

**Licence
Appeal
Tribunal**

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Ontario

July 23, 2010

MEMORANDUM

Re: Abdol Rasoul Afrasiabi v. Registrar, Motor Vehicle Dealers Act, 2002

Enclosed herewith please find a copy of the Decision of the Licence Appeal Tribunal with respect to this matter.

DISTRIBUTION LIST:

Abdol Rasoul Afrasiabi, Applicant
Yovanka McBean, Representative for the Respondent

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ABDOL RASOUL AFRASIABI

AN APPEAL FROM NOTICE OF PROPOSAL BY THE
REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*, S.O. 2002
c. 30

TO REVOKE REGISTRATION

TRIBUNAL: TERRANCE A. SWEENEY, Vice-Chair

APPEARANCES:

ABDOL RASOUL AFRASIABI, Applicant, appeared on his own
behalf

YOVANKA McBEAN, Paralegal, represented the Registrar under
the *Motor Vehicle Dealers Act, 2002*

DATE OF
HEARING: July 8, 2010

Toronto

REASONS FOR DECISION AND ORDER

BACKGROUND

This hearing before the Licence Appeal Tribunal (the "Tribunal") arises out of a Notice of Proposal dated March 11, 2010, as supplemented by further particulars dated May 18, 2010, issued by the Registrar under the *Motor Vehicle Dealers Act, 2002* (the "Registrar" and the "Act" respectively). Under the Notice of Proposal, the Registrar proposed to revoke the registration of the Applicant as a salesperson under the Act. The Registrar alleges that the Applicant's past conduct and financial position are such as to disentitle him to registration under the Act.

The Registrar called three witnesses and filed two books of documents.¹

The Applicant testified on his own behalf. He called no independent witnesses and filed one document.²

¹ Exhibit 3 and 4

² Exhibit 5

ISSUES:

The Registrar cited a number of reasons why the Applicant should not be registered under the Act.

1. He has been bankrupt twice.
2. He caused two companies controlled by him to fail to file numerous returns with the Ministry of Revenue of Ontario ("MOR") and that the MOR suffered losses of over \$240,000.00.
3. The Applicant, on behalf of 1540981 Ontario Inc. o/a City Motor Sales and Service (the "Company"), failed to satisfy his obligations to the financier of the Company's automobile sales.
4. The Applicant caused the Company to sell warranties to consumers and fail to remit the premiums to the warranty company.

EVIDENCE:**The Case for the Registrar*****Richard Wilson ("Mr. Wilson")***

He testified that he is the Vice President, Sales and Marketing, for Clubb Finance Corporation ("Clubb") and knows the Applicant well, as Clubb had entered into a credit agreement with the Applicant's Company. Under that agreement, the Company was immediately to remit any of its sales proceeds to apply against its outstanding indebtedness. The Company did not do this in a number of cases. Moreover, because the Applicant has declared bankruptcy, the Company has suffered a financial loss of \$167,000.00.

The Applicant has caused further problems for the Company. For example, in one case a consumer bought a car for \$8,400.00 from the Company only to learn that Clubb had a \$9,000.00 lien against the car. Clubb settled with that consumer for \$6,000.00. In addition, Mr. Wilson said that Clubb had "to take a haircut" with a number of automobile wholesalers because of the Applicant's activities in order to try and maintain reasonable relations with the wholesalers.

Sean Kirkey ("Mr. Kirkey")

He is a Field Collections Officer with the MOR and testified as to the record of the Applicant's Company.

The Company was a monthly filer under the *Retail Sales Tax Act (Ontario)* (the "RST Act"). Yet the Company only filed four returns from March 3, 2003 to April 2009. The

Company failed to remit retail sales tax to such an extent that on the Applicant's declaration of bankruptcy in May, 2009, the Company owed over \$236,000.00, including interest and penalties.

Mr. Kirkey further testified that on the Applicant's bankruptcy in 1991, the MOR lost \$7,800.00 in retail sales tax in respect of another company controlled by the Applicant.

Mr. Kirkey explained that the Company is not bankrupt but has no assets and the Applicant, as the sole director of the Company, is responsible for the sales tax. The Applicant and the Company have evaded paying the tax, interest and penalties by the Applicant's bankruptcy.

Laura Halbert ("Ms. Halbert")

She is the Director of Compliance at the Ontario Motor Vehicle Industry Council (the "OMVIC") which was designated in 1997 to administer the Act. She is familiar with the files of the Applicant and the Company and said that the history of the Applicant demonstrates "what not to do if one is operating a dealership". She said that OMVIC does not want the Applicant selling cars in Ontario under any circumstances. She emphasized the following:

1. The Applicant has twice declared bankruptcy.
2. The failure of the Company to remit some of the premiums for warranties to Lubrico Warranty Inc. ("Lubrico") caused potential harm to those consumers as they had paid for protection they did not get.
3. The large indebtedness to the MOR, which was effectively evaded.
4. The grief caused to some consumers through the Applicant's actions. She referred, for example, to the Company's customer who had to pay an additional \$6,000.00 on an \$8,400.00 car to settle a lien with Clubb. This shows the cavalier attitude of the Applicant to his customers.
5. The Applicant and the Company breached terms and conditions they signed with OMVIC and the MOR³.

In summary, she said that it is a question of financial responsibility which, combined with the Applicant's conduct since 1991, shows that the Applicant is not going to comply with the law.

The Case for the Applicant

The Applicant testified on his own behalf. He did not seriously challenge any of the allegations made against him by the Registrar. He said that he "was an honest person" and that he "did not hurt anybody". He referred to the \$8,400.00-\$6,000.00 car/Clubb

³ Exhibit 3, Tab A

lien customer problem as "unfortunate". He said his "customers like me". He said that it has been very difficult for him for the past year or so and that he needs the licence to make a living.

