

Fax Télécopieur



From/De **Wahed Boutahar TEL. NO./No de téléphone: (416) 314 - 4265**

Licence Appeal Tribunal

20 Dundas Street West, 5th Floor
Toronto ON M5G 2C2
Tel.: 416 314-4260
1-800-255-2214
Fax: 416 314-4270
1-800-720-5292

Tribunal d'appel en matière de permis

20, rue Dundas Ouest, 5e étage
Toronto ON M5G 2C2
Tél. : 416 314-4260
1-800-255-2214
Télé. : 416 314-4270
1-800-720-5292

DATE: 10 April 2012

**TOTAL NO. OF PAGES (INCLUDING COVER)/
Nbre total de pages (page couverture comprise):**

RE/objet: LAT File No. 6600/MVDA

TO/Destinataire(s):

NAME/NOM	FIRM/MINISTRY Compagnie/ministère	FACSIMILE NO./No de télécopieur
ELIZABETH MAISHLISH		416-512-3758
ROBERT SMALL		BY MAIL

COMMENTS/COMMENTAIRES:

The information contained in this communication is intended to be received only by the person to whom it is addressed. In that context the information is confidential. If you are not the intended recipient or employee/agent responsible for delivery to the intended recipient, this notice is for you. Be aware that unauthorized review, use or disclosure is forbidden. If you have received this material in error, please notify the sender immediately and return the original communication by post. Thank you for your co-operation.

Cette télécopie peut contenir des RENSEIGNEMENTS CONFIDENTIELS et PRIVILÉGIÉS et doit être utilisée seulement par la (les) personne(s) ci-mentionnée(s). Si celle-ci ne vous est pas destinée ou si vous n'êtes pas responsable de la livraison de cette télécopie, nous vous prions de noter qu'il est formellement interdit de la copier ou de la distribuer. Si vous avez reçu cette télécopie par erreur, nous vous demandons de bien vouloir nous la retourner à l'adresse ci-dessus par courrier affranchi de première classe. Merci.

IF YOU DO NOT RECEIVE ALL OF THE PAGES TRANSMITTED PLEASE CONTACT THE SENDER./ SI VOUS N'AVEZ PAS REÇU TOUTES LES PAGES TRANSMISES, VEUILLEZ COMMUNIQUER AVEC L'EXPÉDITEUR(TRICÉ).

**Licence
Appeal
Tribunal**

**Tribunal
d'appel en
matière de permis**



DATE: April 10, 2012
FILE: 6600/MVDA
CASE NAME: 6600/MVDA v. Registrar, *Motor Vehicle Dealers Act 2002*

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

Robert W. Small

Applicant

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Douglas R. Wallace, Vice-Chair

APPEARANCES:

For the Applicants: No one appeared

For the Respondent: Elizabeth Maishlish, Counsel

Heard in Toronto: March 19, 2012

REASONS FOR DECISION AND ORDER

BACKGROUND

This is a hearing before the Licence Appeal Tribunal (the "Tribunal") arising out of a Notice of Proposal issued by the Registrar, *Motor Vehicle Dealers Act 2002* (the "Registrar" and the "Act" respectively). The Notice of Proposal dated April 5, 2011 proposed to refuse the registration of Robert W. Small, (the "Applicant"), as a salesperson under the Act.

The Applicant did not attend the hearing. The Tribunal is satisfied, from a review of the Affidavit of Service, filed, that the applicant received notice of the time and place for the hearing. As the Applicant failed to appear or contact the Tribunal regarding the hearing, the hearing took place in his absence.

THE LAW

In proposing to refuse the registration of the Applicant, the Registrar relied on section 6 and section 8 of the Act.

Section 6 provides that an applicant meeting the prescribed regulations (which is not in dispute in this case), is entitled to registration 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;

Section 8 provides that the Registrar may refuse to register an applicant if, in his opinion, the applicant is not entitled to registration under section 6.

ISSUES

The only issue is whether the evidence adduced by the Registrar (1) shows that the Applicant cannot reasonably be expected to be financially responsible in the conduct of business (2) constitutes reasonable grounds to believe that the applicant will not carry on

business in accordance with law and with integrity and honesty or (3) satisfies the Tribunal that the Applicant provided a false statement in his application for registration.

FACTS

The Registrar's position is that the Applicant is disqualified from registration on each of the grounds set out in Section 6.

The Notice of Proposal (Exhibit 1) sets out in considerable detail the facts the Registrar relied on in coming to his conclusion. These facts were fully corroborated by the testimony of Detective Constable Malcolm Wilson, three employees of the Ontario Motor Vehicle Industry Council (OMVIC), and four books of exhibits. As noted above, the Applicant, although served with the Notice of Hearing, did not appear to contest the facts and the Tribunal accordingly accepts them in their entirety. They may be summarized as follows:

Convictions

The Applicant has been convicted of the following offences:

July 1984-March 2012:	26 Convictions under the Highway Traffic Act (Most recently, driving while under suspension, March 18, 2010)
February 4, 1986	Possession of Stolen Property over \$200.00
March 3, 1986:	Fraud over \$200.00
August 30, 1995:	Criminal harassment
February 4, 1998:	Assault causing bodily harm
September 15, 2011:	Assault (26 days in custody plus 49 days PSC) plus 2years Probation
	Use of forged Criminal Conviction Request (30 days in custody)
	Breach of recognizance (30 days concurrent) plus probation

In addition, a charge of furnishing false information in an application under *Motor Vehicle Dealers Act* is outstanding.

The Applicant is currently still on probation.

Financial Responsibility

The Applicant's drivers licence has been suspended numerous times due to non-payment of fines and family law orders.

