

**LICENCE APPEAL  
TRIBUNAL**

**TRIBUNAL D'APPEL EN MATIÈRE  
DE PERMIS**



**Safety, Licensing Appeals and  
Standards Tribunals Ontario**

**Tribunaux de la sécurité, des appels en  
matière de permis et des normes Ontario**

Citation: Ali Abbas v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2020 ONLAT MVDA  
12252

Date: 2020-04-21  
File Number: 12252/MVDA

Appeal from a Notice of Proposal of the Registrar, *Motor Vehicle Dealers Act, 2002*, S.O.  
2002, c.30, Sch. B - to Refuse Registration

**Between:**

Ali Abbas

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

**ADJUDICATOR:** Stephen Scharbach, Member

**APPEARANCES:**

**For the Appellant:** Justin M. Jakubiak, Counsel

**For the Respondent:** Diana Mojica, Counsel

**Heard in Toronto:** March 4 and 5, 2020

## DECISION and ORDER

### A. Introduction

- [1] This is an appeal by Mr. Ali Abbas (“appellant”) from a proposal issued by the Registrar, under the *Motor Vehicle Dealers Act, 2002*, (“Act”) to refuse his application for registration as a motor vehicle salesperson.
- [2] The Registrar alleges that the appellant’s past conduct affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty. That past conduct consists of convictions in December 2012 for possession of a falsified credit card and breach of a probation order, and an allegation that the appellant acted as an unregistered salesperson in violation of the Act in three separate motor vehicle sales transactions between February and September 2019.
- [3] The appellant’s position is that his past conduct does not afford reasonable grounds to refuse his application. The convictions took place over 7 years ago when he was 19 years old and there have been no arrests or convictions since then. He acknowledges that he acted as an unregistered salesperson in one transaction without appreciating the gravity of his conduct but denies that he did so in the two subsequent transactions.
- [4] As described more fully below, I have concluded that the public interest would best be served by granting the appellant registration subject to conditions.

### B. The *Motor Vehicle Dealers Act, 2002*

- [5] The Act regulates the trade of motor vehicles in Ontario to protect the automobile buying public. Anyone trading in motor vehicles in Ontario must be registered under the Act as either a salesperson or a dealer. Registration is restricted to those whom the Registrar has determined to be qualified and suitable.
- [6] In order to qualify for registration, applicants must successfully complete a course of study. In order to demonstrate suitability, applicants must provide information about their intended business operation, undergo background checks including a criminal record check, and demonstrate financial responsibility.
- [7] Section 6(1) of the Act provides that an applicant who meets the prescribed requirements is entitled to registration by the Registrar unless (among other things) the applicant’s past conduct affords reasonable grounds for belief that he/she will not carry on business in accordance with law and with integrity and honesty.

- [8] If the Registrar proposes to refuse an application, sections 9(1) and 9(2) of the Act require the Registrar to give the applicant written notice of the proposal, including reasons and notification of the applicant's right to a hearing before this Tribunal.
- [9] If a hearing is requested, section 9(5) of the Act provides that the Tribunal shall hold a hearing and make an independent decision on whether to grant or refuse the application based on the facts presented at the hearing.
- [10] After holding a hearing, the Tribunal may direct the Registrar to carry out the proposal, or the Tribunal may substitute its opinion for that of the Registrar, and the Tribunal may attach conditions to its order or to a registration.

### **C. The Registrar's Proposal to Refuse Registration**

[11] The Registrar's proposal to refuse<sup>1</sup> is based on the Registrar's view that the appellant's past conduct affords reasonable grounds to believe that he will not carry on business in accordance with law and with integrity and honesty – a ground for refusal under s. 6(1)(ii) of the Act.

[12] That past conduct consists of:

- the appellant's 2012 criminal convictions, and
- his involvement in three motor vehicle transactions in which the Registrar alleges that the appellant acted as an unregistered salesperson in violation of the Act.

