

Licence  
Appeal  
Tribunal

Tribunal  
d'appel en  
matière de permis



GHASEM GIL

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

TO REFUSE REGISTRATION

TRIBUNAL: LAURIE SANFORD, Vice-Chair

APPEARANCES: SYMON ZUCKER, Counsel, representing the Applicant

BERNARD LEBLANC, Counsel, representing the Registrar, *Motor  
Vehicle Dealers Act, 2002*

DATE OF  
HEARING: October 17, 18, 20 & 21, 2011

Toronto

### DECISION AND ORDER

The Applicant, Mr. Ghasem Gil, appeals to the Licence Appeal Tribunal (the "Tribunal") from a decision of the Registrar (the "Registrar"), *Motor Vehicle Dealers Act, 2002* (the "Act") refusing his application for registration as a salesperson under the Act.

### FACTS

Mr. Gil, who is 49, left his native Iran in 1986 after which he spent approximately six years in Europe as a student before coming to Montreal. While in Montreal, he met Mr. Said Bagheri-Shirksi, who shall be referred to in this decision as "Mr. Bagheri". The two men went into the motor vehicle dealers business together selling used cars. In Quebec at that time, a business licence or registration was not required for this. Mr. Gil testified that while he had no auto mechanic skills, he had loved cars since he was a child. Funding for this business came from his father-in-law. The business ended in 1998 when Mr. Gil had to return to Iran after his claim for refugee status was refused. There was a criminal conviction which he had incurred while he was in Montreal and for this reason, according to Mr. Gil, the Iranian government refused to issue him a passport. He obtained a false passport and fled the country. After traveling in Europe and South America, Mr. Gil returned to Canada in 1999, this time to Toronto where he

claimed admittance on humanitarian grounds. By this time, his marriage was effectively over and the couple separated while retaining joint custody of their three children.

Mr. Gil incorporated 1471142 Ontario Inc. o/a Prestige Toys ("Prestige Toys") in 2001. He testified that he was unable to obtain an occupational registration or licence to work in any regulated industry because he was not a permanent resident. Because he could not work in a regulated industry, he lived in part on money that his mother sent him from Iran. In 1999 he met Ms. Svetlana Lioubimova who at that time worked for an automotive wholesale company. He testified that he did not know what position she held at the company but that she felt she could be registered under the Act. Ms. Lioubimova and Prestige Toys were registered as a salesperson and dealer respectively in September, 2002 and Mr. Gil removed himself as sole officer and director of the company. Prestige Toys went into business buying and selling used, high end motor vehicles.

Mr. Gil lived with Ms. Lioubimova and worked for Prestige Toys. He did not draw a salary or commission. Instead, Ms. Lioubimova paid the household expenses and from time to time gave him some of the profits from the business, according to his evidence.

What he did at Prestige Toys is in dispute. Because he was not registered as a salesperson under the Act, he was prohibited from trading in motor vehicles. Mr. Gil concedes that he had a business card that named him "General Manager" which he used with friends and in his business. His testimony is that despite his title, he did not buy or sell cars. He was responsible for servicing cars and taking them for warranty repairs, according to his evidence. He also advised Ms. Lioubimova about what cars to take into inventory.

Mr. LeBlanc, counsel for the Registrar, attempted to introduce as evidence a "Record of Arrest" dated July 13, 2006 in which the occupation of Mr. Gil is stated to be the owner of Prestige Toys. Mr. Zucker, counsel for Mr. Gil, challenged the admissibility of this record on the grounds that the officer who prepared the record was not available to identify it and to be cross examined. The record itself appears incomplete. It is not signed, although there is a space for the signature of the prisoner and the booking officer. The document refers to a "Charge List" but this is not attached. Mr. LeBlanc, in his submissions, referred to other pages that had been attached to it. Because the record is not complete, the Tribunal will not admit it. It should be noted that even if the record had been admitted, it would have had little weight. Mr. Gil denied telling the arresting officer that he was the owner of Prestige Toys and there is no evidence before the Tribunal as to how he came to be described as the owner.

