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To/À Mohsen Farahat, by Courier
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From/De Jovan Brkic, Case Management Officer

Licence Appeal Tribunal

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Pages to follow/Pages à suivre 7

Message

Please see the attached decision for **7310/MVDA – Downtown Auto Center and Mohsen Farahat v. Registrar, Motor Vehicle Dealers Act, 2002.**

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Licence Tribunal
Appeal d'appel en
Tribunal matière de permis



DATE: 2012-09-19
 FILE: 7310/MVDA
 CASE NAME: 7310v. Registrar, *Motor Vehicle Dealers Act 2002*

An Appeal from a Notice of Proposal by the Registrar, *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B - to Refuse Registration(s)

2207113 Ontario Inc. o/a Downtown Auto Center and
 Mohsen Farahat

Applicants

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Elizabeth Sproule, Vice-Chair

APPEARANCES:

For the Applicants: Mohsen Farahat , on his own behalf and as agent for
 DowntownAutoCenter

For the Respondent: Angela La Viola, Counsel

Heard in Windsor: July 25, 2012

REASONS FOR DECISION AND ORDER

BACKGROUND

This is an appeal to the Licence Appeal Tribunal (the "Tribunal") from a Notice of Proposal (the "Proposal") pursuant to section 9 of the *Motor Vehicle Dealers Act, 2002* (the "Act"). The Proposal dated March 19, 2012, sets out the Registrar's reason for refusing the registration of 2207113 Ontario Inc. o/a DowntownAutoCenter as a motor vehicle dealer (the 'Dealer') and Mohsen Farahat as salespersons as follows:

The intention and objective of the Act is to protect the public interest. In doing so, the Act prohibits conduct which is not in accordance with the law and with integrity and honesty. The past conduct of 2207112 Ontario Inc. o/a DowntownAutoCenter and Mohsen Farahat is inconsistent with the intention and objective of the Act and therefore warrants disentitlement to registration under the Act.

The particulars relied upon by the Registrar include that the Applicant Mohsen Farahat failed to disclose pending charges under section 90(3)(a) of Ontario Regulation 811, of the *Highway Traffic Act*, when he made application for registration in April, 2010. The charges resulted in a conviction in May, 2010. Mr. Farahat is the sole officer and director of the 2207113 Ontario Inc. o/a DowntownAutoCenter (the "Dealer"). In his application for registration as a salesperson with the Dealer in June of 2011, Mr. Farahat failed to disclose his conviction.

PRELIMINARY MATTER

The Notice of Proposal under appeal proposes the refusal of registration of both 2207113 Ontario Inc. and the Applicant Mohsen Farahat. There was some confusion as to whether Mr. Farahat was appealing the proposal for both himself and 2207113 Ontario Inc. The Registrar had interpreted the Notice of Appeal to be an appeal by 2207113 Ontario Inc. only and therefore had issued a final notice confirming the refusal to register Mr. Farahat. It was confirmed at the outset of the hearing that it was the intention of Mr. Farahat to appeal the proposal with respect to both himself personally and the Dealer. The Registrar had no objection to this and confirmed that the previous final notice would have no consequence.

ISSUE

Are the Applicants disentitled to registration on any of the grounds set out in Section 6 of the Act?

FACTS

The Applicant Mohsen Farahat made application for registration as a salesperson in April of 2010. His application was dated April 10, 2010, and was received by the Ontario Motor Vehicle Industry Council ('OMVIC') on April 14, 2010. At the time of this application, Mr. Farahat was to be employed by Andrew Windsor Auto Sales.¹ Page four of the application completed by Mr. Farahat contains Section E which relates to eligibility. Question six of that section reads: "Have you ever been found guilty or convicted of an offence under any law, or are there any charges pending?" The words bolded and underscored are how they appear in the application. Mr. Farahat answered "No" to this question. This was incorrect.

On page six of the same application, there is a Section G, entitled 'Consent and Undertaking' which includes the following sentence in bold: "**I further understand the provision of false, incomplete or misleading information or the omission of information in this application or the documents submitted with it, may result in the refusal, suspension or revocation of registration.**"

Mr. Farahat was personally served with a summons, under section 24 of the *Provincial Offences Act*, on February 24, 2010, with respect to a charge under s.90(3)(a) of the *Highway Traffic Act*. The offence involved issuing a Safety Standards Certificate to a vehicle which was found not to be in compliance with the vehicle standards set out in Ontario Regulation 611. On May 3, 2010, Mr. Farahat attended Court and pled guilty to this charge and was fined \$400.00, which he paid.

