

**Licence
Appeal
Tribunal**

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



DATE: 2015-03-31
FILE: 9229/MVDA
CASE NAME: 9229 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

Rossano De Parolis

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Elizabeth Sproule, Vice-Chair

APPEARANCES:

For the Appellant: Alessia Oliveti, Agent

For the Respondent: Angela La Viola, Counsel

Heard in Toronto: February 27, 2015

REASONS FOR DECISION AND ORDER

BACKGROUND

This is a hearing before the Licence Appeal Tribunal (the “Tribunal”) arising out of a Notice of Proposal (the “Proposal”) issued by the Registrar, *Motor Vehicle Dealers Act, 2002* (the “Registrar” and the “Act” respectively). The Proposal dated November 12, 2014, proposed to refuse to grant the registration of Rossano De Parolis (the “Appellant”), as a motor vehicle salesperson under the Act.

FACTS

The Appellant testified that he was registered under the Act beginning sometime in 1994. This evidence was not challenged. The Proposal indicates that he was first registered from approximately May 28, 2002 to December 16, 2009. When questioned by the Tribunal as to this discrepancy, Counsel for the Registrar acknowledged that the Appellant’s evidence was correct and that the registration date set out in the particulars of the Proposal was incorrect through oversight.

It is an acknowledged fact that in November of 2009, the Appellant was arrested in Florida, and convicted of “Conspiracy to Possess with Intent to distribute 5 kilograms or more of cocaine”, as set out in the Certified U.S. Case Summary of Canadian Citizen found at page 31 of the Respondent’s Book of Documents.¹ The Tribunal notes that the Proposal indicates the Appellant was convicted of “Conspiracy with intent to purchase and distribute 5 kg of cocaine”, but concludes the different descriptions of the offence are inconsequential.

The Appellant entered into a Plea Agreement, a six page document, on approximately March 18, 2010. Pursuant to that agreement, the Appellant agreed, among other things, not to contest the facts set out in the Plea Agreement and to agree that they provided a sufficient factual basis for the plea of guilty. These facts include that the Appellant had numerous telephone discussions with an associate and with an undercover officer, and that the Appellant knew that the associate had paid funds to cover the cost of transportation of the illegal substance.

The Appellant was sentenced to the statutory minimum of 120 months of imprisonment and five years’ supervised release. He served approximately four years in a Florida prison before being granted a treaty transfer back to Canada. The Appellant gave evidence that he was given a treaty transfer for a number of reasons, including: that his crime was not violent, he had demonstrated good behaviour, it was a first offence, it was part of the Plea Agreement, the U.S. Department of Justice had “signed off”, and he had strong family support and social ties. Upon being returned to Canada, he was immediately granted day parole and has been on full parole for approximately one year.

1 Exhibit #3

The Registrar confirmed that the only issue of concern regarding the Appellant's conduct relates to the U.S. conviction. There was no suggestion that he did not complete the registration forms honestly and that he disclosed his criminal conviction. The Registrar, Mary Jane South, testified however that when the Appellant was asked to provide details he did not provide the details as set out in the Plea Agreement. She also was not given an explanation as to why he committed the crime. Overall, the explanation provided by the Appellant was inadequate in the Registrar's view, as it was not clear that "he had perspective on the seriousness of his conduct".

The Appellant was requested to provide further details of his criminal conviction. In a letter dated May 6, 2014, the Appellant provided particulars, including the statement that, "The law of conspiracy in the U.S.A. defines that even only when 'a crime is to be spoken about' it is a crime. The laws in the U.S.A. are very strict therefore that was enough to be charged and convicted". He further stated near the end of his letter, "I am truly sorry and fully accept the responsibility for my actions".

In testifying, the Appellant stated that he chose not to complete the illicit transaction planned but that in the U.S. the law is different, that there was sufficient evidence for the conspiracy charge and that evidence is what is disclosed in the Plea Agreement. His explanation for his conduct was described as being in the wrong crowd, under pressure and greed. In his words he "paid for it, dearly", being imprisoned in another country and that he learned his lesson.

According to the Proposal, the Appellant's statutory release is in July 2017 and his parole ends in April of 2018. The Appellant's evidence is that his statutory release is in June of 2016 and his warrant expires in late April of 2019.

