

Tribunals Ontario

Tribunaux décisionnels Ontario

Licence Appeal Tribunal

Tribunal d'appel en matière de permis



Citation: Wang and 11695070 Canada Inc. o/a Topstar Motors v. Registrar, Motor Vehicle Dealers Act, 2002, 2021 ONLAT MVDA 12796

Date: 2021-04-16

File Number: 12796/MVDA

Appeal from the Notice of Proposal to Refuse Registrations dated June 23, 2020 made by the Registrar under the *Motor Vehicle Dealers Act, 2002*, c. 30, Sch. B

Between

Zhijun Wang and 11695070 Canada Inc. o/a Topstar Motors

Appellants

and

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

DECISION AND ORDER

ADJUDICATOR: Joanne E. Foot, Member

APPEARANCES:

For the Appellants: Justin Jakubiak, Counsel

For the Respondent: Husein Panju, Counsel

Heard by Videoconference: February 16 to 23, 2021

REASONS FOR DECISION AND ORDER

A. OVERVIEW

- [1] The Registrar (the “**Registrar**”) under the *Motor Vehicle Dealers Act, 2002*, c. 30, Sch. B (the “**Act**”) proposes to deny registration to Mr. Zhijun Wang (“**Mr. Wang**”) and his corporation, 11695070 Canada Inc. o/a Topstar Motors (“**Topstar**”), on the basis of Mr. Wang’s past conduct in the industry, primarily trading in vehicles while unregistered, and convictions in relation to that conduct. The appellants have appealed the Registrar’s decision to this Tribunal and I must decide if they are eligible for registration under the Act.
- [2] Mr. Wang has been intermittently involved in the automobile sales industry since about May 2004 but has not been registered under the Act since November 2006.
- [3] On February 2, 2017, Mr. Wang applied for registration as a salesperson for Min Tian operating as Nice Auto Sales (“**Nice Auto**”). The Registrar issued a notice of proposal dated December 11, 2017 proposing to refuse Mr. Wang’s application for registration as a salesperson and to revoke Nice Auto’s registration as a motor vehicle dealer. This notice of proposal was carried out on January 2, 2018.
- [4] On January 13, 2020, Mr. Wang applied for registration as a salesperson under the Act and applied on behalf of Topstar to be registered as motor vehicle dealer under the Act. Mr. Wang is the sole officer and director of Topstar. In this decision, Mr. Wang and Topstar are sometimes collectively referred to as the “**appellants**” and individually as an “**appellant**”.
- [5] On June 23, 2020, the Registrar issued a Notice of Proposal to Refuse Registrations (the “**Notice of Proposal**”) proposing to refuse the registrations under the Act of Mr. Wang and Topstar.
- [6] On July 6, 2020 the appellants filed a notice of appeal with the Tribunal with respect to the Notice of Proposal, requesting that the Registrar be ordered to register each of the appellants without terms and conditions or, alternatively, with terms and conditions on their registrations.

B. ISSUES

- [7] There are three issues before the Tribunal. The first issue is whether there is new or other evidence available, or whether it is clear that Mr. Wang’s material circumstances have changed, since he was refused registration in January 2018.

This is a threshold issue; Mr. Wang must show a change in his material circumstances since the time of that refusal of registration before I am able to consider the second and third issues outlined below. A related issue is whether this threshold test also applies to Topstar.

- [8] If I find that there has been a change in the material circumstances of Mr. Wang or, if applicable, Topstar, I must consider whether the past conduct of Mr. Wang affords reasonable grounds for belief that he will not carry on his business or that of Topstar in accordance with the law and with integrity and honesty.
- [9] If the Registrar establishes that Mr. Wang's past conduct affords reasonable grounds for belief that he will not carry on his business or that of Topstar in accordance with the law and with integrity and honesty, the third issue for determination is the appropriate order for the Tribunal to make. In particular, I consider whether it is appropriate for the Tribunal to substitute its opinion for that of the Registrar and order the registration of Mr. Wang as a salesperson and/or Topstar as a motor vehicle dealer, each with terms and conditions. In this hearing, the Tribunal does not owe any deference to the Registrar's decision as outlined in the Notice of Proposal.

C. RESULT

- [10] There has not been a change in Mr. Wang's material circumstances since he was refused registration on January 2, 2018. In consequence, Mr. Wang's appeal may not proceed.
- [11] Topstar is not required to meet the threshold test of demonstrating a change in material circumstances under s. 12(b) of the Act.
- [12] The past conduct of Mr. Wang affords reasonable grounds for belief that Topstar's business will not be carried out in accordance with the law and with integrity and honesty. Moreover, this is not a case where the public interest can be adequately protected by ordering registration of Topstar on terms and conditions.
- [13] I direct the Registrar to carry out the Notice of Proposal to refuse the registration of Topstar under the Act.

D. LAW

- [14] The purpose of the Act is to provide protection to consumers in relation to what is, for most consumers, a significant and expensive purchase. The Act is also intended to promote professionalism of motor vehicle dealers and salespersons.

A person registered under the Act is required to adhere to the Act, the Regulations made under the Act, and the terms and conditions attached to its registration, if any.