Mr Farahat is the sole officer and director of the Applicant 2207113 Ontario Inc., operating as DowntownAutoCenter. He completed and submitted an application for this corporation to be registered as a 'General Dealer' of used motor vehicles, which was received by OMVIC on May 12, 2011. It was missing a signature on page seven and a completed page seven was received by OMVIC June 10, 2011. This application contains the same question regarding convictions and pending charges. Mr. Farahat indicated that the Applicant, in this case 2207113 Ontario Inc., had no convictions or pending charges. This response was correct as only Mr. Farahat had been charged and convicted under s. 90(3)(a) of the *Highway Traffic Act*.

By application dated June 29, 2011, Mr. Farahat applied to be a registered salesperson with DowntownAutoCenter. Page four of this application contains the same questions as his previous individual application, in particular question six asks: "Have you ever been found guilty or convicted of an offence under any law or are there any charges pending? Mr. Farahat answered 'No' to this question. This statement was incorrect as he had been convicted of the HTA offence on May 3, 2010.

The Registrar also submitted into evidence copies of the notes made by the inspecting MTO Officer 17 days after the safety certificate was issued by Mr. Farahat. The Officer did not testify. The Tribunal noted there appeared to be some pages missing from the

¹Exhibit 3 tab 3

notes. The Officer indicated in her notes that she could not determine with certainty if all the defects found would have been in existence when the safety standard certificate was issued.

In his Notice of Appeal, Mr. Farahat provided the following reason for his appeal:

"In fact I had not mention the conviction to the Ministry of Transportation because it was a minor conviction and the Ministry never suspended my licence or prevented me from practicing as a mechanic at any time, as the conviction was built on a mechanic point of view which might differ from a mechanic to mechanic, and it was not a criminal or a charge that related to honesty. Beside I got the OMVIC licence as a sales man after the conviction date and the OMVIC accepted me as a member that is why I did not mention in the dealer application that conviction which is the only conviction in my career. "

Mr. Farahat testified that the provincial offence conviction related to a mistake. He did not dispute the charge at the time as he had no way to prove the condition of the car when he inspected it. He did not see that this conviction related to him being a salesperson as it did not relate to honesty but rather related to his job as a mechanic. He indicated that in his previous country the only thing that would prevent one from doing something would be a criminal matter or one of honesty or integrity. He therefore was thinking that the word 'law' meant a criminal act.

Mr. Farahat further testified that once he was granted a licence "with the charges, I saw that it had no relation with the application".

In cross-examination Mr. Farahat acknowledged that question six does not limit charges or convictions to criminal matters.

Mr. Farahat has been licensed as a mechanic since 2005. He testified that in his previous country he had been trained as a mechanical engineer.

LAW

The Act states as follows:

- 5.1 If an applicant for registration or renewal of registration does not meet the prescribed requirements, the registrar shall refuse to grant or renew the registration.
6. (1) 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 ground for belief that the applicant will not carry on business in accordance with law and with integrity and honesty, or
- (iii) the applicant or an employee or agent of the applicant make a false statement or provided a false statement in an application for registration or for renewal of registration;
- (d) the applicant is a corporation and,
 - (i) having regard to its financial position or the financial position of an interested person in respect of the corporation, the applicant cannot reasonably be expected to be financially responsible in the conduct of its business,
 - (ii) having regard to the financial position of its officers or directors or an interested person in respect of its officers or directors, the applicant cannot reasonably be expected to be financially responsible in the conduct of its business,
 - (iii) the past conduct of its officers or directors or of an interested person in respect of its officers or directors or of an interested person in respect of the corporation affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty, or
 - (iv) an officer or director of the corporation makes a false statement or provides a false statement in an application for registration or for renewal of registration;

The Highway Traffic Act states

90.

- (3) A safety standards certificate in respect of a motor vehicle shall not be issued or a vehicle inspection sticker affixed to a vehicle unless,
 - (a) the vehicle has been inspected by a motor vehicle inspection mechanic in the motor vehicle inspection station and the vehicle complies with the inspection requirements and performance standards prescribed by the regulations;

ANALYSIS

The facts of this case are not in dispute. Mr. Farahat failed to provide accurate or complete information in two applications to be registered as a salesperson. Mr. Farahat had been served with notice that he was being charged with a provincial offence and submitted his application just a few weeks before he was to appear on those charges. Clearly he knew charges were pending at the time he completed his first application. Mr. Farahat attended Court and pled guilty to the charges on May 3, 2010. Clearly, he was aware of his conviction when he submitted his second application for registration as a salesperson with 2207113 Ontario Inc., for which he was the sole officer and director, in May/June, 2011.

