

12-2888
TAX TYPE: SALESPERSON LICENSE
TAX YEAR: 2012
DATE SIGNED: 1-11-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<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. 12-2888</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 December 20, 2012 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioner (“Applicant”) is appealing the action on the part of Respondent (“Division”) to deny Applicant a motor vehicle salesperson license.

APPLICABLE LAW

The denial, suspension, and revocation of a salesperson license are governed by Utah Code §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:
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 - (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 November 2, 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 listed an arrest date of September 29, 2002 and conviction date of August 12, 2004. He also listed that there had been three counts of securities fraud, two counts of selling unregistered securities and one count of unlawful activities. Question number three of the application asks if the applicant was on probation and still owed restitution. The Applicant had checked “Yes” to both questions.

Based on this information disclosed on the application form the Division denied the license by letter dated November 9, 2012. The letter provides, “This action is being taken in response to your answer to question #2 and/or #3 on the salesperson application concerning criminal convictions within the last 10 years or probation/restitution.” The letter cites Utah Code 41-3-209 which requires the Division to deny a license if there has been violations of state or federal law involving fraud related crimes.

The Applicant asked that he be allowed the license because he needed to be gainfully employed and provide for his family. He stated that he had found a dealership that was willing to give him a chance if he could obtain the license. He provided a December 19, 2012 letter from NAME-1, General Sales Manager of BUSINESS, who indicated that he would be pleased to have him work as a sales associate for the business. BUSINESS personnel would have been aware of the Applicant’s criminal violations as a representative for the business had signed the application form on which the Applicant had listed the violations.

The Applicant explained that the fraud charges related to real estate transactions that occurred in 2000 and 2001. The arrest occurred September 20, 2002 and the date the convictions were entered was August 12, 2004. He indicates that he was sentenced to 12 years probation which was geared toward payment of the restitution. However, he indicates that he will never be

able to pay the amount of restitution he owes in his lifetime. He is and has been making monthly payments toward the restitution. He stated that he had lost everything with these convictions.

After the hearing, the Applicant provided additional letters of recommendation as well as his Criminal History Report from the Department of Public Safety. The Criminal History Report showed just the one criminal incident, one arrest date of September 20, 2002, which resulted in six felony convictions all entered on August 12, 2004.

In addition to the letter from the General Sales Manager, the Applicant submitted a letter from NAME-2 of BUSINESS who asked that the license be issued to the Applicant. Also submitted were two personal/ecclesiastical references, both recommending the Applicant be given a chance.

The Division's representative stated that Utah Code §41-3-209 requires that the Division "shall" deny, revoke, or suspend a motor vehicle salesperson license for reasonable cause, and one of the causes listed is a violation of state or federal law involving fraud. The Division also indicated that based on R877-23V-20, the Division could not issue a license to someone who was still on probation. The Division did note that the date of conviction being in 2004 did substantially predate the application.

The Division properly denied the Applicant a salesperson license based on provisions of Utah Code §41-3-209. However, the Commission may consider other factors, such as the passage of time since the most recent conviction, the payment of restitution, and termination of probation or parole. The Commission generally will not issue a license to someone who is still on probation and paying restitution, but may make exceptions to this general policy if there are compelling reasons and the restitution is not related to violations of motor vehicle or motor vehicle commerce related laws.¹ In this matter the crimes occurred more than ten years prior to the date the Applicant applied for the motor vehicle license. The arrest date, September 20, 2002, also was more than ten years prior to the date he submitted the application. A significant amount of time has passed since the arrest and the conviction. The Applicant provided his criminal history which supports that there has been only the one criminal incident. The Applicant states that he will be making monthly payments toward the restitution for the rest of his life as the total amount owed is so significant. The business to which he applied would have been aware of the convictions as he had listed them on his application form, and its representatives were asking that the Applicant be given the license. Current law requires the Division of Public Safety to notify the Division of any subsequent convictions for all salespersons should there be any further incidents, which does

¹ See the Utah State Tax Commission's Decisions in Appeal No. 11-1762 & 12-2293. These and other prior decisions from the Utah State Tax Commission are available at tax.utah.gov/commission/decisions.

appear unlikely based on the Applicant's history. There are sufficient circumstances in this matter to issue the license to the Applicant.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing the Commission orders the Division to issue a motor vehicle salesperson license to the Applicant. 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 _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner