

CITATION: Platinum Auto Gallery Inc. v. Registrar, Motor Vehicle Dealers Act, 2013 ONSC
5739
DIVISIONAL COURT FILE NO.: 327/13
DATE: 20130911

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
ASTON, HIMEL AND LINHARES DE SOUSA JJ.

BETWEEN:)
)
PLATINUM AUTO GALLERY INC. and) *Symon Zucker*, for the Applicants
BEHZAD RABIE and JAMIE GIROUX)
)
Applicants)
)
- and -)
)
REGISTRAR, MOTOR VEHICLE) *Brian D. Osler* and
DEALERS ACT) *Elizabeth S. Maishlish*, for the Respondent
)
Respondent)
)
)
) HEARD at Toronto: September 11, 2013

ASTON J. (ORALLY)

[1] The applicants negligently failed to renew their licences in a timely fashion. They blame the Ontario Motor Vehicle Industry Council (“OMVIC”) but there is an evidentiary basis upon which Vice Chair Flude’s finding is made, that they themselves are to blame.

[2] It is also logical to conclude that it is not an abuse of process for OMVIC to enforce the clear provisions of the licensing regime which cast the licence applications in the category of a

refusal, rather than a renewal. It is not a breach of procedural fairness or offensive to principles of natural justice to impose responsibility on the negligent parties, in this case, the applicants.

[3] The applicants do not have a right to carry on their auto sales business without a licence. They knew licences were for one year and needed to be renewed in a timely fashion. They had done so in the past. The fact that another Vice Chair in a difference case allowed the Registrar's Notice of Proposal to be treated as a revocation rather than a refusal does not bind Vice Chair Flude. In this case he considered that precedent, distinguished it and came to an opposite conclusion on the particular facts. His interpretation of the statute at the heart of his jurisdiction is entitled to deference and it is reasonable.

[4] The power to make an interim order under s. 16.1 of the *Statutory Powers Procedure Act* and s. 3(2) of the *Licence Appeal Tribunal Act*, does not include the power to override or completely ignore s. 9 of the *Motor Vehicle Dealers Act*. Section 9(8), which extends the ability of a licensee to carry on business pending a renewal application, only applies if the applicant has applied for the licence "before the expiry of the registrant's registration". It is clear in this case that the applicants did not do so, even though the April 27, 2013 expiry date was clear on the Certificate of Registration.

[5] The failure to renew a licence in a timely manner is not a "technicality" under this legislation, the *Motor Vehicle Dealers Act*. There is good reason to treat unlicensed applicants differently in the licensing process. Whether the applicants were unlicensed for two days or for weeks, months or years, the simple fact is that they were unlicensed when they applied and unlicensed because of their own negligence.

[6] The Registrar had no legal obligation to permit them to carry on their business pending the processing of their fresh licence application. The Vice Chair had good reason not to interfere with the Registrar's refusal to do so.

[7] There may be a case in which the Tribunal has the jurisdiction to interfere with the Registrar's decision in circumstances such as this - for example, if the Registrar's actions did constitute a denial of procedural fairness.

[8] In this case the Vice Chair did not explicitly state that the Tribunal never has the jurisdiction to override the Registrar's decision not to permit an applicant to carry on business while a new licence application is pending. Rather, in his reasons he ties that jurisdiction to the necessity of an applicant demonstrating a breach of natural justice or abuse of process as a precondition. He decided that issue as it had been framed by the applicants themselves. His factual findings are supported by evidence and his conclusion on this issue is reasonable.

[9] Moreover, we are of the view that this judicial review application is premature in any event. It does not meet the test for judicial review of an interlocutory decision of a Tribunal set out in *Ackerman* [2010] ONSC 910. The Licence Appeal Tribunal Hearing could have started this Friday and in any event will start by the end of this month.

[10] The judicial review application is therefore dismissed.

[Submissions on Costs]

[11] On behalf of the panel, I have endorsed the back of the Application Record, "For oral reasons given and recorded, the judicial review application is dismissed with costs fixed at \$6,000 all inclusive."


ASTON J.


HIMEL J.


LINHARES DE SOUSA J.

Date of Reasons for Judgment: September 11, 2013

Date of Release: **SEP 16 2013**

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ORAL REASONS FOR JUDGMENT

ASTON J.

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