



Citation: 1830105 Ontario Inc. o/a Legacy Auto Center and Alan Sabri v. Registrar,
Motor Vehicles Dealers Act, 2002, 2022 ONLAT MVDA 12387

Date: 2022-02-14
File Number:12387/MVDA

An appeal from a Notice of Proposal by the Registrar, *Motor Vehicle Dealers Act, 2002*,
S.O. 2002, c. 30, Sch. B to revoke the registration of 1830105 Ontario Inc. o/a Legacy
Auto Center and refuse the registration of Alan Sabri

Between:

1830105 Ontario Inc. o/a Legacy Auto Center and Alan Sabri

Appellants

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

Decision and Order

Adjudicator: Katherine Livingstone, Member

Appearances:

For the Appellants: Justin Jakubiak, counsel
Vincenzo Piruzza, paralegal

For the Respondent: Diana Mojica, counsel

Heard by audio tape

Overview

- [1] This matter has a rather complex and lengthy history.
- [2] The present hearing deals with a Notice of Proposal (“NOP”) issued on September 17, 2019, by the Registrar under the *Motor Vehicles Dealers Act, 2002* (“the Act”) to refuse registration of the appellant, Alan Sabri, as a motor vehicle salesperson and to revoke the registration of the appellant, 1830105 Ontario Inc. o/a Legacy Auto Center (“Legacy”) as a motor vehicle dealer. The Act is administered and enforced by the Ontario Motor Vehicle Industry Council (“OMVIC”). Some review of the history of the licences of both appellants is necessary to provide the underpinning of the present NOP.
- [3] Mr. Sabri was registered as a motor vehicle salesperson under the Act between July 16, 2009, and March 5, 2013.
- [4] On January 9, 2013, Mr. Sabri applied for registration as a motor vehicle dealer, under the Act, using the name of Legacy Auto Center. On October 8, 2013, Mr. Sabri applied for a reinstatement of his motor vehicle salesperson registration.
- [5] On October 7, 2014, the Registrar issued an NOP to refuse the registrations of both Mr. Sabri and Legacy for reasons that included the fact Mr Sabri had outstanding judgements against him. On May 1, 2015, the Registrar issued a Notice of Further and Other Particulars with respect to the NOP, alleging that when Mr. Sabri completed his applications, he had provided false statements with respect to his outstanding judgements.
- [6] On May 13, 2015, the NOP was settled by way of a Consent Order of the Licence Appeal Tribunal (the Tribunal) which resulted in both appellants being registered, subject to conditions. Mr. Sabri was to be the sole director and officer of Legacy. Several of the conditions related to issues of financial responsibility.
- [7] Paragraph 10 of the Consent Order required the appellants to:
- “take immediate steps to resolve, and/or pay the outstanding judgements to Charles Lamon and 2142563 Inc.”; and
- “advise the Registrar of specific steps taken in this regard within 60 days of the date of this Order and continue to update the Registrar at least once per month thereafter”.
- [8] Additionally, paragraph 14 of the Consent Order advised that:

“the Registrar may take further administrative actions, including a proposal to suspend or revoke registration, arising from any matters that have occurred or may occur related to honesty and integrity, financial responsibility or compliance with these terms and conditions”.

- [9] On July 7, 2019, the registration for Legacy was renewed by the Registrar after the yearly renewal form was completed and submitted. On July 8, 2019, Mr. Sabri's registration lapsed after he failed to renew it on time. He is not currently registered under the Act. Legacy continues to maintain its operations.
- [10] On September 17, 2019, the Registrar issued an NOP to Refuse and Revoke Registration, proposing to refuse the registration of Mr. Sabri as a motor vehicle salesperson under the Act and to revoke the registration of Legacy as a motor vehicle dealer under the Act.
- [11] On October 11, 2019, a Notice of Appeal relating to the NOP was submitted to the Tribunal on behalf of both appellants.
- [12] On September 21, 2020, the Registrar served a Notice of Further and Other Particulars with respect to an additional ground the Registrar was relying on in the NOP. This is the NOP that is the subject of this hearing.
- [13] The NOP is based on the grounds that:
- a. Mr. Sabri, as both a salesperson and sole director of Legacy, breached the terms of the conditions of both registrations which therefore disentitled registration pursuant to s. 6 (1) (f) of the Act and
 - b. Mr. Sabri's past conduct disentitled him to registration as a salesperson pursuant to s. 6 (1) (a) (ii) of the Act. Additionally, as the sole officer and director of Legacy, Mr Sabri's past conduct disentitled Legacy to registration as a dealer, pursuant to s. 6 (1) (d) (iii) of the Act
- [14] Unfortunately, the current NOP has been before Tribunal for a protracted period.
- [15] The setting of a hearing date was delayed, first by a change in the Registrar's counsel, and further by the COVID-19 pandemic. A hearing date was then scheduled for two days in September 2020; however, it was adjourned and rescheduled to October 27, 2020, for two days.
- [16] On October 27, 2020, a virtual hearing with respect to the NOP commenced before another adjudicator. Mr. Piruzza represented both Mr. Sabri, and the corporation, Legacy. The matter continued on October 28 but did not finish. It was

adjourned for additional days in November 2020. However, part way through the hearing on November 19, Mr. Sabri advised that he had terminated his relationship with Mr. Piruzza and requested an adjournment to seek new representation. The adjudicator granted the request and the matter was adjourned to November 23, 2020, to determine what progress Mr. Sabri had made with respect to obtaining new representation.

- [17] On November 23, 2020, the hearing reconvened by teleconference at which time the appellant requested a further adjournment to facilitate obtaining new representation. Following discussions with the parties, the adjudicator issued an Order directing the hearing be adjourned to February 5, 2021.
- [18] On February 5, 2021, the appellants appeared with new counsel, Mr. Jakubiak. The hearing continued on February 5. However, the hearing landscape changed with the appearance of Mr. Jakubiak because both the appellants and the respondent now wished to call additional evidence, thereby extending the time needed to complete the hearing. Three more days were set aside, and the hearing ended on March 25, 2021.
- [19] Unfortunately, the adjudicator became unable to complete their decision. In October 2021, the parties were contacted by the Tribunal with respect to this issue. The Tribunal offered the parties two possible solutions: either the Tribunal would schedule a hearing de novo before another adjudicator or the recordings would be obtained from the court reporting company and a new adjudicator would review the recordings together with the filed exhibits and then render a decision.
- [20] Counsel for the respondent was agreeable to proceed by way of a new adjudicator reviewing the recordings and exhibits. Counsel for the appellants indicated a preference for a hearing de novo; however, determined it was not financially feasible. Accordingly, Mr. Jakubiak also agreed to a new adjudicator reviewing the recordings and exhibits. Counsel for the appellants also requested the opportunity to appear before the new adjudicator after they had reviewed the evidence to make brief submissions and answer any questions or concerns the adjudicator may have.
- [21] As a result, in December 2021, I was assigned to review the recordings and exhibits and render a decision. During my review, there was the odd occasion when the audio became muffled or went silent for short periods of time. On some of those occasions, it was apparent that the participants in the hearing were experiencing the same problem. I am satisfied that those brief periods did not negatively impact on my ability to understand the evidence in its entirety.

