



Citation: R. P. v. Registrar, *Motor Vehicle Dealers Act, 2002* **2020 ONLAT MVDA
12028**

Date: 2020/04/01

Tribunal File Number: 12028/MVDA

Appeal from a Notice of Proposal pursuant to s.9 of the *Motor Vehicle Dealers Act, 2002*, Chapter 30, Schedule B and Regulations, as amended, (the "Act") to revoke the registration of Rita Parmar as a Motor Vehicle Salesperson under the Act

R. P.

Appellant

and

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

AMENDED DECISION AND ORDER

ADJUDICATOR: Harriet Lewis, Member

APPEARANCES:

For the Appellant: Frank Alfano, Paralegal

Sean O'Connor, Paralegal

For the Respondent: Michelle Samaroo, Counsel

Heard in Toronto: February 18, 19, 20, 2020

REASONS FOR DECISION AND ORDER

OVERVIEW

- [1] R. P. (“Ms. P.”) was first registered as a motor vehicle salesperson under the Act on February 12, 2013. She was employed as the Business Manager of [a car dealership] in that capacity until sometime in September 2017 when she left [a car dealership] for another dealership.
- [2] On April 11, 2019 the Registrar under the Act (“the Registrar”) filed a Notice of Proposal to revoke R.P.’s registration (“the Proposal”). The Proposal alleges:
 - a. That while at [a care dealership], R.P. falsified information about customers and furnished that false information to the dealership for the purpose of qualifying her customers for special discounts.
 - b. That on each of her 2015 and 2017 applications to the Ontario Motor Vehicle Industry Council (“OMVIC”) for licence renewal, R.P. made false statements by failing to disclose that she had been charged and then convicted of a criminal offence.
- [3] The Registrar takes the position that R.P.’s past conduct and false statements disentitle her to registration under the Act and warrant revocation.
- [4] In her Notice of Appeal (the “Appeal”) dated April 17, 2020, R.P. admits several of the particulars of the Proposal’s allegations against her and agrees that she made certain mistakes in her capacity as a registrant in the past. She states that she has learned from her mistakes and indicates that she is prepared to be registered subject to terms and conditions for “a reasonable period of time”.
- [5] For the reasons which follow, the Tribunal finds that the Registrar’s decision to revoke R.P.’s licence should be upheld. I therefore direct the Registrar to carry out the Proposal.

ISSUES:

- [6] The issues to be decided by the Tribunal are:
 - a. Did R.P. make false statements on her applications for renewal of registration?

- b. Does the past conduct of R.P. afford reasonable grounds to believe that she will not carry on business in accordance with law and with integrity and honesty?
- c. Is revocation the appropriate action in this case?
- d. If revocation is not appropriate, what, if any, conditions should be imposed on R.P.'s continued registration?

THE LAW

- [7] Section 6(1) of the Act provides that, subject to circumstances set out in s.6(1)(a), an applicant is entitled to registration. Section 8 (1) of the Act allows the Registrar to refuse to register an applicant or suspend or revoke a registration or refuse to renew a registration if, in his or her opinion, the applicant or registrant is not entitled to registration under section 6.
- [8] Section 6(1)(a)(ii) provides that one of the grounds the Registrar may rely upon to refuse a licence is if “the past conduct 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.”
- [9] Section 6(1)(a)(iii) provides that an applicant is not entitled to registration if the applicant “makes a false statement or provides a false statement in an application for registration or renewal of registration”.
- [10] The Registrar’s Proposal in this case asserts that R.P.’s registration should be revoked because her past conduct in forging and furnishing false documents and providing false statements in applications for registration are inconsistent with the intention and objective of the Act and warrant disentitlement to registration.
- [11] The jurisdiction and authority of this Tribunal comes from s.9 of the Act which provides that the Tribunal “may by order direct the registrar to carry out the registrar’s proposal or substitute its opinion for that of the registrar and the Tribunal may attach conditions to its order of registration.”

EVIDENCE AND ANALYSIS

Furnishing False Information on an Application for Renewal

- [12] There is little dispute between the parties as to the facts which form the basis of the Registrar’s position that R.P. incorrectly and falsely answered certain questions on her applications for renewal of registration in 2015 and 2017.

