

Licence  
Appeal  
Tribunal

Tribunal  
d'appel en  
matière de permis



KEN TRUNG AND MOHAMMED SHAIKH

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

TRIBUNAL: HARINDER S,GAHIR, Vice-Chair

APPEARANCES: KEN TRUNG AND MUHAMMED SHAIKH both self-representing

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

DATES OF  
HEARING: August 29, 30 and September 7, 2011

Toronto

## 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 26, 2010 ("the Proposal") proposed to revoke the registration of Ken Trung and Muhammed Shaikh ("Trung and Shaikh" respectively, as salesperson(s) under the Act.

### FACTS

The Registrar bases his Proposal under section 9 of the Act and gave the following reasons for his Proposal:

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 Registrants be financially responsible in conduct of business and that they carry on business in accordance with the law and with integrity and honesty. .... Ken

Trung and Mohammed Shaikh's past conduct are inconsistent with the intention and objective of the Act, and therefore warrants disentanglement to registration under the Act. In Particular:

Orangeville Mazda, under the control of Surjeet (a.k.a Sunny) Bains and Sugijanto Oman, Ken Trung and Mohammed Shaikh have engaged in conduct which has resulted in charges under the *Consumer Protection Act, 2002*.

In support of his Proposal the Registrar furnished particulars, relevant portions of which apply to the Registrar's case against the Applicants' are as follows:

1. Ken Trung was first registered as a salesperson under this Act on or about October 20, 1985, and was terminated on or about May 14, 2010. (paragraph 6 of the Proposal)
2. Mohammed Shaikh was first registered as a salesperson under the Act on or about June 20, 1985 and was terminated on or about May 14, 2010. (paragraph 7 of the Proposal)
3. On or about March 3, 2009, consumer D submitted a complaint to a representative of the Registrar. The consumer advised that he had left a trade-in vehicle and a \$1,000 deposit with Orangeville Mazda with the intent of purchasing a new car. The consumer was asked to get a co-signor, but was unable to find one. Only after the intervention of the Registrar's representative, was the consumer's deposit refunded. (paragraph 11 of the Proposal)
4. On or about May 28, 2009, Consumer F submitted a complaint to a representative of the Registrar. The consumer advised that he was seeking a refund of his unused warranty, which Orangeville Mazda refused to provide. Despite the intervention of the Registrar's representative, the parties were not able to resolve the matter, and the consumer advised that he would pursue the matter civilly. (paragraph 13 of the Proposal)
5. On or about October 6, 2009, Consumer K submitted a complaint to a representative of the Registrar. The consumer advised that she had responded to an advertisement placed by Orangeville Mazda and intended to purchase a vehicle. When she attended the dealership, the advertised vehicle was not there but she ultimately signed a contract to purchase another vehicle (a "bait and switch"). Subsequently, she changed her mind but the dealership initially refused to return the deposit. Only after the intervention of the Registrar's representative, Orangeville Mazda agreed to return the deposit. (paragraph 18 of the Proposal)
6. On or about December 2, 3009, Consumer L submitted a complaint to a representative of the Registrar. The consumer advised that he had purchased a 2006 Ford Escape from Orangeville Mazda. The consumer advised that the vehicle had been purchased with sound proofing and rust-proofing but that neither properly applied. The consumer contacted the dealership but satisfactory repairs were not done. Despite the intervention of the Registrar's representative, the parties were not able to come to a satisfactory agreement. The consumer advised that he would pursue the matter civilly. (paragraph 19 of the Proposal)
7. On or about March 23, 2010, a consumer, ML submitted a complaint to a representative of the Registrar. The consumer advised that she attended Orangeville Mazda in December 2009 to discuss some issues with her current car.

While at the dealership, she was pressured by the staff, including Trung and Shaikh, into purchasing a 2010 Mazda 6. The consumer also advised that she is under a disability, and is on a fixed income which makes the payments for a Mazda 6 unaffordable. The consumer advised that she felt threatened and confused during her interaction with Trung and Shaikh. (paragraph 23 of the Proposal)

8. Based on consumer's financial situation and disability benefits, she would not have qualified for the lease payments. However, Orangeville Mazda submitted financing documents on behalf of the consumer which reflected a higher level of income and thereby misrepresented the situation to both the consumer and the finance company. (Para 26 of the Proposal)
  
9. Trung and Shaikh, in preparing the documents relating to the sale, inflated the process of optional extras for the vehicle, including rust-proofing and window etching, beyond their fair market value and consumer's ability to afford them. Subsequently, the consumer realized she could not keep the car as she could not afford it..... (paragraph 27 of the Proposal)
  
10. As a result of their dealings with consumer ML, Trung, Shaikh, and Orangeville Mazda were charged with engaging in an unfair practice contrary to the *Consumer Protection Act, 2002*. (paragraph 29 of the Proposal)

### **Preliminary Matters:**

The Registrar's Counsel made a submission for an Order of the Tribunal under Rule 7.3.1. of the Tribunal Rules of Practice to put a restriction on the access on certain medical records and other personal information of the customer ML. The Applicants did not object to this request. The Tribunal, after considering the submissions of the parties, made an Order to restrict the access to the public of medical and personal records of the Applicant contained in Exhibit 4c, pages 250 to 253 and 371.

### **EVIDENCE**

The parties submitted various documents that the Tribunal marked as Exhibits:

1. Notice of Proposal
2. Notice of Appeal
3. Respondent's Book of Documents
4. Respondent's further documents
5. Affidavit of Attempted Service by OMVIC
6. Termination letter of Moe Shaikh

The summary of the evidence and testimony of the witnesses is as follows:

### **Witness ML**

In December 2009 ML attended Mazda of Oakville (the "dealership") to change tires on her

old car. She testified that it was a 4-1/2 hour wait for the tire change and during this time she started looking at the cars in the dealership. She met a salesperson who took her for a test drive. When she came back from the test drive, the sales person introduced her to Sales Manager, Mr. Mohammed Sheikh ("Mr. Sheikh"), who, she alleged induced her to trade-in her car and purchase another car from the dealership. ML alleged that Mr. Shaikh promised her that he will give her good value for her old car. ML testified that although she had not planned to buy a new car, she ended up trading her old car for a Mazda GT-V6 (G4TB80). She paid a total of \$49,722.98 after a credit of \$8,000.00 towards her trade-in car. The car she bought was a demo and had a mileage of over 5,000 kms. Mr. Sheikh gave her the paperwork to sign. ML alleged that every time she asked any question to Mr. Shaikh, he responded in a raised voice. She further testified that her "confidence goes" when someone raises their voice, and she just acts like a "robot". ML acknowledged that her brother who had accompanied her had medical conditions and did not have the mental capacity to assist her in making the decision to buy the car.

After making the deal, Mr. Shaikh took her to the Business Manager, Mr. Ken Trung. Mr. Trung gave her a credit application to complete in which she put her total monthly income as \$1,850.00<sup>1</sup>, comprised of \$850.00 disability pension and \$1,000.00 from spousal support. However, the Bank of Montreal credit application showed her monthly income as \$3,100.00, and her spousal status as married<sup>3</sup>. ML insisted that she did not provide this information to anyone at the dealership. In addition, Mr. Trung sold her Rust Protection, Paint Protection, Fabric Protection and Sound/Undercoat (the "extras") for a price of \$3,927.00.

She took delivery of the car after four days of initial contact with the dealership. Before taking delivery she and her friend looked on the internet to find the market price of a similar car. They found that the Applicants had sold the car to her for a higher than the market price. She felt intimidated the day she bought the car and thought the deal was firm.

ML believed that Mr. Shaikh had pressured her into the deal and Mr. Trung had pressured her to buy extras at a higher than the market price. She wrote a letter of complaint to the dealership, Mazda of Canada<sup>4</sup> and the Ontario Motor Vehicle Industry Council (OMVIC).

### **Testimony of Carey Smith**

In response to ML's complaint, OMVIC started investigation against the dealership and the Applicants. Mr. Carey Smith, the Director of Investigations, testified on behalf of OMVIC about his involvement in this matter. He has been working with OMVIC as the Director of Investigations since 2002.

In April 2010, on the basis of his investigation, Mr. Smith obtained summons to charge the Applicants and the dealership under sections 17 and 116(1)(b)(ii) of the *Consumer*

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1. Exhibit 3, Tab 4b, page 168

3. Exhibit 3, Tab 4a, page 57

4 Exhibit 3 Tab c, page 325

*Protection Act, 2002*<sup>5</sup>. However, the OMVIC solicitor, in an error, did not attend the Court in this matter on May 12, 2010 and the Court dropped the charges. OMVIC laid new 'information'. The Court determined this new information as an abuse of process and dismissed the proceedings. Thereafter, OMVIC initiated Court proceedings for reinstatement of the original charges. These proceedings are now pending.

Mr. Smith went on to refer the Tribunal to the bill of sale in this transaction<sup>6</sup>, which showed the base price of the car as \$46,291.89. However, the MSRP (Manufacturer's Suggested Retail Price) for a similar brand new car was \$36,695.00<sup>7</sup> as suggested by Mazda Canada. He further testified that the car which the Applicants had sold to ML was used and therefore, the price they charged was excessive compared with the market price of a similar car. As part of the investigation, Mr. Smith interviewed ML and found her to be very confused, therefore, he did not take a written statement from her.

He referred the Tribunal to the accounting records of the dealership with respect to the trade of ML<sup>8</sup>. An accounting printout of the dealership's internal document showed that the dealer sold the "trade-in" within three days of the transaction for \$8,999.00<sup>9</sup>. Mr. Smith alleged that the dealership made unconscionable profit from this customer.

### **Mohammed Shaikh**

Mr. Shaikh testified in response to the Registrar's evidence against him. He insisted that customers always want a high price for their trade-in. Similarly, at the time of financing, the banks like to see equity in the deal. Therefore the dealers raise the price of the trade-in, resulting in a higher price for the car to be sold. He further testified that he showed the trade-in price of ML's car as \$8,000.00 by increasing the price of her old car. In his opinion, the true value of ML's old car was \$4,000.00. In addition, he alleged that he put \$2000.00 to \$2500.00 worth of winter tires and added a "winter package" for \$2,000.00 in ML's new car. He further testified that based on the way dealers operate, every department has to make money and it is the owner of the dealership who decides how much to charge. He alleged that the owner Sunny (Surjit) Bains (the "dealer") structured the price on the bill of sale and alleged that the salesperson who initially dealt with ML made a commission of \$5,000.00 in this transaction. He agreed that when ML complained to OMVIC she had a legitimate concern. However, he stressed that he had to follow the instructions of the dealer with respect to the sale price of the car.

Under cross-examination, Mr. Shaikh agreed that he charged ML an amount of \$46,291.00 and that was excessive as compared to the market price of a similar car. He agreed that he had signed the Bill of Sale but stated that the dealer had input the prices. In an answer to the Panel's question, Mr. Shaikh testified that he did not get any commission on this transaction as he was on salary. Upon being invited to review his dismissal letter that

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5 Exhibit 3, Tab 4a, page 48

6 Exhibit 3, Tab4a, page 54

7 Exhibit 3, tab 4a, page 55

8 Exhibit 4, page 101

9 Exhibit 4, page 84

showed he had received commission from the dealer<sup>10</sup>, he stated that he was shocked to see the content of this letter. However, he did not respond to this letter nor did he file any action against the dealer for his wrongful dismissal.

### **Mr. Trung**

While testifying in response to the Registrar's evidence, Mr. Trung denied that he pressured the customer to purchase the car. He insisted that his role was to sell ML the extras such as Rust protection, Paint Protection, Fabric Protection and Sound/Undercoat, print the pre-filled invoice and arrange financing of the car. He testified that he highlighted the spaces on the bill of sale for ML, where she had to sign, in order to make sure she understood what she signed for.

In regards to the inflated price on the extras, he did not deny the prices being inflated but testified that the rules and guidelines on the "out of market products" are ambiguous. He stressed that no manufacturer suggests the MSRP for the extras.

He further testified that when ML came to pick the vehicle, she was so excited to buy the car, and wrote a "customer testimonial" that thanked the Applicants for the services they provided to her<sup>11</sup>. He further testified that he met her only for 10 -15 minutes and during this time he could not realize that she was not "normal". Answering questions regarding ML's inflated income on the Bank of Montreal credit application, Mr. Trung testified that he did not recall the details about this particular application. He stressed that the dealership was a very busy dealership and it was a big job to keep track of 100 to 150 sales per month. He agreed that monthly payment would have been an issue to him if the customer's monthly income was indeed \$1,850.00. Moreover, he stressed that he simply submitted information to the bank. The bank has a credit department that does the investigation.

Under cross examination Mr. Trung agreed that in August 2009 he had sold the rust protection for an amount of \$792 to another customer. He sold the same product to ML for \$992. He also agreed that he had sold undercoat in August 2009 for \$688 and sold the same product to ML for \$998<sup>12</sup>. He also agreed that in both cases the cars were used and in ML's case it was a newer car. He contradicted himself and said that in this particular transaction the dealer had put in the numbers on the system with respect to the extras, although he had earlier testified that he had sold the extra's to ML.

### **Additional allegations against Mr. Shaikh**

#### **Witness S B**

The testimony of SB related to paragraph 13 of the proposal<sup>13</sup>. The only business dealings the witness had with Mr. Shaikh was his telephone conversation with Mr. Shaikh in May

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10 Exhibit 6

11 Exhibit 3, tab 4b, page 160

12 Exhibit 3, tab 6d, page 246

13 Exhibit 3, Tab 1, page 3 and Tab6b, page 96

2009. The witness alleged that he had telephoned the dealership regarding paper work related to a warranty policy application which the dealership had incorrectly completed resulting SB's loss of \$1,886.00 in premium refunds. Mr. Shaikh was not responsible for the sale of warranty to SB. The allegation is that he was abusive with the customer over a telephone conversation and told him that he was a liar.

### **Witness TC**

The testimony of TC is with respect to paragraph 18 of the Proposal, the detail of that is provided in Exhibit 3, Tab 6(c)

In September 2009 TC saw an advertisement in the *Auto Trader* magazine for a car in the range of \$13,000.00. She called the dealer if the car was still available and she was told it was available. However, when she went to the dealership within one hour of the initial telephone inquiry, someone at the dealership told her that the particular car in which she was interested had been sold. Mr. Shaikh showed her another demo car. She took a test drive, signed an agreement subject to financing and paid a deposit.

After she left the dealership she received a phone call from an employee of the dealership informing her that she did not qualify for the financing. She presumed that the transaction had ended as she did not qualify for the financing. She telephoned Mr. Shaikh the following day to get her deposit back. However, Mr. Shaikh advised her that her financing was approved. She was surprised that the financing was declined a day before, and questioned how it was approved at that time, to which Mr. Shaikh replied that he had "connections". When she asked him about the financing rates, he told her not to worry and to come in to the dealership. TC further testified that at this time she decided not to buy the car. She believed that Mr. Shaikh was not forthcoming with respect to financing and the rate of interest that she had to pay on the transaction. When she went to take her deposit back, Mr. Shaikh told her to get out of his office.

Mr. Shaikh called her the same day and left a threatening message to pursue legal action if she did not buy the car. TC testified that Mr. Shaikh told her that the dealership, at that time, owned both her old car and the new car she was buying. She went to the Ministry of Transportation and found that the dealership had transferred the plate portion of her old car to itself. Therefore, the car she was driving did not have valid plates. She was very upset with the treatment she received from Mr. Shaikh and sent an elaborate complaint to Mazda Canada and the OMVIC<sup>14</sup>. Thereafter, the dealer agreed to return the deposit. She got her deposit back after a deduction of \$200.00.

Mr. Shaikh denied that he changed the ownership of the plate portion of the customer's old car. Rather, he alleged that it was the dealer who had changed the ownership of the plates. He denied being rude to the customer and insisted that only the dealer had the authority to release the deposit back to the customers.

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14 Tab6(c) pages221 to 226

**Witness TB**

The testimony of this witness is with respect to paragraph 11 of the Proposal and is directed to Mr. Shaikh

February 2009, he attended the dealership to purchase a truck. The customer had issues as the dealership wanted him to buy a truck the color of which he did not like. Also, Mr. Shaikh wanted him to bring a co-signer at the time of pickup of the truck, but he did not have one. Due to the color and co-signer issue, TB refused to buy the truck.

TB testified that Mr. Shaikh was rude and shouted at him when he advised him that he did not want to buy the truck.

**THE LAW**

The Act states in part as follows:

**Prohibition**

4.(1) No person shall,

(a) act as a motor vehicle dealer unless the person is registered as a motor vehicle dealer under this Act; or

(b) act as a salesperson unless he or she is registered as a salesperson.

**Unregistered salesperson**

(3) A motor vehicle dealer shall not retain the services of a salesperson unless the salesperson is registered in that capacity.

**Salespersons**

(5) A salesperson shall not trade a motor vehicle on behalf of a motor vehicle dealer unless the salesperson is registered to that dealer.

Regarding the right to registration, the Act states:

**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,

(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, or

(iii) the applicant or an employee or agent of the applicant makes a false statement or provides a false statement in an application for registration or for renewal of registration;

(b),(c) REPEALED: 2004, c. 19, s. 16 (5).



- (d) the applicant is a corporation and,
- (i) having regard to its financial position or the financial position of an interested person in respect of the corporation, the applicant cannot reasonably be expected to be financially responsible in the conduct of its business,
  - (ii) having regard to the financial position of its officers or directors or an interested person in respect of its officers or directors, the applicant cannot reasonably be expected to be financially responsible in the conduct of its business,
  - (iii) the past conduct of its officers or directors or of an interested person in respect of its officers or directors or of an interested person in respect of the corporation affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty, or
  - (iv) an officer or director of the corporation makes a false statement or provides a false statement in an application for registration or for renewal of registration;
- (e) the applicant or an interested person in respect of the applicant is carrying on activities that are, or will be if the applicant is registered, in contravention of this Act or the regulations, other than the code of ethics established under section 43;
- (f) the applicant is in breach of a condition of the registration; or
- (g) the applicant fails to comply with a request made by the registrar under subsection (1.1).

**Request for information**

(1.1) The registrar may request an applicant for registration or renewal of registration to provide to the registrar, in the form and within the time period specified by the registrar,

- (a) information specified by the registrar that is relevant to the decision to be made by the registrar as to whether or not to grant the registration or renewal;
- (b) verification, by affidavit or otherwise, of any information described in clause (a) that the applicant is providing or has provided to the registrar.

**Refusal to register, etc.**

**8.** (1) Subject to section 9, the registrar may refuse to register an applicant or may suspend or revoke a registration or refuse to renew a registration if, in his or her opinion, the applicant or registrant is not entitled to registration under section 6.

**Conditions**

- (2) Subject to section 9, the registrar may,
- (a) approve the registration or renewal of a registration on such conditions as he or she considers appropriate; and
  - (b) at any time apply to a registration such conditions as he or she considers appropriate.

**Notice re: refusal, suspension, etc.**

- 9.** (1) The registrar shall notify an applicant or registrant in writing if he or she proposes to,
- (a) refuse under subsection 8 (1) to grant or renew a registration;
  - (b) suspend or revoke a registration; or
  - (c) apply conditions to a registration or renewal to which the applicant or registrant has not consented.

**Content of notice**

(2) The notice of proposal shall set out the reasons for the proposed action and shall state that the applicant or registrant is entitled to a hearing by the Tribunal if the applicant or registrant mails or delivers, within 15 days after service of the notice, a written request for a hearing to the registrar and to the Tribunal.

### **Application of Law to Facts**

The issue that this Tribunal has to decide is:

Whether or not the past conduct of either or both the Applicants afford reasonable grounds for belief that either or both the Applicants will not carry on business in accordance with law and with integrity and honesty.

The governing legislation is consumer protection legislation that regulates the retail sales of motor vehicles in Ontario. The legislation requires that people involved in this industry be registered under the Act. While the Act gives an entitlement to registration, it also allows the Registrar to revoke registration on the specified grounds. Those grounds are set forth in section 6 of the Act. The registrant is informed of the refusal by the issuance of a Notice of Proposal. An appeal from the Registrar's Proposal lies with the Tribunal.

The Registrar had issued the Proposal to revoke the registrations of Applicants and registrations of 1571390 Ontario Ltd. o/a Mazda of Orangeville, 1807352 Ontario inc. o/a Suzuki of Pickering, 1781169 Ontario Inc. o/a Orangeville Kia and Surjeet (a.k.a. Sunny) Bains and Sugijanto Oman. All the parties mentioned in the proposal filed appeals before the Tribunal. The Applicants pursued and the rest of the parties withdrew their appeals. The registrations of the parties who withdrew their appeals stand revoked.

The Allegations against the Applicants are contained in paragraphs 8 to 29\_ of the proposal. The Tribunal, now, has to focus on the Applicants' past conduct keeping in view their dealings with their customers, in determining whether their past conduct affords reasonable grounds for belief that the Applicants will not carry on business in accordance with law and with integrity and honesty. In *Ontario (Real Estate and Business Brokers) v. Faccenda* [1994] O.J. No. 954 (Ont. Div. Court) Justice Adams laid down the test for such determination as, "It is the totality of the past conduct considered in the light of more current circumstances, which form the basis of relief."

The Tribunal finds that the most serious allegation against Mr. Shaikh and only allegation against Mr. Trung are their questionable dealings with customer ML. She was 56 years old and under multiple psychotropic medications at the time of her dealings with the Applicants<sup>15</sup>. She went to the dealership to change the tires of her old car and alleged that Mr. Shaikh pressured her to purchase a car the price of which together with the extras was far in excess of the market price of a similar car. She testified that due to her medical conditions she was quite confused and unable to make good decisions. She could not afford this car as she was living on a disability pension of \$850.00 and spousal support of \$1,000.00 per month.

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<sup>15</sup> Exhibit 3, tab 4a, page 60

It is evident that the MSRP (Manufacturer's Suggested Retail Price) of a brand new car model G4TB80 was \$36,695.00<sup>16</sup>. However, Mr. Shaikh sold this same model demo car to the customer that had over 5,000 kilometers mileage, for \$46,291.89. Thereafter, he passed the file on to Mr. Trung, who in the Tribunal's view, took advantage of customer's disability and charged an excessive price for the extras. He sold her the Rust Protection, Paint Protection, Fabric Protection and Sound/Undercoat for a total price of \$3,927. Mr. Smith testified, and the tribunal believes, that a similar package was available in the market for an average of about \$1,200.00. The Tribunal agrees with the Registrar's Counsel that this was an unconscionable deal.

Mr. Trung, justifying the prices, submitted that there are no guidelines with respect to MSRP of the extras. The Tribunal is of the view that honesty does not require any guidelines particularly when Mr. Trung, under cross-examination, acknowledged that he charged a higher amount than what he would charge other customers for the same extras.

Mr. Sheikh justifying his role in this transaction submitted that he was working for the dealer and did not personally have much involvement in pricing the vehicles. The evidence established otherwise. Mr. Sheikh dealt with ML, sold her the vehicle and signed the bill of sale.

During his testimony, Mr. Sheikh admitted that he was under pressure to do certain things which he would not do as a sales person, if he did not have his business interest at stake. He testified that he was a partner with the dealer in another dealership. The Tribunal is of the view that it was up to Mr. Sheikh whether or not to work for this dealer. But the Tribunal will not accept that the consumers are not protected from unfair treatment from registered salespersons.

In the business world everyone is expected to make a profit but there is a clear line between profit and unconscionable profit, particularly in a regulated industry. The Applicants crossed this line. Consumer ML, apart from her disability, was very naïve in purchasing a car, otherwise there was no reason she would pay a price in excess of market value of the car and the extras. The Tribunal finds that she was not reasonably able to protect her interests because of her disability, ignorance of the market, and her inability to understand the transaction.

The Tribunal finds that the Applicant sold the car and the extras to ML at a grossly higher than the market price. The Tribunal further finds that the transaction was excessively one-sided in favor of the dealership, which was a result of undue pressure from the Applicants. ML did not know the car was overpriced and went on to write an appreciation letter for the Applicants. Instead of guiding her through the process in a fair and efficient manner, the Applicants took advantage of her lack of knowledge and disability.

The evidence of the remaining witnesses also shed light to the questionable dealings of Mr. Shiekh with his customers. A few of them had to approach OMVIC to get the issues

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16 Exhibit 3, tab4a, page 55

resolved.

The Applicants submitted that ML was fully compensated by the dealer. The Tribunal noted that as a result of the OMVIC's involvement in this matter, the dealer rescinded the transaction in May 2010 without any detriment to ML<sup>17</sup>.

The Tribunal appreciates the fact that both Applicants have been in the Industry as salespersons for over 25 years and did not have any previous complaints against them. However, the Tribunal is equally troubled by the fact that they knowingly and collaboratively exploited a person under disability and failed to accept responsibility of their conduct. They attempted to pass the responsibility on to the dealer by saying that the dealer had put the prices in the system. The evidence is clear that the Applicants were instrumental in overcharging the customer.

The Applicants referred the Tribunal to OMVIC Complaint Work Assignment Snapshots<sup>18</sup>, that contained information regarding ML's issues with other dealers and which showed her mental state. The Tribunal finds that ML certainly had medical issues but that does not give the Applicants an excuse to treat her unfairly. Similarly, there is no doubt that the dealer would have full knowledge of the working of the Applicants and they would have his full support, but that does not alleviate the responsibility of the Applicants towards their customer. The Applicants were individually licensed under the act and expected to carry on business in accordance with honesty and integrity.

The conduct of the Applicants in this transaction reflects poorly on their honesty and integrity and falls below the acceptable standards under the Act.

In view of a recent Divisional Court decision, *Arulappu v. Registrar, Real Estate Business Brokers Act*, 2011 ONSC 797, the next issue for the Tribunal to decide is whether the Applicant's appeal, despite the finding above, could reasonably be granted subject to conditions. Under section 9(5) of the Act, the Tribunal may order the Registrar to carry out the proposal, substitute its opinion for that of the Registrar and attach conditions to registration.

There is no evidence that Mr. Trung had any other complaint other than the complaint of ML in his over 25 years as a salesperson. The Registrar adduced evidence of three other witnesses who testified about their experiences in dealing with Mr. Sheikh. Mr. Sheikh was rude with these customers when they were dealing with him. In two cases he did not provide a refund of deposit to his customers for a failed transaction. Mr. Shaikh submitted that it was not under his control, but it was up to the dealer, to refund the deposits, the Tribunal agrees. However, the Tribunal finds that these complaints reflected poorly on the business conduct of Mr. Shaikh but do not necessarily reflect on his honesty and integrity.

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<sup>17</sup> Exhibit 3, tab 4c, pages 248-249

<sup>18</sup> Exhibit 3, tab 4c, pages 251-252

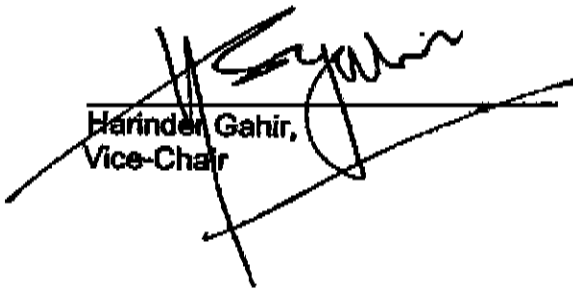
The Tribunal finds that the Applicants were not chronic violators and therefore not worthy of holding registration. It is clear from the evidence that the Applicants were not familiar with the policy and ethics relating to the sale of automobiles in this province. They should be aware of their legal and ethical obligations as salespersons. Therefore, a period of suspension is in order, during which the Applicants shall familiarize themselves with the law and their obligations under the Act would be sufficient.

## ORDER

The Tribunal orders the Registrar to carry out his proposals subject to the following terms and conditions:

1. The Registration of the Applicants will be suspended for a period of one year from the date of this Order.
2. The Applicants will take the salesperson certification course offered by Georgian College, and must successfully complete this course before the expiry of the term of suspension.
3. The Applicants will immediately notify the Registrar of their marks upon completing the certification course;

LICENCE APPEAL TRIBUNAL

  
Harinder Gahir,  
Vice-Chair

*Released: October 7, 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.