[22] After completing the review, a video appearance before me was arranged for February 1, 2022, with counsel and their clients. At that time, I asked for clarification on the parties' respective positions and requested input on conditions for both Mr. Sabri and Legacy, in the event I was prepared to substitute my opinion for that of the Registrar.

Issues

[23] The issues to be decided in this matter are as follows:

- i) Did the appellants breach a condition of their registrations?
- ii) Does the appellants' past conduct afford reasonable grounds for belief that they will not carry on business in accordance with the law and with integrity and honesty?
- iii) If the Registrar proves one or more of the above grounds for refusal and revocation, what is the appropriate outcome?

Result

[24] I find that commencing February, 2018, the appellants breached paragraph 10 of the conditions of their registrations in that they ceased taking steps to resolve and/or pay the outstanding judgements and failed to notify OMVIC on a monthly basis as to the steps taken to address the outstanding judgements.

[25] I find the Registrar has not established the past conduct of the appellants affords reasonable grounds for belief that they will not carry on their business in accordance with law and with integrity and honesty.

[26] I find this is a matter where the public interest can be adequately protected by ordering the registration of the appellants on terms and conditions. Accordingly, I am substituting my opinion for that of the Registrar and I order the Registrar to reinstate the registration of the appellant Alan Sabri as a motor vehicle salesperson and continue the registration of the appellant Legacy as a motor vehicle dealer, with each registration on terms and conditions.

The Law

[27] The Act has two principal purposes. First, it provides protection to consumers when making what is, for most individuals, a very significant and expensive

purchase. Secondly, it is intended to promote professionalism in persons involved in the automobile sales industry in Ontario. A person, whether an individual or company, registered under the Act is required to adhere to the Act and the regulations made under it, as well as abide by any terms and conditions that may be attached to their registration.

- [28] Section 8(1) of the Act permits the Registrar to refuse or revoke a registration if, in his or her opinion, the applicant (or registrant as the case may be) is not entitled to registration under section 6 of the Act. In this case, the Registrar relied upon s. 6 (1) (f) with respect to both appellants, alleging they breached a condition of the registrations. Additionally, the Registrar relied on s. 6 (1) (a) (ii) with respect to Mr. Sabri and s. 6 (1) (d) (iii) with respect to Legacy, alleging that the past conduct of the appellants affords reasonable grounds of belief that they will not carry on business in accordance with law and with integrity and honesty.
- [29] With respect to the breach of a condition, the Registrar bears the onus of establishing the breach on a balance of probabilities.
- [30] The Registrar also bears the onus of proving that the past conduct of the appellant affords reasonable grounds for belief that the appellant will not carry on business in accordance with law and with integrity and honesty. The standard of proof is "reasonable grounds for belief," which is a lower standard of proof than proof on a balance of probabilities. The test, however, is more than mere suspicion and the evidence providing the foundation of the reasonable grounds must be credible and compelling: *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc. (Famous Flesh Gordon's)*¹. The Tribunal must consider evidence of past conduct, both good and bad, including whether there is a nexus between the overall conduct and the regulated industry,² and determine whether the Registrar has discharged its burden.
- [31] Following a hearing, the Tribunal may order the Registrar to carry out its proposal or substitute its opinion for that of the Registrar and may attach conditions to its order or to a registration, pursuant to s. 9(5) of the Act.

Evidence and Analysis

i) Did the appellants breach a condition of the registrations?

¹ 2013 ONCA 157 at par 18.

² *Nagy v. Registrar, Real Estate Business Brokers Act*, 2012 ONSC 325 at par. 58-61 (Div. Ct.); *C.S. v. Registrar, Real Estate Business Brokers Act*, 2019 ONSC 1652 at par. 32 (Div. Ct.)

[32] As noted earlier, paragraph 10 of the 2015 Consent Order required the appellants to:

“take immediate steps to resolve, and/or pay the outstanding judgements to Charles Lamon and 2142563 Inc.”; and

“advise the Registrar of specific steps taken in this regard within 60 days of the date of this Order and continue to update the Registrar at least once per month thereafter”

[33] It is the position of the respondent that the appellants breached both parts of the conditions in paragraph 10 of the Consent Order. The appellants take the position that if they breached the condition, any breach only commenced after February 2018 because, unbeknownst to the appellants, their counsel stopped communicating with OMVIC.

[34] It was agreed amongst the parties that when the Consent Order was signed in 2015, there were judgements outstanding against Mr. Sabri involving 2142563 Inc. and a person named Charles Lamon. There was no dispute that sometime between 2006 and 2008, Mr. Lamon had been Mr. Sabri’s landlord. The parties also agreed that at the time Mr. Sabri’s registration lapsed in July 2019, no payments had been made towards any of the outstanding judgements that were the subject of the Consent Order. However, while the respondent alleged there were two separate judgments with respect to Mr. Lamon, the appellants claimed that up until the time of commencement of this hearing, they were only aware of one judgement respecting Mr. Lamon.

a) The Outstanding Judgements

[35] The particulars of the judgement with respect to 2142563 Inc. were never fully fleshed out during the hearing. It appears a judgement for \$10,000 was granted against Mr. Sabri following an *ex-parte* motion on September 12, 2008. The judgement debt was subsequently bought by Source One Financial Inc. (Source One) who, in turn tried to collect on the debt before turning it over to a collection agency.

