



Citation: Kapoor v. Registrar, *Motor Vehicle Dealers Act, 2002*. ONLAT MVDA 13638

**Date: 2022-06-20
File Number: 13638/MVDA**

Appeal from the Notice of Proposed Order to Refuse Registration under the *Motor Vehicle Dealers Act, 2002*

Between:

Kuldeep Kapoor

Appellant

-and-

Registrar under the *Motor Vehicle Dealers Act, 2002*

Respondent

DECISION

ADJUDICATOR: Laura Hodgson, Member

APPEARANCES:

For the Appellant: Michael Burokas, Counsel

For the Respondent: Husein Panju, Counsel

Heard by videoconference: April 6 and 7, 2022

Overview

- [1] This is an appeal from the Notice of Proposal refusing the registration of the appellant, Kuldeep Kapoor, as a motor vehicle salesperson under the *Motor Vehicle Dealers Act, 2002* (the Act). The Registrar proposes to refuse the registration on the grounds that the appellant cannot reasonably be expected to be financially responsible or act in accordance with law and with integrity and honesty. For the reasons set out below, the Tribunal confirms the proposed order to refuse registration.

Background Facts

- [2] The appellant's conduct in the period prior to his application to be a motor vehicle salesperson provides the backdrop to these proceedings. Many, if not most of the facts before the Tribunal were not in dispute.
- [3] One of the appellant's first jobs was working in a bank as a Financial Services Manager. That role included reviewing and evaluating credit applications. The appellant testified that, in that position, he had authority to underwrite loans up to \$250 000. According to the appellant, he advanced quickly and then became a licensed mortgage broker. Between 2008 and 2016, the appellant worked at a "boutique brokerage firm" owned by his father. The appellant noted that he was never subject to disciplinary action by the Financial Services Regulatory Authority of Ontario.
- [4] Between 2013 and 2015, while working as a mortgage broker, forty creditors made the appellant short-term loans with high rates of return. The creditors were friends or acquaintances of the appellant, some were senior citizens. Initially the loans were repaid by the appellant, often in cash. In 2015, however, the appellant delayed and then stopped making repayments entirely.
- [5] On May 25, 2015, the appellant filed for bankruptcy, acknowledging a debt of \$1,511,150 to 40 creditors. Days later, the appellant's counsel sent a letter to creditors indicating that their loans carried a criminal rate of interest and did not comply with the *Interest Act*.
- [6] In January of 2017, the appellant was charged with defrauding the public of over \$5,000 contrary to section 380(1) of the *Criminal Code*. The appellant's trial did not proceed until December of 2020. It was the Crown's position that the appellant engaged in fraudulent means to induce the complainants to loan him money and that he was gambling with the moneys borrowed. According to defence, there was no evidence that he used the money for gambling and no evidence that he misrepresented the use of the funds.

- [7] On January 29, 2021, the appellant was acquitted by a judge of the Ontario Superior Court of Justice. The judge found that the Crown had not proven the essential elements of fraud beyond a reasonable doubt (see *R. v. Kapoor*, 2021 ONSC 715 (CanLII)). More specifically, the judge found that there was no evidence that the appellant gambled the complainant's money away or used it for purposes other than what he told them.
- [8] In her reasons for judgement, the trial judge found that the complainants made loans to the appellant, and that he was indebted to them. She found that the appellant authorised the letter from his lawyer to the creditors that suggested they engaged in predatory loans. The trial judge observed that they "might reasonably have viewed this letter as threatening."
- [9] While concluding that the Crown failed to prove the criminal offence of fraud beyond a reasonable doubt, the trial judge also noted:
- I have no hesitation in concluding that Mr. Kapoor took advantage of the people who trusted him. Drawn by the prospect of high interest rates, and cash profits, the complainants believed that their investments with Mr. Kapoor were not only safe, but profitable. They took a risk that they calculated was small. He lost their money. Mr. Kapoor has acknowledged, through his bankruptcy, that he is indebted to each of the complainants because he borrowed money from them that he did not repay.
- [10] Before this tribunal, the appellant testified that while working as a mortgage broker he noticed a "niche market" of individuals who required funds but couldn't qualify with traditional lenders. He decided to approach acquaintances and request loans with rates of return ranging from ten to 320 per cent. The appellant received commissions based on the loan size.
- [11] According to the appellant, everyone was initially satisfied with the arrangement and loans were repaid with interest. In the beginning, individuals loaned money (often in cash) for a specific purpose (e.g., so a specific borrower could repay taxes or buy business equipment). Eventually, a number of lenders agreed to a long term loan agreement with the appellant. The appellant says he used these "general funds" to lend to the third parties for various purposes.
- [12] The appellant then began to struggle to repay the loans. His evidence was not clear as to exactly why he stopped making repayments. The appellant testified that he did have a sports gambling addiction that escalated in 2015. He emphasised that he never used funds "loaned for a stated purpose" to gamble. He appeared to indicate that he only used the funds loaned to him by individuals for a "general purpose" to repay his gambling losses. In cross examination the appellant emphasised that he did not borrow money for the purpose of gambling.

