

**Licence
Appeal
Tribunal** **Tribunal
d'appel en
matière de permis**



DATE: 2012-11-21
FILE: 7432/MVDA
CASE NAME: 7432 v. 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

Raheel Siddiqui

Applicant

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Patricia McQuaid, Vice-Chair

APPEARANCES:

For the Applicant: Self-represented

**For the
Respondent:** Michael Rusek, Student-at-
law

Heard in Toronto: October 18 and 19, 2012

REASONS FOR DECISION AND ORDER

BACKGROUND

This is a hearing before the Licence Appeal Tribunal (the "Tribunal") arising out of a Notice of Proposal issued by the Registrar, *Motor Vehicle Dealers Act 2002* (the "Registrar" and the "Act" respectively.) The Notice of Proposal dated May 17, 2012 proposed to refuse to grant registration to Raheel Siddiqui (the "Applicant"), as a salesperson under the Act.

The Registrar bases the refusal to register on two grounds. The first is the 'past conduct' of the Applicant, and specifically two convictions in May 2012 for sexual assault. The second is that the Applicant made or provided a false statement in the application for registration.

DECISION

After considering all the evidence and submissions, the Tribunal directs the Registrar to carry out the proposal to refuse the registration of Raheel Siddiqui. Reasons follow.

PRELIMINARY MATTERS

Mr Siddiqui appeared without legal representation at the hearing, and confirmed, upon being advised of his right to legal representation, that he was waiving that right.

Mr Rusek requested an order for the exclusion of witnesses which was granted. Further, Mr Rusek raised the issue that the Applicant had not provided disclosure in accordance with the Tribunal's Rules of Practice. There was in fact only one document which Mr Siddiqui wished to enter into evidence. The Tribunal ruled that in the circumstances, the document (later marked as Exhibit 3) would be admitted.

EVIDENCE

Two witnesses were called on behalf of the Registrar. The first was Detective Constable Carl Mattinen of the York Regional Police, the investigating officer for the events which led to the two convictions. The incidents occurred between April and July 2009 and involved six female complainants. DC Mattinen described the "modus operandi" – jobs were posted on "craigslist" and the females then attended at the Applicant's place of business, Fusion Personnel Solutions, for an interview. During the course of the interviews, incidents took place which gave rise to a total of 10 charges being laid against the Applicant, including forcible confinement, sexual assault and procurement for the purposes of prostitution. Eight of the ten charges were withdrawn in light of Mr Siddiqui's guilty plea to two charges of sexual assault. Mr Siddiqui spent 53 days in pre-trial custody.

Mr Siddiqui was given a suspended sentence and a period of probation of three years with certain conditions, one being that his name be placed on the Sex Offender Registry for a period of ten years. The reasons for judgment dated May 18, 2010 were entered into evidence within the book of documents marked as Exhibit 2. Mr Siddiqui did have legal counsel at these criminal proceedings. The judge stated that the conduct underlying the charges was very serious and shocking and indicated an abuse of trust. In accepting the joint recommendation of counsel with regard to sentencing, the judge noted that Mr Siddiqui apologized in court and took responsibility in some measure and went on to state that the joint recommendation was at the lower end of what is a fit sentence for such offences and emphasized that breach of any conditions of the probation order could lead to further charges.

Mary Jane South is the Deputy Registrar under the Act. She oversees the registration of motor vehicle dealers and salespersons and makes recommendations to the Registrar, keeping in mind that the legislation has a significant public protection component. She reiterated that the Registrar's concerns were twofold, the past criminal record and the conduct underlying it and the nature of the disclosure on the application form.

The application form was filed in evidence as part of Exhibit 1, found at tab 3. In her evidence, Ms South focussed on several sections of the application form which she characterized as Registrar's first encounter with an applicant. She stated that an applicant is required to complete an OMVIC certification course through Georgian College before seeking registration. Law and ethics is a component of the course with emphasis on the importance of disclosure in all aspects of the business. Mr Siddiqui took the course and passed it.

Question 7 on the form asks if the applicant has ever been found guilty or convicted of an offence under any law. Mr Siddiqui responded 'yes', correctly answering the question. If an answer of 'yes' is given, the applicant is then required to provide the circumstances and particulars surrounding each. Mr Siddiqui provided that explanation, by letter dated October 20, 2011(Exhibit 1, tab 3B). It is this explanation which proved troublesome for the Registrar, leading to further investigation. In that letter, he stated that he" was charged with 2 counts of sexual assault that occurred in an office setting." In describing the incidents he stated:

"...there was a friendly body gesture that was given by the 2 applicants where there was physical touching by both of us that taken place at that time. I was under the impression due to me having a very friendly and affectionate personality that it was okay to touch/greet the person in a friendly way as the 2 applicants also showed their friendly body gesture in a friendly way and didn't complain of anything happening that had happen was improper from my end."

