

Licence Tribunal
Appeal d'appel en
Tribunal matière de permis



DATE: 2013-02-26
FILE: 7455/MVDA
CASE NAME: Umair Gilani Syed Muhammed & Imperial Fine Cars Inc. v. Registrar,
Motor Vehicle Dealers Act 2002

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

IMPERIAL FINE CARS INC. and
UMAIR GILANI SYED MUHAMMED

Applicant(s)

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Richard Macklin, Vice-Chair
APPEARANCES:
For the Applicants: Justin M. Jakubiak, Counsel
For the Respondent: Brian Osler, Counsel
Michael Rusek, Student at law
Heard in Toronto, Ontario
October 11, 2012 and January 7, 2013

REASONS FOR DECISION AND ORDER

OVER VIEW

The Registrar, *Motor Vehicle Dealers Act, 2002*, ("Registrar"), by Notice of Proposal dated May 24, 2012, seeks revocation of the Applicants' motor vehicle dealer and salesperson licences, respectively.

The Registrar commenced its case on October 11, 2012, and after starting, advised the Tribunal that it wished to add further allegations against the Applicants (the "further allegations"). These allegations had been disclosed in the documents that emanated from the Applicants but were not particularized in the Notice of Proposal. The Applicants, who were unrepresented at the time, indicated that they were unprepared to respond to the new allegations. The matter was adjourned and ultimately returned on January 7, 2013. On that date, the Applicants, now represented by counsel, objected to the admission of the further allegations on several grounds including the ground that the further allegations "ought not to be relied upon by the Registrar given that the hearing has already commenced" ("the procedural dispute").

Thus, the first question on this application is whether the Registrar has met his onus, without resort to the further allegations. If the Registrar has met his onus, the next question is whether the proposed revocations are the appropriate disposition. If the Registrar has not met his onus, without regard to the further allegations, the Tribunal must determine whether those allegations can be admitted, in light of s. 8 of the *Statutory Powers Procedure Act* R.S.O. 1990 c.S.22. If admitted, the issue becomes whether the further allegations, taken with the balance of the evidence, establish the Registrar's case and proposed revocation orders. If the Registrar fails to meet his onus, based on whatever evidence is ultimately deemed admissible, the Applicants succeed and the Notice of Proposal will not be carried out.

THE FACTS

The following facts, taken primarily from the Notice of Proposal, are not in dispute.

1. Umair Gilani Syed Muhammed ("Umair Gilani") was originally registered as a motor vehicle salesperson on or about November 3, 2005. The registration expired on or about November 3, 2011.
2. On or about July 30, 2009, Umair Gilani submitted a Business Application on behalf of Imperial Fine Cars Inc. ("IFC") seeking registration as a motor vehicle dealer.
3. On or about December 7, 2010, the Registrar issued a Notice of Proposal to revoke Umair Gilani's salesperson registration, and refuse the registration of IFC as a motor vehicle dealer.
4. The Notice of Proposal also included the revocation of the registration of Rafi Gilani Syed Mohammed ("Rafi Gilani"), Umair Gilani's father. The reasons for this proposal

included Rafi's convictions for Retail Sales Tax evasion and his failure to disclose those convictions to the Ontario Motor Vehicle Industry Council ("OMVIC").

5. On or about December 22, 2010, the Registrar received a Notice of Appeal within the 15-day prescribed period, from Umair Gilani and IFC. However, no timely Notice of Appeal was filed by Rafi Gilani or Gilani's International Limited o/a Imperial Used Cars. The registrations of those parties were revoked as of December 29, 2010.

6. On or about April 24, 2011, a pre-hearing was held at the Licence Appeal Tribunal ("LAT"), at which time Umair Gilani acted on his own behalf as well as on behalf of IFC.

