

12-2892  
TAX TYPE: SALESPERSON LICENSE  
TAX YEAR: 2012  
DATE SIGNED: 1-10-2013  
COMMISSIONERS: B. JOHNSON, M. CRAGUN  
COMMISSIONER D. DIXON CONCURS IN PART AND DISSENTS IN PART  
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. 12-2892</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 January 7, 2013, 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 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:
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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 originally on October 4, 2012. The Division had returned the application to the Applicant for further information. The Applicant resubmitted the Application on November 27, 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, “April ’12 Aggravated assault. April ’12 Domestic Violence, June’12 Assault on a prisoner.” In answer to question number three the Applicant had checked that he was currently on probation. He did additionally check that he did not still owe restitution.

Upon review of the application, the Division denied to issue a license to the Applicant. The Division issued a letter dated November 30, 2012 to the Applicant in which it was stated that the license was being denied, “in response to your answers to question #2 and/or #3 on the salesperson application concerning criminal convictions within the last 10 years or probation/restitution.

At the hearing the Applicant explained that he had never been in trouble with the law before. He indicated that in November 2011 he had an altercation with his now ex-wife and he states that he entered into a plea in abeyance on these charges. The Court record provided by the Division shows an offense date of November 18, 2011, and that from this criminal incident the Applicant had plead “no contest” on February 17, 2012, to an Aggravated Assault-3<sup>rd</sup> Degree Felony, a Domestic violence in the Presence of a Child-3<sup>rd</sup> Degree felony, and a Criminal Mischief Class B Misdemeanor. Later, on April 18, 2012, he was found guilty on a Disorderly Conduct Class C Misdemeanor.

The Applicant indicates in April 2012, his ex-wife went back to the police and more charges were filed against him. The court's records show an offense date of March 28, 2012 and that he pled “no contest” on April 18, 2012 to Aggravated Assault- 3<sup>rd</sup> Degree Felony and Threat of Violence-Class B Misdemeanor.

While in jail he states that he had to defend himself and got into a fight with another inmate. He was convicted of a Class A misdemeanor Attempted Assault by Prisoner on August 17, 2012. The Applicant states that from these convictions he was sentenced to three years probation, which he is currently serving. Also he is paying \$\$\$\$ per month toward fines for these convictions.

The Applicant asked that he be allowed the license so that he could work and support his kids. He states that up until the first charges he had no other criminal incidents or problems. He states that he had been employed for many years in the mining industry and after the convictions he was unemployed. He states that a good friend of his owns DEALERSHIP and was willing to give him a chance as a salesperson if he could get the license.

The Division's representative explained that because the Division has the responsibility of protecting the public it has a concern with violent offenses and noted that all convictions were very recent and that the Applicant was still on probation. The Division did note that after the Applicant was released from probation, the Division would consider issuing the license based on provisions of the rule (R877-23V-20).

Utah Code §41-3-209 mandates that the Division "shall" deny, revoke, or suspend a license for reasonable cause, and has identified several specific violations of the law as "reasonable cause." Aggravated assault and assault convictions are not specifically listed but the Commission has previously concluded that the Division is not limited to finding reasonable cause only from the listed violations. The Division could consider other crimes as reasonable cause to deny a license.

Based on the Division's concern regarding safety of the public, the Division properly denied the Applicant a salesperson license. In determining whether or not to sustain the Division's action, 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. In this case these factors weigh against the Applicant as all convictions are very recent, the Applicant is still on probation and still making payments toward the fine imposed against him. The Applicant's request should be denied.

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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 \_\_\_\_\_, 2013.

R. Bruce Johnson  
Commission Chair

Michael J. Cragun  
Commissioner

COMMISSIONER DIXON CONCURS IN PART AND DISSENTS IN PART

I concur with the majority in denying the license. Not enough time has passed from the Petitioner's convictions to provide evidence of a marked change in his ability to make decisions and choices regarding his actions. I did not deny the license because the Petitioner is on probation or making payment towards fines; on those points I dissent.

D'Arcy Dixon Pignanelli  
Commissioner