Issues of admissibility were also raised concerning two earlier decisions of the Tribunal, one released on June 13, 2007 (the "2007 Decision") relating to the registration of Prestige Toys and Ms. Lioubimova and the other released on June 28, 2008 (the "2008 Decision") relating to the registration of Ms. Lioubimova. The 2007 Decision was attached to the Registrar's Notice of Proposal as Schedule "A" and the Registrar relied on the Tribunal's findings in the Notice of Proposal. As such it is admissible as

evidence. However, it has little weight. Mr. Gil was not a party to these proceedings and he is not mentioned in the 2007 Decision.

Mr. LeBlanc included the 2008 Decision as part of the Registrar's book of authorities and submitted that it was open to the Tribunal to admit the findings of fact as evidence in this proceeding. As authority for this, Mr. LeBlanc cited a number of cases, including *British Columbia (Attorney General) v. Malik*, [2011] S.C.J. No. 18, a decision of the Supreme Court of Canada. At issue in the *Malik* decision was whether facts found against the Malik family in an earlier proceeding brought by Mr. Malik could be used in an interlocutory, *ex parte* application for an *Anton Piller* order. Mr. Justice Binnie, in concluding that those findings of fact could be used, noted that it was not critical that the same parties be involved in both the earlier proceeding and in the second matter. In that case, Mr. Malik was a common party in both proceedings. Binnie, J. was at pains to point out that what was involved in the case before him was an interlocutory decision and one which might be challenged in a subsequent proceeding.

In the present case, Mr. Gil was not a party to the hearing that resulted in the 2008 Decision. He did not give evidence. Mr. LeBlanc argued that because Mr. Gil attended the hearing, that was sufficient for him to be bound by findings of fact against his interests. The *Malik* decision cannot be read as extending that far. Mr. Gil, as the person against whom the findings of fact have been made, cannot be bound by them when he was not a party to the proceedings and did not have a right to testify or to cross examine the witnesses. A second issue of admissibility was raised and that is, even if the findings of fact in the 2008 Decision are not binding on Mr. Gil, are they nevertheless admissible as evidence? The panel in the 2008 Decision had different witnesses and different testimony before it in making its findings of fact than were introduced in this hearing. Perhaps most importantly, this panel had the advantage of the testimony of Mr. Gil and of his friend, one-time business partner and proposed sponsor, Mr. Bagheri. Given the different testimony in this case, the better course is to rely on the direct evidence adduced in this hearing. For this reason, the findings of fact in the 2008 Decision are not regarded as evidence in this proceeding. Mr. LeBlanc is correct in noting that he had an obligation to bring the 2008 Decision forward as a legal authority and it is of interest as background.

What is relevant is the evidence of Mr. Bagheri. In 1994, Mr. Bagheri relocated to Toronto. Eventually, he was registered under the Act and formed the KMS Fine Cars dealership ("KMS"). When Mr. Gil applied for registration as a salesman to OMVIC in September, 2010, he listed KMS as the dealership for which he proposed to work and Mr. Bagheri signed the application as his proposed employer.

Mr. Bagheri testified that it was known in the industry that Mr. Gil was the General Manager of Prestige Toys and that "obviously part of being a General Manager is buying and selling cars". However, Mr. Bagheri also testified that he never bought cars from or sold them to Mr. Gil while Ms. Lioubimova was operating Prestige Toys. Rather, he dealt directly with her as the owner.

Ms. Andrea Korth, an OMVIC representative testified about conversations she had with a customer of Prestige Toys and about what impression that customer had of Mr. Gil's role. However, this evidence is hearsay and is not persuasive, given that it is not direct evidence but rather evidence of the impression the customer formed as to Mr. Gil's role. There was also evidence of the same customer complaining that Prestige Toys did not disclose material information about a car she purchased. However, here again, the evidence connecting Mr. Gil to this non-disclosure is indirect and based on hearsay. It is relevant that the civil suit brought by this customer against Prestige Toys, Ms. Lioubimova and the salesman involved in the sale does not name Mr. Gil as a defendant.