- [13] By the spring of 2015 the appellant was in financial ruin and, as noted, applied for bankruptcy in the amount of \$1,511,540. The appellant was careful to stress to the Tribunal that this amount includes both principal and interest.
- [14] The appellant described his behaviour as “stupidity”. When describing the impact of his actions, the appellant first commented on how it affected his personal life. He noted that his marriage ended in 2018 and he initially had limited access to his children. His father closed his brokerage firm and suffered depression. The appellant’s relationships with various family members suffered. The appellant then went on to note, without specifying how, that his actions also had lasting impact on the creditors. With respect to the letter sent to creditors after filing for bankruptcy, the appellant stated it was sent on the advice of his lawyer.
- [15] According to the appellant, since declaring bankruptcy he has worked hard to rebuild his life. He initially worked three jobs to help support his family. The appellant now has stable employment and noted that he was recently approved for a credit card.
- [16] The appellant acknowledged that he continued to gamble online after declaring bankruptcy but sought counselling in 2016. He completed the Problem Gambling Group at St. Mary’s Counselling Service in Kitchener. The appellant also indicated that he has self-excluded himself from Ontario casinos. He did note, however, that his gambling issue was with sports betting rather than casinos. The appellant states that he has not resumed gambling and is not tempted to do so.
- [17] Before the Tribunal, the appellant’s sister testified that her brother used his professional network, that included family and friends, to obtain loans. He then became overwhelmed by debt. She now knows that he was also gambling at this time. She described this period as “the darkest time”. She noted that her parents lost most of their life savings and other relatives were ‘hurt’ by the appellant. She testified that the appellant has sought counselling and although his marriage ended, he is now a devoted father. The appellant’s sister noted an immense change in her brother and has seen no indication that he will return to prior behaviour.
- [18] The appellant began working with his current employer, West Motors, in July of 2016. Since that time, he has held various roles with this company. The appellant’s supervisor testified that the appellant initially worked on the dealership’s ‘special finance team’ and now works as an ‘inventory coordinator’. He does not sell vehicles but assists with data analysis and marketing. The supervisor indicated that there have been no issues with the appellant’s employment. He is aware of the appellant’s bankruptcy and that the appellant sought treatment for his gambling addiction.
- [19] The Deputy Registrar at Ontario Motor Vehicle Industry Council (OMVIC), Thaya Gengatharan, testified that anyone who trades motor vehicles is required to be registered and must complete a screening process. She explained that the registration process is necessary because, for most consumers, a motor vehicle is their second largest purchase and they need confidence in the process.