- [15] Section 12 of the Act provides that a person whose registration is refused may reapply for registration only if a period of two years has elapsed¹ and “new or other evidence is available or it is clear that material circumstances have changed”. In this case, the appellants have not raised that there is new or other evidence available, but assert that there has been a change in material circumstances. The appellants bear the burden of proving that its material circumstances have changed within s. 12(b) of the Act.
- [16] An individual applicant under the Act is entitled to registration unless one of the criteria in s. 6(1)(a) of the Act exists. Similarly, a corporate applicant under the Act is entitled to registration unless one of the criteria in s. 6(1)(d) exists.
- [17] Section 8(1) of the Act permits the Registrar to refuse a registration if, in his or her opinion, the registrant is not entitled to registration under s. 6. In issuing the Notice of Proposal, the Registrar relies upon s. 6(1)(a)(ii) for Mr. Wang as an individual applicant and s. 6(1)(d)(iii) for Topstar as a corporate applicant.
- [18] The Registrar bears the burden of proving that the past conduct of an appellant affords reasonable grounds for belief that the appellant will not carry on business in accordance with the 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”.²
- [19] In the *Flesh Gordon’s*³ case, the Court of Appeal articulated that there must be reasonable grounds for belief that the person will, in future, carry on activity in a way that is contrary to the public interest and will not act in accordance with the law, with honesty and with integrity. It emphasized that any and all past or present conduct can and should be considered. In this case, all of the allegations against the appellant arise in the context of trading in used vehicles, thus establishing the link between past conduct and the proposed business of the appellants.

¹ Section 15 of O. Reg. 333/08 made under the Act (the “**Regulation**”)

² *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc. (Famous Flesh Gordon’s)*, 2013 ONCA 157 (CanLII) (“**Flesh Gordon’s**”) at paragraph 18.

³ *Flesh Gordon’s*, *supra*, at paragraphs 26-29.

[20] 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.

E. EVIDENCE AND ANALYSIS

ISSUE 1A: IS THERE NEW OR OTHER EVIDENCE AVAILABLE, OR IS IT CLEAR THAT MR. WANG'S MATERIAL CIRCUMSTANCES HAVE CHANGED WITHIN S. 12 OF THE ACT?

[21] Mr. Wang has not argued, or asked me to consider, that there is new or other evidence available since the time that his salesperson application was refused on January 2, 2018. Mr. Wang has not established that his material circumstances have changed.

The Test in s. 12 of the Act Applies to Mr. Wang

[22] For ease of reference, s. 12 is set out below:

A person whose registration is refused, revoked or refused renewal may reapply for registration only if,

(a) the time prescribed to reapply has passed since the refusal, revocation or refusal to renew; and

(b) new or other evidence is available or it is clear that material circumstances have changed.

[23] Section 15 of the Regulation prescribes the time to reapply within s. 12(a) as two years. Mr. Wang applied to be registered as a salesperson on behalf of Nice Auto on February 2, 2017. The notice of proposal relating the refusal to register Mr. Wang was carried out on January 2, 2018. Mr. Wang reapplied for registration as a salesperson on January 13, 2020, which is more than two years following this refusal. The requirement of s. 12(a) is satisfied.

[24] In relation to s. 12(b), Mr. Wang asserts only that there has been a change in his material circumstances; he did not argue that there is new or other evidence that is available that should be considered and did not ask me to consider this point. In considering the issue of change in material circumstances, I consider relevant legal principles, the changes in circumstances offered by Mr. Wang, and Mr. Wang's past conduct.

Legal Principles

[25] The case law enunciates principles to be considered in determining if there has been a change in material circumstances. The case law is clear that the passage of time alone does not amount to a change of circumstances. The *Koo*⁴ case provides helpful guidance where it states:

... if there is sufficient evidence that a criminal has paid his debt, taken responsibility for his actions, taken material and concrete steps to reform and achieved success in sustaining a life of honesty and integrity, then the Tribunal is entitled to take these factors into consideration in determining whether someone has taken themselves out of the operation of subparagraph 6(1)(a)(ii) of the Act.

[26] The *Veras*⁵ case adds some helpful parameters around these considerations where it states:

What is missing is any evidence of ... trustworthiness and positive attitudes and actions in business relationships ... and ... the type of conduct that would be followed in dealing with members of the public. The evidence required must include long-term involvement or employment in a position of trust, preferably in a regulated industry. ... Community involvement is laudable and a start but much more is required.

[27] It is also helpful to weigh the past conduct, in terms of both seriousness and period over which it took place, against the changed circumstances being offered.

Changes in Mr. Wang's Material Circumstances

[28] Mr. Wang introduced three situations which he argues amount, collectively, to a change in his material circumstances. The first is that he retook the OMVIC⁶ Automotive Certification Course and scored 98%. This course is a prerequisite to registration under the Act for all salespersons and motor vehicle dealers.

[29] Secondly, Mr. Wang was employed by Stormwise Tax and Accounting ("**Stormwise**") from for about six months ending in June 2019. In a letter of recommendation, Mr. Peng Tang, principal of Stormwise, wrote that Mr. Wang's duties included collecting receivables, negotiating and making authorized deals

⁴ 7340 v. Registrar, *Motor Vehicle Dealers Act, 2003*, 2012 CanLII 58462 (ONLAT) ("**Koo**")

⁵ *Veras (Re)* O.L.A.,T.D. No. 529, at paragraph 38

⁶ Ontario Motor Vehicle Industry Council, the regulator under the Act ("**OMVIC**")

with clients, dealing with banking arrangements of clients and providing customer service. In testimony, Mr. Tang stated that Mr. Wang worked for Stormwise for about six months and was let go, along with a number of other employees, when business dropped off in 2019. Mr. Tang testified that Mr. Wang was involved primarily in promotional and marketing activities such as client entertainment, seminars and follow-up. Mr. Tang was careful to specify that a registered salesperson was responsible to “sign customers up” for sales of insurance and private equity products. Mr. Tang spoke well of Mr. Wang as a person and of his performance at Stormwise.

