

18-224

TAX TYPE: SALESPERSON'S LICENSE

TAX YEAR: NOT APPLICABLE

DATE SIGNED: 03/06/2018

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

MOTOR VEHICLE ENFORCEMENT
DIVISION OF THE UTAH STATE TAX
COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 18-224

Tax Type: Motor Vehicle
Salesperson's License

Judge: Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, Applicant
NAME-1, Co-owner, DEALERSHIP
NAME-2, General Manager, DEALERSHIP
NAME-3, Controller, DEALERSHIP
NAME-4, General Sales Manager, DEALERSHIP
NAME-5, President/CEO, BUSINESS-1
NAME-6, Guest Commentator, NEWSPAPER AGENCY
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
RESPONDENT-1, from MVED
RESPONDENT-2, from MVED

STATEMENT OF THE CASE

PETITIONER ("Petitioner" or "applicant") is appealing the Motor Vehicle Enforcement Division's ("MVED" or "Division") denial of 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 February 21, 2018.

On or around January 9, 2018, PETITIONER filed an application to receive a motor vehicle salesperson's license to sell motor vehicles at DEALERSHIP in CITY, Utah. In a letter dated January 24, 2018, the Division denied the application, indicating that it was taking this action "until you can show proof you are finished with parole." PETITIONER has appealed the Division's action and asks the Commission to grant him a salesperson's license.

APPLICABLE LAW

Utah Code Ann. §41-3-209 provides statutory guidance concerning the issuance of a motor vehicle salesperson's license, 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 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.

Utah Admin. Rule R877-23V-20 ("Rule 20") provides, as follows:

- (1) Subject to Subsection (2), there is a rebuttable presumption that reasonable cause to deny, suspend, or revoke a license under Title 41, Chapter 3 does not include a violation of a state or federal law that otherwise constitutes reasonable cause under Subsection 41-3-209(2) if the licensee or license applicant who has been charged with, found in violation of, or convicted of

a state or federal law that constitutes reasonable cause to deny, suspend, or revoke a license under Subsection 41-3-209(2), has

- (a) (i) completed any court-ordered probation or parole; or
 - (ii) met any conditions of a plea in abeyance; and
 - (b) paid any required criminal restitution and fines.
- (2) The division may rebut the presumption under Subsection (1) by presenting evidence to the commission establishing that the license should be denied, suspended, or revoked.

For the instant matter, UCA §59-1-1417(1) provides guidance on which party has the burden of proof, as follows:

- (1) In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:
- (a) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
 - (b) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
 - (c) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income:
 - (i) required to be reported; and
 - (ii) of which the commission has no notice at the time the commission mails the notice of deficiency.

DISCUSSION

Pursuant to Subsection 59-1-1417(1), the Petitioner, PETITIONER, has the burden of proof in this matter. On Question #2 of his application, PETITIONER indicated that he had been charged with, found in violation of, or convicted of misdemeanors or felonies during the past 10 years and attached a copy of his BCI Criminal History Report (“BCI report”). The BCI report shows that between 2011 and 2014, PETITIONER was charged with more than 20 misdemeanors and felonies involving 12 different incidents and that he pleaded guilty to many of these offenses (including a number of felonies for burglary and possession or use of a controlled substance). On question #3 of his application, PETITIONER indicated that he was on parole and that he still owed restitution.

PETITIONER explained that the crimes he committed between 2011 and 2014 occurred after he suffered a back injury and became addicted first to pain medication and later to heroin. PETITIONER, who had once worked for BUSINESS-2, proffered that his life “spiraled” out of control because of these events. He explained that because of the crimes he committed, he was incarcerated in prison from 2014 until his release on January 2, 2018.¹ PETITIONER is currently on parole for a period of 36 months and is being supervised by the Utah Division of Adult Probation and Parole. PETITIONER expects his 36-month parole to be reduced to 18 months if he remains in compliance with his parole. If PETITIONER’s 36-month parole is reduced to 18 months, PETITIONER would complete his parole in mid-2019. PETITIONER still owes some restitution for his crimes (which do not involve motor vehicles). PETITIONER proffered that he would pay off all remaining restitution if it would enable him to obtain a salesperson’s license.

While PETITIONER was incarcerated, he participated in a number of programs to help him recover from addiction and improve his life skills. In addition, he began to write a series of “ARTICLE NAME” articles for the NEWSPAPER AGENCY newspaper describing his and other inmates’ lives behind bars and describing the difficulties that felons face upon being paroled, even felons like himself who had once had good jobs and have good work experience. While in prison, the NEWSPAPER AGENCY published more than 100 of PETITIONER’s articles. PETITIONER’s articles were followed by NAME-7, the owner of DEALERSHIP. Upon learning that PETITIONER was being paroled, NAME-7 asked PETITIONER to interview for a position at DEALERSHIP, which soon led to the dealership offering PETITIONER a salesperson’s position. PETITIONER has continued to write articles for the NEWSPAPER AGENCY since he was paroled, including one on February 5, 2018 that is titled “ARTICLE NAME: ARTICLE NAME” and in which he described NAME-7’s interest in helping him after his release from prison.

¹ PETITIONER stated that in 2012, he was initially placed in a “Drug Court” program where he was not incarcerated. However, after failing a drug test, he was sentenced to prison and incarcerated.

NAME-7 could not attend the Initial Hearing because he has just started a church mission. However, NAME-7's brother and son and several of his employees attended the Initial Hearing to express NAME-7's desire for the Commission to grant PETITIONER a salesperson's license. In addition, PETITIONER proffered a letter written by NAME-7, in which NAME-7 explained that he has never before "gone out on a limb" to appeal the Division's denial of a salesperson's license before, but is doing so on this occasion because he is impressed with PETITIONER's intelligence and with his desire to right the wrongs he has committed and to resume being a father to his young son. NAME-7 also indicated that he believes that PETITIONER needs someone to believe in him and that "we at the DEALERSHIP believe in him and are willing to stand beside him as he becomes a valued citizen of Utah."

PETITIONER also proffered letters written by NAME-2 (DEALERSHIP's general manager) and NAME-4 (DEALERSHIP's sales manager), in which these gentlemen also encouraged the Commission to grant PETITIONER a salesperson's license. In addition, PETITIONER proffered a letter from NAME-5, who DEALERSHIP has commissioned to be a life coach for PETITIONER while PETITIONER is on parole (which NAME-5 indicates will involve re-educating PETITIONER in developing successful habits and recognizing and removing failing habits). At the hearing, NAME-5 proffered that it is important that PETITIONER start as a salesperson at DEALERSHIP so that he can develop a "foundation" for serving the motor vehicle customer, which will increase PETITIONER's likelihood of success at the DEALERSHIP organization.

Also attending the Initial Hearing was NAME-6, a guest commentator with the NEWSPAPER AGENCY, who indicates that getting to know PETITIONER has "transformed [his] attitudes about substance-abuse and the criminal justice system" and who also asks the Commission to grant PETITIONER a salesperson's license. PETITIONER also proffered letters that readers of the NEWSPAPER AGENCY have written to thank NAME-7 for his willingness to employ PETITIONER and to express their congratulations to

PETITIONER for the opportunity that NAME-1 has provided him. Lastly, PETITIONER proffered a letter from NAME-8 (PETITIONER's parole agent), who stated that PETITIONER is in compliance with the conditions of his parole, has been attending his recommended treatment, and has not tested positive for any substances during routine testing. Based on the foregoing, PETITIONER asks the Commission to grant him a salesperson's license. The Division, however, asks the Commission not to grant a salesperson's license to PETITIONER until he has completed his parole and paid all restitution. The Division explains that the licensure of a salesperson is a public safety issue and the Division's review process helps ensure that motor vehicle customers are protected when purchasing what is often the second most expensive purchase they will ever make. Because reasonable cause exists to deny PETITIONER's application for a salesperson license and because he has not completed parole or paid all restitution, the Division asks the Commission to sustain its action and not grant PETITIONER a salesperson's license.

The Division was required to deny PETITIONER's application for the following reasons. Because of PETITIONER's controlled substance convictions, "reasonable cause" to deny, suspend, or revoke a license exists under Subsection 41-3-209(2)(c)(viii).² Subsection 41-3-209(2)(b) provides that the administrator (i.e., the Division) *shall* deny, suspend, or revoke a license if it finds that "reasonable cause" to deny, suspend, or revoke a license exists.³ Accordingly, if "reasonable cause" exists to deny, suspend, or revoke a license, the

2 Historically, the Commission has determined that the Legislature's use of the word "includes" in Subsection 41-3-209(2)(c) means that the list of crimes and circumstances that follow and constitute "reasonable cause" is not an exhaustive list. As a result, PETITIONER's convictions for his other crimes that are not specifically listed in Subsection 41-3-209(2)(c) may also have been considered "reasonable cause" to deny, suspend, or revoke a license, even if he had not been convicted of the specifically listed controlled substance offenses. *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." This and other selected decisions can be reviewed on the Commission's website at <http://www.tax.utah.gov/commission-office/decisions>.

3 Utah Code Ann. §41-3-102(1) defines "administrator" to mean "the motor vehicle enforcement administrator" (i.e., the Division).

Division is required to deny an application for a license unless another statute or rule authorizes an exception and does not require the Division to deny the application.

Rule 20 is the only statute or rule that authorizes an exception for the Division not to deny, suspend, or revoke a license when “reasonable cause,” as set forth in Subsection 41-3-209(2), exists. Rule 20 provides that “[t]here is a rebuttable presumption that reasonable cause to deny, suspend, or revoke a license . . . does not include a violation of a state or federal law that otherwise constitutes reasonable cause under Subsection 41-3-209(2) if the . . . license applicant” satisfies certain specified requirements. These requirements include completing court-ordered probation or parole and paying any required criminal restitution. Because PETITIONER is still on parole and has not paid all required criminal restitution, the Division was not authorized to apply the Rule 20 exception in this case.⁴ As a result, the Division was required to deny PETITIONER’s application for a license pursuant to Subsection 41-3-209(2).

The Commission, however, has historically found that it has discretion to grant a license to a person even if “reasonable cause” to deny, suspend, or revoke a license exists under Subsection 41-3-209(2) and even if all requirements set forth in Rule 20 have not been met. In fact, subsequent to the adoption of Rule 20 (which became effective on February 9, 2012), the Commission used its discretion and granted a license to someone who was still on probation and who had not paid all criminal restitution. In *USTC Appeal No. 12-2888* (Initial Hearing Order Jan. 11, 2013), the Commission considered an applicant who, in 2004, had been convicted of six felonies for securities fraud. The applicant was sentenced to 12 years of probation set to end

⁴ There may be instances where a license applicant satisfies all of the requirements listed in Rule 20 and where the Division still believes that the license applicant should not be licensed. To accommodate such circumstances, the exception provided in Rule 20 is subject to a “rebuttable presumption.” As a result, the Division may counteract the presumption and ask the Commission not to implement the exception where the Division believes that a license should not be issued to a person who, nevertheless, has satisfied all requirements listed in the rule.

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in 2016.⁵ The Commission granted this applicant a license, noting that the arrest date for his crimes was more than a decade earlier and that “[c]urrent 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 appear unlikely based on the Applicant’s history.” PETITIONER asks the Commission to make an exception in his case, as well, and to grant him a license.

With very rare exceptions, however, the Commission has not recently granted a license to a person who is still under court-ordered probation or parole. In the instant case, some of PETITIONER’s many convictions occurred 3 to 4 years prior to the hearing date (unlike the *Appeal No. 12-2888* applicant whose convictions had occurred 8 to 9 years prior to the hearing date). Furthermore, PETITIONER was recently incarcerated and has only been on parole for approximately two months, whereas the *Appeal No. 12-2888* applicant had not been incarcerated and had been on probation for approximately 9 years without further incident. As a result, PETITIONER has had less time since his incarceration and the beginning of his parole to show that he has changed his life than the *Appeal No. 12-2888* applicant had had at the time of that applicant’s hearing.

Lastly, it has been the Commission’s general policy not to issue a license to a person under probation or parole. The Commission has also found that such a policy is helpful in administering the licensure process. If the Commission decides not to use its discretion to grant PETITIONER a salesperson’s license under the circumstances described earlier, the Commission’s decision would be consistent with its prior decisions.

Kerry R. Chapman
Administrative Law Judge

⁵ The applicant in *Appeal No. 12-2888* was also ordered to pay restitution (for securities fraud not related to motor vehicle commerce or motor vehicle fraud). The applicant indicated that the lengthy probation period was “geared toward payment of the restitution” and that while he was making monthly restitution

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 parole and pays all restitution, he may submit a new application for the Division to review and consider. 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 _____, 2018.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

payments, he would never be able to pay the entire amount in his lifetime.