- [20] The appellant initially applied for registration as a motor vehicle salesperson on October 7, 2016. With that application, he provided information about his undischarged bankruptcy. After speaking with an OMVIC representative, the appellant provided an additional statement explaining that the bankruptcy had not been discharged “as of yet due to the large amount and an ongoing investigation”. He stated that his debt “was incurred as a result of my sports gambling” and indicated that he would be attending counselling.
- [21] A note to file dated January 12, 2017, indicates that an OMVIC representative spoke to the appellant on that date. The representative advised him that it would be recommended that his registration be refused because of his gambling issues and the undischarged bankruptcy. He was told that management looks at “all aspects of the file”. The appellant was provided information with respect to counselling for gambling issues. He was ultimately advised that he could wait for the official refusal, or he could withdraw his application. The appellant withdrew his application on January 17, 2017.
- [22] The appellant submitted a second application to register as a motor vehicle salesperson on May 31, 2021. A different OMVIC representative followed up and asked the appellant for, among other things, information about the bankruptcy status, details about the criminal charges and confirmation of counselling.
- [23] In an email dated June 10, 2021, the appellant provided proof of completed counselling and a copy of the criminal indictment indicating an acquittal had been entered. With respect to the bankruptcy, the appellant explained:
- In May 2015 I declared personal bankruptcy due to a large sum of funds I personally borrowed between the period of September 2012 – April 2015 to support my sports gambling addiction under the agreement that the funds would be repaid with a pre-determined amount of interest. This amount was 1.5 million inclusive of any and all criminal interest rate paid or due by myself.
- [24] With respect to the discharge process the appellant indicated:
- After the conclusion of my criminal matter, I contacted via telephone, A. Farber (my Trustee) and due to the amount of time that has passed for the criminal matter to be resolved, I was advised via telephone conversation with A. Farber that my file was considered to be abandoned.
- [25] The Deputy Registrar testified that it was concerning that, at the time of the second application, the bankruptcy remained undischarged and that the appellant referred to it as ‘abandoned’. She noted that a discharge involves some distribution of property to creditors. She was concerned about the appellant’s responsibility and governability. The Registrar issued a Notice of Proposal to Refuse registration on September 27, 2021.
- [26] Before the Tribunal, the appellant first testified that he contacted his bankruptcy lawyer in 2021 and was advised to abandon the bankruptcy. He then indicated that “abandoned” was a word he chose as he was instructed to “let it go”. He

testified that, contrary to what he wrote in his June 10, 2021, email to OMVIC, his trustee did not say that the bankruptcy would be abandoned.

- [27] In cross examination, the appellant initially stated that he had no conversations with his bankruptcy trustee after the criminal proceedings. He then recalled that he did attempt to contact the trustee but was told that the individual handling his file was no longer there. He indicated that he didn't follow up on this. At one point, the appellant appeared to suggest that by 'abandoned' he actually meant that the file had transferred to another trustee office. The appellant testified that he didn't know the name of the new trustee or when he last made a payment. He confirmed that he understood that the bankruptcy was not discharged. The appellant also understood that one of the issues OMVIC had with his application in 2016 was the undischarged bankruptcy.

Law and Analysis

- [28] The Act is a consumer-protection statute which regulates the motor vehicle sales industry. Its main objective is to ensure that the public receives honest, ethical and competent services from motor vehicle dealers and salespersons. Registrants must be aware of and comply with the Act, act with honesty and integrity and be financially responsible in the conduct of business.
- [29] The Registrar proposes to refuse the registration on the following two grounds set out in s.6(1)(a) of the Act:
- (i) having regard to the appellant's financial position or the financial position of an interested person in respect of the appellant, the appellant cannot reasonably be expected to be financially responsible in the conduct of business,
 - (ii) the past conduct of the appellant or of an interested person in respect of the appellant affords reasonable grounds for belief that the appellant will not carry on business in accordance with law and with integrity and honesty.
- [30] The onus is on the respondent to establish that the appellant is not entitled to registration. The Ontario Court of Appeal has found that as a standard of proof, 'reasonable grounds for belief' is lower than 'balance of probabilities.' It requires more than mere suspicion and an objective basis for the belief which is based on compelling and credible information (see *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc.* (Famous Flesh Gordon's), 2013 ONCA 157 at paras 18-19). The Court of Appeal emphasized that any and all past or present conduct can and should be considered.
- [31] In these circumstances the grounds for refusal are factually intertwined. The applicant's prior conduct and testimony before the Tribunal provides reason to believe that he will not act in accordance with the law, with integrity and honesty or reasonably be expected to be financially responsible in the conduct of business.