Ms. Korth testified to conversations she had with Mr. Gil in the fall of 2005 and the spring of 2006 in which Mr. Gil identified himself first as the "business manager" of Prestige Toys and subsequently as the "technical advisor". According to Ms. Korth, the title "business manager" is a commonly used one and a person with such a title usually is involved in after sales warranties, a responsibility requiring registration. Mr. Gil was warned against discussing car sales with customers as he was not registered. In the spring, 2006 discussion, Mr. Gil identified himself as the "technical advisor" to Prestige Toys. The title "technical advisor" is not a recognized one in the industry and the responsibilities of such a position are not generally understood. Ms. Korth also testified that in a subsequent application for registration, Mr. Gil identified his job at Prestige Toys as "maintenance manager", which is also a job title not normally used in the industry.

Mr. Gil gained his permanent resident status in 2005. Despite that, he did not apply for registration under the Act. Instead he continued his association with Prestige Toys. The Registrar brought a Notice of Proposal to revoke the registration of both Prestige Toys and Ms. Lioubimova and in the 2007 Decision the Tribunal revoked the dealership registration of Prestige Toys. This decision was appealed by Ms. Lioubimova and cross-appealed by the Registrar. A stay of proceedings pending the outcome of the appeal was obtained.

In December, 2007 Mr. Gil applied to be registered as a salesperson for Prestige Toys and in September, 2008, while the appeal was still outstanding, Mr. Gil became the owner of Prestige Toys and continued its operations. In August, 2009, the Divisional Court upheld the 2007 Decision in so far as it revoked the registration of Prestige Toys and the company sought leave to appeal to the Court of Appeal.

Mr. Gil testified that in December 2009 he became concerned about the possible outcome of the appeal. As well, his business was not prospering. So, sometime in the first week of December and certainly by December 8 or 9, 2009, he sold his entire inventory to KMS and to another dealership located at the same address as KMS. These sales were evidenced by Bills of Sale. Mr. Bagheri testified that he acquired ten motor vehicles from Prestige Toys in this initial trade. There was some evidence that six other cars were sold to the second dealership. The decision to liquidate his

inventory was a prescient one; on December 14, 2009 leave to appeal to the Court of Appeal was denied and Prestige Toys was out of business.

Ms. Mary Jane South, the Deputy Registrar, testified that once a dealership registration is revoked, there is a prescribed way to deal with any remaining inventory. The inventory is catalogued and OMVIC is advised of the motor vehicles remaining in the dealership's inventory. Motor vehicles are identified by their identification, or VIN, numbers. OMVIC then executes an "override" or specific permission for each vehicle to be sold at a wholesale auction. It was to Mr. Gil's financial advantage to avoid being forced to sell at an auction for wholesale prices. It is important to note that, as Mr. Zucker pointed out, there is no forensic evidence that Mr. Gil back dated the Bills of Sale for the remaining inventory of the business and Mr. Gil denies back dating them.

Early in 2010, following two anonymous tips, Mr. Smith, an investigator with OMVIC, went to the premises of Prestige Toys to determine whether the dealership was carrying on business despite having had its registration revoked. When Mr. Smith first arrived, on January 2, 2010, a Saturday, he found a sign in the window of the dealership saying it was closed but it would be open on January 4, the following Monday. Also, on January 2, Mr. Smith went to the premises of "AutoFuture", a dealership which OMVIC understood had received some of Prestige Toys' inventory. Mr. Smith found that AutoFuture did not operate at the address they had given as its place of business and the company was declared "inactive" by OMVIC.

An OMVIC investigation of Prestige Toys showed that the company maintained its listing with the web site "autotrader.ca", a listing service which showed the company's inventory, with pictures and the proposed retail prices of the cars. The web site listing for Prestige Toys as at January 1, 2010 shows the company with 29 cars in inventory at a combined suggested retail price of over \$2.2 million. Mr. Gil testified that the payments for this listing service were made at the end of each month and that no further payments were made to the web site after the registration of Prestige Toys was revoked. Mr. Gil also testified that the company had no cars left in inventory by December 16, 2009, when he received formal notification of the revocation.

Mr. Smith returned to the showroom of Prestige Toys on January 6, shortly after noon. He does not recall seeing a sign saying whether or not the business was closed. He did see cars on the lot and people in the showroom. When Mr. Smith attempted to question Mr. Gil about what was going on at the showroom, a quarrel ensued. Each man blames the other for the outburst. Mr. Smith testified that he withdrew from the quarrel. Mr. Gil returned to his showroom and phoned the police. The police refused to arrest Mr. Smith and Mr. Smith decided, after attempting to serve a summons, that he did not have enough evidence to charge Mr. Gil with operating the business without a registration. Mr. Gil testified that the cars on the lot were primarily there on consignment from Ford, awaiting return and that the people in the showroom were members of his family and a private contractor. Mr. Gil's explanation was unchallenged by the Registrar. The Tribunal finds that the Registrar has not met the onus of proof to establish that Prestige Toys was operating after the revocation.

On January 11, 2010, Mr. Gil applied for registration as a salesperson with AutoFuture. However, as that company was inactive, Mr. Gil's application was unsuccessful. In order to be registered as salesman, an applicant must be registered to work for a dealership with a valid dealer registration.

Meanwhile, Mr. Bagheri, who had very deliberately avoided talking to Mr. Gil about his business, learned from other sources that Prestige Toys' registration had been revoked. He became uncomfortable with the arrangement he had reached with Mr. Gil to take the ten cars. Mr. Bagheri explained that his son was in the process of applying for registration as a salesman, that his only business was the car dealership and that he did not want trouble with OMVIC. He wanted to "wash his hands" of the arrangement. So he flipped the ten cars to AutoFuture. Somehow, the other dealership which had taken Prestige Toys' inventory also flipped its cars to AutoFuture. OMVIC disallowed the sale because of AutoFuture's inactive status and, according to Mr. Bagheri, the regulator told him he was the only person who could take the cars. Thus, in early 2010, KMS ended up owning the motor vehicles which had been in the inventory of Prestige Toys prior to the December 14, 2009 revocation. Mr. Bagheri testified that he did not know how many cars he took into inventory as a result of this transaction.

On June 9, 2010, Mr. Gil again applied to OMVIC for registration as a salesperson. This time, he listed KMS as his proposed employer and Mr. Bagheri signed the application on behalf of KMS. On this application, Mr. Gil disclosed that he did not have a valid Ontario driver's licence. Asked to explain, Mr. Gil said he had never had the chance to pass the test. Ms. South testified that it is unusual for a motor vehicle salesman or dealer not to have a driver's licence as taking cars for test drives is part of the salesperson's usual job. The Registrar introduced documentary evidence showing that on seven separate occasions from December, 2006 to November, 2010, Mr. Gil has been convicted of offences relating to his not having a valid driver's licence. He also has six speeding convictions and one other conviction for a driving offence in this period. Despite his lack of a driver's licence, Mr. Gil testified that he owned a 2008 Ferrari "through the company" until he sold it to KMS as part of the wind-up of his business.

In June, 2010, Ms. South e-mailed Mr. Gil to advise him that some issues had arisen concerning his past conduct. She wrote:

I also understand there were a number of vehicles remaining in inventory of Prestige Toys Ltd when it's registration was terminated on December 14, 2009. I believe some of those vehicles are now in the possession of KMS Fine Cars. Kindly provide me with a list of all vehicles which were in Prestige Toys' inventory as at December 14, 2009 (including VIN, make, model and year), an explanation of how you intend to (or have) disposed of them and their current status. Kindly provide supporting documents such as any related agreements or proofs of payment.

In other words, OMVIC wanted an accounting from Mr. Gil of the motor vehicles which were in Prestige Toys' inventory at revocation. Acting through his lawyer, Mr. Gil provided OMVIC with the VIN numbers of sixteen cars. There was some evidence that these were the cars that were sold to KMS and another dealer in December, 2009,

subsequently flipped to AutoFuture and then transferred to KMS but this evidence was not clear. Despite repeated requests, OMVIC remains unsatisfied with the accounting Mr. Gil has made of those sixteen motor vehicles. Prior to the hearing, Mr. Gil provided ten Bills of Sale to OMVIC. These Bills of Sale are between Prestige Toys and KMS and are dated from December 7, 2009 to December 11, 2009. Nine of these Bills of Sale correspond to the VIN numbers provided by Mr. Gil to OMVIC. The total purchase price for these nine vehicles was \$239,000. During the hearing, Mr. Gil produced four more Bills of Sale which refer to four more of the VIN numbers provided by Mr. Gil to OMVIC. These Bills of Sale are from the second dealer who took vehicles from Prestige Toys in December, 2009 and subsequently transferred them to AutoFuture. The Bills of Sale document the transfer to AutoFuture but not the sale from Prestige Toys. Three of the VIN numbers provided by Mr. Gil do not have Bills of Sale associated with them.