[13] According to the appellant,

- his past criminal convictions no longer afford reasonable grounds to believe that he will not carry on business in accordance with law and with integrity and honesty. His convictions occurred over 7 years ago when he was 19 years old and he has studied and worked since then with no re-occurrence of any criminal behaviour.
- He likely did conduct salesperson activities with respect to one vehicle sales transaction without fully appreciating the gravity of his conduct. However, he denies that he acted as a salesperson in connection with 2 other transactions.

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<sup>1</sup> The Registrar's Notice of Proposal to Refuse is dated July 24, 2019. The Registrar afterwards issued 4 Notices of Further and Other Particulars dated October 31, 2019; November 14, 2019; December 11, 2019; and February 5, 2020. All the above documents are collectively referred to as the "Registrar's Notice".

## **D. Findings**

### **(i) Previous Criminal Convictions**

- [14] The facts are not in dispute. The appellant is currently 26 years old. When he was 17 years old and considered a young offender, he was charged with being in possession of a stolen credit card. On March 21, 2012, he pled guilty and received a conditional discharge and two years probation.
- [15] On August 17, 2012, the appellant was arrested again – this time for the attempted use of a fraudulent pre-paid credit card at a gas station. At that point he was 19 years old and still on probation. When he was arrested and searched, he was found to be in possession of other fraudulent pre-paid credit cards.
- [16] On December 27, 2012, the appellant pled guilty to two charges - unlawfully having in his possession a falsified credit card and breach of the probation order that had been imposed in March 2012.
- [17] According to the appellant, around the time this conduct occurred, he was associating with the wrong crowd, was negatively influenced by his peers, and made some very poor choices which he now regrets.
- [18] The Court considered his age and other factors and gave the appellant another chance. He was given a suspended sentence and a two-year term of probation. It appears that the probation term was successfully completed, and a criminal record check shows that the appellant has not been charged or convicted for any criminal offences since then.
- [19] After pleading guilty to the two criminal charges in December 2012, the appellant attended Sheridan College for a total of 3 years. He initially studied information technology but switched to finance after a year. He completed two years of a three-year finance course but eventually realised that his convictions would be an obstacle to a career in that field and he began working for First Choice Exhausts Inc. ("First Choice"), a manufacturer of catalytic converters located in Scarborough, Ontario.
- [20] Mr. S. Zahid, a part owner of First Choice, testified at the hearing and confirmed that the appellant was employed by First Choice for about 3.5 years. According to Mr. Zahid, First Choice was aware of the appellant's criminal history when he was hired. Although it was a concern, the company decided to give the appellant a chance and hired him to set up the e-commerce side of First Choice's business.
- [21] Over time the appellant was given more responsibility. He was eventually made Operations Manager with bank signing authority and had many functions including purchasing from suppliers, dealing with customers, receiving payments, and managing online sales. According to Mr. Zahid, the appellant was a trusted employee and he and First Choice have no regrets about hiring him.

[22] The appellant testified that he voluntarily left First Choice in January 2019 to become inventory manager for Grandeur Motors (“Grandeur”), a motor vehicle dealership located in Oakville, Ontario and owned by Mohammad Abbas, the appellant’s father.

**(ii) Acting as Salesperson while not Registered - Background**

[23] The Act prohibits anyone from acting as a motor vehicle salesperson unless they are registered under the Act as a salesperson<sup>2</sup>. “Salesperson” is defined as an individual employed by a motor vehicle dealer to “trade” in motor vehicles on behalf of the dealer<sup>3</sup>.

[24] According to the Act, “trade” includes “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 such, it is illegal for any person to engage in the motor vehicle trade on behalf of a dealership without being registered under the Act and employed by that dealership.

[25] The appellant has never been registered as a salesperson under the Act. He began working for Grandeur in January 2019. His job title was (and still is) inventory manager. His responsibilities include transporting, examining and inspecting vehicles acquired for sale, picking up parts, arranging for repairs and detailing, and moving cars on Grandeur’s lot.

[26] Grandeur has two registered salespersons – Mohammad Abbas (registered as a salesperson on November 30, 2018), and Aisha Abbas, the appellant’s sister (registered as a salesperson on January 17, 2019).

