

**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: Amin Kaaby v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2018 ONLAT-MVDA 11095

Date: 2018-11-21
File Number: 11095/MVDA

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

Between:

Amin Kaaby

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

DECISION AND ORDER

Adjudicator:

Raymond C. Ramdayal, Member

Appearances:

For the Appellant:

Amin Kaaby, appellant (self-represented)

For the Respondent:

Diana Mojica, counsel for the Respondent

Place and date of hearing:

April 6, 2018

Toronto, ON

REASONS FOR DECISION AND ORDER

A. OVERVIEW

- [1] This is a hearing before the Licence Appeal Tribunal (the “Tribunal”) arising out of a Notice of Proposal issued by the Registrar, *Motor Vehicles Dealers Act, 2002* (the “Registrar” and the “Act” respectively). The Notice of Proposal dated October 27, 2017, proposes to refuse to grant the registration of Amin Kaaby (the “appellant”) as a salesperson under the Act.
- [2] The Registrar is proposing to refuse the appellant’s registration on the basis that the appellant’s past conduct and his failure to comply with requests made by the Registrar for information, are inconsistent with the intention and objective of the Act, and therefore warrant his disentitlement to registration under the Act.
- [3] The objective of the Act is to protect the public interest. In doing so, the Act requires that, among other things, applicants carry on business in accordance with the law and with integrity and honesty, and that they comply with requests made by the Registrar for information that is relevant to the decision as to whether or not to grant registration.
- [4] After considering all the evidence and submissions, the Tribunal directs the Registrar to carry out the Notice of Proposal dated October 27, 2017, and to refuse the registration.

B. ISSUES:

- [5] The issue is whether the Registrar was justified in its proposal to refuse registration to the applicant as a motor vehicle salesperson pursuant to section 6 of the Act.
- [6] The respondent relies specifically on two sections of the Act. Namely s. 6(1)(a)(ii) that the appellant’s conduct affords reasonable grounds for belief that the appellant will not carry on business in accordance with the law and with integrity and honesty, and s. 6(1)(g) that the appellant failed to comply with requests made by the Registrar for information that is relevant to the decision as to whether or not to grant registration.
- [7] Central to this case is determining whether the appellant is disentitled to registration because of the appellant’s past conduct and his failure to comply with the Registrar’s request for information.

C. EVIDENCE:

- [8] Two witnesses were called to provide evidence on behalf of the Registrar. One of those witnesses was Ms. Shelley Webb, Registration Team Lead of the Ontario Motor Vehicle Industry Council (OMVIC) where she assists the manager of the department responsible for conducting application reviews and staff training.
- [9] Ms. Webb has been in her current position for approximately 4 years and has been with OMVIC for 9 years. She provided testimony outlining OMVIC's duties and how they enforce and administer the Act in Ontario.
- [10] A number of documents were read into the record including, but not limited to, notes from Ms. Webb documenting when she asked for clarity around the appellant's outstanding immigration matter; an email from Ms. Webb requesting information from the appellant regarding the reasons for his supervision while in the community.
- [11] Ms. Webb testified that OMVIC advised the appellant that as a regulator, they are seeking to obtain this information as part of their consideration of his application. This is so an informed decision can be made on his application. Ms. Webb testified that this was made clear to the appellant.
- [12] Ms. Webb testified that the appellant was refusing to provide the information and he stated that it was confidential and none of their business. Of concern to Ms. Webb in her position with OMVIC is the previous criminal conduct of the appellant which includes convictions for assault, assault with a weapon, escaping lawful custody and other offences including failures to comply with conditions; the absence of a period of acceptable conduct that is unsupervised in the community; and the fact that the information requested was not received due to the appellant's unwillingness to disclose.
- [13] Ms. Webb was seen as a credible witness and provided reliable, pertinent testimony at the hearing.
- [14] The second witness called by the respondent was Ms. Thaya Gengatharan. She is the Registration Manager at OMVIC and has held this position since 2005. She has been employed with OMVIC since 2001.
- [15] Ms. Gengatharan explained that OMVIC's role is to administer the MVDA on behalf of the Ministry. This is to protect the public interest since a salesperson under the Act would be expected to deal with the public on a daily basis, particularly at times when they are making large purchases.

- [16] Ms. Gengatharan explained the registration process which includes completing a form and providing any supporting documents.
- [17] Ms. Gengatharan's confirmed that the appellant's application was received on December 8, 2017.
- [18] The respondent also provided a criminal record outlining details of the appellant's past criminal convictions and the serious offences they involve including assault, breach of conditions, break and enter and escaping lawful custody.
- [19] Ms. Gengatharan provided evidence on why the appellant's past conduct and pattern of behaviour is concerning. It is her position that, in the absence of supervision, there is no past positive conduct that could be identified which would allow him registration.
- [20] Evidence was provided which detailed the appellant's past conduct. They are listed as follows:
- a. April 2010: Breaking and entering & threats – the appellant engaged in conduct which included breaking and entering and making threats against his victim. A peace bond was subsequently imposed on the appellant.
 - b. January 2011: Assaults and breach of conditions – the appellant was charged with breaching the terms of his peace bond. He was also charged with assault causing bodily harm.
 - c. September 2011: Failure to attend court – the appellant failed to attend court in relation to the above charges.
 - d. October 2011: Assault – the appellant assaulted another victim.
 - e. May 2012: Assault and breach of conditions – the appellant again assaulted one of his past victims thereby failing to keep the peace and be of good behaviour.
 - f. September 2013: Assault of a Peace Officer – the appellant assaulted a member of the York Regional Police.
 - g. For all of the above charges, the appellant was given a suspended sentence and 18 months of probation.
 - h. November 2013: Assault of a Peace Officer & escape lawful custody – the appellant assaulted a Correctional Officer and escaped from lawful custody

at the Central East Correctional facility in Lindsay, Ontario. He was recaptured a short time later and charged.

- i. For the above charges, the appellant was given 4 months of imprisonment.
- j. January 2014: Assault of a Peace Officer – the appellant assaulted another Correctional Officer at the Central East Correctional facility.
- k. May 2014: Assault of a Peace Officer – the appellant assaulted another Correctional Officer at the Central East Correctional facility.
- l. For the above charges, the appellant was sentenced to 60 days of imprisonment.

[21] Since approximately November 2014, the appellant has been required to report to the Canada Border Services Agency via the Toronto Bail Program on a weekly basis while awaiting his removal from Canada.

[22] Evidence was received which indicated that the Registrar inquired on several occasions to provide an explanation of the immigration proceedings against him.

[23] Ms. Gengatharan provided evidence that the Registrar's concern was not regarding the fact that the appellant was required to report, but rather he did not disclose the reason he is required. This information was sought on several occasions.

[24] The appellant's application was delayed longer than what would be expected for other applications for registration. This was due to the fact that his past conduct needed to be verified. There was also information requested which was not received. This is information that the appellant was required to provide to the Registrar.

[25] Ms. Gengatharan stated that based on his past problem with compliance, he may not comply with requirements in the future.

[26] The appellant was self-represented and provided submissions at the hearing. He indicated that his registration would allow him to get his life back on track. His employer, Mazda Richmond Hill, would welcome him back.

[27] The appellant worked for Mazda Richmond Hill and participated in all work except actually selling cars. He provided submissions that he is very passionate about selling cars. Both his brother and his girlfriend are employed in the automotive sector.

[28] The appellant stated that he is wanting to return to Germany, however, he has no status. His travel documents are now expired and he cannot return. In the meantime, he is wanting to maintain gainful employment.

[29] The appellant expressed remorse for his past poor behaviour and noted that he was young at the time and he has now gained insight into his actions. The offences are also dated and he is hoping to move forward in a pro-social manner. It is his belief that allowing him to sell cars would be a step in that direction.

D. LAW:

[30] Under section 4 of the Act, no person shall act as a motor vehicle dealer or salesperson unless they are registered. A registration is not transferable. An individual is exempt from the registration if they are trading a motor vehicle that is primarily of personal or family use.

[31] An applicant that meets the basic requirements is entitled to registration or renewal unless the applicant meets any of the grounds for disqualification set out in section 6(1). Section 6(1)(a) applies to an applicant that is not a corporation. It states that an applicant is disqualified to registration if:

- 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

[32] Another ground for disqualification is set out under s. 6(1)(g), which states that the registrar may refuse registration or renewal if the applicant fails to comply with a request made by the registrar under this section. Under section 6(1.1)(a) and (b), the registrar may request that the applicant provide information specified by the registrar that is relevant to the decision to be made and verification, by affidavit or otherwise, of any information provided by the applicant to the registrar.

[33] Section 8(1) states that the registrar may refuse to register, refuse to renew, suspend or revoke a registration for any of the grounds listed in section 6, subject

to the requirement to notify a registrant of its proposal and a right to appeal to this Tribunal under s. 9.

- [34] Section 9(5) states that after holding the hearing, the Tribunal may by order direct the registrar to carry out the registrar's proposal or substitute its opinion of that of the registrar and the Tribunal may attach conditions to its order or to a registration.