[36] The evidence with respect to the judgement in 2142563 Inc. was clouded with contradictions as to whether the appellant, Mr. Sabri, is responsible for the monies owing and the legality of the judgement itself. I find the issue of whether monies are actually owing to be a red herring in the hearing as the condition in paragraph 10 of the Consent Order states the appellants are to take immediate steps to *resolve*,

and/or pay the outstanding judgements (emphasis added). However, I find the evidence of attempts made to collect the debt and/or resolve the matter germane to the issues before me.

- [37] The respondent called three witnesses to recount the attempts made to collect the debt owed as a result of the 2142563 Inc. judgement.
- [38] Mr. Porter works as a recovery manager with Source One. He testified his company bought a portfolio which included the 2142563 Inc. judgement against Mr. Sabri. Source One tried to collect the debt. In 2009 and in 2011, the company made efforts to contact Mr Sabri with respect to the debt; however, those efforts were unsuccessful. Mr. Porter advised that Source One was contacted in June 2015 by counsel for the appellants and some discussion ensued about a possible settlement. Nothing, however, came to fruition and shortly after, Source One turned the debt over to Kingston Data and Credit to handle the collection.
- [39] Mr. Maderios is employed as a receivables manager by Kingston Data and Credit. He has been employed there for over 5 years and is familiar with the 2142563 Inc. judgement. He was aided in his recollection by notes entered on the file maintained with respect to the claim. He testified that he had contact with both Mr. Sabri and counsel for Mr. Sabri from 2015 onward. Mr. Maderios also indicated in that in October of 2015 he made the decision not to pursue the judgement any further “as there are too many holes in the claim and the fact that it is filed in the wrong jurisdiction”.
- [40] However, after that decision, he had ongoing email contact with the appellants’ counsel from November 2015 to March 2016, when Mr. Maderios was advised that the appellant’s counsel had left the firm and he should contact the law firm’s reception. There does not appear to have been any further contact with either appellant’s counsel or Mr. Sabri after March 2016, although Mr. Maderios did say his company made many attempts both through personal phone calls and robo calls to connect with Mr. Sabri but did not receive a reply. His next contact was on October 12, 2020, when he received an email from Mr. Pirruza, who, at that time, was representing the appellants. Mr. Maderios said Mr. Pirruza advised him he would be applying to set the judgement aside.
- [41] I found both Mr. Porter’s and Mr. Maderios’ evidence to be straight forward and corroborated, both by their file notations, and by filed correspondence from the appellants’ counsel during the period in question.

- [42] The respondent also called Mr. Berger, the former president of 2142563 Inc. As I understand it, this was in response to Mr. Sabri's position that he did not owe 2142563 Inc. any monies.
- [43] Prior to the 2015 Consent Order, Mr. Sabri provided the Registrar with email correspondence purportedly from Mr. Berger wherein Mr. Berger acknowledged that Mr. Sabri never owed any monies to 2142563 Inc.
- [44] Mr. Berger did not recall the email correspondence in question and didn't believe he had sent it. He confirmed some knowledge of Source One but apparently had no recollection of 2142563 Inc.'s portfolio being bought by Source One.
- [45] Mr. Berger acknowledged that just prior to the resumption of the hearing in March 2021, he signed an affidavit drafted by Mr. Piruzza consenting to the judgement being set aside. At the same time, he stated he didn't read the affidavit, as he'd "spent too much time on it already and I thought it was a waste of my time". This statement describes the whole tenor of Mr. Berger's evidence. Given his dismissive attitude toward the whole issue, I did not find his evidence, particularly as it relates to whether he sent the email in 2011 to Mr. Sabri, to be particularly helpful. I found Mr. Berger's evidence distracted from the core grounds of the NOP.
- [46] The respondent called Mr. Larry Lamon. Mr. Lamon originally testified on the first day of the hearing. Due to developments between the hearing continuation dates, he was recalled on the March 15, 2021, hearing date.
- [47] Mr. Lamon is the son of Charles Lamon, who died in 2017. Mr. Lamon testified that his father had two outstanding judgements against Mr. Sabri and that prior to his death, his father had made efforts to collect the monies owing on the judgements. One of the judgements was for nonpayment of rent and the second one was for damage caused to the apartment while Mr. Sabri and his wife were tenants. Mr. Lamon said his father had difficulty locating Mr. Sabri and, given the close relationship he had with his father, he said he would have been aware if there had been contact between the two. However, the respondent did file an affidavit purportedly signed by Mr. Lamon Sr. indicating that he had personally served Mr. Sabri in April 2008, with notice of an examination and enforcement hearing with respect to one of the judgements, which indicates Mr. Lamon Sr. had some contact with Mr. Sabri
- [48] Mr. Lamon said his father lived in the same residence for years up until the time it was sold in 2018. He was unaware of any efforts by Mr. Sabri or anyone acting on his behalf to contact either his father or himself to settle the judgements until he was

contacted by Mr. Piruzza in September of 2020. At that time, he had some initial discussions with Mr. Piruzza and then had Mr. Piruzza contact his counsel. These discussions did not result in any settlement. Mr. Lamon agreed his discussions with Mr. Piruzza centered around one judgement, not two.

- [49] On February 19, 2021, after receiving a notice to attend, Mr. Lamon went to Small Claims Court with respect to a motion brought by Mr. Piruzza on behalf of Mr. Sabri. The motion was only with respect to one of the judgements and centred on the narrow issue of what amount was necessary to be paid into court in order to satisfy the judgement. The court determined the amount to be \$5,732.71. On March 9, 2021, Mr. Sabri paid \$3,300 into court towards satisfaction of the judgement.
- [50] Mr. Lamon was obviously frustrated by what he felt was the lack of response by Mr. Sabri with respect to his late father's judgements. I found his evidence to be balanced and that he testified to what he thought was the truth. However, contrary to his evidence, I am not satisfied that he was privy to all the circumstances concerning his father's interactions with Mr. Sabri.