Mr. Gil supplied OMVIC with eight cheques from KMS and OMVIC made copies of a further five KMS cheques during a routine inspection of KMS. The cheques supplied to OMVIC by Mr. Gil are dated from December 3, 2009 to August 23, 2010. The four cheques dated December, 2009 and January, 2010 are payable to Prestige Toys and the four after that date are payable to Mr. Gil directly. Mr. Gil testified that his bank closed Prestige Toys' bank account and thereafter he took the payments personally. These eight cheques total \$583,329. One of these cheques is dated December 23, 2009, payable to Prestige Toys in the amount of \$236,250. There is a notation on the cheque that this was for a 2008 Ferrari and Mr. Bagheri testified that this car was in the Prestige Toys' inventory. The VIN number listed on the cheque does not correspond to any of the VIN numbers provided by Mr. Gil to OMVIC. Mr. Gil provided further Bills of Sale during the hearing and some of these Bills of Sale appear to relate to the same Ferrari. Mr. Gil testified that this was his personal car but was owned "through the company" and was not one of the cars identified to OMVIC as having been sold to KMS. He did not give any further explanation.

The five KMS cheques copied by OMVIC are all payable to Mr. Gil by KMS and range in date from February, 2011 to April, 2011. The amount on these five cheques is \$112,563. One of these cheques is dated March 1, 2011 and refers to a car with a VIN number which does not correspond with any of the sixteen VIN numbers supplied to OMVIC by Mr. Gil. Mr. Gil testified that this car was not part of the Prestige Toys' inventory but he did not explain how he came to sell it to KMS. Several of the cheques are notated "Loan" or "Loan Return". No other cheque refers to a VIN number although some have references to a make and model year of a car.

Mr. Bagheri testified that the notation "Loan" refers to two separate loan transactions in which he loaned Mr. Gil \$43,000 to permit him to finance a new business venture. Mr. Bagheri testified that the notation "Loan Return" refers to an arrangement whereby Mr. Gil did not seek immediate payment for a motor vehicle, thereby extending to KMS credit in the form of terms of payment. The notation "Loan Return" refers to a repayment of that loan. Neither Mr. Gil nor Mr. Bagheri provided evidence that linked the cheques to specific cars or traced the amounts of the cheques to the sale of one or

more specific cars. There was no evidence as to whether there had ever been Bills of Sale for the remaining three motor vehicles listed in Mr. Gil's report to OMVIC and no Bills of Sale or other sale documents for these vehicles were produced. No Bills of Sale were produced from Prestige Toys to the second dealer who purportedly bought six cars from Prestige Toys in December, 2009.

Ms. South testified that the Registrar remained unsatisfied with the documents provided. Not all cars are accounted for, some remain incompletely accounted for and it is impossible to trace the cheques provided to any specific car. Two cheques refer to VIN numbers that are not on the list. Mr. Gil has not reconciled the amounts paid with the Bills of Sale provided. As well, the cheques continue to be paid well into 2011, over a year after the revocation. The Registrar is concerned that there is ongoing trading activity between KMS and Mr. Gil.

The costs of the appeals from the 2007 Decision were ordered to be paid by Ms. Lioubimova and Prestige Toys. To date, those costs have not been paid and Mr. Gil's position is that it is not his responsibility to pay them.

In his June, 2010 application for registration, Mr. Gil gave his future employer as KMS and Mr. Bagheri signed the application. However, in his evidence-in-chief, Mr. Bagheri testified that he had changed his mind. He did not want to supervise Mr. Gil; he did not want to be associated with Mr. Gil in the motor vehicle business. He did not want the responsibility. It is a requirement for any registrant to have a registered dealer as an employer so Mr. Bagheri's position effectively ended Mr. Gil's application. Mr. Zucker called for a recess which was granted over the lunch hour. On his return, Mr. Bagheri took the stand and testified that he had again changed his mind and would accept Mr. Gil as an employee and would be responsible for supervising any terms and conditions imposed on Mr. Gil's registration if the Tribunal held that Mr. Gil ought to be registered.

It was not only Mr. Bagheri's evidence which had dramatically changed. Prior to the lunch break, Mr. Bagheri gave his evidence in an expository manner. His body language was active; he moved his hands around in the witness box and moved frequently in his chair. After lunch, when testifying as to how he came to recant his earlier testimony, Mr. Bagheri sat still in his chair, his hands quiet on the table top in front of him and his eyes fixed on the table or on the table frame.

Mr. Bagheri testified that he had spent "less than a minute" discussing his evidence with Mr. Gil's lawyer, Mr. Zucker. After that discussion, Mr. Zucker invited Mr. Bagheri to go to lunch with Mr. Gil. Mr. Bagheri said that he did not discuss his testimony at all with Mr. Gil during their lunch together. Mr. Gil also testified that the two men did not discuss Mr. Bagheri's testimony over lunch.

This explanation for Mr. Bagheri's change in testimony is not credible. The Tribunal finds that Mr. Bagheri did discuss his evidence with Mr. Gil and was persuaded during the recess to recant his earlier testimony and agree to accept Mr. Gil as an employee.



On November 12, 2010, the Registrar issued a Notice of Proposal to refuse Mr. Gil's registration and Mr. Gil appealed to the Tribunal.

## DECISION

Under subsection 6 (1) of the Act,

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 grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty . . .

The question for the Tribunal is whether Mr. Gil's past conduct affords reasonable grounds for the belief that he will not carry on business in accordance with law and with integrity and honesty. The Tribunal concludes that it does.

Mr. Gil's persistent refusal to obtain a driver's licence, despite seven incidents of convictions for not having one (or refusing to show it) is of significant concern to the Tribunal. The fact that Mr. Gil drove a "personal" Ferrari owned by Prestige Toys during this period simply underscores the insouciance of his attitude towards the legal requirement for drivers to be licenced in this province.

OMVIC was entitled under subsection 6(1.1) of the Act to request Mr. Gil to provide an accounting of the motor vehicles in the inventory of his former dealership in December, 2009. The Act is consumer protection legislation and the Registrar could not carry out his mandate if he could not track cars sold after a dealer's registration was revoked. At the time of the request, Mr. Gil provided the VIN numbers of sixteen vehicles he said were in inventory at the time of the revocation of the Prestige Toys' registration. At this hearing, he testified that he had no motor vehicles in inventory at revocation. It appears that sixteen cars were transferred out of the inventory of Prestige Toys immediately prior to revocation and the Registrar is within his rights to ask what has become of them. The Tribunal still does not know the answer to that question. There is evidence that sixteen cars were transferred to KMS and a second dealer, flipped to AutoFuture and subsequently sold to KMS but it is not clear that these are the same sixteen cars which Mr. Gil referred to when providing the VIN numbers to OMVIC. Even the number of cars involved in the transfer from AutoFuture to KMS is unclear. Mr. Bagheri testified that he does not know how many cars he took in from Prestige Toys, via AutoFuture,

which seems improbable. We do not know whether all these cars have been sold to consumers. We do not know how much was paid to Prestige Toys or to Mr. Gil for them.

The Registrar is concerned that Mr. Gil is continuing to trade in motor vehicles despite being unregistered. The fact that one of the cheques paid by KMS to Mr. Gil is dated more than a year after the revocation of Prestige Toys' registration and refers to a car with a VIN number which was not disclosed to OMVIC provides some basis for the Registrar's concern. The fact that Mr. Gil did not explain why the Ferrari sold by Prestige Toys to KMS was not part of the inventory disclosed to OMVIC is also a concern. While the Registrar has not demonstrated the Mr. Gil was in fact trading in motor vehicles after his registration ended, neither has Mr. Gil provided a cogent explanation for why these two cars were not among the vehicles disclosed to the Registrar.

Mr. Zucker, in closing submissions, suggested that the Registrar ought to have asked in more detail for the information he required and should have persisted in these requests. In fact, the Registrar made repeated, specific requests for information about the sixteen cars. The fact that the information was not provided formed one of the grounds of the Registrar's Notice of Proposal. Mr. Gil had every opportunity to provide the accounting for these cars both during the hearing and in the months leading up to it. The inescapable conclusion is that Mr. Gil is unable or unwilling to comply with a request that the Registrar is entitled to make under the Act and which bears directly on the question of Mr. Gil's honesty, his integrity and his willingness to submit himself to the regulation of the Act.

These two incidents of past conduct – Mr. Gil's refusal to obtain a driver's licence and his failure to account for the cars in Prestige Toys' inventory in December, 2009 – together constitute sufficient grounds to refuse Mr. Gil registration under subparagraph 6(1)(a)(ii) of the Act. Based on his past conduct there are reasonable grounds to believe that Mr. Gil will not comply with the regulatory regime set out in the Act or with legitimate requests of the Registrar. In short, there are reasonable grounds to believe that Mr. Gil is ungovernable.

In addition to the above issues, the Registrar gave a number of other grounds for his refusal to register Mr. Gil. In light of the conclusion reached above, it is not necessary to decide on these other grounds but for the sake of completeness of the decision, the Tribunal notes the following.

The evidence of Mr. Gil and Mr. Bagheri taken together establishes that Mr. Gil held himself out as the General Manager of Prestige Toys within the industry. In that context, it was clearly understood that his responsibilities involved buying and selling cars. The evidence of Ms. Korth establishes that Mr. Gil attempted to obscure his role at Prestige Toys to his regulator by referring to his job as a "technical advisor" or "maintenance manager" while holding a business card showing himself to be the

General Manager. This is another example of Mr. Gil's unwillingness to be governed in his conduct by OMVIC.

The Registrar has not demonstrated that Mr. Gil in fact bought or sold cars during the period when he was holding himself out to be the General Manager. There is the evidence of Ms. Korth that Mr. Gil told her he had discussed the condition of a car with a customer but this is not sufficient to conclude that Mr. Gil was selling cars. It is relevant to note the testimony of Mr. Bagheri that he did not deal with Mr. Gil but with Ms. Lioubimova when he traded in cars with Prestige Toys.

Interestingly, the Act defines a motor vehicle dealer as including someone who holds themselves out as selling cars. The definition of a salesperson is someone employed by a dealer to trade in cars but that definition makes no mention of a person holding themselves out as selling cars. Under section 4 of the Act, no one may act as a dealer or a salesperson without being registered. Mr. Gil held himself out to be a General Manager, a position generally understood in the industry to include the buying and selling of cars and therefore requiring registration as a salesperson. Mr. Gil was not a dealer at the time; Prestige Toys was the dealer. Given the above and the fact that the Registrar has not established that he actually bought or sold cars, is he in breach of section 4 of the Act? The parties made no submissions on this point and in light of the decision above, it is not necessary to decide the matter.

It is also unnecessary to decide whether Mr. Gil has a legal obligation to pay the costs of the appeal of the 2007 Decision. This non-payment would not have been sufficient grounds on its own to deny Mr. Gil his registration.

The Registrar questioned the prospective role of Mr. Gil at KMS. During the closing arguments, Mr. LeBlanc submitted that Mr. Gil had too much influence over Mr. Bagheri to be permitted to be under his supervision. Given the dramatic change in Mr. Bagheri's testimony about whether he would employ Mr. Gil or not, it certainly appears that Mr. Bagheri can be persuaded by Mr. Gil to do things he does not wish to do, even to the point of deception. Mr. Bagheri would not be a suitable employer of Mr. Gil for that reason. The fact that Mr. Gil denied discussing this testimony with Mr. Bagheri and that the Tribunal found that denial incredible is an obvious reflection on Mr. Gil's ability to conduct his business with honesty and integrity.

## **ORDER**

The Tribunal directs the Registrar to carry out his Notice of Proposal of November 12, 2010 to refuse to register Mr. Gil as a salesperson under the Act.

## LICENCE APPEAL TRIBUNAL

  
Laurie Sanford, Vice-Chair

*Released: November 14, 2011*

The hearing was recorded. Transcripts can be made available at your expense. The period to appeal a decision to the Ontario Superior Court of Justice or Divisional Court (<http://www.ontariocourts.on.ca/>) 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 <http://www.lat.gov.on.ca/> within three weeks time. The decision may also be available on Quicklaw at a later date.