E. ANALYSIS:

- [35] It is the respondent's burden to prove the appellant's past conduct affords reasonable grounds to believe that he will not act with honesty, integrity and in accordance with the law. The appellant was elusive and not forthcoming with the details surrounding his immigration matters. Protection of the public is paramount particularly when individuals are making a large vehicle purchase.
- [36] The appellant is seeking registration for the first time. At the centre of this case is whether the appellant's past conduct demonstrates that he will not behave in a manner that expresses honesty and integrity to the public. To make this determination, section 6 of the Act is applied to determine the applicant's ability to meet the requirements prescribed in the Act.
- [37] The evidence provided by the respondent proved that the appellant failed to provide the necessary information to the Registrar for complete consideration of his registration as a salesperson. The respondent on numerous occasions attempted to obtain information from the appellant regarding his immigration matters however, the appellant did not wish to release the information as he did not see the relevance to his current application.
- [38] The information being requested by the Registrar is relevant to their decision as to whether or not to grant registration. The appellant's requirement to report to the Toronto Bail Program was the result of the appellant committing offences while not having status in Canada. The information the Registrar is requesting would also provide insight into whether the appellant is allowed to work in Canada while the Immigration matter is being dealt with.
- [39] The appellant has a lengthy and serious criminal record. It includes convictions of assault, assaulting a peace officer, escape lawful custody and numerous failures to comply. It demonstrates a troubling pattern of escalating violent behaviour and an inability to abide by conditions of community supervision.
- [40] The appellant served a custodial sentence for these and other offences. He has also been subject to probations orders. He has broken conditions related to a

peace bond between himself and his victim. The appellant's criminal record demonstrates his disregard for conditions placed on him.

- [41] The appellant is still under supervision and has not had a period where he has not been under some form of community supervision since 2014. It is noted that he still requires a high level of supervision to ensure his continued compliance with conditions to ensure the protection of society.
- [42] In addition, the appellant is not a citizen of Canada and is the subject of a removal order made pursuant to the Immigration and Refugee Protection Act. Since 2014 he has been required to report to the Canada Border Services Agency via the Toronto Bail Program on a weekly basis while awaiting his removal from Canada. This has now changed and will be discussed in section F of this decision which deals with post hearing submissions from the appellant.
- [43] Given that OMVIC's mandate is public protection, the Tribunal finds that they are acting well within their mandate when refusing application of the appellant in this case based on his long and serious criminal record. As well, the appellant was given multiple opportunities to provide information regarding his immigration matters but chose not to.
- [44] The Registrar considered the appellant's application for registration and in the process, requested additional information. It is clear that when the appellant was requested to provide additional information on several occasions, he failed to do so.
- [45] It is clear that the immigration and criminal issues are intertwined. The appellant was placed on conditions as a result of his criminal transgressions. He has performed poorly at times when on this supervision. He has also been required to be on some form of community supervision since 2014. The appellant has never been without conditions so it is difficult to assess how he would perform without having the structure that community supervision offers.
- [46] During his closing statement, the appellant still failed to admit that his actions were criminal in nature. It is his position that this is an immigration matter and it should not be held against him. However, the immigration matter stems from his criminal conduct and whether he is suitable for continued residency in Canada. His criminal behaviour weighs into the Tribunal's decision for directing the Registrar to grant or deny registration as a motor vehicle salesperson under the Act.

- [47] There is no set date for an immigration hearing. It would appear that Immigration Canada is sensitive to this fact and, as a result, has given him a work permit in the interim.
- [48] There is an obligation under the Act that the information being requested by the Registrar from the appellant be provided. It specifically references disclosures and applies to all applicants. The appellant is not exempt from this requirement.
- [49] The appellant did not at any time provide a response on the reasons about why he is on supervision for his immigration matters. It is clear that this matter does not relate to his immigration status, but rather to the matters related to his immigration supervision and his past serious criminal convictions.
- [50] The failure to respond to inquiries can justify a refusal to grant registration, particularly in light of the concerns the Registrar has raised regarding the appellant's serious criminal record.
- [51] It is determined that the information requested by the Registrar was necessary in making a determination on the entitlement of the appellant for registration as a salesperson under the Act.
- [52] Furthermore, it was clear to the appellant that the request of this information was directly related to the Registrar's assessment of his application for registration as a salesman under the Act.
- [53] The appellant made a clear decision to not provide the relevant information required by the Registrar that would inform their decision on the appellant's suitability for registration under the Act.
- [54] The evidence brought forward by the respondent during the hearing was shown to prove that the appellant's past conduct were inconsistent with the Act. In addition, the appellant failed to respond to repeated inquiries from the Registrar for information which would allow them to adequately determine his entitlement for registration as a salesperson under the Act.
- [55] The evidence also proved that the appellant was not frank and forthcoming in providing essential information concerning his immigration issues and requirements and reasons for having to report while under community supervision.
- [56] The evidence also proved that the appellant's past conduct and pattern of criminal offending demonstrates that there are reasonable grounds to believe that he will not conduct himself in accordance with the law and conducting himself with honesty and integrity.