7. On or about July 15, 2011, the matter was resolved through a Consent Order (the "Consent Order") issued by the LAT. Umair Gilani and IFC were granted terms of registration. The Consent Order included the following clauses:

1. The Applicant (Umair Gilani) will ensure that Rafi Gilani Syed Mohammed will not be involved in the operation of the dealership (Imperial Fine Cars Inc.) either directly or indirectly and will not be employed by the Dealership in any capacity...

15. The Applicant agrees to provide the Registrar with written notice of any new sources of financing or guarantors for the dealership within 5 days of having arranged for, or received, the financing, whichever comes first...

8. Syed Muhamed Azam ("Azam") was the dealer principal of Matrix Wheels Inc. o/a Orange Car Sales & Rentals ("Orange Car Sales & Rentals"), which was originally registered as a motor vehicle dealer from September 24, 2010 to September 24, 2011. Umair Gilani (Azam's nephew) was employed as a salesperson by Orange Car Sales & Rentals, from on or about April 15, 2010 to November 3, 2011.

9. On or about March 4, 2011, a representative of the Registrar, Marcela Coellar, attended the premises of Orange Car Sales & Rentals, located at 395 Dundas Street East, Mississauga, for the purpose of conducting an unscheduled inspection. The following findings were revealed:

- a. When entering the premises, the Inspector was greeted by a gentleman identifying himself as Asim Hussein ("Asim") and advised that he was not a salesperson but was rather there to use the facilities to prepare himself for prayers;
- b. The Inspector then asked Asim to clarify his position within the dealership; Asim advised that he would call Azam, in order to discuss the matter with him directly;

- c. Azam advised the Inspector that he was unable to attend the premises, however the person in charge of the dealership (whom he identified as Umair Gilani) would arrive shortly;
- d. Upon Umair Gilani's arrival, the inspector explained the purpose of the visit and requested to review the Garage Registry;
- e. Umair Gilani redirected the request to Asim, who advised that he was not aware where the Registry was kept, as he is the accountant for the business and is not involved in the sale of vehicles;
- f. The Inspector rescheduled an inspection for March 15, 2011.

10. On or about March 15, 2011, Ms. Coellar attended the premises of Orange Car Sales & Rentals, for the purpose of conducting the re-scheduled inspection. The Inspector met with Umair Gilani, and the inspection revealed, amongst other things, the following:

- a. The Inspector inquired about Asim's role at the dealership, and Umair Gilani advised that he is the accountant and is often present on the premises in order to conduct his functions.

11. On or about October 5, 2011, Ms. Coellar attended at the premises of IFC, for the purpose of conducting an unscheduled new dealer inspection. Ms. Coellar met with Umair Gilani, and the inspection revealed, amongst other things, the following:

- a. Upon entering the premises, the Inspector found 2 individuals by the salesperson desk; Umair Gilani and the person who had identified himself as Asim Hussein on the March 4, 2011 visit to Orange Car Sales & Rentals;
- b. The Inspector asked Umair Gilani if the gentleman next to him was, in fact, Rafi Gilani, and Umair Gilani answered "yes". Umair Gilani confirmed that he had previously misrepresented Rafi Gilani's identity on March 15, 2011.

PERTINENT CONTESTED FACTS

What happened next at the inspection of October 5, 2011 is the subject of conflicting evidence. The Registrar's witness, Ms. Coellar, stated that Umair Gilani told her that Rafi Gilani was the bookkeeper for IFC "like he is for Orange". Ms. Coellar stated that she then cautioned Umair Gilani that the hiring of Rafi Gilani as bookkeeper amounted to a breach of the Consent Order.

In his evidence, Umair Gilani denies admitting to Rafi Gilani being a bookkeeper or that Rafi Gilani was, in fact the bookkeeper. He states that Rafi Gilani was at the dealership on

October 5, 2011, as a “handyman” to help with a move by IFC into its new premises (notwithstanding the fact that Rafi Gilani was dressed in business attire and not “handyman” clothes).