Mr. Farahat's explanation for not disclosing the pending charges and conviction appears to be twofold. Firstly, in his previous country only criminal convictions would be of

importance in such matters. Secondly, his registration on May 11, 2010, was after his conviction and his acceptance by OMVIC indicated to him that his conviction was of no consequence.

The language of the application for registration is clear and key words are emphasized in bold type, presumably to avoid any confusion as to what must be disclosed. An applicant is asked if he has **ever** been found guilty or convicted under **any law** or are there charges pending. Mr. Farahat is an educated, literate man and the language used in the application was plain and clear. If in fact his interpretation of this question was as he alleges, as to relate to only criminal convictions, this was not a reasonable interpretation and in the Tribunal's opinion does not excuse his conduct. The Tribunal finds that he made a false statement in this application for registration in April of 2011.

With respect to his application a year later, it is Mr. Farahat's position that his narrowed interpretation of the question was reinforced by the fact that he had been registered by OMVIC notwithstanding his conviction, therefore confirming that it was not of significance. This conclusion was unreasonable. Mr. Farahat did not disclose the pending charges and although his conviction was a week before his registration there is no evidence that OMVIC had any information about the conviction. The Tribunal does not accept Mr. Farahat's explanation and finds that Mr. Farahat knew he had a conviction and his indication that he did not, was a false statement.

Section 6(1)(a) of the Act provides that an applicant is entitled to registration unless, if the applicant is not a corporation and, "(iii) the applicant or an employee or agent of the applicant make a false statement or provided a false statement in an application for registration or for renewal of registration." The obligation to provide complete and accurate information was clearly stated, and with emphasis, in the application as was a warning of the consequence for not providing complete or correct information. As stated above, the Tribunal has found that Mr. Farahat made a false statement on his applications for registration and therefore is not entitled to registration in accordance with Section 6(1)(a)(iii) of the Act as a consequence.

With respect to the corporate Applicant, the application for registration of 2207113 Ontario Inc. did not contain a false statement. However, section 6(1)(d)(iv) of the Act provides that a corporate entity is not entitled to registration if an officer or director of the corporation makes a false statement or provides a false statement in 'an application' for registration or for renewal of registration. It does not seem reasonable in the circumstances to interpret 'an application' as restricted to the corporate application given that this would allow the Applicant Farahat to achieve for his company that which his is not entitled to personally, as a result of his conduct, in the same instance.

The Registrar has argued that the Applicants are also disentitled to registration under Section 6(1)(a)(ii), on the basis that the past conduct of Mr. Farahat affords reasonable ground for belief that he, and the corporate Applicant under his direction, will not carry on business in accordance with law and with integrity and honesty. The Registrar submitted evidence of the investigation which led to the charge under s. 90 of the HTA.

The written findings of the inspecting officer which were submitted, aside from being incomplete, indicated the officer could not determine with certainty which defects would have been in existence at the time Mr. Farahat examined the vehicle. Mr. Farahat's evidence was to the effect that he may have made a mistake, overlooked something, but it was not a matter of dishonesty. The Tribunal finds that the evidence in its totality is insufficient to support a finding that the charge and subsequent conviction is past conduct which goes to Mr. Farahat's honesty and integrity as it could reasonably be attributable to Mr. Farahat's negligence in carrying out the particular inspection in question.

This then leaves for consideration the conduct of Mr. Farahat of making a false statement in two applications for Registration. Section 6 of the Act sets out the exceptions as to when an Applicant will not be entitled to registration. The grounds are listed with the use of the word 'or' which clearly indicates that each ground is intended to be viewed as a separate basis for refusal. As sections 6(1)(a)(iii) and (d)(iv) of the Act, relating to individuals and corporations respectively, specifically provide that making a false statement is grounds for disqualification to registration, and given the findings of the Tribunal set out above, the Tribunal finds that the Applicants are not entitled to registration on this basis at this time.

ORDER

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar to carry out the Proposal.

LICENCE APPEAL TRIBUNAL


Elizabeth L. Sproule, Vice-chair

Released: September 19, 2012