- [13] On January 29, 2015, R.P. submitted her first application for renewal of her registration as a salesperson. Question 5 in the “eligibility” section of the application asked, “Have you ever been found guilty or convicted of an offence under any law or are there any charges pending? Make sure to include those cases with a conditional, absolute discharge or stayed charges. Please note: This question refers to charges under any law”.
- [14] R.P. answered “no” to that question although, at the time of the application, she had been charged and was awaiting resolution of charges for impaired driving and dangerous driving.
- [15] On January 26, 2017, when she submitted the next application for renewal of her registration, the same question was asked, and R.P. again answered “no” although on March 24, 2015 she had pleaded guilty and been convicted of both impaired driving and dangerous driving and received a lengthy suspension of her driving privileges.
- [16] R.P. was charged under the Act and, in September 2019, pleaded guilty to failing to notify the Registrar of changes to the information in the applications for registration and to furnishing false information in applications for registration.
- [17] R.P.’s explanation of her failure to properly answer Question 5 on her applications was that she thought driving offences did not have to be disclosed. She did not disclose her licence suspension to [a car dealership] where she was expected to move vehicles within the premises and take customers for test drives. Despite her own evidence of concerns expressed to her by her sister that she had been convicted of a criminal offence, she determined that her conviction was a matter that need not be disclosed to immigration officials when crossing the United States Border on two occasions. She now understands she should have disclosed her charges and convictions to [a car dealership] and to OMVIC.
- [18] Given R.P.’s evidence on this matter, I find that she knowingly failed to disclose her licence suspension to her employer and that she knew or ought to have known that the answers that she gave on her two applications for renewal were false.
- [19] On this ground alone, the Registrar is entitled under ss.8 (1) and 6 (1)(iii) of the Act to revoke R.P.’s registration.

Does the past conduct of R.P. afford reasonable grounds for belief that she will not carry on business and in accordance with the law and with integrity and honesty?

- [20] Through its productions and witnesses, the Registrar introduced evidence that R.P. had created and/or submitted a series of forged documents in respect to eight vehicle sales for the purpose of giving [a car dealership] customers incentive discounts made available to its qualifying customers by General Motors of Canada ("GMC").
- [21] As explained by L. V., the dealer/principal of [a car dealership], these programs include, among others, special discounts for spouses of salespersons, for employees of "affiliate" companies with which GMC does business, and for graduates of post secondary institutions who have obtained employment within 48 months of graduation. There is also a discount for individuals who own and trade-in a vehicle which has been discontinued by GMC. Customers can qualify for more than one incentive.
- [22] The process provides for the dealership to apply specified discounts to the manufacturers suggested retail price for the vehicle, for qualified customers. The dealership then completes an application for a rebate from GMC. The customer signs documentation attesting to their qualification for the incentive discount and that form, along with documents substantiating their qualification for discounts, accompany all rebate applications.
- [23] The incentive program in each dealership is subject to routine yearly or bi-yearly audits by GMC. In turn, [a car dealership] does monthly audits of its transactions. As a result of one of the monthly audits in 2017, after R.P. had left [a car dealership], it discovered evidence of improper application of the incentive plan to several of R.P.'s sales.
- [24] Evidence concerning R.P.'s actions with respect to the applications for incentive discounts was given by R.P., some of her former customers, representatives of two affiliate companies and representatives of two post secondary educational institutions. It is clear and undisputed that the false information created and supplied by R.P. to the dealership and in turn to GMC for incentive discounts occurred in the following transactions: (the alphabetical listings correspond to the individual cases and the evidence introduced by the Registrar):
- a. False information that her father was her spouse in order to obtain a spousal discount;

- b. False information in the form of a forged employment record showing that a customer worked for TD Bank, an “affiliate” company. The customer had never worked for TD and is the owner of a non-affiliate contracting company;
- c. False information in the form of a forged ownership certificate for a discontinued vehicle which was never owned by R.P.’s brother for whom the applicable discount was claimed;
- d. False information in the form of a forged employment record indicating that a customer worked for [an asset management company], an affiliate company. The customer worked for a non-affiliate electrical contractor;
- e. False information in the form of a forged paystub from T.D. Bank, and a forged university graduation certificate. The customer is a senior teacher at a school board with degrees from two universities but had never attended the subject university nor worked for the T.D. Bank;
- f. False information in the form of a forged paystub from [a law firm], and a forged degree certificate from [post secondary educational institution]. The customer is a senior real estate agent in [Ontario] and has never worked for [a law firm] nor attended [post secondary educational institution];
- g. False information in the form of a forged paystub from [an affiliated company]. The customer has never worked for [an affiliated company] and at the relevant time worked for a local law firm;
- h. False information in the form of a forged paystub from T.D. Bank and a forged graduation diploma from [post secondary educational institution]. The customer has never worked for T.D. Bank nor attended [post secondary educational institution].