This letter was co-signed by the principal of Mr Siddiqui's sponsoring dealership, Dynamic Auto Mart, an acknowledgement that the sponsor is aware of the fact of the convictions.

Finally, Ms South drew the Tribunal's attention to Section F of the application form wherein the Applicant is required to confirm that he has not misrepresented or omitted any material facts and understands that each statement is subject to verification. Further, the Applicant certifies that to the best of his knowledge and belief, the information provided is true. Mr Siddiqui signed the form.

Ms South stated that the explanation provided seemed inconsistent with a finding of guilt on two charges of sexual assault. Their investigation resulted in the report at Exhibit 1, tab 10, revealing that there were in fact 10 charges and the receipt of the reasons for judgment found at Exhibit 2. The conduct described by the court raised concerns about the appropriateness of Mr Siddiqui being in contact with the female public in particular, especially in the relative privacy of test drive situations which would be part of his role as a salesperson. In addition, the description of events given by him when contrasted with the facts as revealed through the convictions suggest a marked discrepancy which in the Registrar's view point to a lack of honesty and integrity. Though Ms South gives Mr Siddiqui credit for pleading guilty, his letter indicates to her that he has not fully accepted responsibility for his actions.

As for terms and conditions that might be placed on a registration, Ms South stated that the Registrar always gives consideration to that possibility, however, in this case, because of their continuing concerns about the nature of Mr Siddiqui's conduct, the decision was made that registration with terms and conditions was premature. Mr Siddiqui is still on probation which is a period of supervision with significant consequences for breach of its terms. Generally, the Registrar will look for a period of "good conduct" after the probation period ends. There is no fixed time period that must elapse before the Registrar would consider registration on terms; it will depend on the seriousness of the conduct that led to the conviction. Ms South stated that it is the Registrar's view that there are no conditions at this stage that would be sufficient to protect people who might be victimized by the Applicant nor can she recall a similar situation where registration was granted on terms. The Registrar does not grant conditional registrations.

In cross examination, Ms South did acknowledge that it did take a fairly lengthy period of time to process this application. She was aware that Mr Siddiqui had attempted on many occasions to follow up on the status of his application, maintaining a high level of communication. She was prepared to credit Mr Siddiqui with being earnest and diligent in his efforts to resolve the matter.

Mr Siddiqui testified on his own behalf and called no other witnesses. He described his work experience, particularly as owner of Fusion Personnel Solutions, which he developed over a period of ten or more years. He testified that he has placed over 800 people in a variety of jobs, serving a wide range of businesses, including non profit organizations.

In his evidence, Mr Siddiqui referred to a "misunderstanding" between himself and the two women, but stated that he has taken responsibility for his actions and shown remorse. While his case was working its way through the court system, he took the OMVIC certification course, through the Ontario Works program, and then made the decision to

apply for registration. He acknowledged that he found some of the questions on the application form confusing so he went back to Mr Goodman, his lawyer in the criminal matter, to get help with it. Mr Siddiqui, in hindsight, thinks, perhaps, he should have sought other help as Mr Goodman did not know "tribunal law", but nevertheless, Mr Goodman did supervise completion of the application. If he had been aware of the weight put on the application, he would have looked for a lawyer with greater expertise. In his letter accompanying the application, he did attempt to explain the charges, concentrating on the sexual assault convictions, in what he described as a "subtle way without being extravagant."

Mr Siddiqui also put effort into finding a sponsoring dealer, which was a challenge as it was embarrassing to disclose the details of his convictions. Dynamic Auto Mart, the principal of which is a friend, did agree to sponsor him after he disclosed the fact of the convictions and that he had made a mistake. This individual is prepared to give him an opportunity to prove himself in the industry.

Regarding his probation, Mr Siddiqui stated that he has taken all of the required courses such as one on relapse prevention. He has provided a letter from his probation officer (Exhibit 3) which does indicate that he has complied with the conditions of his probation order and notes that Mr Siddiqui is to seek gainful employment. Mr Siddiqui emphasized that this opportunity to become a salesperson is very important to him; he has put his heart and soul into the registration process.

As for the charges, he acknowledges that they are concerning and serious for OMVIC. He takes accountability for these, though there are, he stated, "two sides to a story." People who know him would describe him as loving, caring and affectionate. Some might take that the wrong way, but he has no bad intentions. He stated that he is not a violent man, he was not hitting women. He went on to describe himself as a victim of the system in that not all of the information stated was correct. There was, he still maintains, a misunderstanding and/or miscommunication that took place at those interviews. He acknowledges that he maybe did something wrong to the women, and hurt their feelings. For that, he seeks forgiveness.