Thus, at the hearing, Umair Gilani admitted to the misrepresentation of Rafi Gilani’s identity, but denied the “bookkeeper” allegation. Umair Gilani further submitted that the misrepresentation was mitigated by the fact that he admitted to it upon being confronted on October 5, 2011.

FURTHER ALLEGATIONS

The further allegations relied upon by the Registrar, contested on procedural and other grounds, relate to a breach of paragraph 15 of the Consent Order by the Applicants when they obtained financing from a Mr. S.M, without disclosing the financing to the Registrar. The “financing” involved S.M. contributing money to purchase cars and splitting the profits with IFC. The Registrar submits that the transactions fall within the spirit and letter of the proscribed conduct set out in paragraph 15 of the Consent Order. The Applicants submit that “one off” joint ventures on specific cars did not amount to financing and thus did not have to be disclosed.

THE LAW

The *Motor Vehicle Dealers Act, 2002* S.O. 2002 c.30 Sched “B” (“the Act”) states as follows:

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.

Section 8 of the *Statutory Powers Procedure Act* R.S.O. 1990 c.S.22 states as follows:

8. Where the good character, propriety of conduct or competence of a party is an issue in a proceeding, the party is entitled to be furnished prior to the hearing with reasonable information of any allegations with respect thereto. R.S.O. 1990, c. S.22, s. 8.

ISSUES AND ANALYSIS

Issue 1 – Has the Registrar Made out His Onus Without Resort to the Further Allegations

As noted above, the Applicants do not contest that Umair Gilani misrepresented Rafi Gilani's identity to an inspector on March 15, 2011. Although the misrepresentation is not a breach of the Consent Order and did not occur in respect of IFC, it does call into question the ability of the Applicants to carry on business with honesty and integrity. The misrepresentation is disconcerting as it related to the very individual, Rafi Gilani, who was the "person of concern" in respect of the previous Notice of Proposal.

The Registrar also relies upon the purported admission by Umair Gilani, on October 5, 2011, that Rafi Gilani was a bookkeeper for IFC. As noted above, by virtue of paragraph one of the Consent Order, Rafi Gilani was not to be involved or employed in the operations of IFC. The Applicants deny having made this admission. Indeed, the Applicants point to the fact that IFC was in a start up phase in October 2011 and there was no bookkeeping to do, much less a basis to hire Rafi Gilani as a bookkeeper.

The evidence of the "bookkeeping" admission was provided by Marcela Coellar. Ms. Coellar has been employed by the Ontario Motor Vehicle Industry Council for ten years, and she has been an inspector for five. She gave her evidence in a forthright manner and the key evidence relating to the "bookkeeper" admission was corroborated in her notes of the incident – which were filed as an exhibit at the hearing and can be found at p. 56 of Exhibit 3.

The Tribunal had, on the other hand, concerns regarding the credibility of Umair Gilani. First, as noted above, he did deceive the inspector in March 2011, regarding Rafi Gilani's identity. His explanation was that he did not want to get his father in trouble. He also testified in an "uneven" manner regarding who signs cheques at IFC. He stated he was the only one who signs cheques for IFC. On cross-examination it was revealed that of 123 cheques signed, 10 were signed by someone else. Moreover, the signature on cheque 50 (p. 87 of exhibit 5) was first identified by Umair Gilani as having been signed by Abdi Abdillahi. Upon further cross-examination, Umair Gilani conceded that the cheque was signed by none other than Rafi Gilani¹.