- [32] While a registered mortgage broker, the appellant facilitated numerous loans with interest rates ranging from 10 to 320 per cent. He failed to repay many of the loans and in May 2015 he declared bankruptcy. He acknowledged a total debt owed of \$1,511,540 to creditors. The appellant has not repaid significant loans to people who knew and trusted him.
- [33] The appellant's loan scheme was not a momentary lapse of judgement. The loans were executed over a number of years and involved many people. The creditors are not companies, but individuals mostly known to the appellant. Before this Tribunal, the appellant gave no indication of any intent to discharge the bankruptcy.
- [34] For whatever reason, the appellant was not subject to discipline by the brokerage regulatory authority at the time of the loans. He was, nonetheless, working in a regulated industry when he facilitated and defaulted on these loans. This raises concerns about his ability to operate in motor vehicle sales, also a highly-regulated activity.
- [35] Days after filing for bankruptcy, a letter was sent from the applicant's counsel to numerous creditors warning of their potentially illegal loans. The trial judge noted that this letter, authorized by the appellant, could have been viewed as threatening. The Tribunal agrees. The Tribunal also notes that, while quick to explain the impact of the bankruptcy on him professionally and personally, the appellant demonstrated minimal insight into the impact of his conduct on his creditors.
- [36] The appellant's evidence with respect to the loans and bankruptcy was unclear and, at times, not credible. The appellant testified that he didn't know that he was facilitating loans with criminal rates of interest. Given his significant experience in the financial sector this seems unlikely. The appellant has also given inconsistent explanations regarding the status of his bankruptcy. In correspondence to OMVIC in June of 2021, the applicant indicated that his bankruptcy trustee advised him that his bankruptcy file was "considered abandoned". In his testimony, the appellant stated that his lawyer advised him to abandon his bankruptcy, but that 'abandon' was his word. He also indicated that he had called his trustee but because the file had been transferred, he considered the bankruptcy abandoned. He was unable to state who it was transferred to or how many payments had been made. Before the Tribunal, the appellant presented as either not understanding or not wanting to state the status of the bankruptcy. Given the magnitude and impact of this bankruptcy, one would expect the appellant to have clear understanding, be aware of transaction details and to be forthright with both OMVIC and the Tribunal.
- [37] The applicant has also not been consistent in explaining how his gambling addiction related to his accumulated debt. At his criminal trial, the appellant took the position that there was no evidence that any money was used for gambling. In both 2015 and 2021 correspondence to OMVIC, the appellant wrote that he borrowed the money to support his sports gambling addiction. In testimony before this Tribunal, the applicant was wholly unclear as to how his gambling

interacted with his debt accumulation. Again, this lack of clarity and candor impacts the assessment of the appellant's honesty, integrity and financial responsibility. It raises the question that, if the appellant cannot clearly articulate how the bankruptcy occurred, how can he prevent other financial missteps in the future? In the circumstances, counsel's submission that attending counselling for gambling completely nullifies his risk is not tenable.

- [38] The Tribunal notes that, since declaring bankruptcy, the applicant has made significant changes in his life. He has maintained long term employment at West Motors and his employer attested to his work ethic and skill. His sister has also noted changes in her brother. Counsel pointed to the appellant recently being issued a credit card as evidence of his financial responsibility. While commendable, none of this outweighs the appellant's significant prior financial mismanagement and lack of redress.
- [39] This is not the forum to denounce the appellant for his past business conduct. Nor is an undischarged bankruptcy, on its own, a bar to registration under the Act. The appellant was, however, advised when he applied for registration in 2016 that the large, undischarged bankruptcy was an issue for OMVIC. Regardless, and with no changes to his bankruptcy status, the applicant reapplied in 2021 simply indicating that he had abandoned it.
- [40] The totality of the appellant's conduct gives reason to believe that he will not, when acting as a salesperson, act in accordance with the law or with integrity or be financially responsible in the conduct of business. The position of the Tribunal might have been different had there been evidence of the applicant taking any steps with respect to the bankruptcy, demonstrating a solid understanding of his financial affairs and acknowledging the serious impact of his actions on the creditors.
- [41] Lastly, I must consider if refusal of registration is the appropriate outcome or whether the public interest can be adequately protected by registration with conditions. The applicant has an employer willing to supervise him. Counsel for the appellant noted that the appellant plans to work in marketing and not directly in vehicle sales. Counsel suggested conditions such as the appellant not being a final signatory, not being a person in charge and being required to advise of any changes in bankruptcy status.
- [42] The applicant has applied to be registered as a motor vehicle salesperson. As noted by the respondent, 'trade' under the Act has a broad definition that includes advertising. The Tribunal rejects the proposition that any of the proposed conditions adequately address concerns with respect to the appellant's honesty, integrity and financial conduct. But for the appellant's lack of candor with respect to the bankruptcy, conditions may have been an appropriate outcome. In the circumstances, however, I am not satisfied that any conditions would adequately protect the public interest.

Order

- [43] The Tribunal confirms the Registrar's proposals to refuse the appellant's registration.

LICENCE APPEAL TRIBUNAL



Laura Hodgson, Vice Chair

Released: June 20, 2022