b) Efforts Undertaken to Resolve or Pay the Judgements

- [51] Sometime prior to the signing of the 2015 Consent Order, the appellants retained counsel to assist with their applications to OMVIC. In yet another example of the complexity of this matter, the appellants' representation changed more than once between 2015 and 2018, none of it apparently due to the appellants' actions but rather to a shifting of lawyers to different firms. In all, there were two different law firms and four different lawyers and legal assistants who corresponded with OMVIC prior to the issuing of the NOP.
- [52] During the evidence of Ms. Gengatharan, a Deputy Registrar under the Act, the respondent filed an exchange of emails and letters between the appellants' counsel and OMVIC, commencing shortly after the Consent Order was signed. When addressing the issue of whether there was a breach of conditions, it is necessary to review this correspondence in some detail.
- [53] The first correspondence introduced was a reporting email with attachments, dated July 10, 2015, from the appellants' lawyer, Ms. De Vuono. When the appellants first engaged Ms. De Vuono, she was with the firm of Shulgan, Martini, Marusic LLP. By the time the Consent Order was signed, Ms. De Vuono was with Marusic Law.
- [54] The July 10 email was received within the 60 days of the signing of the Order, as required by the condition in paragraph 10. It is clear from the correspondence that shortly after the Consent Order was signed, appellants' counsel had taken steps to

contact both Source One and Mr. Lamon. They had encountered difficulties in both matters. With respect to 2142563 Inc. on June 5, 2015, a letter to both Source One and 2142563 Inc was sent wherein the appellants' counsel acknowledged the judgement while advising of Mr. Sabri's position that he did not owe any money and included a copy of the purported email communication between Mr. Sabri and Mr. Berger in 2011. Both letters were sent back to the lawyer marked "return to sender". After obtaining an updated address for Source One, the same letter was again sent on June 29, 2015.

- [55] With respect to Mr. Lamon, counsel refers to two matters commenced by Mr. Lamon, one in 2007 and one in 2008. Further, it appears that, while counsel was doing work in terms of contacting the parties, Mr. Sabri was also doing some leg work in this regard, by attending the Windsor Small Claims Court and communicating with the court by phone. The requisition for the files appears to be signed by Mr. Sabri.
- [56] On July 17, 2015, OMVIC counsel, Ms. Samaroo, confirmed in an email that the Registrar was satisfied the appellants had responded with the 60 days of the Consent Order.
- [57] On August 10, 2015, Ms. De Vuono provided a further update advising that she had yet to hear from Source One and was still trying to retrieve the Small Claims files with respect to Mr. Lamon from the court archives.
- [58] On September 4, 2015, Ms. De Vuono advised OMVIC that another letter had been sent to Source One and no reply had yet been received. Another letter had been sent of August 11, 2015, both by fax and mail. She said the files with respect to Mr. Lamon had arrived at the Windsor courthouse and they will copy the files so that they can take "further steps to attempt to resolve these matters". She also stated, "Mr. Sabri and I will continue our efforts to follow up on these matters." Ms. De Vuono received a response from Ms. Samaroo on September 11 that all was "satisfactory".
- [59] On October 5, 2015, Ms. De Vuono advised she had still not heard from Source One. Further she said Mr. Sabri was in the process of reaching out to Mr. Lamon using the contact information from the court file. Ms. Samaroo replied on October 6 that this was "satisfactory"
- [60] On November 12, 2015, Ms. De Vuono wrote that she again wrote Source One on October 16, 2015 and having received no answer to her letters, she contacted them by phone. She was in the process of reviewing documentation that Source One had forwarded to her. With respect to Mr. Lamon, Mr. Sabri had made efforts to contact

him by phone without success and was going to write to him. Ms. Samaroo replied on November 13, indicating this was “satisfactory”.

- [61] On December 10, 2015, Ms. DeVuono wrote OMVIC counsel and advised that with respect to Source One they had “discussed options with Mr. Sabri” and were in the process of finalizing our instructions. As to Mr. Lamon, Ms. De Vuono said Mr. Sabri had left voice message with no response and he “intends to write to him shortly regarding a possible resolution of this matter”. It appears the contact person at OMVIC changed after December of 2015 to Ms. Leggard.
- [62] On January 8, 2016, Ms. De Vuono emailed Ms. Leggard and advised the status had not changed since her email of December 10, 2015.
- [63] On February 9, 2016, Ms. De Vuono emailed Ms. Leggard to say that Mr. Sabri intended to bring a motion in Small Claims Court to set aside the 2142563 Inc. judgement. Further, she said Mr. Sabri was continuing his efforts to contact Mr. Lamon.
- [64] On March 18, 2016, Mr. Cooke, a legal assistant from Marusic Law emailed Ms. Leggard and provided the same update as the February one.
- [65] On April 27, Mr. Cooke emailed Ms. Leggard and advised Mr. Sabri’s work schedule had not allowed him to bring the motion to set aside the 2142563 Inc. judgment but it was still his intention to do so. He further said Mr. Sabri was continuing to try to contact Mr. Lamon.
- [66] On June 3, 2016, Mr. Cooke emailed Ms. Leggard and said although Mr. Sabri still intended to bring the motion, no significant steps had been made. With respect to Mr. Lamon, the situation was unchanged.
- [67] On July 22, 2016, Mr. Cooke emailed Ms. Leggard providing the same update from the month before.
- [68] On September 15, 2016, Mr. Cooke emailed Ms. Leggard providing the same update from July 22, 2016
- [69] In each email sent by Mr. Cooke to Ms. Leggard, between February 9 and September 15, 2016, he ended his correspondence by stating he hoped the update was satisfactory. The respondent did not file any communication from Ms. Leggard indicating that the reporting was not satisfactory.