- [30] Finally, Mr. Wang worked as a volunteer for the Canadian Red Cross, in their Meals on Wheels program. He worked as a driver and a runner for about six months from January to July 2020, although he applied to become a volunteer in early 2019. A representative of Canadian Red Cross wrote a very positive reference letter for Mr. Wang describing him as a quick learner, patient, understanding, consistent, helpful and a valued contributing member. He said that he stopped his volunteer activity owing to the pandemic and the associated exposure risk.
- [31] Throughout his testimony, Mr. Wang repeated that he “took responsibility” for his past actions and expressed that he was sorry. For the most part he did not elaborate on these statements, but his testimony was given through an interpreter which could account for its brevity to some degree. In the cover letter relating to his applications dated January 21, 2020, he was forthright in owning up to trading in vehicles while unregistered and engaging in unfair practices in the industry. Mr. Wang further expressed regret, accepted the penalties for his actions, and noted the absence of any excuse and the desire for another chance. Mr. Wang also indicated his desire to be an honest businessman, to give back to society and to earn an honest living. He reported having changed his mind-set and character. In his oral testimony, Mr. Wang stated that he wanted to learn from working with other volunteers at Canadian Red Cross whom he described as honest and nice.

Past Conduct

- [32] Some of Mr. Wang’s past conduct is described in the Notice of Proposal⁷ to Revoke and Refuse Registration dated December 11, 2017 (the “**2017 NOP**”). Mr. Wang did not appeal the proposal to refuse his registration under the 2017

⁷ This Notice of Proposal related to Mr. Wang’s application to become a salesperson under the Act and to the revocation of registration of Min Tian o/a Nice Auto as a motor vehicle dealer under the Act. Min Tian o/a Nice Auto filed an appeal with the Tribunal in relation to the revocation, but Mr. Wang did not appeal his refusal

NOP. In consequence, the Registrar was authorized to carry out the 2017 NOP under the Act with respect to Mr. Wang.

- [33] An applicant's failure to appeal a notice of proposal is not analogous to a person who is convicted of a criminal offence failing to appeal the conviction, or even an applicant whose registration is refused by the Tribunal following a hearing. Nonetheless, it is a document that contains serious allegations against potential registrants. The failure by an applicant to appeal has significant consequences in that it allows the Registrar to proceed with its proposal to deny registration. Thus, for the purposes of this threshold inquiry, I am prepared to accept that the allegations in the unchallenged 2017 NOP are generally accurate and indicative of Mr. Wang's material circumstances at that time, that is, the time of refusal of his application. Of course, I make no such assumption when I consider whether any overlapping allegations have been proved by the Registrar in the context of this hearing.

Has there been a change in Mr. Wang's Material Circumstances?

- [34] Mr. Wang had an excellent score on the OMVIC Automotive Certification Course, which he offers as evidence of a change in material circumstances. However, this is not a case where lack of knowledge or understanding on the part of a proposed registrant is at issue. Mr. Wang has, in fact, demonstrated considerable ingenuity in circumventing the regulatory regime established by the Act. In this case, I do not view that Mr. Wang's taking of the test and his strong results are evidence that there has been a change in his material circumstances and ascribe it little weight.
- [35] Mr. Wang worked for Stormwise for about six months, a relatively short period of time. Notwithstanding Mr. Tang's reference letter that referred to Mr. Wang "negotiating and making authorized deals with clients", Mr. Tang's oral testimony made it clear that these activities were carried out by registered sales people and that Mr. Wang's role was restricted to business development and client servicing matters. The *Veras* case suggests that "the evidence required must include long-term involvement or employment in a position of trust, preferably in a regulated industry." This is directly applicable to this case in that Mr. Wang's employment was both short-term and did not involve a position of trust in terms of dealing with matters in the regulated areas of Stormwise's business. This is a good start for Mr. Wang but is of limited value in demonstrating a significant change in his material circumstances.

- [36] Likewise, Mr. Wang's stint volunteering at the Canadian Red Cross for six months was very brief and, while positive, cannot be seen as a sustained commitment to charitable work.
- [37] Mr. Wang's involvement with Stormwise and the Canadian Red Cross is not adequate to demonstrate that he is sustaining a life of honesty and integrity; more of a positive track record is required. As stated above the passage of time, alone, is not adequate to established changed circumstances. In this case, the opposite is also true – Mr. Wang reapplied for registration after the minimum time period, two years. Considering the serious nature of Mr. Wang's past conduct and its occurrence over an extended period of years, I would want to see a longer history of trustworthy behaviour. There is no precise formula for the right amount of unregistered time on the part of an applicant; however, time away from the industry, together with other factors, must be weighed against the seriousness of the misconduct and the period of that misconduct.
- [38] Having found that Mr. Wang has not demonstrated a change in material circumstances, there is no need to consider the second or third issues in relation to Mr. Wang and his appeal may not proceed.

ISSUE 1B: DOES TOPSTAR NEED TO ESTABLISH NEW OR OTHER EVIDENCE IS AVAILABLE OR THAT THERE HAS BEEN A CHANGE IN MATERIAL CIRCUMSTANCES WITHIN THE MEANING OF S. 12 OF THE ACT?

- [39] Topstar does not need to establish that new or other evidence is available or that there has been a change in material circumstances under s. 12(b) of the Act in relation to its appeal.
- [40] This issue is of a more technical and legal nature. Mr. Wang was refused registration as a salesperson for Nice Auto on January 2, 2018. Topstar, however, was not part of this rejected application, which was for Mr. Wang alone, and Topstar has never been refused registration under the Act.
- [41] The intent of s. 12 appears to relate to the administrative resources of the Registrar. That is, once a person has been refused registration by the Registrar and/or the Tribunal, that person is not entitled to reapply for registration if there has not been a change in its material circumstances. This prevents frequent reapplication when, essentially, there has been no change from the original situation that resulted in the refusal.
- [42] In this case, Mr. Wang is the sole officer and director of Topstar and responsible for its day to day operations. Topstar is, in effect, Mr. Wang's "alter ego". With the

underlying principle set out in paragraph [41] in mind, one would expect that if an individual did not meet the s. 12(b) hurdle, his or her corporate “alter ego” would also be excluded from applying for registration under the Act by virtue of s. 12. The underlying policy considerations are identical in that the corporate applicant would tax the resources of both the Registrar and the Tribunal.