FACTS FOUND PROVEN:

The Tribunal finds that the following facts have been proven on a balance of probabilities:

1. The Applicant has been registered as a salesperson under the Act for over 20 years.
2. The Applicant is the sole officer and director of the Company which has been registered as a dealer under the Act since March, 2003.
3. The Applicant and his wife filed for bankruptcy on or about the 29th day of May, 2009. That was the second time that the Applicant declared bankruptcy.
4. The 2009 bankruptcy left Clubb with an uncollectable debt of about \$167,000.00 and the MOR with one of over \$236,000.00.
5. The Company sold four Lubrico warranties to consumers and then failed to submit the payment collected from the consumers to Lubrico, thus exposing those consumers to potential economic loss.
6. The Applicant consistently, on the sale of an automobile, failed to remit payment to its creditor, Clubb. Clubb was forced to repossess the automobiles which often resulted in economic harm to the Company's customers.
7. The Applicant and the Company breached an agreement with the Registrar dated August 13, 2008. This agreement contained terms and conditions which allowed the Applicant and the Company to continue to carry on business. Paragraph 26 of this agreement provided that

"The Registrant will comply with all aspects of the Retail Sales Tax Act with regards to filing and ensuring that all tax collections are accurately reported and remitted to the Minister of Finance when due. The Registrant acknowledges that all taxes collected are deemed to be trust funds and will not be used for any other purpose other than remittances to the Minister of Finance."

8. The Applicant, as a director of the Company, entered into an agreement with the MOR dated October 22, 2008. The Applicant and the Company breached this agreement on or about May, 2009. In a letter dated May 11, 2009⁴ to OMVIC, an official of the MOR said, among other things,

"... we do not consider the vendor to be financially responsible in the conduct of this business".

⁴ Exhibit 3, Tab 13

THE LAW:

Subsection 6(1) of the Act reads, in part, as follows:

"An applicant that meets the prescribed requirements is entitled to registration or renewal of registration by the registrar unless,

- (a) the applicant is not a corporation and,
 - (i) having regard to the applicant's financial position or the financial position of an interested person in respect of the applicant, the applicant cannot reasonably be expected to be financially responsible in the conduct of business;
 - (ii) the past conduct of the applicant or of an interested person in respect of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty ...".

Section 8 of the Act allows the Registrar to refuse to register an applicant where, in the Registrar's opinion, the applicant is not entitled to registration under section 6.

The Registrar must prove his case on a balance of probabilities.

Subsection 22(1) of the RST Act, as it then was, read as follows:

"Any amount collected or collectable as or on account of tax under this Act by a vendor shall be deemed, despite any security interest in the amount so collected or collectable, to be held in trust for Her Majesty in right of Ontario and separate and apart from the vendor's property and from property held by a secured creditor that but for the security interest would be the vendor's property and shall be paid over by the vendor in the manner and at the time provided under this Act and the regulations"

APPLICATION OF THE LAW TO THE FACTS:

The Applicant, in his testimony, expressed no remorse for the harm he caused to his consumers, the MOR, Clubb and Lubrico. He took no responsibility for his actions. He blamed the "economy" for his financial problems. He said that the situation with his customer who had to pay an extra \$6,000.00 on an \$8,400.00 car was "unfortunate". This illustrates with blinding clarity the selfish attitude he has had towards his customers.

He breached agreements with the Registrar and the MOR. The Tribunal notes particularly that the Applicant, through his second bankruptcy, breached a trust imposed on the Company and cheated the MOR out of a very large retail sales tax debt.

The Applicant has been in the motor vehicle business for over 20 years. He knew, or ought to have known, what his responsibilities were. Yet, although the Company was a monthly filer under the RST Act, he only filed four returns for the period March 2003 to April 2009.

The Tribunal has considered all of the evidence and concludes that the Applicant cannot reasonably be expected to be financially responsible in the conduct of his business and that he will not carry on his business in accordance with law and with honesty and integrity.

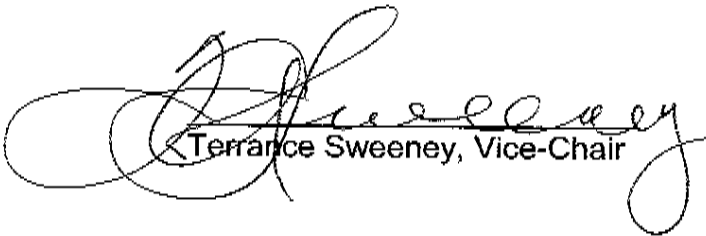
The Act is consumer protection legislation. The people of Ontario need to be protected from the Applicant.

The Registrar has proved his case on a balance of probabilities.

DECISION:

By virtue of the authority vested in it under the Act, the Tribunal directs the Registrar to carry out his Proposal.

LICENCE APPEAL TRIBUNAL



Terrance Sweeney, Vice-Chair

RELEASED: July 23, 2010

The hearing was recorded. Transcripts can be made available at your expense. The period to appeal a decision to the Superior Court of Justice or Divisional Court (<http://www.ontariocourts.on.ca/>) is 30 calendar days from the date of release of the decision. Please arrange to pick up your Exhibits within 30 days after that period has passed. The Tribunal requires seven days notice prior to releasing Exhibits.

This decision, which is being released to the parties in this proceeding, may also be posted on the Licence Appeal Tribunal's website <http://www.lat.gov.on.ca> in approximately three weeks. The decision may also be available on Quicklaw at a later date.