- [70] The next correspondence filed by the respondent was a May 19, 2017, email from a Ms. Aucoin from Marusic Law to Ms. Leggard. Ms. Aucoin was writing to update OMVIC “since the last email you received from our office on July 22, 2016”. The content is the same as the update on July 22, 2016.
- [71] On May 23, 2017, Ms. Samaroo replied to Ms. Aucoin’s email. She inquired why Mr. Sabri had not brought his motion to set aside the judgement as some time had passed.
- [72] On June 2, 2017, Ms. Samaroo made a notation on the file that she had been contacted by Ms. Medaglia from Marusic Law advising she was now the lawyer assigned to Mr. Sabri’s file. She said she would investigate the status of the motion to set aside the judgement and then provide Ms. Samaroo with their position.
- [73] On July 27, 2017, Ms. Samaroo noted she had received a phone call from Ms. Medaglia advising that with respect to 2142563 Inc. she had reviewed an email from 2011 from the company which indicated Mr. Sabri didn’t owe any money. Ms. Medaglia asked if this would satisfy the Registrar. Ms. Samaroo remembered the 2011 email had been provided to OMVIC back in 2014 and that it wasn’t enough to satisfy the Registrar. Ms. Samaroo noted she told counsel that this has been going on for a while and that Mr. Sabri “cannot just let it sit there as he has an obligation to be financially responsible as per the legislation and his T&Cs”. Ms. Medaglia said as she had only recently inherited the file she would speak with Mr. Sabri and update Ms. Samaroo as soon as possible.
- [74] The next correspondence filed by the respondent was an October 17, 2017 email from Ms. Aucoin to Ms. Samaroo wherein she said her office was in the process of “drafting and bringing a Motion to set aside” the 2142563 Inc. judgement and the update with respect to Mr Lamon remained the same.
- [75] On December 21, 2017, Ms. Samaroo created a written summary of a telephone conversation with Ms. Medaglia. Ms. Medaglia inquired whether the Registrar would consider removing the conditions on the appellants’ registrations as the judgements were no longer on his credit report and Mr. Sabri had advised he was not being garnished for anything. She said she did not want to vacate the judgement and “stir the pot” if she didn’t have to. Ms. Medaglia advised they had been trying to find “the creditor” but had not had success. It is unclear what creditor she was referring to.
- [76] Ms. Samaroo’s notation indicated she told Ms. Medaglia that Mr. Sabri cannot ignore a judgement and Mr. Sabri had to deal with them if he didn’t want to report anymore. Ms. Samaroo told Ms. Medaglia she would speak with the Registrar about removing

the condition but that if they were not agreeable then Mr. Sabri needed to do whatever was necessary so he didn't have to report anymore.

- [77] Ms. Medaglia emailed Ms. Samaroo on January 3, 2018, confirming the appellants were seeking to have the condition in paragraph 10 removed from the terms and conditions. She said that Mr. Sabri disputed the judgements and "based on the information provided to me, it appears that Mr. Lamon and 2142563 Inc. have no interest in continuing to pursue these matters".
- [78] On February 2, 2018, Ms. Samaroo responded to Ms. Medaglia's request to remove paragraph 10, advising the Registrar would not consent to the removal and stating it was Mr. Sabri's responsibility to deal with the issue.
- [79] On the same day, Ms. Samaroo received an out of office email response from Ms. Medaglia, saying she would respond as soon as possible on her return.
- [80] No further correspondence between OMVIC and the appellants' counsel was filed by the respondent. It is the respondent's position that there was no further communication with appellants' counsel until the most recent NOP was issued. The appellant did not provide any evidence to the contrary. However, in her evidence, Ms. Gengatharan also addressed the lengthy correspondence that ensued between OMVIC and Mr. Sabri, once he was told in July 2019, that his registration was not being approved and prior to the NOP being issued in September 2019. The thread of emails repeatedly outlined Mr. Sabri's frustration at the lack of reinstatement of his registration, the steps he says he was now personally prepared to take to address the Lamon judgement, and the fact that he believed he did not owe 2142563 Inc. any monies.
- [81] After the Registrar issued the NOP in September 2019, the appellants retained Mr. Piruzza. Mr. Piruzza gave evidence at the hearing, saying he was retained to represent the appellants on the appeal. He outlined what steps he also took to assist Mr. Sabri in dealing with the outstanding judgements.
- [82] With respect to the Lamon judgement, he said he sent a letter to the estate but did not get an answer. He then contacted Mr. Lamon's daughter through Facebook who in turn connected him with Mr. Lamon Jr. He said he had conversations with both Mr. Lamon and his lawyer to settle the matter. The amount Mr. Piruzza was offering was less than the amount of the judgement. Mr. Piruzza said he thought there were jurisdictional and other issues that may have impacted the judgement and he was interested in pursuing those avenues.

- [83] Mr. Piruzza testified that it was not until Mr. Lamon testified in October 2020, that he realized there were two separate judgements. On February 9, 2021, Mr. Piruzza appeared on the motion in Small Claims Court that Mr. Lamon referred to in his evidence. As noted earlier, on March 9, 2021, Mr. Sabri paid \$3,300 into court towards satisfaction of one of the judgements.
- [84] Respecting the 2142563 Inc. judgement, Mr. Piruzza agreed that he contacted Mr. Berger and undertook steps to set aside the judgement, despite the fact the judgement was part of a portfolio bought by Source One several years ago. The question of the appropriateness of this action is not something that needs to be determined by me in these proceedings.
- [85] I found Mr. Piruzza to be direct in his answers and I conclude that he undertook significant effort on behalf of his client to try and resolve the issue of the outstanding judgements. He started this effort shortly after he was retained and continued after his retainer on the appeal ended.
- [86] Mr. Sabri testified. He was originally licenced as a motor vehicle salesperson in 2009. Between then and March 2013, he worked for a couple of dealerships in Windsor, where he has lived since 1996. His registration ended on March 5, 2013. In October 2013, he applied to reinstate his salesperson licence. He also wanted to register Legacy as a dealership.
- [87] His applications resulted in an NOP issued by the Registrar in 2014 with a Notice of Further and Other Particulars in May 2105. With respect to the allegations in the Notice of Further and Other Particulars that he had answered “no” to the application question about whether he had outstanding judgements when in fact he had five judgements, Mr. Sabri testified he thought he was answering truthfully as there was nothing on his credit check. He said he had filled out the 2013 applications by himself and that after that he had lawyers fill them out so that they would be accurate.
- [88] He said there were negotiations between OMVIC and Ms. De Vuono before the Consent Order was signed in 2015, which allowed the registration of Mr. Sabri as a salesperson and Legacy as a motor vehicle dealer. During the negotiations, Ms. De Vuono was working for the “Martini” firm but at the time the Order was signed in May 2015, Ms. De Vuono was now working for Marusic Law. Although Ms. De Vuono reviewed the Order with him before he signed it, he did not think he “read it thoroughly”. He said at the time of signing the Order he only believed he had one judgement with respect to Mr. Lamon.