- [43] The analysis of whether the s. 12(b) test applies to Topstar begins with consideration of the words used in the preamble of s. 12 that “A *person* whose registration is refused ...” [emphasis added]. Is it appropriate that the word “person” be given an extended meaning so as to include a related person, in this case Topstar, for the purpose of s. 12(b)?
- [44] Although the term “person” is not defined in the Act, it is beyond controversy that this term is properly interpreted to include all legal persons including, as here, a corporation. The real question is whether the term “person” can be extended in this case to require that related persons, such as Topstar, clear the s. 12(b) hurdle.
- [45] The Act does extend its reach to related persons through its use of the term “associated person” in s. 1(2) and the term “interested person” in s. 6(4). Section 1(2) provides that one person is associated with another person if “one person is a corporation of which the other person is an officer or director”. This exactly covers the situation with Topstar and Mr. Wang. Section 6(4) provides that a person shall be deemed to be an interested person in respect of another person if the person is associated with the other person or if, “in the opinion of the registrar, the person exercises ... control either directly or indirectly over the other person ...” Again, this applies to the relationship between Mr. Wang and Topstar.
- [46] Under the Act, the legislature specifically turned its mind to ensuring that the conduct of a corporate officer or director be considered the conduct of the corporation in certain areas of the Act. It would have been very easy for the Legislature to do the same in the context of s. 12. For example, the legislature could have added the term “associated person” or “interested person” to the preamble in s. 12. Yet it chose not to, instead using only the term “person”. While it may seem contrary to the apparent policy consideration underpinning s. 12 (that is, an individual who is refused cannot reapply for two years, but could reapply using a corporate identity the next day), I conclude that it was not the legislature’s intent to extend the meaning of the term “person” to apply to an individual’s corporate “alter ego”.

[47] I find that Topstar is not required to satisfy the test under s. 12. It has not been refused registration under the Act and the appropriate interpretation of s. 12 does not extend the meaning of “person” to include persons related to the person, in this case, Mr. Wang’s corporate vehicle.

ISSUE 2: DOES THE PAST CONDUCT OF MR. WANG AFFORD REASONABLE GROUNDS FOR BELIEF THAT TOPSTAR’S BUSINESS WILL NOT BE CARRIED OUT IN ACCORDANCE WITH THE LAW AND WITH INTEGRITY AND HONESTY?

[48] The past conduct of Mr. Wang affords reasonable grounds for belief that Mr. Wang, in his capacity as an officer and director of Topstar, will not carry on the business of Topstar in accordance with the law and with integrity and honesty.

[49] By way of background, Section 4(1) of the Act provides that no person shall act as a motor vehicle dealer or a salesperson unless the person is registered as such under the Act. A motor vehicle dealer is defined a person who trades in motor vehicles. A motor vehicle salesperson is defined as a person who trades in motor vehicles on behalf of a dealer. The term “trade” includes “buying, selling, leasing, advertising or exchanging an interest in a motor vehicle or negotiating or inducing or attempting to induce the buying, selling, leasing or exchanging of an interest in a motor vehicle”.

[50] Mr. Wang o/a Douluck Auto Sales voluntarily terminated his registration as a motor vehicle dealer on November 23, 2006 and he has not been registered under the Act since that time.

2013 to 2014: Unregistered Trades and Convictions Under the Act

[51] In July 2014, Mr. Wang was charged under the Act with (a) trading in motor vehicles while unregistered between October 1, 2013 and March 24, 2014, contrary to s. 4(1)(a) of the Act, and (b) engaging in unfair practices contrary to s. 14 and s. 17 of the *Consumer Protection Act*. Mr. Wang entered a plea of guilty to these charges and was convicted of both on July 8, 2015. He was fined \$11,000 for the unregistered trading charge and received a suspended sentence for the unfair practices charge.

[52] The transcript of his conviction discloses that in February 2014 Mr. Wang sold a 2007 Toyota Camry with the odometer showing just over 95,000 kilometers. At the time of the sale, the vehicle had not been registered in Mr. Wang’s name and remained in the name of the previous owner of the vehicle. The purchaser subsequently learned that the odometer had been rolled back from about 201,000 kilometers and contacted Mr. Wang, who then reversed the sale and

registered the vehicle in the name of Mr. Lixing Tian. Mr. Wang again advertised the 2007 Camry for sale on Kijiji, still showing the lower kilometer reading. On March 4, 2014, an OMVIC investigator posing as a customer contacted Mr. Wang and attended to view the vehicle. He met with Mr. Wang who identified himself as “Jason” and test drove the vehicle. The odometer read 95,860 at the time of the test drive. The investigator asked Mr. Wang if he was Mr. Lixing Tian and Mr. Wang answered “yes”. They reached agreement on the purchase price and the investigator said that he would be in touch to complete the deal.

- [53] On March 4, 2014, another OMVIC investigator contacted Mr. Wang about a 2009 Infiniti. When attending to view this vehicle, this investigator saw that the odometer showed 67,880 kilometers. OMVIC’s investigation revealed that at the time of the purchase by Mr. Wang of the vehicle, the odometer showed 179,615. On March 24, 2014, two OMVIC investigators posing as a couple went to look at the 2009 Infiniti at a bank parking lot not far from the Finch Avenue East location the first OMVIC inspector had visited. Upon being asked to see Mr. Wang’s driver’s licence, Mr. Wang produced a driver’s licence in the name of Mr. Lixing Tian. A short time later, Mr. Wang was stopped by police and produced a valid driver’s licence in the name of “Zhijun Wang”. Mr. Wang admitted in oral testimony that Mr. Lixing Tian is his father-in-law.
- [54] I find that Mr. Wang impersonated his father-in-law, Mr. Lixing Tian, rolled back odometers on two vehicles and sold or attempted to sell vehicles while unregistered as a dealer under the Act.