[27] The Registrar alleges that contrary to the Act, the appellant acted as an unregistered salesperson on behalf of Grandeur in three motor vehicle transactions and that conduct, in addition to the 2012 convictions, establishes reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty.

**(iii) Purchase of 2011 Ford Edge - February 26, 2019**

[28] Evidence with respect to the appellant’s role in this transaction was provided by the purchaser (“JL”), the appellant, and Ms. Abbas. Based on that evidence, I conclude that the appellant did act as an unregistered salesperson in this transaction on behalf of Grandeur.

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<sup>2</sup> The Act, s. 4

<sup>3</sup> The Act, s. 1

- [29] The evidence indicates that in late February 2019, JL attended at Grandeur with her partner in order to view and test drive a 2011 Ford Edge that had been advertised on-line.
- [30] She was greeted at Grandeur by the appellant who showed them the vehicle and discussed its condition with them. The appellant gave them the keys to the vehicle and JL and her partner took it for a test drive. Afterwards, they spoke to the appellant about the condition of the vehicle and negotiated the purchase of the vehicle and provided the appellant with the deposit.
- [31] JL returned to pick up the vehicle on March 1, 2019 and the appellant was the only person she dealt with when she picked up the vehicle. The appellant prepared a bill of sale and reviewed it with JL who then signed it. Ms. Abbas, a registered salesperson, signed it on behalf of Grandeur.
- [32] Shortly after the sale was completed, JL reviewed a Carfax report on line and learned that the vehicle's odometer had been rolled back. Apparently, the appellant provided JL with a Carfax report which references the odometer issue but it was not brought specifically to her attention. She got in touch with the appellant who appeared genuinely surprised and shocked.
- [33] According to the appellant and Ms. Abbas, Grandeur was not aware of the odometer issue when the vehicle was sold although it appears that the relevant information was readily available in the Carfax report.
- [34] Grandeur agreed to "unwind" the transaction and return the full purchase price. JL was not entirely satisfied with that arrangement. She felt that the odometer issue should have been brought to her attention and pointed out that if she dealt with a registered salesperson who was aware of his/her obligations to disclose material facts this would not have occurred.
- [35] It appears clear that the appellant acted as an unregistered salesperson with respect to this transaction. The evidence indicates that JL dealt primarily, if not exclusively, with the appellant throughout the sales transaction including discussions involving the condition of the vehicle, the provision of the Carfax report, the price, the terms of payment, and review of the final terms of the sale as set out in the bill of sale.
- [36] According to the appellant, this transaction occurred a few weeks after Grandeur opened and shortly after Ms. Abbas obtained registration. The experience made it clear to him, his father, and his sister that the appellant was not permitted to be involved in selling vehicles. It was decided that the appellant should apply for registration as a salesperson and in the meantime, he would not be engaging with customers in any aspect of the sales process.

[37] Shortly afterward, on March 20, 2019 the appellant applied to OMVIC for registration as a salesperson.

**(iv) Purchase of 2009 Infiniti - July 31, 2019**

[38] The Registrar alleges that the appellant again acted as an unregistered salesperson with respect to a purchase of a 2009 Infiniti on July 31, 2019. Based on the evidence presented I conclude that this allegation has not been proven on a balance of probabilities.

[39] The Registrar primarily relies on the evidence of Erica Morrison, an OMVIC inspector who testified that she conducted an unscheduled inspection of Grandeur on January 13, 2020.

[40] Ms. Morrison testified that she reviewed 13 transactions and sent emails to 11 consumers who had recently purchased vehicles asking who they dealt with when they purchased. Ms. Morrison received 5 responses, two of whom indicated that they dealt with the appellant. One of those responses was from JH.

[41] The Registrar attempted to summon JH to testify at the hearing. An Affidavit of Attempted Service indicates that a process server attended at JH's residence on several separate occasions but was unable to serve her.

[42] Since JH was not available to testify in these proceedings, the Registrar proposed calling the evidence of Ms. Morrison to report the results of her communications with JH. Counsel for the appellant objected on the basis that Ms. Morrison's testimony regarding what she was told by JH was hearsay. According to counsel, allowing Ms. Morrison to provide second hand testimony regarding the appellant's interaction with JH would deprive him of the opportunity to cross-examine JH and clarify the precise role the appellant played in this transaction.