ANALYSIS/REASONS

The Act in its regulation of motor vehicle dealers and salespersons is designed to protect the public interest which includes providing a safe marketplace for consumers. To that end, the Registrar needs to determine, based on the information available to him through the application process, whether an applicant will carry on business in accordance with the law and with honesty and integrity. As Ms South pointed out in her evidence, the application form submitted by Mr Siddiqui is the first test of that.

In coming to the conclusion that Mr Siddiqui ought not to be registered, the Registrar considered his past conduct and the fact that, in his view, Mr Siddiqui had made a false statement on the application form.

The Tribunal will examine the issue of the false statement first. Ms South does not dispute that Mr Siddiqui answered question 7 correctly. The question reads as follows:

Have you ever been found guilty of an offence under any law, or are there any charges pending? Make sure to include those cases where a conditional, absolute discharge or pardon has been ordered/granted.

Mr Siddiqui responded "yes". In his letter of explanation, he referred only to the two charges of sexual assault that resulted in conviction. He did not disclose the total number of charges. These additional charges were withdrawn well before he wrote the letter. They were not pending charges. Mr Siddiqui's use of the word "charges" in his letter was a colloquial use of the word, reflecting a layperson's choice of language rather than a deliberate misstatement. Strictly speaking, he was required to explain, for application purposes, only those matters which led to the convictions. This he did. The Tribunal cannot conclude therefore that he made a false statement on his application.

The Tribunal draws a different conclusion regarding the "past conduct" concern of the Registrar. Despite Mr Siddiqui's statements to the contrary, the evidence strongly suggests that he has not assumed responsibility for his actions. There is a pattern; from the statements in the pre-sentence report referenced by the judge:

'With respect to one of your friends Alisha, the pre-sentence report author spoke with...she stated that she asked you if you committed the offence and that you said you were innocent of the charges and the victims were exaggerating the incident.'

And continuing with the letter of October 20, 2011 referenced above. There continues to be an apparent lack of insight. Mr Siddiqui was told by the Tribunal at the hearing that it cannot permit an applicant to re-litigate his guilt: a guilty plea and resulting conviction are an admission of every element of the offence. Yet, in his evidence and submissions, Mr Siddiqui continues to suggest that there are "two sides to a story", that he, too, is a victim of the process.

The relevant portion of section 6 of the Act states as follows::

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,
- (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,...(underling added)

The underlined words are of particular note on these facts. Mr Siddiqui's various charges and ultimately the two convictions, stem from his **conduct** at his place of business, while he was purportedly pursuing his business activities, that is, as a job placement agency. That was, as the judge noted, very serious and shocking conduct.

Ms South, in her evidence, stated that the Registrar has significant concerns about permitting Mr Siddiqui to work in an environment where situations that present opportunity for an abuse of trust could arise again. She specifically cited a situation in which a salesperson is alone in a vehicle with a client for a test drive, a common occurrence in sales. These concerns are bolstered by Mr Siddiqui's continuing assertions that seem to be an attempt to minimize his culpability. The Tribunal concludes that based on the evidence, the Registrar does have reasonable grounds, at this time, for the belief that Mr Siddiqui's past conduct is such that he will not carry on business as a motor vehicle salesperson in accordance with the law.

Mr Siddiqui submits that his probation officer has referenced that there is a condition on his probation order which states "shall seek and maintain gainful employment" the Court did state:

So there is no question that you are an enterprising person, capable person who is able to be employed. I hope I have made it abundantly clear to you that I am concerned going forward that you not be allowed to be in a position, that you not be allowed to be in a position where you can have contact with women in a manner in which you will be perhaps similarly tempted to abuse their trust..

Denial of this registration does not prevent employment per se as referred to in the probation order, rather it only precludes work as a motor vehicle salesperson registered under the Act and having regard to the Registrar's obligation to ensure public confidence and protection in the industry. Mr Siddiqui has, it seems, put all of his considerable energy into his pursuit of employment as a salesperson. He was advised by the Registrar that a refusal does not preclude registration in the future. Every case will be decided on its own particular facts, but through the evidence of Ms South, it is clear that the Registrar, on these facts, is looking for a lengthy record of positive behaviour, evidence of a high degree of trustworthiness for a significant period of 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 to refuse registration to Raheel Siddiqui as a motor vehicle salesperson under the Act.

LICENCE APPEAL TRIBUNAL



Patricia McQuaid, Vice-Chair

Released: November 21, 2012