- [89] After the Consent Order was signed, he left the communication with OMVIC, about the terms and conditions, in the hands of his lawyers. He stated his understanding was that there was monthly communication between OMVIC and his lawyers, although he was “ping ponged” between lawyers. He was in regular contact with the law firm. He said he went from one lawyer to another to a legal assistant to a secretary and the firm just started “dismantling”. He said he never instructed his lawyers to stop communicating with OMVIC and his lawyers did not advise him they were no longer communicating with OMVIC. In August 2019, he discovered they had not been communicating as a result of his own communications with OMVIC about the status of his licence.
- [90] With respect to what he believed his lawyers were doing about the judgements, Mr. Sabri said his understanding was “letters were sent, phone calls were made, none of which were returned, and further letters were sent”.
- [91] Mr. Sabri said in June 2019 he applied for the required yearly registration of Legacy; however, due to his mistake he did not register for renewal of his salesperson licence. On July 22, 2019, he received information that his registration had expired. He tried to renew it at that point; however, it was not approved. He contacted the law firm he had been dealing with and was told to “get another lawyer because this place has sunk under”.
- [92] Mr. Sabri agreed he then contacted OMVIC several times to try and reach an understanding about how to deal with his lapsed registration and the outstanding issues surrounding his terms and conditions. It is clear from the filed correspondence between Mr. Sabri and OMVIC that Mr. Sabri was annoyed at the way his file was being handled by OMVIC. Once he was served with the NOP, he contacted Mr. Piruzza to assist with the appeal and to deal with the outstanding judgements. He confirmed that in February 2020, he made a \$3,300 payment into court on the one Lamon judgement and on March 23, 2021, a payment of \$4,500 to the Lamon family with respect to the other judgement. He was unwavering in his testimony that he did not owe 2142563 Inc. any monies.
- [93] Mr. Sabri described Legacy as a used car lot with a significant focus on exporting cars to the United States. Since the loss of his registration, Legacy has been run by his sister who is registered with OMVIC. The dealership employs a full-time mechanic, a full-time general labourer and 2 part time salespeople. Although his wife is employed, the dealership is the family’s main source of income. Mr. Sabri described the time he has been without a registration as “tough”.

- [94] In cross examination, Mr. Sabri agreed that he had the same phone number and email address since 2009. He did not recall either Mr. Porter, Mr. Maderios or Mr. Lamon trying to contact him either by phone or email. He agreed that he knew in 2013 he owed money to Mr. Lamon but said he was not aware of judgements. He did not recall being served any papers by Mr. Lamon but did say Mr. Lamon had been at his house once, shortly after Mr. Sabri's son was born. He thought his wife had paid Mr. Lamon some money during the visit but was unclear on the details. After the Consent Order was signed, he said he tried calling Mr. Lamon so many times he remembered the number, which he rhymed off; however, there was no response. He remembered leaving messages on the phone for Mr. Lamon.
- [95] He said he was in contact with his lawyers between February 2018, and July 2019, and they told him they were still communicating with OMVIC. He was also told that motions were being filed.
- [96] With respect to his failure to file his renewal for his salesperson registration in 2019 in a timely fashion, Mr. Sabri said he had received emails about his renewals but that they had gone into his junk box and he had not seen them. His lawyer's office was "falling apart" so he contacted OMVIC about the renewals of his and Legacy's registrations. He was told that Legacy's needed to be renewed but that his salesperson registration had another year before renewal. So, he only filed for renewal of Legacy's registration, not his own. He said he had no reason not to do both registrations at the same time.
- [97] In assessing Mr. Sabri's evidence, I am mindful that I can accept all, some, or none of a witness's evidence. Overall, I accept the bulk of his evidence. Unlike the respondent's argument that his evidence was full of inconsistencies, I found Mr. Sabri to be for the most part, direct, passionate and responsive to the questions asked, although I do believe there are areas where he has convinced himself that matters are other than they really are. Contrary to Mr. Sabri's evidence, I do believe that Mr. Maderios and Mr. Porter made efforts to contact him about the outstanding debt to 2142563 Inc. and he ignored these contacts, as he didn't believe he owed money to it. I accept his evidence that in 2011 he received an email from Mr. Berger stating he did not owe any money to 2142563 Inc.
- [98] As Mr. Sabri at one point in 2015 applied to the Small Claims Court to retrieve two files with respect to Mr. Lamon, and his lawyers in their correspondence to OMVIC refer to two files, I was unsettled by his firm position that, until recently, he thought there was only one file.

[99] While at first blush Mr. Sabri's stated reason for missing the renewal of his salesperson registration was that the reminders were in his junk box might seem implausible, it doesn't make sense that he would apply for one registration and intentionally forego the requirement to file the other. I accept his reason for the late filing.

[100] I find that after the Consent Order was signed in 2015, he put his faith in his lawyers to sort through what needed to be done to ensure there was not a breach of paragraph 10. After February 2, 2018, unfortunately that faith was misplaced. Should Mr. Sabri have been more attentive to what was occurring, or in this case, not occurring on his file? I find the prolonged time Mr. Sabri's matters continued in the hands of his lawyers without some type of resolution should reasonably have led him to ask more questions of his lawyers.

[101] After listening to Mr. Sabri's evidence, I conclude he took a much too casual approach to resolving and/or paying the judgements. He simply left it in the hands of the lawyers without prodding for results, even after a lengthy period had passed. He said he "thought they were doing what they were supposed to be doing". This casualness may be attributed to his belief, rightly or wrongly, that he didn't owe any monies to 2142563 Inc. and less than the amount of the judgements with respect to Mr. Lamon.

[102] I note that in the 2014 NOP, which led to the terms and conditions of the 2015 Consent Order, there is mention of two other outstanding debts, one for \$9,697 and the other for \$1,150. Since payment of these debts was not part of the terms of the Consent Order, I conclude they were paid before the Consent Order was signed. This may be some indication of Mr. Sabri's preparedness to make payments on debts which he does not dispute. However, I do not place great weight on this conclusion in reaching my findings.

[103] Counsel for the respondent argued the appellants breached both parts of paragraph 10 in that they did not take immediate steps to resolve or pay the outstanding judgements and also failed to update the Registrar on a monthly basis, saying the only thing the appellants did was make "empty promises". She argued Mr. Sabri did not provide proper instructions to his lawyers (although there was no evidence of this) and he "chose deliberately and knowingly not to take the necessary steps to comply with the Tribunal's Consent Order".

[104] I might have been more receptive to counsel's position if Mr. Sabri had not been represented by counsel during the time in question. The condition in paragraph 10 required "immediate steps" be taken to resolve and/or pay the outstanding

judgements. There was no time limit imposed on when the judgements were to be paid, only that “immediate steps” be taken. There was also no time limit imposed in the second part of the paragraph with respect to monthly reporting. One can therefore conclude there was an expectation on the part of OMVIC it would take some time for the condition to be fulfilled.

[105] I cannot ignore the steps counsel took on Mr. Sabri’s behalf, immediately after the signing of the Consent Order. The evidence before me is of monthly reporting, starting within 60 days of the signing of the Order, and continuing for a significant period of time, contacting and engaging in dialogue with Source One, retrieval of files from Small Claims Court with respect to the Lamon matter and attempts at contact with Mr. Lamon. I find counsel, on behalf of the appellants, complied with the first part of the condition in paragraph 10. During her evidence, Ms. Gengatharan agreed there had been compliance with the monthly contact provision up until January 2017.

[106] Counsel for the appellants argued that if there was a breach of the conditions in paragraph 10, it only occurred once the lawyers stopped their monthly communication with OMVIC. Further, he argued that this breach was due to the inaction of the lawyers, unbeknownst to the appellants.

[107] I accept the argument of the appellants and find there was a breach of the second part of paragraph 10, in that the monthly communication from the appellants’ counsel ceased. There was no evidence before me that the appellants were aware the communication had stopped, although, as I noted earlier, I find that Mr. Sabri could have been more proactive in questioning his lawyers as to the progress they were making on the matter.

ii) Does the appellants’ past conduct afford reasonable grounds for belief that they will not carry on business in accordance with the law and with integrity and honesty?

[108] The respondent argued that Mr. Sabri’s breach of the condition in paragraph 10, combined with false statements relating to outstanding judgements made by Mr. Sabri in his applications prior to the 2015 Consent Order, provide reasonable grounds for belief the appellants will not carry on business in accordance with the law and with integrity and honesty. Considering OMVIC’s mandate is public protection, she submitted that his past conduct is serious and raise concerns about the appellants “inability to act within the law”.

[109] Counsel referred to Ms. Gengatharan's evidence of the importance of ensuring both registered salespersons and dealers act with integrity and honesty due to the trust that is placed in them by the consumer. She said misleading OMVIC during the application process was a significant concern as was breaching terms or conditions on the registrations. She pointed to false statements made by Mr. Sabri regarding outstanding judgements, prior to the 2015 Consent Order, as examples of that concern. His failure to resolve the outstanding judgements which continued up until the time of the hearing, as well as his "pattern of excuses" also gave OMVIC concerns about his financial responsibility.

[110] However, there was nothing presented during the hearing indicating OMVIC had concerns about Mr. Sabri not fulfilling the other terms of the Consent Order that dealt with financial responsibility. These conditions dealt with the maintenance of bank accounts, including trust accounts, responsibilities to report any future outstanding judgements, and future sources of financing. Additionally, in cross examination Ms. Gengatharan agreed that OMVIC was not relying on consumer complaints when they issued the NOP. Nor were there any completed dealer audits that revealed harm done to consumers. Neither Mr. Sabri nor Legacy had convictions under the provisions of the Act or the *Consumer Protection Act*.

[111] I conclude that, other than the issue with respect to false statements prior to 2015 and the lack of resolution of the paragraph 10 judgement, OMVIC had no other areas of concern with respect to Mr. Sabri and the operation of Legacy.

[112] OMVIC was aware of the length of time that had passed without Mr. Sabri completing the full condition in paragraph 10, as is evident from the correspondence between OMVIC counsel and Mr. Sabri's legal representatives. Although in December, 2017, OMVIC counsel told Mr. Sabri's counsel that he just couldn't ignore the judgements, OMVIC took no steps then or in the ensuing 21 months, pursuant to paragraph 14 of the Consent Order, toward "further administrative actions, including a proposal to suspend or revoke registration, arising from any matters that have occurred or may occur related to honesty and integrity, financial responsibility or compliance with these terms and conditions". Rather, the registration of Legacy was renewed yearly, and Mr. Sabri's registration was also renewed up until the time he let it lapse. I agree with appellant's counsel when he said if Mr. Sabri had filed his renewal application on time he would still be registered.

[113] Respondent's counsel said it was not OMVIC's responsibility to "micro-manage" the appellant. That may be so; however, there was ongoing correspondence with OMVIC and the appellant's counsel and no timeline for completion of a resolution

was ever given by OMVIC nor any warning of potential action until Mr. Sabri failed to file his renewal application on time. I agree with appellants' counsel that OMVIC seemed to be "accepting of the status quo".

[114] Respondent counsel referred to case law where the issue of past conduct was reviewed. In *Goselin*³, the appellant was appealing a refusal of the Registrar to register him as a salesperson. Prior to applying for his registration, the appellant had lost his licence to trade in securities as a result of engaging in activity contrary to the public interest that had negatively impacted several dozen investors both financially and emotionally. The adjudicator found that, over the course of three years, the appellant had "made grave violations of the *Securities Act* and public policies" and on that basis upheld the refusal. An appeal to the Divisional Court was dismissed. Given the egregious actions of the appellant in *Goselin*, I find the matter is quite distinguishable from the one before me. There is no evidence that Mr. Sabri engaged in any comparable activity.

[115] In *Monzon v Registrar, Motor Vehicle Dealers Act*,⁴ the appellant had been refused registration after he did not disclose a criminal record including convictions for obstruction, theft, carrying a concealed weapon and breaches of court orders. The issue centred on assessing the honesty of the appellant. The adjudicator found that although the appellant had made significant strides in his life and had avoided the criminal justice system for five years, his recent nondisclosure on the application demonstrated a continuation of dishonest behaviour. The refusal was confirmed. Again, I do not find the case of great assistance. Although this was a case of nondisclosure on an application, arguably like Mr. Sabri's application post 2015, Mr. Monzon had a previous unenviable criminal record which together with the nondisclosure, was the concern for the adjudicator in terms of past conduct.

[116] The history of Mr. Sabri's interaction with OMVIC is not without concern. I have mentioned Mr. Sabri's seemingly laid-back attitude toward the judgements in question. Several years have passed since the terms and conditions were put in place. Additionally, his communication with OMVIC once his licence was not renewed was sometime intemperate. However, I note that once Mr. Sabri was informed by OMVIC that his lawyers had not be communicating with him, he quickly took steps to engage a new representative and begin the process of resolving the judgements once more. These efforts have met with some considerable success.

³ *Goselin (Re)*, [2008] O.L.A.T.D No. 269, appeal dismissed [2009] O.J. No. 1433 (Div. Ct.)