[25] R.P. admitted to creating forged documents for some of these customers by altering the valid documentation of other unrelated customers. She denied creating forged documents for other of the listed transactions but admitted to including documents she knew to be forged in the materials being submitted for discounts in those cases. She testified that those materials were provided to her by other employees of [a car dealership] who wanted incentive discounts to apply to vehicle sales to their relatives.

- [26] Although she had passed the OMVIC course as a precondition of her employment by [a car dealership], in defending her conduct in respect to these matters, R.P. attributes her conduct to failures or actions of others at [a car dealership]. She testified that after being hired, she was given some brochures to learn the process of selling a vehicle and was then “thrown out there” to make sales. She worked for four months before selling a car, by which time she believed she was on the verge of being fired. She believed that creating false documents to give incentive discounts and make a sale was a practice being done by everyone in the dealership. In her words, it was “just normal”.
- [27] Sometime in the early autumn of 2017 R.P. left [a car dealership] and transferred her registration to [a car dealership] where she was employed as a Finance Manager. At [a car dealership], she was provided with a training program and it was in the course of that training that she was exposed to case studies of salespeople who were sentenced to prison and given other punishment for their fraudulent behaviour. She became frightened and realized that her behaviour was wrong and had to change.

Is revocation the appropriate action in this case?

- [28] The Act is consumer protection legislation and it is through the registration process that OMVIC and the Registrar can best ensure that registrants abide by the Act and regulations. Registration is denied to persons who by their dishonest conduct demonstrate a disregard for the registration requirements and the law, who lack integrity, and who are therefore considered to be unlikely to carry on business in accordance with the law and with integrity and honesty in the future.
- [29] As established in the case of *Registrar, Alcohol and Gaming Commission of Ontario v. 751809 Ontario Inc. o/a Famous Flesh Gordon's*, 2013 ONCA 157, the Registrar has the onus to demonstrate a reasonable basis for its belief that a proposed registrant will not, if registered, carry on business in accordance with the law or within integrity or honesty.
- [30] As noted above, the false statements made by R.P. on her 2015 and 2017 applications for renewal of registration are in themselves enough to require refusal of registration or to allow revocation.
- [31] In this case it is the Registrar’s position that the repeated incidents of R.P.’s creation and submission of false documents is strong evidence in support of the reasonableness of the decision to revoke her registration. It is also the Registrar’s position, based on the evidence of witnesses, that such conduct caused harm to the public.

- [32] Three of R.P.'s customers, representing transactions d, e, and g above, testified of their concern that documentation had been forged in their names in respect to the discounts obtained through R.P. Each said that the fact of the forgeries and the forged documents were not disclosed to them, although in at least one of the cases, the customer realized she was receiving an incentive discount for which she did not qualify.
- [33] [L.V.] testified about the actual and potential consequences of R.P.'s actions on [a car dealership]. He expected to have to make restitution to GMC of amounts falsely claimed for incentives. In the worst case, [a car dealership]'s GMC dealership could be cancelled. He is concerned that the public could lose trust in the dealership and its salespeople because customers' personal information had been used in the creation of false documents for others.
- [34] Andrea Korth ("Ms. Korth"), the Business Standards and Legal Project Manager of OMVIC, spoke to the public's expectation of honesty by the salespeople with whom they make such an expensive purchase. The public is entitled to the expectation that a customer's personal information, given for purposes of their obtaining financing or other transactions, will be protected. The public should be able to rely on their information not being used for illegal acts in respect to other customers. The registration system depends on the honesty of the registrants and on their willingness to abide by the law, the regulations and the requirements of registration.
- [35] Ms. Korth noted that R.P. did not come forward to OMVIC or to [a car dealership] to advise that her registration applications contained false answers. She did not confess to having fabricated documents until she was caught. Her role as a business manager put her in a position of trust and her actions illustrate a serious breach of that trust.
- [36] R.P.'s testimony was understandably emotional. Based on her evidence, it is not clear that she has yet understood the gravity of her past acts and the regulatory, legal and ethical framework of a regulated industry such as motor vehicle sales. While she now claims to know what she did was wrong, she explains her conduct by accusing everyone else of doing the same thing. She said that she regretted her actions in part because she got caught. She gave no evidence of having sought counselling to better understand herself or the motivations for her actions. Her only counselling occurred during the compulsory "Back on Track" course to regain her driving privileges after having been found guilty of the criminal charges in 2015.

- [37] R.P. is only 30 years old. She lives with her parents and other family members. She attended university for part of a year then moved to a community college but did not complete her course of study. Since then she has been in a motor vehicle accident leading to criminal convictions for impaired driving and dangerous driving and committed repeated illegal and unethical acts in connection with her position at [a car dealership]. She made no voluntary disclosure of her criminal charges and convictions to OMVIC, to [a car dealership], or to [a car dealership]. In her evidence she admitted that based on what she now knows, she would not likely hire herself.
- [38] G.D.S. provided character evidence in support of R.P. He had worked with her in sales at [a car dealership] and then became the General Manager at [a car dealership]. He hired R.P. as a Finance Manager at [a car dealership] when he heard that she had left [a car dealership]. He admitted that had he known of actions constituting the grounds for the Proposal he would not have hired her. However, he spoke about her performance at [a car dealership] and her promotion to Sales Manager. While he does not condone her past behaviour, he is of the opinion that R.P. is intelligent, a “people person” and understands and has followed proper processes at [a car dealership]. He “believes in second chances”.
- [39] Filed in evidence in further support of R.P.’s retention of her registration were letters from some of her fellow employees at [a car dealership], including from G.D.S., attesting to her reliability, diligence and personal qualities. However, there was no evidence provided from her dealer/principal as to her suitability to continue at [a car dealership] under what are now fully disclosed circumstances.
- [40] When asked about her expectations for the future R.P. answered that she just wants her life back “and to be done with this”. Submissions made on her behalf emphasized that R.P. had behaved as she did because of her understanding that others were behaving in the same manner and that she has learned her lesson and is unlikely to repeat past behavior, particularly if the Tribunal were to impose conditions that provide for some supervision.
- [41] R.P.’s misconduct was serious and the Tribunal heard no evidence that would illustrate a genuine acceptance of her own responsibility for her actions or an understanding of the effect of those actions on her customers, the public, or on the dealer who gave her a position based on trust. Unless and until she demonstrates some genuine understanding of what she has done and takes responsibility for her actions, it is reasonable for the Registrar to believe that R.P. will not carry on business in accordance with law and with integrity and honesty

going forward. The Tribunal finds that the Registrar's proposal to revoke registration is the appropriate decision in these circumstances.

Would conditions be appropriate in this case?

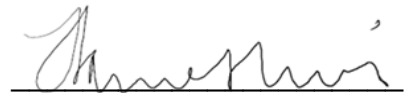
[42] The Tribunal finds that that R.P.'s registration should be revoked based both on the false statements made in her applications for renewal and on the reasonableness of the Registrar's belief that she will not carry on business with law and with integrity and honesty going forward. This is not an appropriate case for conditions.

[43] The serious breaches of the Act and regulations and R.P.'s apparent failure to fully accept her responsibility for the breach of trust and illegal acts at [a car dealership] warrant revocation. While no specific conditions were suggested in argument, it was submitted that the Tribunal might order that R.P. be ordered to "report to someone" and to make immediate disclosure of any changes in circumstances. As noted above, there was no expression of support for R.P. from the owner/principal at [a car dealership], nor was there any indication of a willingness to oversee any conditions included in the letter of support from her General Manager.

DECISION AND ORDER

[44] Pursuant to section 9(5) of the Act, the Tribunal orders the Registrar to carry out the Proposal and revoke R.P.'s registration as a motor vehicle salesperson under the Act.

LICENCE APPEAL TRIBUNAL



Harriet Lewis, Member

Amended Released: April 01, 2020