

Tribunals Ontario
Licence Appeal Tribunal

Tribunaux décisionnels Ontario
Tribunal d'appel en matière de permis



Citation: Babar Chaudhry o/a Cars Dome v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2021 ONLAT MVDA 12628

Date: 2021-06-04

File Number: 12628/MVDA

Motion pursuant to s. 9(11) of *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c.30, Sch.B to stay an Order of the Tribunal revoking the registration

Between:

Babar Chaudhry o/a Cars Dome

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

MOTION DECISION

Adjudicator: Patricia McQuaid, Vice-Chair

Appearances:

For the Appellant: Laney Paddock, Counsel

For the Respondent: Husein Panju, Counsel

Heard by videoconference: May 25, 2021

OVERVIEW

- [1] This is a motion brought by Babar Chaudhry operating as Cars Dome (the “appellant”) for a stay of the Tribunal’s Order dated March 11, 2021 (the “Order”) pending his appeal of that Order to Divisional Court.
- [2] The Order directed the Registrar to carry out its proposal issued under s. 9(1)(b) of the *Motor Vehicle Dealers Act, 2002*, S.O. c. 30 (“MVDA”) to revoke the registration of Mr. Chaudhry as a motor vehicle dealer under the MVDA. The Registrar delivered the Final Notice that it was carrying out the Notice of Proposal on March 12, 2021.
- [3] On April 12, 2021, Mr. Chaudhry appealed the Order to the Divisional Court pursuant to s. 11(1) of the *Licence Appeal Tribunal Act, 1999*. This provision allows the appellant to appeal to Divisional Court as of right on questions of fact and law. Leave to appeal is not required.
- [4] The appellant now seeks a stay of the Order pending his appeal pursuant to s. 9(9) of the MVDA, which provides that an order of the Tribunal takes effect immediately even if it is appealed, “but the Tribunal may grant a stay until the disposition of the appeal.”
- [5] The respondent, the Registrar under the MVDA, opposes the appellant’s request for a stay.

DECISION

- [6] For the reasons that follow, the stay is granted with conditions.

ANALYSIS

- [7] The test for granting a stay pending appeal is set out in the Supreme Court of Canada case of *RJR-MacDonald v. Canada (Attorney General)*¹. The party seeking a stay must establish, on a balance of probabilities that:
 - a. The appeal raises a serious issue;
 - b. The stay is necessary to avoid irreparable harm, and;
 - c. The balance of convenience favours granting a stay.

¹ *RJR-MacDonald v. Canada (Attorney General)* [1994] 1 S.C.R. 311

- [8] The jurisprudence also states that no one of these factors is determinative. I will address each factor and then assess whether, taken together, a stay is appropriate.

Does the appeal raise a serious issue?

- [9] This first branch of the test is a relatively low threshold. The Registrar concedes, in this instance, that this factor has been met.

Is the stay necessary to avoid irreparable harm?

- [10] The appellant has filed an affidavit in support of this motion, stating that he has been registered as a dealer since 2008 and, as he became more experienced, it has been his sole source of income, supporting his wife and three children. He stated that he is 52 years old and is foreign-trained as a physical therapist but has not passed the Ontario licensing exam and therefore cannot work as a physical therapist to support his family. He has no other training or work experience. In addition, he explained that the dealership has ongoing monthly business expenses of approximately \$2,500 including rent, insurance, security and storage. He argues that if he is unable to work as a dealer, he will lose the dealership because of an inability to meet these expenses.
- [11] The appellant was cross examined on his affidavit. The Registrar submits that in fact, the appellant's income sources are unclear and questioned the appellant about his LinkedIn profile as this appears to suggest that the appellant has had other income since February 2009. In particular, it states that he was working as a physical therapist in 2013 (to present) in New York and Michigan at Rehab Inc. as a rehab associate and has worked as a case manager in the non-profit sector from 2012 to present.
- [12] The appellant explained that he has not updated his account on LinkedIn in some time, but that he did work for Rehab Inc around 2014 for approximately one year, as an intern to further his qualification for licensure as a physical therapist. He was ultimately unsuccessful in that effort. Regarding the case manager role, based on his answers at the motion hearing it appears that this work was essentially that of a case worker for organizations like Credit Valley Hospital, providing support to newcomers to Canada. He received remuneration if funding was available, but on other occasions did this on a volunteer basis. He estimated that he might earn between \$2000- \$4000 annually from this work.
- [13] The Registrar submits that the LinkedIn profile suggests that the appellant has made inaccurate statements in asserting that the dealership is his sole source of

income and his assertions about the harm he would suffer if the stay is not granted are not credible. The Registrar has acknowledged that it has no actual knowledge about the appellant's qualifications as a physical therapist nor about his actual income sources.

- [14] In these circumstances, I do not find the appellant to lack credibility, notwithstanding his LinkedIn profile, which likely reflects a slight overstatement in terms of person's resume given the nature of the account and its purpose. But more importantly, I accept the appellant's evidence that he has not updated it in some time, that he is not qualified to work as a physical therapist in Ontario and that any work he gets from working for various social services support agencies is either unpaid or paid minimally. There is no reasonable basis on which I can conclude, based on the evidence before me, that the appellant has any other appreciable source of income apart from what the dealership provided.
- [15] The Registrar has submitted that the test is not 'some' harm, but irreparable harm; in this context, that without a stay, dealership expenses cannot be covered with the result that there would be no dealership to return to if the appeal is successful. Even if some income can be generated from his social agency work, it is likely to be no more than \$4000 annually, an amount that would, at best, cover two months of dealership expenses. The more likely outcome is that the dealership would permanently shut its doors, the appellant will lose the business, thereby rendering the right to appeal moot.
- [16] Mr. Panju stated, quite reasonably, that if the appellant could prove that this would likely happen, he would concede the irreparable harm branch of the test. Based on the evidence before me, I am satisfied that the appellant has, on a balance of probabilities, established that he will be unable to maintain the dealership as an ongoing concern, and will therefore suffer irreparable harm if the stay is not granted.