To the extent there is a question of credibility as between Mr. Umair Gilani and Ms. Coellar, the Tribunal accepts the evidence of Ms. Coellar. In this case, that means that the Tribunal finds that Umair Gilani admitted to Ms. Coellar, on October 5, 2011, that Rafi Gilani was a bookkeeper for IFC. That admission leads to the reasonable finding that Rafi Gilani was involved, at least, as a bookkeeper with IFC. That involvement amounts to a breach of the Consent Order and taken together with the misrepresentation of Rafi Gilani's identity on March 15, 2011, amounts to sufficient evidence for the Registrar to have met his onus on the application. Specifically, the Registrar has established that there are reasonable grounds for the belief that Umair Gilani – and thereby IFC- will not carry on

¹ The signing of a cheque by Rafi Gilani would appear to be a patent breach of paragraph 15 of the consent order. However, this allegation was not relied upon by the Registrar in the original notice of proposal. Nonetheless, the failure to immediately identify Rafi Gilani as the cheque signer is a matter that can go to Umair Gilani's credibility.

business in accordance with law, integrity and honesty.

The above findings do not depend, in any regard, on the disputed further allegations.

Although not necessary to the Tribunal's decision, the Tribunal notes that Umair Gilani did testify that IFC had an accountant who worked "upstream" from IFC's bookkeeper. The Tribunal observes that it would have taken negligible effort on the part of Umair Gilani to call this accountant to testify as to who provided bookkeeper services at IFC and whether the identity of that bookkeeper was someone other than Rafi Gilani. No evidence in this regard was called.

Issue 2 – Appropriate Order Based on Findings Made - Without Resort to the New Allegations

The Tribunal has found two breaches of the "law, honesty and integrity" requirements. These requirements are important to the public interest in that consumers rely on the honesty and integrity of salespersons and dealers in making their expenditures on automobiles, often a significant investment. Umair Gilani's conduct has failed to meet this appropriately high standard.

The Applicants submit that even if the Tribunal finds against them, a revocation order is too harsh. The Act is consumer protection driven and there is no evidence of there having been any harm inflicted by the Applicants on any consumer. It is further submitted that the mistakes made by Umair Gilani do not rise to the level where a person should be deprived of his livelihood. The Tribunal was advised that, if required, the Applicants would consent to tighter conditions regarding a disassociation with Rafi Gilani, would be prepared to post a letter of credit with OMVIC and submit to any other reasonable conditions imposed by the Tribunal.

Breaches of consent orders are a serious matter (see *102265 Ontario Inc. c/o/b as Tri-star Sales and Leasing et al. v. Registrar Motor Vehicle Dealers Act*, [2004] O.J. No. 900 (Div.Ct.) at para. 7). Based on the holding in *102265 Ontario Inc., supra*, the breach of paragraph one of the Consent Order and the admitted instance of dishonesty in this case (misrepresentation of Rafi Gilani's identity), the Tribunal finds that a revocation of the Applicants' registrations is the appropriate disposition.

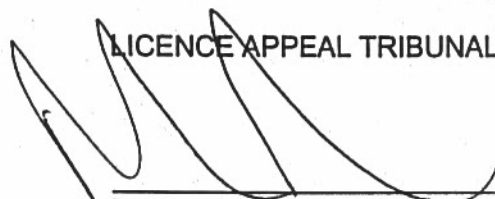
Issue 3 – Consideration of Further Allegations

The Tribunal has found –without consideration of the further allegations- that the Registrar has met his onus regarding the grounds for revocation in this case. Thus, the procedural dispute regarding the further allegations need not be decided. The procedural dispute crystallized on January 7, 2013, prior to the Registrar closing his case and prior to the Applicants calling theirs. In the interests of hearing economy, the case proceeded (on consent) with the contested evidence being tendered, subject to an ultimate ruling on its admissibility. Even after both parties closed their case, it appeared that the further allegations might have a bearing on the result. As neither party came armed with case law in respect of the procedural dispute, the Tribunal ordered that written submissions be provided. The Tribunal is indebted to the parties for their written submission but, based on the findings set out above, it has elected to exercise adjudicative restraint and not pronounce on an issue that, as things turned out, it need not adjudicate upon.

ORDER

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar to carry out the Proposal dated May 24, 2012.

LICENCE APPEAL TRIBUNAL



Richard Macklin,
Vice-Chair

Released: February 26, 2013