[43] The *Statutory Powers Procedure Act*<sup>4</sup> gives the Tribunal the ability to consider hearsay evidence and I allowed Ms. Morrison's testimony concerning her communication with JH to be admitted subject to assessing its weight in the context of all the other evidence presented, including the testimony of the appellant and Ms. Abbas.

[44] Ms. Morrison testified that on January 21, 2020 she emailed JH and essentially asked her who she dealt with when she purchased her vehicle from Grandeur in July 2019. JH responded by email and indicated that she dealt with the appellant and Ms. Abbas.

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<sup>4</sup> Section 15

[45] Ms. Morrison then had a telephone conversation with JH which Ms. Morrison confirmed in an email. According to that email JH advised Ms. Morrison that:

- Ms. Abbas told JH that she had to deal with the appellant,
- the appellant arranged for the test drive,
- JH communicated with the appellant regarding the purchase,
- JH negotiated the price of the vehicle with the appellant.

No further detail or elaboration of those statements was provided and since JH was not available as a witness her precise recollection could not be explored or tested.

[46] Both Ms. Abbas and the appellant testified with respect to this transaction and denied that the appellant conducted the trade. According to the appellant, JH arrived at Grandeur with her fiancé. He spoke socially to the fiancé and JH mainly spoke with Ms. Abbas. The appellant located and brought the Infiniti from the lot so that it could be test driven. JH had a Honda Accord that she wanted to use a trade-in and the appellant took it for test drive to assist in determining its trade-in value and reported the results to Ms. Abbas. Ms. Abbas testified that she dealt with JH, negotiated the price with her and conducted the trade.

[47] None of the available transaction documentation is particularly enlightening on the issue of the appellant's role in the transaction but what is available is consistent with Ms. Abbas' description of what occurred. The bill of sale is signed by Ms. Abbas on behalf of Grandeur, and there is an email from Ms. Abbas to JH with the bill of sale and Carfax report attached. In that email Ms. Abbas asked JH to sign and return the bill of sale. JH responded with an email back to Ms. Abbas attaching the signed documents.

[48] In conclusion, the evidence suggesting the appellant acted as the salesperson on this transaction is unconvincing. The only evidence to that effect is Ms. Morrison's email communication with JH in which JH confirms Ms. Abbas told her to deal with the appellant, the appellant arranged the test drive, JH communicated with the appellant regarding the purchase and negotiated the price with him.

[49] Those statements were confirmed without elaboration or context and JH could not be questioned with respect to those statements.

[50] In my view, when viewed alongside the more definitive testimony of the appellant and Ms. Abbas, JH's email to Ms. Morrison does not establish on a balance of probabilities that the appellant acted as the salesperson in this transaction.

**(v) Purchase of 2012 Nissan Murano - September 28, 2019**

[51] The Registrar alleges that the appellant acted as an unregistered salesperson with respect to a purchase of a 2012 Nissan Murano on September 28, 2019. Based on



the evidence presented I conclude that this allegation has not been proven on a balance of probabilities.

