



**Citation: 9681159 Canada Inc. & Motiki-Stephens v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2023 ONLAT MVDA 14622**

**Licence Appeal Tribunal File Number: 14622/MVDA**

In the matter of an Appeal from a Notice of Proposal to Refuse Registrations issued by the Registrar pursuant to the *Motor Vehicle Dealers Act, 2002*, c. 30, Sch. B

Between:

**9681159 Canada Inc. & Payne Motiki-Stephens**

**Appellants**

and

**Registrar, *Motor Vehicle Dealers Act, 2002***

**Respondent**

## **DECISION AND ORDER**

**VICE-CHAIR:**

**Jeffery Campbell**

**APPEARANCES:**

For the Appellants:

Payne Motiki-Stephens, Self-represented

For the Respondent:

Zachary Kowalsky, Counsel  
Thaya Gangatharan, Agent for the Registrar

**Held by teleconference:**

October 30, 2023

## BACKGROUND

- [1] This is an appeal from the Notice of Proposal (“NOP”) dated February 5, 2023 refusing the registration of Payne Motiki-Stephens (the “appellant”) as a motor vehicle salesperson and 9681159 Canada Inc. (the “corporate appellant”) as a motor vehicle dealer under the *Motor Vehicle Dealers Act, 2002* (the “Act”). The appellant is the sole director and officer and person in charge of the corporate appellant. The respondent Registrar under the *Act* proposes to refuse the registrations of the appellant and corporate appellant based on allegations that neither can reasonably be expected to be financially responsible in the conduct of business.
- [2] For the reasons set out below, the Tribunal confirms the NOP to refuse the registrations. The Tribunal finds there are reasonable grounds to believe that, as registrants under the *Act*, the appellants will not be financially responsible in the conduct of business.

## ISSUES IN DISPUTE

- [3] The issues to be decided in the hearing are:
1. Has the Registrar proven that, having regard to his financial position, the appellant cannot reasonably be expected to be financially responsible in the conduct of business, and is therefore disentitled to registration as a motor vehicle salesperson, pursuant to section 6(1)(a)(i) of the *Act*?
  2. Has the Registrar proven that, having regard to the appellant’s financial position, the corporate appellant cannot reasonably be expected to be financially responsible in the conduct of its business and is therefore disentitled to registration pursuant to section 6(1)(d)(ii) of the *Act*?

## THE LAW

- [4] Section 6(1) of the *Act* provides that applicants seeking registration, that meet prescribed requirements, are entitled to registration or renewal of registration by the Registrar unless,
- (a) the applicant is not a corporation and,
    - (i) having regard to the applicant’s financial position or the financial position of an interested person in respect of the applicant, the applicant cannot reasonably be expected to be financially responsible in the conduct of business,

- (d) the applicant is a corporation and,
- (i) having regard to its financial position or the financial position of an interested person in respect of the corporation, the applicant cannot reasonably be expected to be financially responsible in the conduct of its business,
  - (ii) having regard to the financial position of its officers or directors or an interested person in respect of its officers or directors, the applicant cannot reasonably be expected to be financially responsible in the conduct of its business,

[5] In this appeal, the onus is on the Registrar to prove that the appellant and/or the corporate appellant cannot reasonably be expected to be financially responsible in the conduct of its business.

## **RESULT**

[6] Having considered the parties' evidence and submissions, I direct the Registrar to carry out the NOP.

## **EVIDENCE AND ANALYSIS**

- [7] The appellant submitted his application for registration as a motor vehicle salesperson to the Ontario Motor Vehicle Industry Council ("OMVIC") on November 10, 2020. On the same day he submitted the application for registration as a motor vehicle dealer for the corporation. The application for the corporation advised that it was seeking registration as a wholesale, and not a general, dealer.
- [8] For the reasons which follow, I find that the Registrar has established that the financial position of the appellant supports the Registrar's position that neither the appellant nor the corporate appellant can reasonably be expected to be financially responsible in the conduct of business."

### **The appellant's financial position**

- [9] The only evidence presented with respect to the appellant's personal financial position was that of two RBC monthly personal bank statements for the period of October 23, 2020 to December 23, 2020 showing a negative balance of \$31.59 as of December 23rd.
- [10] The respondent submits that as the sole director and owner of the corporate appellant, the corporation's financial position affects and reflects the financial position of the appellant's personal financial viability.

- [11] The appellant submits that the corporate appellant's wholesale dealer business would be financially viable. He points to the CIBC bank statements of the corporate appellant as examples that there are many transactions indicating that the corporation is already a sustainable business.
- [12] I cannot come to the same conclusion as the appellant. Monthly bank statements are minimal proof of a business' financial viability, even if they do exhibit financial activity. With regards to that activity, I note that \$14,933.15 was deposited in November and December, 2021 and \$13,444.92 was withdrawn. However, there is no evidence as to either the source of those deposits or the reasons for the withdrawals. I therefore find that the bank statements of the corporation are not helpful in determining the financial viability of the corporate appellant.
- [13] The appellant provided no evidence of any expected personal income apart from that which the corporate appellant produces. The appellant submitted that the corporate appellant will be buying and selling with only one vehicle at a time. It is difficult to conclude that, utilizing that business model after overhead and expenses, the potential income from the business is likely to improve his personal financial position.
- [14] I am led to conclude that lack of evidence showing a consistent and positive personal financial situation, taken together with the financial position of the corporate appellant, the appellant cannot reasonably be expected to be financially responsible in the conduct of business according to s. 6(1)(a)(i) of the Act.

### **The corporate's financial position**

#### *Banking documentation*

- [15] The corporate appellant provided banking documentation which established that it had three bank accounts with TD, Scotiabank and CIBC.
- [16] The respondent produced bank statements for the accounts listed above which reveal that:
- i. The corporate account with TD had a balance of \$24.14 on December 31, 2020;
  - ii. The corporate account with CIBC had a balance of \$1,424.26 on November 30, 2021; and
  - iii. The corporate account with Scotiabank had a balance of \$73.38 on November 30, 2021

- [17] These statements show that as of the end of November 2021, the corporation had a balance of approximately \$1,500.00. As noted above, the appellant submitted that the corporate bank statement from CIBC for the period of November 1, 2021 to November 30, 2021, showed that the account had deposits of \$14,933.15 and withdrawals of \$13,444.92 over that period. The appellant asserted that this is evidence that the corporation is active and financially healthy. As previously stated, I do not find this helpful, as there are no details as to the deposits and withdrawals which could establish the sources of the appellant corporation's income or what the expenses were.
- [18] These corporate bank statements, taken together with the personal financial position of the appellant, lead me to conclude that the corporate appellant cannot reasonably be expected to be financially responsible in the conduct of its business according to s. 6(1)(a)(i) and (ii) of the Act.

### *Business Plans*

- [19] On November 10, 2020, the appellant completed and filed the corporate appellant's OMVIC business application. In the "Section E Business Plan" portion of that application the appellant stated that the corporate appellant had \$1,500.00 in start up capital and that the projected number of vehicles for the start up of the dealership is one 2011 GMC Safari at a cost of \$300.00 to \$1,000.00.
- [20] On May 19, 2022, the appellant completed the OMVIC Business Plan Requirement. The appellant stated on the included Business Plan Chart that, as of May 19, 2022, the corporate appellant had \$1,500.00 in savings. The appellant projected the monthly operating expenses at \$420.00.
- [21] The appellant submits that the amounts on both the Business Plan on the application of November 2020 and the amounts on the Business Plan Chart of May, 2022 are realistic. As noted, the appellant submits that, as the business will only be dealing in one vehicle at a time, the expenses are projected to be minimal.
- [22] The respondent submits that the appellant is unrealistic in his projections of the corporate appellant's expenses. The respondent submits that neither the Business Plan nor the Business Plan Chart take into account all reasonable expenses that will occur when operating a dealership. Among those expenses not included are salaries, insurance, debts and tax obligations.
- [23] I concur with the respondent in this regard. The appellant's projections of the corporate appellant's expenses are not only minimal but incomplete. When these projections are coupled together with the aforementioned banking documentation

they exhibit a precarious financial position and an overly optimistic outlook for the corporate appellant.

- [24] Of even more cause for concern is the corporate appellant's negative position with the Canada Revenue Agency ("CRA").

*CRA tax obligation*

- [25] The evidence at the hearing is that CRA obtained a lien against the corporate appellant with respect to debts owing by the corporate appellant to CRA in the amount of \$35,324.00 as of December 2020.
- [26] On December 14, 2020, the Registrar emailed the appellant requesting, among other items, a written and signed explanation including what steps he has taken to resolve the issue with CRA and to provide his CRA Notices of Assessment ("NOA") for 2018 and 2019. The Registrar requested that the information be provided by January 15, 2021.
- [27] On January 18, 2021, the appellant requested an extension of time to produce the explanation and documentation. The deadline for submitting the requested documentation was subsequently extended to March 12, 2021.
- [28] On March 19, 2021, the respondent again emailed the appellant and advised that the "application is now late, the requested documents were due last week...". The Registrar advised that if the appellant anticipated that the NOAs will require additional time, he can submit the other requested information while waiting for the NOAs. The respondent reminded the appellant that "The documents from CRA will still be required".
- [29] On October 26, 2021, the respondent again, via email, requested an update from the appellant with respect to the NOAs. The appellant responded, via email dated November 9, 2021, that the tax assessment is still pending.
- [30] Testifying for the respondent, Shelley Webb, Registration Team Lead for OMVIC ("Ms. Webb") testified that the lack of the requested CRA documentation and information "tied their hands" with respect to approving the appellant's registration. She testified that they did not receive any NOAs and the only information that they received with respect to the CRA lien was the amount of that lien.
- [31] Also testifying for the respondent, Thaya Gangatharan, Director of Registration for OMVIC ("Ms. Gangatharan") testified that, as the appellant was a first-time applicant, the Registrar has no history to base their decision on, and they therefore must rely upon what they receive from the appellant in order to determine the

financial viability of the applicants. She stated that if the applicant's financial standing is not in line with the objective of the *Act*, it is a concern to OMVIC.

[32] Ms. Gangatharan further testified that OMVIC did not receive any information with respect to CRA, nor did the appellant provide proof of steps that he had taken to resolve the issue of the lien and garnishments. She also testified that they also had not received the requested NOAs.

[33] The appellant testified that the issue regarding the CRA and the NOAs is due to a mistake that H&R Block made regarding his 2019 taxes. He advised that it is his understanding that no NOAs can be issued by the CRA until the mistake is corrected.

[34] The appellant also testified that it was his belief that the NOAs or information regarding the lien and garnishments were no longer required as the respondent stopped requesting them after March 2021.

[35] I am not persuaded by the appellant's explanations. He provided no documentation from either H&R Block, nor the CRA, to verify that the issue of the lien and garnishments are a result of H&R Block's mistake. Nor did he provide, either by way of documentation or in his testimony, any plan of action to deal with the CRA situation.

[36] I also do not accept the appellant's position that it was his belief that the NOAs and CRA information was no longer needed as the respondent stopped requesting them. The evidence submitted by the respondent establishes that the NOAs and CRA information was requested at least three times. Further, in the March 19, 2021 email the Registrar specifically advised the appellant that (even should it take some time), "The documents from CRA will still be required".

[37] I conclude that the appellant has failed to produce the necessary and sufficient documentation from CRA reasonably requested by the Registrar. The appellant has also failed to provide evidence that the CRA lien was the result of a mistake by his accountant. Further the appellant has failed to offer a credible plan of action with respect to resolving the CRA issue.

## **CONCLUSION**

[38] With respect to the appellant's application, when considering the lack of personal financial documentation I conclude that the appellant cannot reasonably be expected to be financially responsible in the conduct of business according to s. 6(1)(a)(i) of the *Act*.

- [39] With respect to the corporate appellant's application, the issue of the lien by the CRA remains in effect, jeopardizing the corporate appellant's financial viability. Also, importantly, as the personal financial position of the appellant has not been shown to be financially viable, I conclude that the corporate appellant cannot reasonably be expected to be financially responsible in the conduct of its business according to s. 6(1)(d)(i) and (ii) of the Act.
- [40] For those reasons I find that the corporate appellant cannot reasonably be expected to be financially responsible in the conduct of its business.

### **ORDER**

- [41] Pursuant to s. 9(5) of the *Act*, the Tribunal directs the Registrar to carry out its proposal to refuse the registration of the appellants.

**LICENCE APPEAL TRIBUNAL**



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**Jeffery Campbell  
Vice-Chair**

***Released: December 8, 2023***