

**Licence**  
**Appeal**  
**Tribunal**

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



**DATE:** 2012-06-22  
**FILE:** 7214/MVDA  
**CASE NAME:** 7214 v. Registrar, *Motor Vehicle Dealers Act, 2002*

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An Appeal from a Notice of Proposal by the Registrar, *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B - to Revoke Registrations

Samarah Auto Sales Inc. and Walid Samarah

Applicants

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

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**REASONS FOR DECISION AND ORDER**

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**ADJUDICATOR:** Laurie Sanford, Vice-Chair

**APPEARANCES:**

**For the Applicant:** Unrepresented  
**Samarah Auto Sales Inc.**  
**For the Applicant:** Self-represented  
**Walid Samarah**  
**For the Respondent:** Jason Morishe, Counsel

Heard in Toronto: June 18, 2012

## REASONS FOR DECISION AND ORDER

This is an appeal to this Tribunal by the Applicant Walid Samarah from a Notice of Proposal by the Registrar (the "Registrar"), *Motor Vehicle Dealers Act, 2002* (the "Act") proposing to revoke his registration as a salesperson under the Act.

In the same Notice of Proposal, the Registrar also proposed to revoke the registration of Samarah Auto Sales Inc. (the "Dealership") as a motor vehicle dealer. The Dealership did not appeal the Notice of Proposal and did not appear at the hearing.

### FACTS

In 1995, Mr Samarah was registered as a salesperson under the Act and began working for the Dealership. Mr Samarah denies being the owner of the Dealership. He acknowledges that from 2007 to 2011, he was the Manager of the Dealership and as such was responsible for the Dealership's day-to-day operations and for its compliance with the Act.

The Ontario Motor Vehicle Industry Council ("OMVIC") provides investigatory and administrative services to the Registrar in the oversight and regulation of motor vehicle dealers and salespersons under the Act. In 2010, OMVIC began investigating the Dealership as a result of a customer complaint about an unreturned deposit. The complaint was eventually resolved but in the course of the investigation, OMVIC concluded that the Dealership was permitting people not registered under the Act to sell motor vehicles, a violation of the Act. Mr Samarah was warned not to continue this practice both in person and in a telephone conversation. However, the conduct continued and eventually the Dealership was charged, in December, 2010 and February, 2011, and subsequently convicted of two offences of permitting unregistered people to sell motor vehicles. In an application to renew the Dealership's registration in March 2011, Mr Samarah did not disclose the charges to OMVIC, although the renewal form clearly requires this disclosure.

In 2011, there was another customer complaint. This time the complainants (the "2011 Complainants") asserted that they had purchased a motor vehicle from the Dealership in May, 2011 but that the Dealership failed to provide them with a Retail Bill of Sale despite a written request. Repeated OMVIC requests to obtain the Retail Bill of Sale were unsuccessful.

Mr Samarah testified that the 2011 Complainants were in fact engaged in a private transaction and that he was not the salesperson involved. The salesperson involved, according to Mr Samarah's testimony, was one of the two unregistered salespersons referred to in the charges against the Dealership. Mr Samarah testified that this unregistered salesperson was doing the transaction on his own behalf. The Dealership's role, according to Mr Samarah, was to provide access to financing by using the Dealership's financing forms to obtain financing from the bank with which the Dealership

ordinarily dealt. It is customary for motor vehicle financiers to require a deposit, according to Mr Samarah. The 2011 Complainants wished to obtain the financing without paying a deposit. Therefore, Mr Samarah testified, the purchase price for the motor vehicle was inflated on the financing forms by \$14,000 and the 2011 Complainants were shown as having paid this amount as a deposit. Mr Samarah gave conflicting testimony as to his role in this transaction. At one point he testified that he had known of the inflated purchase price but not until "it was too late". At another point, he acknowledged that he had authorised the transaction, albeit reluctantly. In closing argument, Mr Samarah argued that the 2011 Complainants had gone to the owner of the Dealership to get his approval of the transaction. The Tribunal finds as fact that Mr Samarah knew of the inflated purchase price and authorised the transaction, however reluctantly. Mr Samarah characterised this transaction as fraudulent. He testified that the Dealership was paid \$800 for its role in the transaction.

In October 2011, an OMVIC investigator visited the premises of the Dealership and was advised that the Dealership had moved in September of that year. It is a violation of the Act to change locations of a dealership without advising OMVIC. Mr Samarah testified that the Dealership had not moved but had ceased operations as of September, 2011. It was because the Dealership was no longer in business, Mr. Samarah testified, that the Dealership did not defend itself on the charges of using the services of unregistered salespeople.