⁴ *Monzon (Re)*, 2002 CarswellOnt 8517 (ON LAT)

[117] Despite these concerns, I do not find his past conduct provides the nexus necessary to conclude there are reasonable grounds for belief the appellants would not carry on business in accordance with the law and with integrity and honesty. Unlike the cases provided to me, there was no evidence of prior criminal acts, breaches of other regulatory acts or untoward business practices being committed by the appellants. Importantly, there was no evidence of consumer harm.

[118] I am unable to conclude that in totality, there is compelling evidence that the appellants' past conduct affords reasonable grounds for belief that they will not carry on business in accordance with the law and with integrity and honesty.

iii) Having found a breach of a condition, what is the appropriate outcome of this case?

[119] Counsel for the respondent took the position that as there had been a breach the only option was a refusal to register Mr. Sabri and a revocation of Legacy's licence. She submitted that as the Tribunal had already dealt with Mr. Sabri in the past, "there was nothing else left for him".

[120] She referred me to the decision in *Tri-star Sales*⁵ where the appellant was appealing a revocation of his registration after an alleged breach of a condition of his registration. The conditions included a term that the appellant was not to conduct sales or purchases with anyone without first ensuring the person is registered as a dealer or purchase vehicles without ensuring the vehicle is registered to the seller. Complaints were received about noncompliance with these terms involving over 30 vehicles. Again, the nature of the breaches in the *Tri-star* matter are much more serious than in the present case. Additionally, the Consent Order signed by the appellants in *Tri-star* provided that if any of its terms were breached, the registration of the dealer and salesperson were to be revoked. This wording differs from the Consent Order signed by Mr. Sabri.

[121] With respect, paragraph 10 of the Consent Order was too open ended in its drafting, leaving room for uncertainty both in terms of the language around resolving vs paying the judgements and the contemplated timelines. I find the breach in this instance is principally a result of the lack of action by Mr. Sabri's counsel. Further, although OMVIC was aware of the fact the judgements had not been resolved, they took no further action and continued to renew the appellants' registrations.

⁵ *Tri-star Sales and Leasing and Vasilos Mitropoulos v. Registrar, Motor Vehicle Dealers Act*, [2002], appeal dismissed, [2004] O.J. No. 900 (Ont. Div. Ct.)

[122] I do not believe these circumstances call for the disentitlement of the appellants to their registrations. I agree with the appellants' counsel that this is a unique set of facts where there is no allegation of consumer harm or evidence that they are not operating properly or that they had done anything wrong either as a salesperson or a dealer.

[123] In the circumstances before me I find this is a matter where the public interest can be adequately protected by ordering the registrations of the appellants on terms and conditions. Accordingly, I am substituting my opinion for that of the Registrar and I order the Registrar to reinstate the registration of the appellant Alan Sabri as a motor vehicle salesperson and continue the registration of the appellant Legacy Auto Center as a motor vehicle dealer, each on terms and conditions.

[124] I requested input from counsel about suggested conditions in the event my decision was to substitute my opinion for the Registrar's. I received suggestions from both counsel with respect to Mr. Sabri however, counsel for the respondent declined to provide suggestions with respect to Legacy..

Order

[125] I direct the Registrar not to carry out its proposal to refuse the registration of Mr. Sabri. I direct the Registrar to reinstate the registration of Alan Sabri on the following terms and conditions:

- i) He shall complete payment on any outstanding judgements to Charles Lamon within 180 days of the date of this decision and provide proof of the satisfaction of those judgments to the Registrar within five (5) business days of completing payment.
- ii) He shall notify the Registrar within five (5) business days of any new judgements against him.
- iii) He shall comply with all requirements of the MVDA and Ontario Regulation 333/08, the Code of Ethics in Ontario Regulation 332/08, the Ontario Motor Vehicle Industry Council ("OMVIC") Standards of Business Practice, 2010 and OMVIC Guidelines, as may be amended from time to time. Further he shall read all correspondence and bulletins from OMVIC as released.
- iv) He shall provide the Registrar with notice in writing, within five (5) business days, of any substantive changes to information provided

in obtaining his registration, pursuant to section 31 of Ontario Regulation 333/08.


- v) He shall provide the Registrar with full and complete disclosure in all future correspondence and on all future applications and renewals, regardless of whether or not disclosure has been made previously to the Registrar.
- vi) He shall immediately enroll in the OMVIC Key Elements Course and be responsible for all fees in relation to enrolment. Mr. Sabri shall successfully pass the OMVIC Key Elements Course within **90 days** of the date of this Order and shall forthwith provide proof of compliance to the Registrar within five (5) business days of being notified of his successful completion.
- vii) The Registrar may take further administrative action, including issuing a Proposal to Refuse to Renew, Suspend or Revoke Registration should Alan Sabri fail to comply with these conditions
- viii) The terms and conditions shall remain effective from the date of this Order for a period of 2 years.

[126] I direct the Registrar not to carry out its proposal to revoke the registration of Legacy. Instead, I order that registration of Legacy continue and to subject to the following terms and conditions:

- i) Legacy shall provide the Registrar with notice in writing, within five (5) business days, of any change in the officers or directors of the dealership.
- ii) Legacy shall notify the Registrar of any change in partners or owner(s), person(s) in charge, and signing authority for the dealership.
- iii) Legacy shall notify the Registrar within five (5) business days of any new judgements against it.
- iv) Legacy shall provide the Registrar with notice in writing, within five (5) business days, of any substantive changes to information provided in obtaining its registration, pursuant to section 31 of Ontario Regulation 333/08

- v) Legacy shall provide the Registrar with full and complete disclosure in all future correspondence and on all future applications and renewals, regardless of whether or not disclosure has been made previously to the Registrar
- vi) Legacy shall comply with all requirements of the MVDA and Ontario Regulation 333/08, the Code of Ethics in Ontario Regulation 332/08, the Ontario Motor Vehicle Industry Council ("OMVIC") Standards of Business Practice, 2010 and OMVIC Guidelines, as may be amended from time to time
- vii) The Registrar may take further administrative action, including issuing a Proposal to Refuse to Renew, Suspend or Revoke Registration should Legacy fail to comply with these conditions
- viii) The terms and conditions shall remain effective from the date of this Order for a period of 2 years.

LICENCE APPEAL TRIBUNAL



Katherine Livingstone, Member

Released: February 14, 2022