- [52] RY, the purchaser in this transaction, testified that he became interested in a Nissan Murano that Grandeur advertised on Auto Trader. He attended Grandeur in September 2019 to test drive the vehicle. The appellant provided him with the keys and was the only person RY spoke to on that visit.
- [53] After the test drive, RY returned the vehicle to the appellant who parked it. According to RY, he discussed with the appellant the fact that the vehicle lacked a GPS, had a large scratch and the price. The advertised price was \$13,500 and RY asked for a reduction of \$1,000. According to RY, the appellant told him that the best he could do was a reduction of \$200. They left it at that, and RY told the appellant that he would be in touch.
- [54] According to RY, this was the only discussion he had concerning the purchase with the appellant. A few days after his visit he received a call from Ms. Abbas asking whether he intended to purchase the vehicle. RY indicated that he was interested, and Ms. Abbas told him that if he wanted to buy the vehicle he would have to provide a deposit to hold the vehicle.
- [55] According to RY, he requested from Ms. Abbas a reduction of the purchase price but Ms. Abbas reminded him that he had already negotiated a \$200 reduction with the appellant, and she refused to drop the price further.
- [56] RY testified that at some point in mid-September he was driving to Niagara and he stopped at Grandeur and, using Grandeur's computer, transferred a deposit to Grandeur to purchase the vehicle.
- [57] Ms. Abbas later emailed the bill of sale to RY for signing along with a copy of the Carfax report. The bill of sale is signed by Ms. Abbas on behalf of Grandeur. According to RY he picked up the Murano on October 1, 2019 and he remains content with the vehicle.
- [58] Both the appellant and Ms. Abbas testified with respect to this transaction. Ms. Abbas testified that RY took the vehicle out for a test drive on his first visit in early September. She testified that she spoke to him and obtained a copy of his driver's licence and contact information. The appellant brought the car from the lot and RY took it for a test drive. Ms. Abbas did not speak to him again that day but called him a couple of days later to see if he was interested. According to Ms. Abbas, RY was interested, eventually provided a deposit, and the deal was concluded when RY picked up the vehicle on October 1, 2019.
- [59] According to the appellant, the only interaction he had with RY was on RY's first visit in early September. RY first spoke to Ms. Abbas who took a copy RY's drivers' licence. The appellant got the vehicle ready and provided the keys to RY so he could

test drive it. According to the appellant, RY returned the keys to him but there was no discussion about the condition of the vehicle or a \$200 reduction of the purchase price.

- [60] After considering all of the evidence I am unable to conclude on a balance of probabilities that the appellant acted as a salesperson in this transaction. According to all three witnesses involved in this transaction, RY's only interaction with the appellant occurred during his first visit when he test drove the vehicle. According to RY, the appellant agreed to a \$200 reduction of the advertised price. If accurate that would be the clearest indication that the appellant had acted as an unregistered salesperson - it would amount to negotiating and/or inducing RY to purchase the vehicle - conduct prohibited to any person not registered under the Act.
- [61] I have no reason to doubt the sincerity of RY's testimony. However, his testimony regarding the \$200 reduction which he negotiated with the appellant is inconsistent with the bill of sale. The bill of sale indicates that RY paid the advertised price - \$13,500 - with no \$200 reduction.
- [62] The appellant's evidence that he did not discuss or negotiate the purchase price is consistent with the terms of the transaction reflected in the bill of sale. It appears more likely than not that RY was mistaken with respect to this crucial point. I therefore cannot conclude on a balance of probabilities that the appellant acted as a salesperson in this transaction by negotiating or inducing RY to purchase the vehicle.

### **E. Analysis**

- [63] With respect to the conduct that resulted in the two criminal convictions, the Registrar accurately points out that they are directly relevant to the appellant's suitability for registration. The appellant was convicted of having in his possession a falsified credit card. Salespersons routinely deal with sensitive personal and financial information provided by customers who trust that their information will not be misused. The appellant was also convicted of breaching a probation order within months of it being imposed which suggests a willingness to disregard a court order and clearly calls into question the appellant's willingness to comply with the Registrar's directions and orders.
- [64] The fact that the appellant acted as salesperson while unregistered in one transaction is also relevant to any assessment of his suitability for registration. I note that after the sale had been negotiated and the bill of sale signed by the purchaser, the appellant brought the bill of sale to Ms. Abbas for signing. It suggests that the appellant was aware that only a registered salesperson could conduct a trade on behalf of Grandeur.
- [65] The question then becomes, given the appellant's past conduct, what is the appropriate disposition in light of all of the circumstances of the case? The Registrar

and the Tribunal (on an appeal) have the statutory discretion to consider the applicant's circumstances and determine whether the public interest requires outright refusal of registration or whether the public interest can be adequately protected through granting registration with conditions.