OMVIC became aware that Mr Samarah ceased being a Director of the Dealership in 2007 and became an Officer. This change was not reported to OMVIC as is required under the Act.

The Registrar issued a Notice of Proposal on December 22, 2011 proposing to revoke the registrations of both the Dealership and Mr Samarah. The Registrar has concluded that both the Dealership and Mr Samarah are ungovernable given their repeated failure to notify OMVIC of changes in status under the Act, their failure to provide the Retail Bill of Sale to the 2011 Complainants despite repeated requests and their continued use of unregistered salespeople despite repeated cautions.

Mr Samarah denies doing anything wrong. He suggests that it was the 2011 Complainants who were engaged in fraud, not him. He does not wish to be involved in retail sales of motor vehicles any more but does wish to engage in wholesale and export sales.

## **DECISION**

The appeal of the Registrar's Notice of Proposal was in Mr Samarah's name alone. The Tribunal accepts that Mr Samarah does not speak for or represent the Dealership in this matter. It follows that the Dealership did not appeal the Notice of Proposal and because of this the Registrar is entitled to carry out his proposal to revoke the Dealership's registration.

Concerning the registration of Mr Samarah as a salesperson, he cannot be held responsible for the failure of the Dealership to notify OMVIC that it was ceasing operations.

Mr Samarah implied in his testimony that he lost his job with the Dealership when it went out of business and therefore it would no longer have been his responsibility to notify OMVIC of the change in status.

It was his responsibility to notify OMVIC when he ceased being a director of the company in 2007 and became an officer. It was also his responsibility to ensure that only salespersons registered under the Act were involved in selling activities on the Dealership's site. Further, it was his responsibility to disclose the charges laid under the Act against the Dealership for permitting unregistered salespeople to engage in sales activities.

These offences, while serious, might not have been sufficient to result in the revocation of Mr Samarah's registration. Considering that Mr Samarah wishes to move to an area of the industry that does not deal with retail customers and considering that Mr Samarah has apparently not been the subject of any prior OMVIC investigation, terms and conditions might have been fashioned that would have permitted him to be registered for the wholesale and export trade.

However, in addition to issues of non-disclosure and of using unregistered salespeople, the Tribunal is concerned about the role Mr Samarah played in the conduct of the 2011 Complainants. First, he permitted an unregistered salesperson to carry out selling activities on the premises of the Dealership. It is important to note that this occurred in May, 2011, several months after charges were laid against the Dealership for the same offence. Even if the salesperson had been registered, it is still a violation of the Act to permit a salesperson to conduct transactions on their own behalf. The term "salesperson" is defined in the Act as: "an individual who is employed by a motor vehicle dealer to trade in motor vehicles on behalf of the motor vehicle dealer". To permit someone to trade on their own behalf while using the name, the premises and, in this case, the financing arrangements of the Dealership, constituted a serious breach of the Act. According to Mr Samarah's testimony, he did permit this illicit activity.

The fact that Mr Samarah authorised an application for financing that he knew was false and that he knew was for the purpose of deceiving the financing institution casts serious doubt on his ability to conduct his business with honesty. The fact that, far from expressing remorse, he continues to insist that he has done nothing wrong leaves the Tribunal with grave concerns that Mr Samarah has learned nothing as a result of the transaction involving the 2011 Complainants.

Under section 6 of the Act, an applicant for registration is entitled to be registered unless, among other things, "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,"

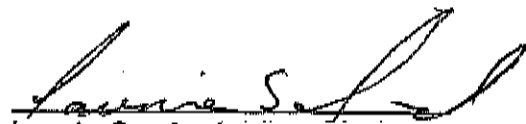
Mr Samarah's participation in the illicit activities of the 2011 Complainants, however reluctant his acquiescence may have been, gives rise to reasonable grounds for the belief that he will not carry on business in accordance with law and with honesty and integrity. His insistence that he has done nothing wrong underscores the conclusion that he cannot

be relied upon to comply with the Act in future. For these reasons, the Tribunal concludes that his registration as a motor vehicle salesperson must be revoked.

### **ORDER**

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar to carry out his Notice of Proposal dated December 22, 2011 to revoke the registration of Walid Samarah as a salesperson.

LICENCE APPEAL TRIBUNAL



Laurie Sanford, Vice-Chair

*Released: June 22, 2012*