

15-971  
TAX TYPE: MOTOR VEHICLE SALESPERSON'S LICENSE  
TAX YEAR: 2015  
DATE SIGNED: 8-26-2015  
COMMISSIONERS: J. VALENTINE, R. PERO, R. ROCKWELL  
EXCUSED: M. CRAGUN  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>v.</p> <p>MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="padding-left: 40px;">Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 15-971</p> <p>Tax Type: Motor Vehicle Salesperson's License</p> <p>Judge: Chapman</p>
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**Presiding:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER, Applicant  
REPRESENTATIVE FOR PETITIONER, Witness  
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General  
RESPONDENT, from MVED

STATEMENT OF THE CASE

PETITIONER (the "Petitioner" or "applicant") is appealing the Motor Vehicle Enforcement Division's ("MVED" or "Division") action to deny his application for a motor vehicle salesperson's license. This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on June 22, 2015.

On or around May 26, 2015, PETITIONER filed an application (Form TC-303) to receive a motor vehicle salesperson's license to sell vehicles at DEALERSHIP. In a letter dated June 1, 2015, the Division denied

the application, indicating that it was taking this action “based on answers to question #2 and #3.” PETITIONER has filed an appeal and asks the Commission to grant him a salesperson’s license.<sup>1</sup>

APPLICABLE LAW

Utah Code Ann. §41-3-209 provides statutory guidance concerning the issuance of motor vehicle salesperson’s licenses, as follows in pertinent part:

- (1) If the administrator finds that an applicant is not qualified to receive a license, a license may not be granted.
- (2) . . . .
  - (b) If the administrator finds that there is a reasonable cause to deny, suspend, or revoke a license issued 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 for 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;
    - (xi) a violation of any state or federal law involving a registerable sex offense under Section 77-41-106; or
    - (xii) having had a license issued under this chapter revoked within five years from the date of application.

. . . .

DISCUSSION

PETITIONER has submitted an application for a salesperson’s license to sell motor vehicles at DEALERSHIP. On question #2 of the application, PETITIONER was asked whether he has “been charged with,

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<sup>1</sup> With his petition, PETITIONER included another letter the Division issued on November 14, 2014, in which it had denied a prior application PETITIONER had submitted to work at a different dealership. PETITIONER did not appeal the Division’s November 14, 2014 denial within the 30-day appeals period. Accordingly, the issue in this case is whether or not the application he submitted on or about May 26, 2015 should be granted.

found in violation of, or convicted of any misdemeanors or felonies in Utah or in any other state” during the past 10 years, and if so, to list them. PETITIONER answered this question by writing “Please See Attached” and attaching a copy of his “Criminal History Report” (dated May 22, 2015). On question #3 of the application, PETITIONER indicated that he is currently under probation or parole (i.e., court supervision) and that he does not owe any restitution.

The Division proffered information from the 3<sup>rd</sup> District Court that corroborated the disclosures PETITIONER made on questions #2 and #3 of his application. The parties agree that the Criminal History Report and the 3<sup>rd</sup> District Court information show that PETITIONER has been convicted of four crimes within the past 10 years, two of which occurred in both 2011 and 2014, as follows:

- 2011: Class B Misdemeanor - Electronic Communication Harassment  
Class B Misdemeanor - Electronic Communication Harassment
- 2014: 3<sup>rd</sup> Degree Felony - Stalking  
3<sup>rd</sup> Degree Felony – Obstruction of Justice

This information also shows that for the two 2014 crimes, PETITIONER was sentenced to jail and placed on probation for 36 months to be supervised by Adult Probation and Parole. PETITIONER was in jail for approximately four months before being released on May 17, 2015. His probation is currently set to end in 2018.

PETITIONER proffered that he was a successful motor vehicle salesperson from 2001 until his arrest in late 2014. He explained that all four of his convictions concern his interactions with his ex-wife with whom he has children. PETITIONER indicated that because of his and his ex-wife’s contentious relationship and divorce, a protective order was entered that precluded him from contacting his ex-wife. He stated that the two convictions from 2011 involved his telephoning his ex-wife, which was not allowed under the protective order. He stated that the last two convictions from 2014 also involved his telephoning his ex-wife, which led to felony charges because of his prior convictions for violating the protective order.<sup>2</sup>

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2 NAME-1, who appeared on behalf of the Division, stated that a third violation of a protective order often

PETITIONER stated that he is a recovering alcoholic and that he made these telephone calls while he was intoxicated. He stated, however, that he has been sober for six months and that he has decided not to drink again because of the problems that arise when he does. He also states that he and his ex-wife have decided that any communications between them will go through an intermediary, specifically through his mother, REPRESENTATIVE FOR PETITIONER. PETITIONER asks the Commission to consider that he will not be making any more telephone calls to his ex-wife and that he will not violate the protective order again.