- [66] In the circumstances of this case, I conclude that the public interest will be adequately protected by granting the appellant registration subject to conditions for the following reasons.
- [67] Firstly, the conduct resulting in the convictions took place over 7 years ago when the appellant was 19 years old. He is now 26 years old and in the intervening years he has had no further arrests or convictions for any criminal activity. He attended college for about three years and worked for a small manufacturer for another 3.5 years. According to the owner of that business the appellant performed his duties successfully, was given increasing responsibility, including bank signing authority, and performed his functions without any suggestion of a re-occurrence of his previous behaviour. In other words, since the appellant committed the crimes, he has established an almost 8-year track record of avoiding the poor choices that got him into trouble as a teen.
- [68] Secondly, the transaction in which the appellant acted as a salesperson while not registered should be seen in its context. It took place in late February 2019, very shortly after Grandeur – essentially a small family owned and operated business – started operating. The owner, Mohammad Abbas, became registered in November 2018 and from the evidence presented he appears not to be involved in the day to day operation of the business.
- [69] Ms. Abbas is the only other registered person involved in the business but she was very inexperienced when this transaction occurred. She became registered as a salesperson in February 2019, about a month before this transaction took place. It appears that neither the appellant nor Ms. Abbas were sufficiently mindful of the gravity of allowing the appellant to conduct sales activity. However, it appears that lessons were learned as a result of that transaction. The appellant applied for registration in March 2019 and I have concluded that since then the appellant has not overstepped his role by conducting salesperson activity.
- [70] Thus, in my view, the public interest can be adequately addressed by granting the appellant registration as a salesperson subject to conditions. The Registrar's position at the hearing was that registration should be refused but, if registration is to be granted certain conditions should be considered. I agree and have essentially imposed the suggested conditions.

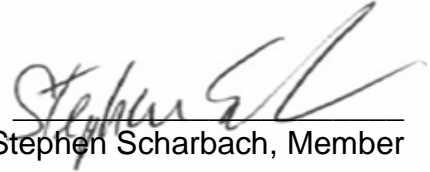
- [71] The most controversial of those conditions is one that would require the appellant to work as a salesperson at a dealership other than Grandeur for a period of two years. The appellant's counsel argued that this was unduly restrictive because it would prohibit the appellant from participating in the family business (at least as a salesperson), and it may be difficult to find employment elsewhere due to his past convictions.
- [72] I understand that such a condition, as well as the others listed below, may present practical difficulties for the appellant. Nevertheless, the Tribunal's primary concern is protection of the public and in my view such a condition is appropriate in this case. Due to Grandeur's small size, its relative lack of experience, and its family operated character, it appears that the appellant's activities as a salesperson will likely not be as effectively supervised at Grandeur as they would be in a more established dealership. In my view, the public interest would best be served if the appellant gained his initial experience as a salesperson at an established dealership.

#### **F. ORDER**

- [73] Pursuant to s. 9(5) of the *Act*, I substitute my opinion for that of the Registrar and direct the Registrar to register the appellant as a salesperson subject to the following conditions which shall remain in force for two years:
- (i) The appellant shall comply with all requirements of the *Motor Vehicle Dealers Act, 2002* and Ontario Regulation 333/08, the Code of Ethics in Ontario Regulation 332/08, the OMVIC Standards of Business Practice and OMVIC Policies and Guidelines, as may be amended from time to time.
  - (ii) The appellant shall only be employed as a salesperson at a dealership that has been approved by the Registrar and such approval shall not be unreasonably withheld.
  - (iii) The appellant's employment as a salesperson shall not be transferred to another registered dealer unless that transfer is approved beforehand by the Registrar and such approval shall not be unreasonably withheld.
  - (iv) The appellant shall report in writing any new criminal or *Provincial Offences Act* charges to the Registrar and to his sponsoring dealer within 5 days of being charged.
  - (v) The appellant shall not be employed at a dealership as a manager or the person in charge.

- (vi) The appellant shall not be an officer or director of a registered dealership.
- (vii) The appellant shall not be the final signatory on a bill of sale on behalf of a dealership.

LICENCE APPEAL TRIBUNAL



Stephen Scharbach, Member

*Released: April 21, 2020*