2017: Unregistered Trades with Consumers on behalf of Nice Auto

- [55] Min Tian, operating as Nice Auto Sales, was registered as a motor vehicle dealer under the Act on October 7, 2013. Mr. Wang acknowledged that Ms. Tian is his wife. Mr. Wang denied involvement in the business of Nice Auto for any trades with consumers.
- [56] Ms. Jennifer Andrew, then an OMVIC inspector, attended at the Nice Auto dealership on three occasions. On November 19, 2015 she attended for an unscheduled inspection. There was no one there, but she called a telephone number and spoke to a male. Mr. Wang later admitted that he was the one who answered Inspector Andrew’s call on that occasion.
- [57] The inspection on December 14, 2015 was a scheduled inspection and Inspector Andrew met with Ms. Tian. Ms. Andrew said that Ms. Tian did not understand what a garage register was and was unable to produce one for her dealership.

- [58] Upon arriving at the December 7, 2017 inspection, Inspector Andrew found “Jason” at the dealership but Min Tian was not there. At the hearing, Inspector Andrew identified Mr. Wang as “Jason”. Ms. Tian subsequently arrived at the dealership and they began a review of documents. Ms. Tian was unable to locate some of the transaction files for vehicles, saying that she had taken them home. As well, she was unable to find and log in to her banking portal for the dealership without the assistance of another OMVIC inspector in attendance. Finally, Ms. Tian was unable to operate the printer and had to call Mr. Wang for assistance. Ms. Andrew asked about a Maserati parked in the lot. Ms. Tian was unable to recall any details about the vehicle, stating that it was a “personal vehicle”. However, she could not recall how much she paid for the vehicle or whether she or Mr. Wang purchased it. Ms. Andrew described all of these events as unusual, it being typical for a dealer to know how the dealership business operates and know details relating to high-end vehicles on its premises.
- [59] Three individuals appeared as witnesses regarding trades made at the premises of Nice Auto on Finch Avenue East in Toronto. Mr. Ruiwen Xu testified that he dealt with two men when he was selling his 2010 Toyota Matrix to Nice Auto in late 2017. Mr. Xu estimated that the younger of the two men was under 30 years of age and guessed that the older man was in his 40s. Mr. Xu recounted that the older man spoke Mandarin and he believed him to be Chinese. He had to wait for the older man to become available to “make the deal” as the younger man could not do so. He testified that the older man signed the bill of sale dated November 13, 2017, which was presented to the Tribunal.
- [60] Mr. David Bertolo also testified that he dealt with an Asian man in his early-to-late 50s when he purchased a Jeep in late November 2017. This is also the man that drove Mr. Bertolo to his mechanic for an inspection of the Jeep before purchase and the person with whom he negotiated the price of the vehicle. He indicated that this man was the “lead person” in the transaction. The bill of sale for this trade is dated November 16, 2017.
- [61] Ms. Helena Clark, an employee at J. Lockwood Leasing Limited, described creating a bill of sale for a transaction with Nice Auto dated November 30, 2017. She recalled that a middle-aged Asian male attended at her office to deliver the cheque and pick up the ownership documentation.
- [62] None of Mr. Xu, Mr. Bertolo or Ms. Clark was able to positively identify Mr. Wang owing to passage of time since each had their interaction with the person at Nice Auto. However, each was clear that they had dealt with a middle-aged Asian man in their dealings Nice Auto.

- [63] A Director's Certificate is a certificate prepared by OMVIC based on a search of its records and, under s. 39 of the Act, may be relied on for the truth of its contents absent evidence to the contrary. Inspector Andrew testified about the Director's Certificate dated November 5, 2020 relating to Nice Auto. This certificate discloses that Mr. Wang was never registered as a salesperson for Nice Auto, that Qiu Jin Ye was registered as a salesperson for Nice Auto from June 5, 2014 to August 25, 2014, and that Qianyne Guan was registered as a salesperson for Nice from October 10, 2017 to October 24, 2017.
- [64] From this Director's Certificate we know that Qui Jin Ye is a female, so could not be the individual involved in the trades with Mr. Xu, Mr. Bertolo or Ms. Clark. Likewise, Ms. Min Tian is a female and was not the person involved in these trades. While Quianyne Guan is a male, he was registered under the Act only for a period of two weeks in October 2017. This does not match the period in November 2017 that the three trades were negotiated or when the bills of sale for each were signed. The appellants did not call any evidence as to who the person was that dealt with Mr. Xu, Mr. Bertolo or Ms. Clark or otherwise challenge the Registrar's position that it was Mr. Wang.
- [65] Based on Ms. Min Tian's lack of familiarity with the basics of Nice Auto's business, Mr. Wang's presence at the dealership (by telephone or in person) during the various inspections, the description given by each of the three customers that they were dealing with a middle-aged Asian man, and the fact that the Director's Certificate does not disclose a person that matches that description at the relevant times, I find that it is more likely than not that each was dealing with Mr. Wang. As such, I find that Mr. Wang was trading in vehicles with consumers on behalf of Nice Auto at a time when he was not registered to do so under the Act.