[57] The appellant's numerous criminal convictions and violations of conditions demonstrate that he has a lack of respect for compliance with legal requirements, which is a significant concern in an industry that is regulated to protect the public interest.

**F. RECONVENING OF THE HEARING TO DISCUSS POST HEARING
SUBMISSION FROM THE APPELLANT (OCTOBER 9, 2018):**

[58] The hearing was reconvened on the record via teleconference on October 9, 2018. Amin Kaaby appeared on behalf of the appellant. Michael Burokas appeared on behalf of the respondent.

[59] The purpose of the teleconference was to discuss post hearing submissions from the appellant. The information includes a letter from Canada Border Services Agency dated March 27, 2018, which indicates that the appellant remains in good standing with the Toronto Bail Program. As a result, the conditions of his release have been amended to delete the requirement for him to be under supervision of the Toronto Bail Program.

[60] The parties were given an opportunity to provide submissions on the admissibility, relevance and weight that should be given to this new information.

[61] The appellant stated that he received the letter the day after the original hearing. However, the respondent argued that given the timeframe, the letter should have been available at the original hearing. It is the respondent's position that the information should not be admissible as it flies in the face of efficiency and finality. It is the Tribunal's finding that this information could add some value to the decision since it addresses community supervision.

[62] The respondent argued that the issue was regarding his immigration status and not necessarily the community supervision. The respondent also made it clear that the fact that the appellant is not under supervision does not change their position.

[63] The Tribunal placed limited weight in the post hearing submissions since the appellant will still have some conditions even with the absence of the Toronto Bail Program. The appellant still has not shown any period of non-supervision and the new information does not change his past criminal conduct.

[64] The appellant argued that his immigration status was not relevant. The Tribunal is in agreement, however, finds that the information is relevant in so far as it relates to his criminal behaviour.

[65] The post hearing information submitted by the appellant is found to be relevant but does not change the decision to deny his registration. The Tribunal placed little weight on the information as it does not significantly change the personal circumstances of the appellant. He remains on some form of conditions. He also has a serious criminal record that includes assaults, escape lawful custody and numerous instances of non-compliance with conditions.

G. CONCLUSION:

[66] I find that there is reasonable grounds to believe that the appellant will not conduct himself in accordance with the law, and with honesty and integrity because his past conduct shows a history of violence and non-compliance with community orders.

[67] I find that the appellant has failed to comply with the Registrar's request for information made pursuant to section 6(1)(g).

[68] I find that the appellant's post hearing submissions indicate that his conditions of release by Canada Border Services Agency have been amended to delete the requirement for him to be under the supervision of the Toronto Bail Program. This does not change the fact that he remains under supervision of Canada Border Services Agency on other conditions imposed. It also does not change his past criminal conduct and failure to provide information requested by the Registrar for consideration of his application for registration as a salesman under the Act. The appellant's past conduct has resulted in the necessity for him to be under some form of community supervision.

[69] The appellant's recent positive conduct and the fact that his community supervision is being relaxed, were taken into consideration. However, it could not overcome the concerns regarding his past criminal conduct and failure to provide information requested by the Registrar.

[70] In conclusion, I find that the appellant is disentitled to registration for the grounds set out in s. 6(1)(a) and 6(1)(g) of the Act based on the following:

- i. The finding that the appellant was not frank and forthcoming in providing essential information concerning his immigration issues and requirements and reasons for having to report while under community supervision.
- ii. The failure to respond to repeated inquiries from the Registrar for information which would allow them to adequately determine his entitlement for registration as a salesperson under the Act.

- iii. The appellant's past conduct and pattern of criminal offending demonstrates that he will not conduct himself in accordance with the law and conducting himself with honesty and integrity.

H. ORDER:

[71] Pursuant to the authority vested in it under the provisions of the Act, I direct the Registrar to carry out the Notice of Proposal dated October 27, 2017, to refuse the application for registration as a salesperson.

LICENCE APPEAL TRIBUNAL



Raymond C. Ramdayal, Member

Released: November 21, 2018