st</sup> Step Program. It was his assertion that if he paid off the fines he might be released from probation as early as January 2013. However, if he was not able to pay the fines by then, he stated that it could be April 2013 before he is released. He also noted that with the plea in abeyance on the felony burglary and larceny charges, once he completed the terms of the probations those convictions would be dismissed.

The Applicant had provided several letters of recommendation. One was dated September 25, 2012, from REPRESENTATIVE FOR PETITIONER, General Manager of BUSINESS, which was the business at which the Applicant wanted to work as a salesperson. REPRESENTATIVE FOR PETITIONER also attended the hearing. In the letter he indicated that BUSINESS was, “completely satisfied with his performance with our organization” and it indicated support for the Applicant.

There was a letter dated October 4, 2012, from NAME-1, FDC Case Manager, Salt Lake County. He stated in the letter that PETITIONER was, “an active participant in the Salt Lake Felony Drug Court program since November 2010. His charges of Burglary (F2), Theft (F3) and Theft by Receiving Stolen Property (F3) are held in Abeyance while he is in Drug Court. His last criminal charge occurred on 02/25/2010.”

A letter from NAME-2, Attorney at Law from the Salt Lake Legal Defender Association was dated October 12, 2012. She stated, “PETITIONER is nearing the end of his participation in Salt Lake County Felony Drug Court. In this phase of the program, his is involved in demonstrating long term sobriety and participates in groups that are focused on maintaining a productive and sober life. It has been my experience that while he has struggled at times, PETITIONER has always been accountable and has moved forward in his sobriety. Based on his current performance, it is anticipated that he will graduate in the near future and his criminal charges will be dismissed.”

The Applicant also provided two personal letters of recommendation from NAME-3, owner of DEALERSHIP, as well as from his father, NAME-4.

The representative for the Division stated that the Division had denied the license because the Applicant was still on probation. He also pointed out that as the license had been denied based on the information that the Applicant had disclosed on the form, the Division had

not sent in the Applicant's fingerprints to BCI and did not have the Applicant's criminal history report. The representative did ask the Applicant if there had been other drug related convictions since the Applicant was in the Felony Drug Court Program. The applicant stated that there were none, but that his addiction to drugs had been a factor in the crimes that he had been convicted of, so they had sentenced him to Felony Drug Court.

Utah Code §41-3-209 mandates that a license "shall" be denied, revoked, or suspended for reasonable cause, and has identified various convictions that would constitute "reasonable cause" which include violations of law involving controlled substances, fraud or motor vehicle convictions, as well as making a false statement on the application. The list does not specifically include burglary, theft or assault convictions, but the Commission has previously concluded that the statute does not provide an all inclusive list and other convictions may constitute reasonable cause to deny a license. The Applicant stated that his convictions related to his drug dependency and the Court's action in the manner in which it sentenced the Applicant to Felony Drug Court indicates the same.

There is a bit of a discrepancy between the crimes listed by the FDC Case Worker in his letter date October 4, 2012, and those listed by the Applicant when filling out the application form. The FDC Case Worker listed three separate felonies which were being held in abeyance while the Applicant was in Drug Court. The Applicant has listed two felonies on his application form. Additionally, in response to a question requiring he list all charges, violations or convictions, the Applicant had listed on the form what appears to be March 2012 Domestic Violence-Simple Assault. This was not something that the FDC Case Worker had listed when he wrote his letter on October 4, 2012.

Given the circumstances, the Division properly denied the Applicant a salesperson license because he was on probation in Felony Drug Court and had listed recent charges or convictions. 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 in determining what would constitute reasonable cause under Utah Code §41-3-209. However in this case the charges or convictions are recent, the Applicant is still on probation and has not yet paid fines and restitution. Based on these factors, regardless of the fact that the applicant has support from a prospective employer and others in the community, the denial of the license should be upheld. That the Applicant is currently on Felony Drug Court probation is a significant factor in this decision. Once the Applicant is released from probation, he may apply again for a Motor Vehicle Salesperson License and consideration of the application will be made based on the facts and circumstances at that time.

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Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing the Commission denies the Applicant's appeal. 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

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner