



Citation: *Zabian v. Registrar, Motor Vehicle Dealers Act, 2002*, 2021 ONLAT MVDA 13109

Date: 2021-11-10
File Number: 13109/MVDA

Appeal from a Notice of Proposal of the Registrar, *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c.30, Sch. B - to Revoke Registration

Between:

Toufic Zabian

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

DECISION AND ORDER

ADJUDICATOR: Stephen Scharbach, Member

APPEARANCES:

For the Appellants: Christos Vitsentzatos, Counsel

For the Respondent: Michael Rusek, Counsel

Heard via Videoconference: September 8, 2021

A. Introduction

- [1] Mr. Toufic Zabian (“appellant”) appeals a notice of proposal issued on January 5, 2021 by the Registrar under the *Motor Vehicle Dealers Act, 2002* (“Registrar”) to revoke the appellant’s registration as a salesperson under the *Motor Vehicle Dealers Act, 2002* (“Act”).
- [2] The Registrar proposes revocation on the basis that the appellant’s past conduct affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty.
- [3] That past conduct is the appellant’s involvement in an arrangement to evade income tax and a failure to remit HST which resulted in convictions and fines in September 2020 under the Federal *Income Tax Act* and the *Excise Tax Act*.
- [4] The appellant’s position is that the convictions were related to the 2014 and 2015 tax years which were six to seven years ago, and that there have been no issues or concerns with his conduct since then. There are no allegations that the appellant contravened the Act or its regulations or harmed customers in any way. According to the appellant, the revocation is unwarranted and any concerns that the Registrar may have could be addressed by placing conditions on the appellant’s registration.
- [5] As described below, I conclude that the appellant’s past conduct does afford reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty and I have directed the Registrar to carry out his proposal to revoke the appellant’s registration as a motor vehicle salesperson.

B. The Law

- [6] The appellant is registered as a salesperson under the Act. The Act is a consumer protection statute which, along with its regulations, attempts to regulate the business of dealing in new and used motor vehicles in Ontario. Its main objective is to ensure that the public receives honest, ethical, and competent services from motor vehicle dealers and salespersons.
- [7] To achieve that objective, the Act prohibits anyone from acting as a dealer or salesperson unless they hold a registration granted by the Registrar under the Act. Registration is only granted to applicants who are qualified and have demonstrated their suitability to do business with the public.
- [8] Once registration is granted, the Registrar may revoke, suspend or attach conditions to a registration in circumstances specified by the Act. One of those circumstances

is contained in s. 6(1)(a) of the Act which, together with s. 8, provides that the Registrar may revoke a registration where:

“the past conduct of the [registrant] affords reasonable grounds for belief that the [registrant] will not carry on business in accordance with law and with integrity and honesty,”

- [9] However, before the Registrar may revoke a registration, the Act requires the Registrar to first give written notice to the registrant who may then request a hearing before this Tribunal.
- [10] If requested, the Act requires the Tribunal to hold a hearing to determine whether the Registrar’s proposal should be carried out, not carried out, or whether conditions should be placed on the appellant’s registration. At a hearing, the onus is on the Registrar to prove the facts that support the proposal.
- [11] In this case, the Registrar proposes revocation on the basis of the appellant’s past conduct and thus, the central issue is whether that past conduct affords reasonable grounds for belief that the appellant will not carry on business in accordance with the law and with integrity and honesty.
- [12] According to the Ontario Court of Appeal, “reasonable grounds to believe” in this context requires something more than mere suspicion but less than proof on a balance of probabilities.¹
- [13] In other words, the Registrar bears the onus of proving any conduct upon which it relies. It also bears the onus of establishing that revocation is warranted in light of the proven conduct. It is not required to show that that the past conduct of the appellant makes it more likely than not that he will not carry on business as required. The Registrar only needs to show that there are “reasonable grounds to believe” that the appellant will not carry out carry on business in accordance with law and with integrity and honesty.

C. **Analysis**

(a) **Nature of the Past Conduct**

- [14] On September 18, 2018, the appellant was charged with eight offences under the *Income Tax Act* and four offences under the *Excise Tax Act*.

¹ *Registrar, Alcohol and Gaming Commission of Ontario v. 751809 Ontario Inc. operating as Famous Flesh Gordon’s* [2013 ONCA 157], Ontario Court of Appeal.

- [15] The charges under the *Income Tax Act* involved allegations that the appellant unlawfully and willfully evaded the payment of income tax by failing to report taxable income on his 2012, 2013, 2014 and 2015 personal income tax returns.
- [16] The charges under the *Excise Tax Act* involved allegations that the appellant unlawfully and willfully evaded tax by failing to file a HST tax return during the 2012, 2013, 2014 and 2015 tax years.
- [17] On September 22, 2020, eight charges were withdrawn, and the appellant pleaded guilty to the following four charges:
- Contravening the *Income Tax Act* by willfully evading taxes during the 2014 tax year by not disclosing taxable income of \$64,267 and evading taxes of \$18,637;
 - Contravening the *Income Tax Act* by willfully evading taxes during the 2015 tax year by not disclosing taxable income \$239,975. and evading taxes of \$59,813;
 - Contravening the *Excise Tax Act* by willfully evading payment of HST by failing to remit \$3,576 in the 2014 tax year;
 - Contravening the *Excise Tax Act* by willfully evading payment of HST by failing to remit \$35,486 in the 2015 tax year.
- [18] According to the agreed statement of fact that was placed before the Court on the guilty plea:
- During 2014 and 2015 the appellant was employed by a registered motor vehicle dealer as a general manager. He earned income through commissions on the sale of both vehicles and warranties, as well as profit sharing in the dealership.
 - The appellant invoiced his employer for his services and directed that his remuneration be paid into a numbered company.
 - The sole director of the numbered company was the appellant's spouse.
 - The appellant's employment income went into the numbered company's bank account to which both the appellant and his spouse had access. The funds were mainly used to pay their personal expenses.

- The appellant did not report this income on his 2014- and 2015-income tax returns and the appellant evaded taxes of \$18,637 in 2014, and \$59,813 in 2015.
- The appellant also collected HST in respect of automobile warranty referral services that he provided. Although he was aware of his obligation to file a HST return and remit the tax, he did not do so in 2014 and 2015 and evaded paying a total of \$39,062.

[19] Based on the appellant's plea, the Court found the appellant guilty and imposed a fine equal to the amount of tax that the appellant evaded. The Court considered both mitigating and aggravating factors and considered it aggravating that the offences in this case involved an element of abuse of trust. The Court stated:

[T]he aggravating factors pertain to the seriousness of the offence and the reality is that the tax system in Canada is based on self reporting. It is accordingly a trust-based system. And whenever anyone evades the payment of taxes, whether those be obligations under the *Excise Act* or obligations under the *Income Tax Act*, it amounts to what is, in effect, an abuse of trust. And that abuse of trust operates to the detriment of not some bureaucratic entity like Revenue Canada but rather operates to the detriment of all Canadians.

(b) The 2010 Notice of Proposal

- [20] The Registrar's notice of proposal also refers by way of background to a previous 2010 Notice of Proposal to deny the appellant's registration as a salesperson.
- [21] That proposal was based on the appellant's conduct in operating three registered dealerships whose registrations had been terminated. The proposal alleged that the appellant was the "directing mind" of the dealerships which, among other things, failed to remit retail sales tax to the Provincial government.
- [22] The appellant appealed that notice to this Tribunal and the Tribunal issued a decision on March 21, 2011. The Tribunal found that the appellant was only guilty of lax supervision and that it was the appellant's accountant and son (who was employed as a general manager) who conducted a well-executed and long-lasting fraud scheme which included pocketing retail sales tax that was supposed to be remitted to the Provincial government.
- [23] The Tribunal concluded that given the fraud carried out by the accountant and the general manager, the failure to remit HST carried no stain on the appellant's personal honesty and integrity. Rather than revoke the appellant's registration, the

Tribunal imposed conditions. The Registrar's appeal of the Tribunal's decision was dismissed by the Divisional Court.

[24] Given the Tribunal's findings, I draw no negative inference from the appellant's involvement in his companies' earlier failure to remit retail sales tax funds.

(c) The 2020 Convictions and Suitability for Registration

[25] However, I conclude that the appellant's conduct that resulted in the 2020 convictions does call into question his personal suitability to continue to be registered for the following reasons.

[26] Firstly, unlike the earlier conviction in 2010, there is no suggestion that the evasion of income tax and failure to remit HST was the responsibility of anyone other than the appellant. The appellant was charged with "willfully" evading taxes and he pled guilty in his personal capacity.

[27] Secondly, the amount of taxes the appellant evaded was significant. This was not a minor case of overstating expenses, it involved failing to report over \$300,000 in income and evading taxes of \$117,513 (both income tax and HST).

