

Licence
Appeal
Tribunal

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June 24, 2010

MEMORANDUM

***Re: James Gordon Peterson 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:

James Gordon Peterson, the Applicant
Angela A. La Viola, Counsel for the Respondent

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JAMES GORDON PETERSON

AN APPEAL OF A DECISION OF THE REGISTRAR, *MOTOR
VEHICLE DEALERS ACT, 2002* S.O. 2002, c. 30

TO REFUSE REGISTRATION

TRIBUNAL: ELIZABETH L. SPROULE, Vice-Chair

APPEARANCES: JAMES GORDON PETERSON, Applicant, self-represented

ANGELA A. LA VOILA, Counsel, representing the Registrar,
Motor Vehicle Dealers Act, 2002

DATE OF HEARING: May 27, 2010 London

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 7 of the *Motor Vehicle Dealers Act, 2002* (the "Act"). The proposal dated February 23, 2010, sets out the Registrar's reason for refusing to register James Gordon Peterson (the "Applicant") as a salesperson, as follows:

"The intention and objective of the Act is to protect the public interest. In doing so the Act prohibits the making of false statements in an application for registration or renewal and requires that Applicant be financially responsible in the conduct of business and that they carry on business in accordance with the law and with integrity and honesty. James Gordon Peterson's past conduct is inconsistent with the intention and objective of the Act, and therefore warrants disentanglement to registration under the Act.

In particular, the Registrar believes that the Applicant's failure to disclose pending criminal charges on his application for registration and his written explanation of his

conduct which led to the criminal charges, which the Registrar did not believe to be truthful, disqualify him from registration.

ISSUE

Does the past conduct of Applicant provide reasonable grounds to conclude that he will not carry on business with honesty and integrity and in accordance with the law?

EVIDENCE

The evidence of the Registrar consisted of documentation and the oral testimony of Police Officer Lincoln Boyd, and Carey Smith, Director of Investigation at the Ontario Motor Vehicle Industry Council ("OMVIC").

The evidence of the Applicant consisted of his oral testimony.

The following is a summary of the relevant evidence.

The Applicant was previously registered under the Act from February 1, 2005 to April 30, 2009. On March 30, 2009, Officer Boyd attended the dealership where the Applicant was employed in response to a complaint of a theft. It was alleged that the Applicant had been given \$4,300 in cash from a customer for the purchase of a warranty on March 26, 2009; however, the money was not remitted to the dealership until a number of days later and only after the Applicant had been prompted to do so by his employer. The Applicant was subsequently charged with theft under \$5000, possession of property obtained by crime, and fraud under \$5000. He was also terminated from his employment at the dealership, where he had been the business manager.

Mr. Smith gave evidence that the eligibility for registration is based on honesty and integrity and that the application is the first test of a registrant. The Applicant's application for registration was received by OMVIC on July 16, 2009. In the application the signature of the Applicant was dated June 8, 2009. The signature of the employer was dated July 14, 2009. In response to question 9 on the application the Applicant responded 'No'. Question 9 asks:

"have you ever been found guilty or convicted of an offence under any law or are any charges pending? (This includes those instances where a conditional or absolute discharge has been ordered). If yes, list all charges and/or convictions, and the circumstances surrounding each".

The Applicant testified that, although his signature on his application for registration was dated June 8, 2010, he in fact had signed it much later. The June date was when he had joined the dealership. He was not clear as to why he would have put that date nor was he sure as to what date he did actually sign that application. However, it was his evidence that at the time he signed the application he was aware that 'diversion' was

available to him and that the criminal charges against him were going to be withdrawn. This was the reason why he answered 'No' to question 9.

The Applicant's interpretation of question 9 was that it did not include charges that were 'withdrawn'. He explained that the sentence 'this includes those instances where a conditional or absolute discharge has been ordered' somehow led him to conclude that his charges, which were to be withdrawn, did not need to be disclosed. He also expressed doubt that he had read the caution at the bottom of question 9 as to the consequences of providing false or incomplete disclosure.

The charges against the Applicant were withdrawn at the request of the Crown on August 20, 2009, and the Applicant was offered a 'diversion program'. It was the Applicant's testimony that he 'heard' about getting 'diversion' the week before a July 23rd court date, but it was at the July 23rd appearance that he 'officially' heard he would be getting 'diversion'. Ultimately this resulted in the Applicant making a \$500 donation to a charity of his choice. According to the Applicant, he had intended to fight the charges but did not have sufficient funds to pay a lawyer to do so.

