



Citation: Kafaldjian Motors Limited o/a Kafaldjian Motors v. Registrar, *Motor Vehicle Dealers Act ONLAT 15954/MVDA*

File Number:15954/MVDA

An appeal from a Notice of Proposal by the Registrar, *Motor Vehicle Dealers Act, 2002*, S.O. c. 30 Sch. B to revoke registration.

Between:

Kafaldjian Motors Limited o/a Kafaldjian Motors

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

CONSENT ORDER

ADJUDICATOR: Jeffery Campbell, Vice-Chair

Date: September 1, 2024

BACKGROUND

- [1] In a Notice of Appeal dated May 31, 2024 filed with the Licence Appeal Tribunal (“Tribunal”), Kafaldjian Motors Limited o/a Kajfaldjian Motors, (the “appellant”) appeals a decision contained in an email dated May 31, 2024 (“email”) from Zaahirah Khan, Senior Registration Officer at the Ontario Motor Vehicle Industry Council (“respondent”) indicating that the appellant’s application for General Dealer (used) will not be approved at this time under the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B (“Act”).
- [2] The parties advised the Tribunal that they had resolved the issues in dispute and both parties consent to the registration of the appellant as a motor vehicle dealer under the Act on the terms and conditions set out in Terms and Conditions between the appellant (signed August 28, 2024) and the Registrar (signed August 29, 2024). The Terms and Conditions shall constitute Schedule A.
- [3] Further, both parties confirmed that pursuant to section 4.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S 2 (the “SPPA”), both parties waive the requirements of a hearing and consent to an Order of the Tribunal to continue the appellants’ registrations on the terms and conditions set out on Schedule A. A copy of the agreements signed by all parties is attached as Schedule A to this Order.

ON CONSENT OF BOTH PARTIES, I ORDER:

- [4] Pursuant to s. 4.1 of the SPPA and on the consent of the parties, I dispose of this proceeding without a hearing on the terms set out in the agreement signed by the appellant on August 28, 2024 and by the Registrar on August 29, 2024. A copy of which is attached to this order as Schedule A, which Schedule A is incorporated and made part of this Order.

LICENCE APPEAL TRIBUNAL



Jeffery Campbell, Vice-Chair

Released: September 3, 2024

LAT File Number: 15954/MVDA

IN THE MATTER OF the Motor Vehicle Dealers Act, 2002, S.O. 2002, Chapter 30, Schedule B
and Regulations, as amended

- and -

IN THE MATTER OF the registration of KAFALDJIAN MOTORS LIMITED

BETWEEN:

KAFALDJIAN MOTORS LIMITED

Appellant

-and-

REGISTRAR, MOTOR VEHICLE DEALERS ACT, 2002

Respondent

TO: Licence Appeal Tribunal
Tribunals Ontario
General Services
15 Grosvenor Street, Ground Floor
Toronto, ON M7A 2G6

FROM: The Registrar
Motor Vehicle Dealers Act, 2002
OMVIC
65 Overlea Blvd., Suite 300
Toronto, ON M4H 1P1

(Respondent)

AND FROM: KAFALDJIAN MOTORS LIMITED

(Appellant)

Pursuant to subsection 6(2) of the Motor Vehicle Dealers Act, KAFALDJIAN MOTORS LIMITED ("the Appellant") and the Registrar, *Motor Vehicle Dealers Act, 2002*, ("the Registrar"), in accordance with section 4.1 of the *Statutory Powers Procedure Act*, do hereby waive the requirements for a hearing and consent to an Order of the Licence Appeal Tribunal based upon the following conditions of registration:

1. The Appellant shall comply with all requirements of the MVDA and Ontario Regulation 333/08, the Code of Ethics in Ontario Regulation 332/08, the Ontario Motor Vehicle Industry Council ("OMVIC") Standards of Business Practice, 2010 and OMVIC Guidelines, as may be amended from time to time. The Appellant further agrees to read all correspondence and bulletins from OMVIC as released.

