



Citation: Ahmad Makkawi o/a A & A Motors v. Registrar, *Motor Vehicle Dealers Act, 2002*,  
2019 ONLAT MVDA 11487

Date: 2019-04-12  
File Number: 11487/MVDA

Appeal from a Notice of Proposal by the Registrar, *Motor Vehicle Dealers Act, 2002* to  
Refuse Registration

**Between:**

Ahmad Makkawi o/a A & A Motors

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

**CONSENT ORDER**

**Order Made by:** Jeanie Theoharis, Vice-Chair

**Date of Order:** April 12, 2019

- [1] Ahmad Makkawi o/a A & A Motors (the “appellant”) appeals the Registrar’s Notice of Proposal to refuse the registration of Ahmad Makkawi o/a A & A Motors as a motor vehicle dealer under the *Motor Vehicle Dealers Act, 2002* (the “Act”). The Notice of Proposal, which was issued on June 21, 2018, alleges that false statements made on Mr. Makkawi’s applications for registration as well as concerns regarding his financial responsibility in the conduct of a business warrant disentitlement to registration under the Act.
- [2] The Notice of Proposal also cites issues regarding ‘past conduct’. Respondent’s counsel clarified that the Registrar is not relying upon past conduct as a ground for his refusal. He had also indicated that the Registrar wished to correct the section of the Act cited in paragraph 14 of the Notice of Proposal: it should read as reliance upon s. 6(1)(a) (i) of the Act, not s. 6 (1)(d)(i) given that the appellant is applying for registration as an individual and not as a corporation.
- [3] The parties were unable to resolve the issues in dispute at a case conference; and the matter was set to proceed to a hearing on April 10, 2019.
- [4] On April 3, 2019, the parties requested the April 10, 2019 hearing date be vacated, and the terms of a signed agreement be incorporated into a consent order.
- [5] The appellant, as part of the signed agreement, and in agreeing to the terms of the consent order, acknowledges the following:
  - a. The Appellant acknowledges 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.
  - b. 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.

- c. Subject to any legal defences, 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.
- d. The Appellant understands that the transaction fee is payable on any sales or leases to non-dealer Appellants, including sales or leases in exports, fleet transactions and consignments.

[6] On review of the terms of the signed agreement, I was satisfied that the Tribunal had the jurisdiction to grant the consent order on the terms as noted on the signed agreement.

**On consent of the parties, I order that:**

[7] In accordance with subsection 6(2) of the *Motor Vehicle Dealers Act, 2002* and section 4.1 of the *Statutory Powers Procedure Act*, and on consent of the parties, I waive the requirements of a hearing, and dispose of this proceeding without a hearing.

[8] Further, and with the consent of the parties, I order that the appellant's registration as a motor vehicle dealer be issued subject to the following conditions of registration that are consented to by the appellant and the respondent:

- a. The Appellant will 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.
- b. The Appellant will 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.
- c. The Appellant will 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.

- d. The Appellant will 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.
- e. The Appellant will 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.
- f. The Appellant will 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**

- g. The Appellant will 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.
- h. The Appellant agrees not to change the location approved by the Registrar without first obtaining the Registrar's approval, in writing, pursuant to section 31 of Ontario Regulation 333/08. The Appellant will then provide the Registrar with notice in writing, within 5 days, of any such change in the location.
- i. The Appellant will ensure that all advertisements placed by or on behalf of the Appellant will identify the registered name, address and phone number of the location approved by the Registrar, pursuant to section 36(2) of Ontario Regulation 333/08.

### **Books and Records**

- j. The Appellant will 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.

- k. The Appellant will 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.
- l. The Appellant will not purchase a vehicle without first ensuring that the vehicle is registered to the seller, in the records of the Ontario Ministry of Transportation (MTO).
- m. The Appellant will ensure that all vehicles purchased will be registered within 6 days in accordance with section 11 of the *Highway Traffic Act* ("HTA").
- n. The Appellant will 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.
- o. The Appellant will 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.
- p. The Appellant will 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**

- q. The Appellant will 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 section 4 of Ontario Regulation 332/08, where applicable.

- r. The Appellant will 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 possible regarding the nature and severity of the damage. The Appellant undertakes to research the history of all the motor vehicles under trade to ensure all material facts are disclosed.
- s. The Appellant will not 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.

### **Financial Responsibility**

- t. The Appellant will not 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, applies.
- u. The Appellant will comply with all federal, provincial and municipal tax obligations. The Appellant will 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.
- v. The Appellant will maintain bank accounts that are compliant with section 59 of Ontario Regulation 333/08.
- w. The Appellant will 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.

- x. The Appellant will 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.
- y. The Appellant will ensure that 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 will reimburse the Fund for any monies paid in relation to the claim.
- z. The Appellant will provide the Registrar with notice in writing, within five (5) days, of any future collections, judgements, consumer proposal or bankruptcy proceedings involving the Appellant.
- aa. The Appellant will pay any outstanding judgments, collections or court orders against the Appellant, when due.

#### **Letter of Credit**

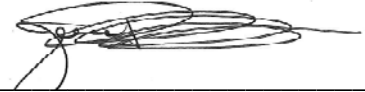
- bb. The Appellant shall maintain an irrevocable Letter of Credit in the interest of the Fund of not less than \$20,000 from a financial institution under the Loan and Trust Corporations Act, The Bank Act. The Appellant further acknowledge that they may not be registered while this condition is unfulfilled.
- cc. The Appellant will maintain the above Letter of Credit, in the interest of the Fund, for not less than two (2) years.

#### **OMVIC Transaction Fee**

- dd. The Appellant will provide OMVIC with documentation, when requested by the Registrar, to establish that a particular transaction is exempt from the transaction fee, failing which the Appellant will remit the transaction fee on the transaction.

- ee. These conditions shall expire after two years from the day this Order takes effect.

LICENCE APPEAL TRIBUNAL



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Jeanie Theoharis, Vice-Chair

*Released: April 12, 2019*