2015 to 2017: Unregistered Trades with Adesa on behalf of Nice Auto and Conviction Under the Act

- [66] Mr. Darryl Maidment testified on behalf of ADESA Canada ("**Adesa**"), an organization comprising a number of corporate entities that run wholesale vehicle auctions across Canada. Adesa is part of a corporate group that is listed on the New York Stock Exchange and operates internationally. Mr. Maidment is the general manager of Adesa Toronto, one of the largest locations for the Adesa group in North America.
- [67] Adesa deals only with wholesale dealers, not members of the public. Mr. Maidment said that Adesa will deal only with professionals who understand the rules, what needs to be disclosed and the policies of the auction. Adesa acts as

an agent between the buyer and the seller at its auctions, including extending credit to the buyer, guaranteeing payment to the seller, and conducting arbitrations when there is an issue with a vehicle sold through the auction. Adesa also takes steps to ensure that all participants in the auction are upstanding business partners, which includes conducting various background and credit searches. Mr. Maidment appears to have a sophisticated and deep knowledge of this business.

- [68] Mr. Maidment testified that Nice Auto was first registered with Adesa in about 2013 and that he first started speaking with “Min Tian” in 2015 when “Min Tian” expressed concern about inaccuracies in vehicle condition reports. Mr. Maidment said that in all his interactions with Nice Auto from 2015 to 2017, Mr. Wang represented himself as “Min Tian” and Mr. Maidment dealt with Mr. Wang as Min Tian. Mr. Maidment did not deal with anyone else on behalf of Nice Auto.
- [69] Mr. Maidment explained that even Adesa’s best customers sometimes sell a vehicle through the auction that has a deficiency of which it is unaware. This can result in an arbitration leading to a price adjustment or cancellation of a sale. In May 2017, Nice Auto sold an Audi through the auction that was arbitrated as it had not been disclosed that the vehicle had been stolen and recovered. This sale was cancelled. Mr. Maidment described this as the first issue Adesa had with Nice Auto.
- [70] In the latter half of August 2017 it became apparent to Mr. Maidment that there was a much more serious problem with Nice Auto. He learned that a vehicle sold by Nice Auto through the Adesa auction had been revinned. Mr. Maidment explained that when a vehicle has been stolen and recovered, the police install a brass VIN plate on the inside of the door of the vehicle so that industry participants understand that there is a history associated with the vehicle. Mr. Maidment testified that he believes Mr. Wang made his own VIN plates that looked like the original factory VIN plates and installed them on vehicles being sold through the auction. Mr. Wang then put a scratch through the bar code so the VINs would not scan and had to be entered manually. Mr. Wang then sold the vehicle as being free and clear of any previous history.
- [71] Over the period from 2015 to 2017, Mr. Maidment confirmed that Nice Auto bought 40 vehicles and sold 299 vehicles through the Adesa auction, a total of 349 trades. Mr. Maidment focussed on 18 vehicles that Mr. Wang had purchased from Impact, a salvage auction that is a sister company to Adesa. “Salvage auction” is a colloquial term that refers to a wholesale auction involving cars that have been written off by insurance companies. A write-off can happen as a result

of an accident, because the vehicle has been stolen and recovered or for a number of other reasons. Other vehicles are also sold through the salvage auctions, such as retired rental car fleets and cars donated to charity.

[72] Mr. Maidment compiled a spreadsheet of the 18 vehicles Nice Auto purchased from Impact. Four of the 18 vehicles were either never consigned to Adesa or not sold by Nice Auto through the Adesa auction. The remaining 14 vehicles were sold by Nice Auto through the Adesa auction. Of those, Nice Auto failed to make the following disclosures required by s. 42 of the Regulation:

- (a) six vehicles had been declared a total loss by an insurer;
- (b) two vehicles were previous daily rentals;
- (c) four vehicles had been in an accident;
- (d) one vehicle had been stolen and recovered;
- (e) eight vehicles had been sourced from out of the province; and
- (f) two vehicles had sustained smoke or other damage.

In addition, the brass re-VIN plate attached by the police to signal that the vehicle has “history” had been tampered with on two of the 14 vehicles. Moreover, only 2 of the 14 vehicles had no compliance issues.

[73] Not surprisingly, Mr. Maidment testified that this situation had a significant impact on Adesa. Adesa had to unwind the sales transactions and, in some cases, incurred costs to have the vehicles returned to it or to compensate purchasers for repairs or overpayment. Adesa was able to manage the process in such a way that its costs were covered by consigned Nice Auto vehicles that had not been sold and that were being held as collateral. Notwithstanding this, Mr. Maidment reported that a significant amount of time and resources of Adesa personnel was required to track the vehicles, to unwind the transactions when necessary and, generally, to make things right. Mr. Maidment also cited an intangible cost to Adesa – damage to its reputation caused by Nice Auto’s conduct. He says that this damage is not quantifiable as he cannot know who is now unwilling to deal with Adesa because of this unsavoury situation. Mr. Maidment puts a high value on Adesa’s reputation as an honest dealer.

[74] In late August 2017, when the situation first came to light, Mr. Maidment contacted Mr. Dave Wilson at OMVIC, a person with whom he had dealt in the past. From Mr. Wilson, Mr. Maidment learned that Min Tian’s driver’s licence

showed a picture of a female. Later that day they asked “Min” to attend at the premises of the auction. Mr. Maidment and Mr. Wilson confronted Mr. Wang when he arrived. Nice Auto’s account was then locked down, Nice Auto and Min Tian were banned from Adesa auctions across North America and reported to the industry as a fraudulent dealer.