[28] Thirdly, the appellant's arrangement to unlawfully evade income taxes was willful, planned, relatively sophisticated, and lasted for a prolonged period. It involved disguising his employment income by submitting invoices from a numbered company and directing the employer to pay the funds to the numbered company's bank account.

[29] Fourthly, as the Judge pointed out during sentencing, the appellant's conduct amounted to a breach of trust which operated to the detriment of other taxpaying Canadians.

[30] Finally, the appellant's unlawful scheme occurred in the context of his employment as a registered salesperson. At the time the offences were carried out, the appellant was the general manager of a registered motor vehicle dealer and the income upon which he failed to pay tax was earned through vehicle sales, profit sharing and vehicle warranty referrals.

[31] While in a management position of a registered dealer, the appellant engaged in a deceptive scheme to hide his income from the tax authorities. While that scheme apparently did not impact customers of the dealer, it indicates the appellant's willingness to contravene the law in his capacity as a registered salesperson and general manager of a registered dealer. It suggests that that the appellant was

willing to ignore his legal obligations when they conflicted with his personal financial interest.

[32] Registrants in the motor vehicle industry are subject to regulatory requirements that are ultimately meant to protect the public. The clearest examples are the disclosure obligations imposed on registrants to ensure that customers are given accurate information about the condition of the vehicle they may purchase. The appellant's conduct illustrated his willingness to contravene the law when it was in his personal financial interest to do so. In my view that conduct affords reasonable grounds to believe that the appellant will not carry on business in accordance with the law in circumstances where non-compliance may be financially advantageous to him.

(d) Any unique circumstance that would explain that conduct and indicate it is unlikely to re-occur.

[33] The conduct described above calls into question the appellant's suitability for continued registration as a salesperson. However, there may be many other factors that contribute to objectionable behaviour. Such factors are no doubt varied and peculiar to each individual's circumstances, but some examples that come to mind are: severe and unusual financial pressures, death of close family members, marital breakdown, alcohol/substance abuse, gambling addiction, or mental health issues.

[34] If the evidence established that the objectionable conduct emerged from a set of circumstances or pressures that have now been addressed or changed so that a re-occurrence is unlikely, that may be a factor in considering whether registration should continue with or without conditions.

[35] However, in this case, the appellant provided no explanation or insight into why the conduct occurred, what motivated or contributed to it, or whether any steps have been taken to eliminate or minimize the likelihood of re-occurrence.

[36] As a result, although the relevant conduct occurred in 2014 and 2015, I have no information that would allow me to conclude that the appellant has insight into the cause of his past conduct, or that changes have occurred that would make similar conduct unlikely to be repeated. There was no evidence regarding any positive past conduct by the appellant other than the submission that the conduct took place a number of years ago and there have been no issues since. I have considered that in arriving at my decision but have ultimately concluded that notwithstanding when the conduct took place, it calls into question the appellant's suitability as a registrant under the Act.

(e) Are Conditions Appropriate?

- [37] The appellant argues that since the conduct that led to the convictions, there is no evidence that indicates that he has been anything other than forthright and honest with the public and the Registrar. According to the appellant, any doubt about his suitability to be registered can be adequately addressed by conditions placed on his registration. For example, the Tribunal could consider conditions that might require the appellant to file an income tax return annually and not handle customer funds.
- [38] In my view this is not an appropriate case for conditions. While conditions involving training, monitoring etc. may effectively address deficiencies in standards of practice, I am unconvinced that the proposed conditions would effectively address a failure to adhere to the law when non-compliance would result in a financial advantage. In other words, having considered the possibility of conditions, I conclude that there are none that would sufficiently protect the public given the findings I have made about the appellant's past conduct and its impact on his future conduct.

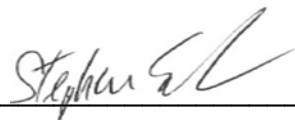
D. Conclusion

- [39] After carefully considering the factors above, I have concluded that the appellant's past conduct does afford reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty.
- [40] I have therefore decided to direct the Registrar to carry out his proposal to refuse the appellant's application.

E. Order

- [41] Pursuant to s. 9(5) of the *Motor Vehicle Dealers Act, 2002*, I direct the Registrar to carry out his proposal dated January 25, 2021 to revoke the appellant's registration as a salesperson under the Act.

LICENCE APPEAL TRIBUNAL



Stephen Scharbach, Adjudicator

Released: November 10, 2021