Making false statements

The Applicant was registered as a salesperson under the Act between August 1994 and November 2003. During this time, he made two applications for registration and three applications for renewal. Each and every one of the applications contained false statements indicating that he had not been convicted of any offence when he had in fact been convicted of a number of criminal offences. Each of the applications also falsely stated that the Applicant never had a licence revoked, refused, suspended or cancelled when in fact his drivers' licence had been suspended on numerous occasions.

The Applicant also made four separate applications for registration as a salesperson between 2007 and 2011, each proposing to work with different dealers. His application on March 12, 2007 failed to disclose many HTA convictions and failed to disclose criminal convictions for possession of stolen property, fraud, criminal harassment and assault causing bodily harm. It also indicated that he had a valid Ontario Drivers Licence when in fact his license had been suspended. The application clearly stated that "Submitting a false or incomplete disclosure is an offence under the MVDA and will result in disqualification".

His application in May 2008 (as amended on May 21, 2008) contained similar misstatements or failures to disclose required information. Although the Applicant admitted, when questioned by the Registrar's office, that there was a charge of uttering a threat pending against him, he failed to disclose the suspension of his driver's license or any of the offences noted above with respect to his March 2007 application or the fact that there were unsatisfied civil judgments outstanding. He also disclosed that he had been working for four separate motor vehicle dealers over the previous three years in positions that required registration under the Act without the benefit of registration.

The Applicant applied again for registration as a salesperson in August 2010. This application indicated again that he had a valid Ontario driver's license when the suspension of his licence had in fact recently been extended until September 18, 2010 as a result of a conviction for driving while his licence was under suspension. The application also indicated that there were no unsatisfied judgments against him when there appears to have been several outstanding orders under the Family Law Support Program. Finally, when pressed to provide details of any criminal convictions or pending charges he provided a very incomplete list. This list failed to disclose that he had been placed under probation for two of the crimes he did disclose, and that he had been convicted of criminal harassment in 1995 and assault causing bodily harm in 1998 for which he was also put under probation. He also failed to disclose that there were charges pending against him for assault and assault with a weapon. It is clear that the Applicant only made his sponsoring dealer aware of the incomplete, and totally misleading, list of offences.

The Applicant's final application, and the one giving rise to the Registrar's Notice of Proposal, was received by the Registrar's office on February 8, 2011. This application indicated that he had never had "a licence of any kind refused, suspended, revoked or cancelled". In truth his driver's licence had, at this time, been suspended three times (2004, 2007, and 2010). The Applicant advised that he had a valid driver's licence when he did not have one. He advised that he had been employed in motor vehicle sales for a motor

vehicle dealer from 2004 to 2007 when he was not licensed under the Act. He provided the Registrar with a copy of a Report by the Durham Regional Police Services, dated April 16, 2010 which had been doctored to delete any reference to four serious crimes noted on the original of that report and noted on a true copy of that report which he himself had provided to the Registrar less than a year earlier. Finally, he failed to disclose the fact that he had recently been charged with a two further serious criminal charges: one charge of assault and one of assault using a weapon. .

APPLICATION OF LAW TO FACTS

The facts set out above satisfy the Tribunal that the Applicant is disqualified from registration under each subsection of section 6 of the Act.

The number of defaults in paying support orders under the Family Law Act and in paying assessed fines levied under for offences under the HTA satisfies the Tribunal that the Applicant cannot reasonably be expected to be financially responsible in the conduct of his business if granted registration. Section 6 (a) (i) accordingly excludes him from the class of those entitled to registration.

The offences for which the Applicant has been convicted are serious; involving, as they do, a threat to the lives and safety of members of the public. The offences of theft, fraud and the use of forged documents are also "industry related" in the sense that they demonstrate the very antithesis of the honest, reliable character the public must find in those engaged in the motor vehicle industry if respect for the industry is to be maintained and the public protected.

The offences also took place over a lengthy period of time, indicating to the Tribunal that they were not mere aberrations in the Applicant's behaviour, but are rather, a fair indicator of his true character at that time. There was no evidence of remorse at the time the crimes were committed and the Applicant has had no unsupervised time since his release from custody to demonstrate that there has been any remorse or change of character since the crimes were committed. In the absence of such evidence, the Tribunal can only conclude that it is more likely than not that this type of unlawful conduct will continue should the Applicant be granted registration. At the very least, the convictions provide reasonable grounds to believe the Applicant will fail to conduct his business with honesty and integrity and in accordance with the law. He is, accordingly, excluded by section 6 (a) (ii) from the class of those entitled to registration.

The false and misleading information the Applicant provided on each application is compelling corroboration of the Applicant's lack of honesty and integrity, a ground for refusing the application under section 6 (a) (ii) of the Act. It is also a ground to refuse the application under section 6 (a) (iii) of the Act. The conduct cannot be said to be inadvertent. Rather, it is a deliberate attempt over a lengthy period of time to deceive the Registrar in respect to material facts in order to advance his own interest. Refusal of

registration is authorized under section 6(a) (iii) and is required to protect the public from fraud and misleading information.

The Tribunal has not been asked to grant registration under terms and conditions and does not feel that any terms or conditions it could impose would be adequate to ensure this applicant would carry on business with honesty and integrity should his application be granted.

The Tribunal notes that the Applicant failed to attend either the Pre-Hearing or the Hearing in this matter without notice to the Tribunal or the Registrar and accepts the Registrar's submission that an order of costs is appropriate in this case. It therefore orders costs in the amount of \$1,200.00

ORDER

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar to carry out his Proposal.

LICENCE APPEAL TRIBUNAL



Douglas R Wallace, Vice-Chair

Douglas R. Wallace, Vice-Chair

Released: April 10, 2012