- [75] I am satisfied, based on the testimony of Mr. Maidment and of Mr. Dey, described below, that all contact between Adesa and Nice Auto was with Mr. Wang and that all of Nice Auto’s trades through Adesa were in fact conducted by Mr. Wang.
- [76] By way of Information dated June 20, 2018, Mr. Wang was charged under the Act for unregistered trading at Adesa on behalf of Nice Auto. On October 18, 2018, Mr. Wang entered a guilty plea to this charge and was assessed a fine of \$25,000. As well, Mr. Wang acknowledged his involvement in the unregistered trades through Adesa on behalf of Nice Auto. While there were no charges or convictions for the offences under the Act for failing to make required disclosures, I accept Mr. Maidment’s evidence regarding Mr. Wang’s involvement in those, which were largely unchallenged by Mr. Wang.

2019: Unregistered Trade on behalf of A1 Motors

- [77] Mr. Sunny Dey worked at Adesa as a dealer relations representative for many years. Mr. Dey managed accounts for certain dealerships, including Nice Auto for about four to six months on and off from 2015 to 2017. In this role he booked vehicles for the weekly auction sales and addressed the needs of buyers and sellers participating in the sales. He estimated that he spoke to “Min Tian” two or three times on auction days. Mr. Dey estimated that he would have spoken to “Min Tian”, on average, two to five times per week during this period.
- [78] In January 2019, well after Mr. Wang’s impersonation of Min Tian had become known to Adesa, and after Mr. Wang had been confronted and charged, Mr. Dey received a call about a vehicle being consigned for sale at the auction. Mr. Dey testified that the caller’s voice was distinctive and sounded to him like “Min Tian”, that is, Mr. Wang. He put the caller on hold, asked his colleagues to listen in, and reconnected the call on speaker phone. His colleagues agreed that the caller sounded like “Min Tian”. He reported this incident to his general manager, Mr. Maidment. Mr. Maidment explained that the dealer relationship representatives step in for one another from time to time such that others would be in a position to recognize the voice of “Min Tian”

- [79] Upon receiving this information from Mr. Dey, Mr. Maidment contacted Mr. Wilson at OMVIC, indicating his belief that Mr. Wang might, again, be attempting to participate in Adesa's auction. The consignor of the vehicle was 11104098 Canada Inc. o/a A1 Motors ("**A1 Motors**") whose principal, according to Adesa's records, was a Mr. Zi Wang. Mr. Wang acknowledged that Zi Wang is his adult son. Mr. Wilson was able to determine, based on OMVIC's records, that the business location of A1 Motors was 4032B Finch Avenue East, the same location used by Nice Auto. These records were provided to the Tribunal and this was acknowledged by Mr. Wang in his testimony.
- [80] Based on Mr. Dey's testimony, Zi Wang being Mr. Wang's adult son, and A1 Motor's business location being the same as that of Nice Auto, I find that it is more likely than not that Mr. Wang was again trading in vehicles in January 2019, a time when he was not registered under the Act.

Summary regarding Mr. Wang's Past Conduct

- [81] It is very significant that all of Mr. Wang's past conduct considered above took place in the automobile industry. His conduct of trading in vehicles while unregistered goes to the heart of the Act – consumers are not protected by sellers who do comply with the regulatory regime established by the Act. This is highlighted by the findings I have made regarding Mr. Wang's conduct as an unregistered dealer.
- [82] Mr. Wang's conduct took place over a lengthy period of about six years. After Mr. Wang's first conviction under the *Provincial Offences Act* in July 2015, he continued trading on an unregistered basis on behalf of Nice Auto with Adesa, making 349 trades. Mr. Wang continued unregistered trading on behalf of A1 Motors with Adesa in January 2019 after his second conviction under the *Provincial Offences Act* in October 2018.
- [83] It appears that Mr. Wang's first two convictions did not have the effect of bringing about a change in Mr. Wang's behaviour. For most individuals, a conviction would be a significant deterrent to repeat behaviour. The fact that Mr. Wang was not deterred by his convictions is a significant factor in determining whether he will carry on the business of Topstar in accordance with the law and with integrity and honesty. This pattern strongly suggests that he will not.
- [84] As well, Mr. Wang was less than fully candid with the Tribunal about his past conduct. While admitting to the facts underlying his two convictions and taking responsibility therefor, he denied involvement in the business of Nice Auto other than in relation to the 349 Adesa trades. I found otherwise as described in

paragraphs [55] to [65] above. Likewise, Mr. Wang denied he had attempted to make a trade with Adesa on behalf of A1 Motors. Again, I found otherwise in paragraphs [77] to [80] above.

- [85] Mr. Wang also testified that he replaced brass VIN plates inside the doors of stolen and recovered vehicles because these VIN plates were “very ugly”. He went on to say that he wanted to make the vehicle “look prettier” and that he didn’t know that this was not allowed. This explanation is not credible.
- [86] These instances of lack of candour with the Tribunal are troubling and represent a lack of acceptance of responsibility for his past conduct. Lack of acceptance does not augur well for future compliance with the regulatory regime established by the Act.
- [87] Also troubling is Mr. Wang’s testimony, on more than one occasion, that one of the reasons he has changed his outlook is that he had come to realize that the regulatory regime under the Act is very tight and that, sooner or later, he will be found out if he attempts to get away with things. This statement suggests that Mr. Wang may not have undergone, as he claims, a fundamental change in outlook and developed honesty and integrity. Rather it suggests that Mr. Wang will not engage in this conduct because he believes he will be caught. Should a situation arise in the future where Mr. Wang could “get away” with something, I am not satisfied that he would do the right thing and act with honesty and integrity. This testimony calls into question whether Mr. Wang has a genuine desire and intent to turn over a new leaf and change the way he conducts business.
- [88] My findings are summarized as follows:
- (a) while impersonating his father-in-law Lixing Tian, Mr. Wang engaged in unregistered trading in relation to the sale of the 2007 Toyota and the attempted sale of the 2009 Infiniti, contrary to s. 4(1)(a) of the Act;
 - (b) Mr. Wang rolled back the odometers of the 2007 Toyota and the 2009 Infiniti;
 - (c) Mr. Wang engaged in unregistered trading on behalf of Nice Auto in relation to the trades with Mr. Xu, Mr. Bertolo and J. Lockwood Leasing Limited in 2017, contrary to s. 4(1)(a) of the Act;