Does the balance of convenience favour a stay?

- [17] As stated previously in Tribunal jurisprudence, this branch of the test requires me to weigh the interests of the appellant against the public interest, noting that the MVDA is consumer protection legislation.² In directing the Registrar to carry out the Notice of Proposal, the Tribunal found that the appellant had displayed a persistent pattern of noncompliance with the regulatory regime established by the MVDA over his registration history and displayed a lack of acceptance of responsibility for his past failures to comply with the regulatory requirements

² See *Toronto Quality Motors Inc et al v. Registrar, Motor Vehicle dealers Act, 2002*, 2021CanLII 30528 (ONLAT)

(paragraph 120 of the decision). Given the decision, as it currently stands, the Registrar takes the position that if the stay is granted, it would seriously compromise the public interest.

- [18] The appellant states that since the issuance of the Notice of Proposal in February 2020, he continued to be registered, took a further OMVIC education course and benefitted from the Tribunal hearing process. He submits that there is “no doubt” that he understands the disclosure obligations required by the MVDA issues at the core of the Notice of Proposal. He also notes that there have been no consumer complaints against him. While that is commendable, the Registrar’s point that the number of complaints is not a proxy for no consumer harm and compliance with regulatory requirements is persuasive.
- [19] The appellant also submits that the MVDA provides the Registrar with significant power to continue to monitor his dealership and given that his is a one-man operation with relatively low volume, this would not be especially burdensome. Essentially, his position is that unless there is evidence of strain on the Registrar’s ability to monitor his operations, the prospect of his loss of livelihood should outweigh the position of the Registrar on this branch of the test. However, as stated in the *Toronto Quality Motors* decision, it should not fall to the Registrar to monitor the appellant in order to ensure that he does not repeat the conduct that the Registrar has already proven, while noting that the appellant is challenging that Order. The fact that the MVDA does not allow an automatic stay of the Order suggests that protection of the public is a significant, if not paramount consideration.
- [20] In recognition of the public interest concern and the weight given to it, the appellant has proposed one condition – that for every sale, a Canadian Carfax report is generated and that the appellant be required to sign every page of that report. This would address the nondisclosure issues identified in the Tribunal’s decision and in submissions before me. The Registrar maintains that conditions are not appropriate, that the public interest and the protection of the public require that the stay be denied. However, if a stay is being considered, the Registrar submits that the appellant must only be permitted to engage in wholesale trading of vehicles thereby limiting his business interactions with the consumer public.
- [21] The likely effectiveness of terms and conditions on the appellant’s registration was addressed in the Tribunal’s decision. In determining that conditions would not likely bring about a change in the appellant’s ability or willingness to come into compliance with the regulatory regime thereby protect the public interest, the

Tribunal noted that the appellant always had terms and conditions attached to his registration.

- [22] In considering the balance of convenience, I do find that the public does need to be protected. I agree with the Registrar that in the context of this matter, the fact of no consumer complaints is not indicia that there has been no harm to the public. However, after considering the parties' submissions I do find that the public can be protected in the interim by imposing strict conditions on the stay order, including conditions on the appellant's ability to interact with the public and conditions requiring the appeal to proceed expeditiously. With these conditions in mind, I find that the balance of convenience weighs in the appellant's favour.

Conclusion

- [23] I have found that the first two branches of the test favour the granting of the stay. Regarding the balance of convenience, I am of the view that, given the findings in the decision, especially regarding the pattern of failure to make proper disclosure and to maintain proper records, if the public could not be protected during the period of the stay, this factor would weigh against the appellant. I have considered all the factors and have decided that the public can be protected if the stay is granted with conditions such that the balance of convenience favours granting the stay.
- [24] In determining what conditions are appropriate, I have placed weight on the fact that the appellant has been subject to conditions in the past, yet still found himself before the Tribunal had his licence revoked. I accept Ms. Paddock's submissions that he will have learned much through this process; however, the Registrar's proposal that the appellant be restricted in his dealership operation is more persuasive given the facts before me. The parties are in agreement that the appeal must proceed expeditiously and the conditions will reflect that.

ORDER

- [25] Pursuant to s. 9(9) of the MVDA, I grant a stay of the Tribunal's Order dated March 11, 2021, pending the disposition of the appeal filed by Mr. Chaudhry, subject to the following terms and conditions.
- a. The appellant shall forthwith order the transcripts from the hearing.
 - b. During the period of the stay, the appellant shall be registered as a wholesaler only, and may only engage in the trade, purchase and sale of motor vehicles in accordance with s. 21 of Ontario Regulation 333/08 under the MVDA.

- c. This stay is granted for a period of seven months from the date of this decision. During that time, the appellant shall perfect the appeal and take all necessary steps to ensure a hearing before the Divisional Court is scheduled as soon as is reasonably possible. At the end of seven months, the stay may be extended either on consent of the parties or on motion by the appellant.
- d. The Registrar may bring the matter back before the Tribunal if there is a breach of any of the above conditions, at which time the Tribunal will consider whether the stay should be lifted.

LICENCE APPEAL TRIBUNAL



Patricia McQuaid, Vice-Chair

Released: June 4, 2021