With respect to the event which gave rise to the charges, the Applicant's written and oral explanation is that it was simply the result in an error in judgment. He had received money from a client on March 26, 2009, for a warranty. He had processed warranty paperwork, or at least that relating to the client, and had provided the client with a copy. He testified he had left a copy of those warranty documents in a file on his desk. The Applicant then got engaged with another client and it slipped his mind to give the money to the receptionist, whose job it was to process clients' funds, and provide a receipt. When he was finished with the subsequent customer, the receptionist was gone for the day. Not being comfortable leaving the money at the dealership overnight, he took it home for safekeeping. He then forgot to bring it back until he was prompted to do so by the General Manager some days later. No paperwork was ever submitted to the dealership about the warranty, but apparently the Applicant's dealings with the client had been observed according to the evidence of Officer Boyd. The Applicant brought the cash back when told to do so on March 30, 2009, and had it properly processed.

The Applicant explained that he had transferred from another branch dealership where there was no safe and it was not uncommon for managers to take large amounts of cash home when the receptionist was not available to put it in the safe. The Applicant transferred to the dealership where the incident occurred in approximately November/December of 2008. There was a safe at this new dealership and there was a drop slot in the safe.

LAW

The *Motor Vehicle Dealer Act* states as follows:

5. (1) An applicant is entitled to registration or renewal of registration by the Registrar except where,

- a) having regard to financial position of the applicant, the applicant cannot reasonably be expected to be financially responsible in the conduct of business; or
- b) 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; or
- c) the applicant is a corporation and,
 - (i) having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its business, or
 - (ii) the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty;

6. (2) Subject to section 7, the Registrar may refuse to renew or may suspend or revoke a registration for any reason that would disentitle the registrant to registration under section 5 if the registrant were an applicant, or where the registrant is in breach of a term or condition of the registration.

8. A further application for registration may be made upon new or other evidence or where it is clear that material circumstances have changed.

ANALYSIS

The issue before the Tribunal is whether the past conduct of the Applicant provides reasonable grounds to conclude that he will not carry on business in accordance with the law, and with honesty and integrity.

The Applicant has provided an explanation that it was an innocent oversight which led to the criminal charges laid against him. The Tribunal has considered his explanation very carefully and does not find it credible. There was no reason for the Applicant to take the cash home with him. There was a safe with a drop slot at the premises, which the Applicant was aware of, and which one would expect an employee would use in just the circumstances the Applicant found himself in on March 26, 2009. The Applicant had been employed at the dealership for a number of months and should have known and followed the course of action expected by his current employer. The fact that there was no safe that could be accessed after the receptionist had left at the previous location where he was employed is not a credible explanation, in the Tribunal's opinion, for his failure to use the safe that he could access by means of a drop slot.

In addition, the Tribunal does not accept that the Applicant could have simply forgotten for days that he had taken such a large amount of cash home. According to his testimony the Applicant had left the paperwork relating to the warranty in a file on his desk. One would have expected that, if nothing else, this documentation on his desk would act as a reminder of the warranty transaction and the non-processed funds. Given that it was the Applicant's apparent concern for the security of the money that

allegedly led him to take it home, it does not seem feasible that this concern simply evaporated and was never thought of again and that the written evidence of the transaction sitting on the Applicant's desk did not prompt his memory. Regretfully, the Tribunal concludes that the Applicant's explanation provided in writing to OMVIC, and orally to this Tribunal, is not truthful.

With respect to his failure to disclose his criminal charges, the Applicant is a well educated and articulate man. It is, therefore, difficult to understand how he could have interpreted question 9 in such a way to conclude that 'pending charges' would not include the ones he was facing. His explanation is that he knew they were being withdrawn. Based on the evidence the Tribunal finds that the charges were withdrawn on August 20, 2009, and that the Applicant did not know conclusively that they were being withdrawn until July 23, 2009. Therefore, at the time he signed and filed his application for registration for OMVIC, which is stamped as received on July 16, 2010, there were charges pending and the Applicant knew that. He may have had hopeful expectations that they would be withdrawn, but the truth was that they were still outstanding at that time. Apparently the Applicant could not bring himself to disclose this and that is a failing which raises real concern.

In conclusion, after considering all the evidence and for the reasons outlined above, the Tribunal finds that the Applicant's past conduct does provide reasonable grounds to conclude that he will not carry on business with honesty, integrity and in accordance with the law.

DECISION

By virtue of the authority vested in it pursuant to the provisions of section 7(4) of the Act, the Tribunal directs the Registrar to carry out the Proposal dated February 23, 2010, to refuse the registration of the Applicant as a motor vehicle salesperson.

LICENCE APPEAL TRIBUNAL


Elizabeth L. Sproule, Vice-Chair

RELEASED: June 24, 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 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 www.lat.gov.on.ca in two weeks time. The decision may also be available on Quicklaw at a later date.