PETITIONER also asks the Commission to consider that the owner of the dealership for which he has applied to sell vehicles is aware of his criminal history and still wants to employ him. The owner signed each page of the Criminal History Report that the taxpayer submitted with his application to show that he was aware of the taxpayer's convictions. Finally, PETITIONER asks the Commission to consider that his probation officer has indicated that his probation may end in 12 months instead of 36 months if he continues to meet all conditions of probation (in which case PETITIONER'S probation would end in March 2016). For these reasons, PETITIONER asks the Commission to grant his application for a salesperson's license.

REPRESENTATIVE FOR PETITIONER, the applicant's mother, also proffered testimony. REPRESENTATIVE FOR PETITIONER wanted the Commission to be aware that her son and his ex-wife went through a "nasty" divorce where her son was deceived by his ex-wife several times during the process. In addition, she wanted the Commission to know that her son's ex-wife was also charged with a crime because of another incident involving her son and his ex-wife's father. She stated that her son's convictions are a result of the bitterness between her son and his ex-wife and her son's drinking. She asked the Commission to consider that her son has never stalked anyone and to understand that selling motor vehicles is his livelihood.

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results in a felony charge for obstruction of justice.

The Division stated that it denied PETITIONER'S application pursuant to Section 41-3-209(2). The Division indicated that Subsection 41-3-209(2)(b) requires it to deny a license if it finds that "reasonable cause" exists to deny the license. Furthermore, the Division stated that it had "no latitude" to grant a license in this case because PETITIONER is still under probation. The Division referred the Commission to Utah Admin. Rule R877-23V-20 ("Rule 20")<sup>3</sup> and indicates that pursuant to the rule, there is a "prima facie case" that a person should not receive a salesperson's license if that person is under probation. For a person who is under probation, the Division contends that the burden shifts to that person to show reason to "overrule" the prima facie case. The Division states that if PETITIONER submits an application once his probation ends, the Division would probably grant him a license. Until then, however, the Division indicates that the decision is with the Commission. The Division stated that it submits the case "on that basis."

Section 41-3-209(2)(c) lists a number of violations that constitute "reasonable cause" to deny an application for a salesperson's license. PETITIONER'S four convictions are not violations specifically enumerated in Section 41-3-209(2)(c). The Commission has, nevertheless, found in prior cases that crimes not specifically enumerated in Section 41-3-209(2)(c) may constitute reasonable cause to deny an application for a salesperson's license.<sup>4</sup> Such a finding is reasonable because the use of the word "includes" in that subsection

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3 Rule 20 became effective on February 9, 2012, and provides, 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.

4 See *USTC Appeal No. 12-2892* (Initial Hearing Order Jan. 10, 2013), in which the Commission stated 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." Redacted copies of this and other selected decisions can be viewed on the Commission's website at <http://www.tax.utah.gov/commission-office/decisions>.

indicates that the list of crimes that follows is not an exhaustive list. In addition, PETITIONER'S most recent convictions were felonies. Furthermore, the Commission has a responsibility to protect the public, and insufficient time has elapsed since PETITIONER'S recent release from jail to show that his drinking problems have ended and that he is unlikely to commit future crimes, including future violations of the protective order that is in place.<sup>5</sup> For these reasons, the Commission should find that reasonable cause existed for the Division to deny PETITIONER'S application for a license under Section 41-3-209(2)(c).

Although the Division had reasonable cause to deny PETITIONER'S application, the Commission may consider all factors surrounding the applicant's circumstances before determining whether to grant or deny the license. It does not appear that Rule 20 precludes the Commission from issuing a license to an applicant who is on probation because the Commission did so in *USTC Appeal No. 12-2888* (Initial Hearing Order Jan. 11, 2013), approximately one year after the rule became effective. Nevertheless, it has been the Commission's general policy not to issue a license to a person under court supervision. Such a policy is helpful in administering the licensure process. In addition, PETITIONER has only recently been released from jail. The circumstances of this case do not warrant an exception to the Commission's general policy. For these reasons, the Division's action to deny PETITIONER'S application for a salesperson's license should be sustained.

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Kerry Chapman  
Administrative Law Judge

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<sup>5</sup> In *USTC Appeal No. 12-2892* (Initial Hearing Order Jan. 10, 2013), the Commission denied a salesperson license to an applicant who had never had a conviction until he had an altercation with his "now ex-wife," after which he was convicted of two 3<sup>rd</sup> degree felonies (including one for assault), went to jail, and was sentenced to three years probation. The Commission denied this applicant's request for a license, in part, because all convictions were very recent and because he was still on probation and making payments towards a fine the court had imposed.

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's action and denies PETITIONER'S application for a motor vehicle salesperson's license. Once PETITIONER completes his probation, he may submit a new application for review. 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, or emailed, 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

or emailed to:

taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

Rebecca L. Rockwell  
Commissioner