- (d) while impersonating his wife Min Tian, Mr. Wang engaged in unregistered trading on behalf of Nice Auto in relation to the 349 trades with Adesa during the period from 2015 to 2017, contrary to s. 4(1)(a) of the Act;
- (e) Mr. Wang revinned vehicles, rolled back odometers, and failed to disclose required information about several vehicles while trading on behalf of Nice Auto with Adesa, contrary to the Regulations and other legislation; and
- (f) while impersonating his son Zi Wang, Mr. Wang engaged in unregistered trading on behalf of A1 Motors with Adesa in January 2019, contrary to s. 4(1)(a) of the Act.

Each of the foregoing actions on the part of Mr. Wang amounts to failing to conduct business in accordance with the law and with integrity and honesty within the meaning of s. 6(1)(d)(iii) of the Act.

- [89] Mr. Wang's past conduct alone is sufficient to allow me to conclude that there are reasonable grounds for belief that, as its sole officer and director, he will not carry on the business of Topstar in accordance with the law and with honesty and integrity. This conclusion is bolstered by Mr. Wang's denials in relation to Nice Auto and A1 Motors. The Registrar has fully satisfied its onus to establish that there are reasonable grounds to believe that Topstar will not carry on its business in accordance with the law and with honesty and integrity.

ISSUE 3: HAVING FOUND THAT THE REGISTRAR HAS ESTABLISHED THAT THE PAST CONDUCT OF MR. WANG AFFORDS REASONABLE GROUNDS FOR BELIEF THAT TOPSTAR WILL NOT CARRY ON ITS BUSINESS IN ACCORDANCE WITH THE LAW AND WITH INTEGRITY AND HONESTY, WHAT ORDER IS APPROPRIATE?

- [90] The public interest will not be protected by ordering registration of Topstar as a motor vehicle dealer with terms and conditions.

- [91] Having found that the Registrar has satisfied its onus to show that Mr. Wang's past conduct affords reasonable grounds for belief that he will not carry on the business of Topstar in accordance with the law and with integrity and honesty within s. 6(1)(d)(iii) of the Act, I must consider whether it is appropriate to order that Topstar be registered with terms and conditions imposed on its registration. The appellants indicated that registration with conditions would be acceptable, but the respondent took the position that conditions are not appropriate in this case.

- [92] In some instances, an applicant is deserving of another chance to demonstrate a willingness and ability to comply with the regulatory regime established under the Act. In these cases, whether the applicant will carry on business in accordance with the Act and with honesty and integrity is usually “close to the line”. In other words, while the Tribunal may not think the public would be adequately protected if the applicant were permitted to participate unfettered in the regulated activity, it is satisfied that the public would be adequately protected if it attached terms and conditions to the registration
- [93] This is not such a case. In reaching this conclusion, I have considered the likely effectiveness of conditions, the pattern of conduct of Mr. Wang, and his failure to acknowledge and take responsibility for the entirety of his past conduct.
- [94] Mr. Wang’s pattern of conduct of unregistered trading in vehicles is dishonest behaviour that goes to the heart of the purpose of the regulatory regime of the Act; consumer protection and dealer professionalism. This conduct occurred over a number of years, from at least 2013 to 2019, continued after his conviction in 2015, and again after his conviction in 2018. Mr. Wang also demonstrated ingenuity that enabled him to continue his unregistered trading undetected by impersonating a series of his family members. Mr. Wang clearly understood that unregistered trading was not permitted but continued the practise notwithstanding. He testified that he rolled back odometers so that he could realize a higher price on the sale of a vehicle.
- [95] Stated simply, I am not satisfied that there are any terms or conditions that can be written that would be effective to induce Mr. Wang to conduct his affairs in an honest manner, in accordance with the law and with integrity. Honesty and integrity are qualities that are internal to a person and are not effectively imposed from outside.
- [96] That said, the Tribunal acknowledges that people can change over time. Mr. Wang has asserted that he is a changed person, a person that wishes to pursue an honest life. As considered in paragraphs [28] to [38] above, Mr. Wang has offered evidence to support this assertion. I have found that this evidence is not adequate to fully support this assertion. More telling, however, is Mr. Wang’s failure to acknowledge his shortcomings and fully accept responsibility for all of his past conduct, namely his denials of involvement with consumer trades on behalf of Nice Auto and a trade with Adesa on behalf of A1 Motors; his acceptance of responsibility related only to the matters underlying his two convictions. As well, Mr. Wang’s testimony that the he removed the brass VIN

plates from vehicles consigned to be sold through the Adesa auction for aesthetic reasons is not credible.

- [97] Mr. Wang's lack of full candour at the hearing is evidence that he has not yet accepted responsibility for all of his past conduct and that he has not yet fully embraced honesty and integrity as guiding principles in his life.
- [98] Registration of Topstar with terms and conditions will be not be effective to bring about honest behaviour and will not be effective to give effect to the intent and purpose of the Act, being consumer protection, and to protect the public interest. It is not appropriate to order registration of Topstar as a motor vehicle dealer with terms and conditions and I decline to make such an order.

F. ORDER

- [99] I order that:
- (a) Mr. Wang is not permitted to proceed with his appeal as he has failed to satisfy the requirements of s. 12 of the Act; and
 - (b) (b) under s. 9(5) of the Act, the Registrar carry out its proposal to refuse registration to Topstar.

LICENCE APPEAL TRIBUNAL



Joanne E. Foot, Member

Released: April 16, 2021