2. The Appellant shall provide the Registrar with notice in writing, within five days of any substantive changes to their business plan or information provided in obtaining their registration, pursuant to section 31 of Ontario Regulation 333/08.
3. The Appellant shall provide the Registrar with notice in writing, within five days of any change in the officers or directors of the corporation, pursuant to section 24 of the MVDA. The Appellant further agrees to notify the Registrar of any change in partners or owner, person(s) in charge, and signing authority for the dealership. The Appellant further agrees not to effect such changes without first obtaining the Registrar's prior approval, in writing, which shall not be unreasonably withheld.
4. The Appellant acknowledges that "trade" refers to buying, selling, leasing, advertising or exchanging an interest in a motor vehicle or negotiating or inducing or attempting to induce the buying, selling, leasing or exchanging of an interest in a motor vehicle as defined in the MVDA and pursuant to section 36 through to and including section 51 of Ontario Regulation 333/08; and is not limited to the signing of contracts. The Appellant further acknowledges that this includes attendance at auction on behalf of the Appellant and positions commonly referred to as Sales Manager, Finance and Insurance Manager, Branch Manager, Business Manager, General Manager or any individual who has supervisory authority over salespersons.
5. The Appellant shall ensure that all personnel, agents, assignees or anyone acting on behalf of the Appellant are informed of the conditions contained in this document to the extent necessary to ensure compliance therewith.
6. The Appellant shall ensure that all personnel, agents, assignees or anyone acting on behalf of the Appellant to trade motor vehicles will be registered as a salesperson to the Appellant.
7. The Appellant shall not conduct business with any person acting as a motor vehicle dealer and trading in motor vehicles without first confirming that the person is registered as a motor vehicle dealer in accordance with the MVDA.

Premises

8. The Appellant shall operate exclusively from the location approved by the Registrar and will not invite the public to trade at a place other than the approved location, pursuant to section 28 of Ontario Regulation 333/08.

Books and Records

9. The Appellant shall maintain all books and records at the Appellant's registered premises in accordance with the MVDA and pursuant to section 52 through to and including section 60 of Ontario Regulation 333/08.
10. The Appellant shall provide free access to books and records of the Appellant to an authorized representative of the Registrar in accordance with section 15 of the MVDA.
11. The Appellant shall not purchase a vehicle without first ensuring that the vehicle is registered to the seller and, if it is in Ontario, in the Ministry of Transportation (MTO) records.

12. The Appellant shall ensure that all vehicles purchased will be registered within 6 days in accordance with section 11 of the *Highway Traffic Act* ("HTA").
13. The Appellant shall undertake to ensure that all vehicles sold will be registered in the name of the purchaser, in the records of the MTO before releasing the vehicle to the purchaser.
14. The Appellant shall undertake that in the event their books and records are lost, stolen or destroyed in whole or in part, the Registrar will be advised, in writing, within 5 days of the event pursuant to section 55 of Ontario Regulation 333/08; and will include all relevant documentation. The documentation will include, but is not limited to, police reports, insurance claims and affidavits. The Appellant further agrees to make all reasonable efforts to reconstitute the lost, stolen or damaged records.
15. The Appellant shall obtain a receipt prior to the removal of any records by a government or professional agency; or any other person or entity, from the registered premise. Such receipt will include the recipient's name, address, telephone number, description of records taken, the time of return and signature of recipient. The Appellant undertakes to provide the receipt to OMVIC when requested by the Registrar.

Disclosure

16. The Appellant shall ensure that all trades in motor vehicles are completed in accordance with section 30 of the MVDA and pursuant to sections 39, 40, 41, 42 and 43 of Ontario Regulation 333/08 and sections 4 and 5 of Ontario Regulation 332/08, where applicable.
17. The Appellant shall disclose all material facts about the motor vehicles for purchase or lease to its customers. The Appellant further agrees to disclose all material facts on the Bill of Sale, in writing. The Appellant will ensure compliance with the disclosure obligation notwithstanding whether or not the vehicle has been branded through MTO. For greater certainty, a material fact is one that if disclosed could affect the decision of a reasonable person to purchase or lease the vehicle or affect the purchase price. In the case of damaged vehicles, the Appellant further agrees to disclose as much detail as reasonably possible regarding the nature and severity of the damage. The Appellant undertakes to conduct a reasonable amount of research into the history of all the motor vehicles under trade to ensure all material facts are disclosed.
18. The Appellant agrees not to represent any charges or fees on a Bill Sale as being required by law where the charges or fees are not required by law. For greater clarity, this includes charges or fees such as tax, registration fee or certification.
19. Subject to any legal defenses, the Appellant agrees to accept full responsibility for the quality of any repairs or alterations to a motor vehicle completed by the Appellant's personnel, agents, assignees, affiliated repair facilities or anyone acting on behalf of the Appellant.

Financial Responsibility

20. The Appellant agrees not to receive any new private sources of financing without the prior approval of the Registrar. This does not apply where the Appellant has applied on his own account and has obtained financing from a corporation registered under the *Loan and Trust Corporations Act*, *The Bank Act* or from a credit union or league to which the *Credit Unions and Caisses Populaires Act*, as may be amended from

time to time.

21. The Appellant shall comply with all federal, provincial and municipal tax obligations. The Appellant shall ensure all required filings are current and submitted with required payments. All taxes collected are deemed to be trust funds and will not be used for any other purpose other than remittances to the federal, provincial and municipal government.
22. The Appellant shall maintain bank accounts that are compliant with section 59 of Ontario Regulation 333/08.
23. The Appellant shall maintain a trust account, in respect of any deposits made in excess of \$10,000.00 or any funds in relation to motor vehicles sold on consignment on the behalf of a consumer, pursuant to section 58 of Ontario Regulation 333/08. The Appellant agrees to provide written confirmation to the Registrar, within five days, that a trust account has been established in the Appellant's business name at its financial/banking institution.
24. The Appellant shall ensure that bank account transactions relate exclusively to the operation or financing of the business. The Appellant agrees to notify the Registrar of any change in any business banking accounts.
25. The Appellant shall ensure that if any consumer claim made to the Motor Vehicle Dealers Compensation Fund (the "*Fund*") in relation to the Appellant, and the *Fund* determines entitlement to compensation of the claim pursuant to section 42 of Ontario Regulation 338/08; that the Appellant shall reimburse the *Fund* for any monies paid in relation to the claim.
26. The Appellant agrees to pay any outstanding judgments or court orders against the Appellant without delay.
27. Appellant shall provide the Registrar with notice in writing, within five (5) days of any future collections, judgements, consumer proposal or bankruptcy proceedings involving the Appellant.

Letter of Credit

28. As a condition precedent to obtaining registration under the Act, the Appellant shall provide an irrevocable Letter of Credit in the amount of \$20,000 in favour of the Motor Vehicle Dealers Compensation Fund from a financial institution under the Loan and Trust Corporations Act, which will remain in place for two (2) years from either the date of registration termination or the last retail transaction of the Appellant (the "Closure of Business"), whichever is earlier.
29. The Letter of Credit shall be in the form set out by the Registrar.
30. Should the financial institution give notice that the Letter of Credit is to be rescinded, the Appellant shall provide a replacement letter of credit before the expiry of the notice period.
31. The Appellant understands that the Registrar may release a portion of the funds held by the letter of credit before the Closure of Business, subject to the following:
 - The request must be made in writing to the Registrar

- The request must be made by all the owners, partners, officers, directors, and shareholders registered with the Appellant
 - The request must be made no less than 2 (two) years after the letter of credit was deposited with the Registrar; and
 - The Registrar shall hold back the minimum holdback amount of \$ 5000, until the Closure of Business.
32. The Appellant consents that the Registrar has the discretion to approve the release of the Letter of Credit based on the Appellant's compliance record and other risk considerations that the Registrar deems appropriate at the time of the request

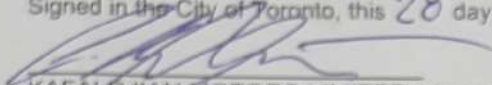
OMVIC Transaction Fee

33. The Appellant understands that transaction fee is payable on any sales, leases, exports, fleet, and consignments except those transactions with dealers registered under the MVDA.
34. The Appellant understands that it is mandatory to record all motor vehicles sold, leased, or exported under this dealership in the register provided, except for any transaction made to another OMVIC registered dealer. The Appellant further understands that the register records are to be made immediately upon transaction completion and are to be kept at least for a period of seven (7) years.
35. The Appellant understands that dealers are required to self-report and remit all transaction fees with their annual registration renewal application.
36. The Appellant undertakes to provide the Registrar, as soon as practicable, with documentation related to any motor vehicle trade, including the transaction register, when requested by the Registrar. The Appellant further understands that failure to report the transaction fee accurately may cause an appropriate administrative action to be taken by the Registrar.

ACKNOWLEDGMENT AND UNDERTAKING:

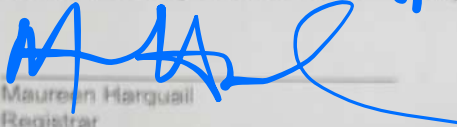
37. The Appellant understands that the Registrar is relying on the accuracy and completeness of all documents, statements or information provided by the Appellant in support of the Appellant's application for registration.
38. The Appellant warrants that the documents, information or statements provided to the Registrar are true to the best of the Appellant's knowledge, and belief; and that full answer to all questions, inquiries and requests made by the Registrar in connection with the Appellant's application have been given.
39. The Appellant understands that the Registrar may take further administrative action, including a proposal to suspend or revoke registration, arising from any matters that have occurred or may occur related to honesty and integrity, financial responsibility or compliance with these conditions.

Signed in the City of Toronto, this 28 day of August, 2024.


KAFALDJIAN MOTORS LIMITED (signature)
Per

These Terms and Conditions are accepted by the Registrar, *Motor Vehicle Dealers Act, 2002*.

Signed in the City of Toronto, this 29 day of August, 2024.


Maureen Harquail
Registrar
Motor Vehicle Dealers Act, 2002