Mr. Robin McLeod testified that he has been working in the motor vehicle industry for many many years. Currently, he is the owner operator of Auto Resources Leasing. He is aware that the Appellant is on parole and was convicted of a serious offence in the U.S. Mr. McLeod had prior dealings with the Appellant in the wholesale business, and based on this experience, he had a good opinion of the Appellant. He found him to be "straight up" as he described vehicles how they were, and Mr. McLeod never had an issue with any vehicle that was traded between them. Mr. McLeod heard all of the evidence of the Registrar in support of the allegations prior to testifying. He confirmed that he would not hesitate to employ the Appellant and that he was still willing to do so. His business is a one person operation; therefore monitoring the Appellant would not be difficult. At the end of the day, nothing would be done without his "signing off". Mr. McLeod confirmed his understanding that the Appellant's registration may be subject to conditions.

In addition to the testimony of Mr. McLeod, and a letter from same, the Appellant provided a letter from his Parole Officer who confirmed that the Appellant has no history of fraud or theft, misuse of client information, violence, weapons or sexual offences.

The Appellant also provided a letter from a criminal defence lawyer, practising in Ontario, who the Appellant had consulted in an effort to reduce the sentence per the treaty transfer. In his letter, counsel states "I firmly believe that Mr. De Parolis would have received a much lesser sentence had the matter been dealt with in Canada".

The Appellant submitted a letter from a past employer in the motor vehicle industry who had a direct working relationship with the Appellant as an independent broker, and who has known the Appellant for 10 years, confirming the Appellant's good character and work ethic. Another letter was provided from the principal of a dealer in the industry who has known the Appellant for 20 years, both as an employee salesperson (one year) and through dealings with the Appellant while employed by other firms.

The Appellant submitted a letter from his current employer with whom he has been employed with since May of 2014, providing a positive review of his performance.

Finally, the Appellant provided two letters from individuals of the public attesting to his good character and contribution to the community. There were a total of eight letters of support including Mr. McLeod's letter.

THE LAW

Regarding the right to registration, the Act states, in part, as follows:

Registration

6. (1) An applicant that meets the prescribed requirements is entitled to registration or renewal of registration by the registrar 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;

Request for information

- (1.1) The registrar may request an applicant for registration or renewal of registration to provide to the registrar, in the form and within the time period specified by the registrar,
 - (a) information specified by the registrar that is relevant to the decision to be made by the registrar as to whether or not to grant the registration or renewal;

- (b) verification, by affidavit or otherwise, of any information described in clause (a) that the applicant is providing or has provided to the registrar.

Refusal to register, etc.

- 8. (1) Subject to section 9, the registrar may refuse to register an applicant or may suspend or revoke a registration or refuse to renew a registration if, in his or her opinion, the applicant or registrant is not entitled to registration under section 6.

Conditions

- (2) Subject to section 9, the registrar may,
 - (a) approve the registration or renewal of a registration on such conditions as he or she considers appropriate; and
 - (b) at any time apply to a registration such conditions as he or she considers appropriate.

ISSUES

Are there reasonable grounds for belief that the Appellant will not carry on business in accordance with the law and with honesty and integrity?

APPLICATION OF LAW TO THE FACTS

The facts of this case are not in dispute. The Registrar has confirmed that prior to 2009 the Appellant was a registrant, and that there is no allegation of previous wrongdoing. Neither is there any allegation that in making an application for registration the Appellant made any false statements. The information that he provided as to any prior convictions was accurate.

The Registrar submits that there has not been a sufficient period of good conduct since the Appellant's conviction to confirm his rehabilitation in that the period he has and will be on parole cannot really be relied upon as evidence of positive conduct as the conditions imposed upon the Appellant motivate positive conduct and thus his independent conduct cannot be known. The Registrar is also concerned that registering the Appellant so soon after a conviction of such an offence will undermine the confidence of the public in the regulation of the industry. Finally, the Registrar believes that the Appellant must demonstrate that he has "perspective on the seriousness of his conduct" and provide an explanation of why he did what he did so it is understood how to prevent similar conduct in the future.

With respect to the issue of the Appellant's perspective, the Registrar would appear to base her conclusion that the Appellant does not have the appropriate perspective, in part, by his failure to provide the details of his conduct as set out in his Plea Agreement. In the Tribunal's opinion, it is not reasonable to expect an applicant to set out the details of the evidence upon which he was convicted unless such information is explicitly requested.

The Appellant's testimony that his treatment and experience would have been different in Canada suggests to the Registrar that the Appellant does not concede the seriousness of his offence.

The Appellant's comments as to the severity of his sentence simply mirrors what his criminal defence counsel has advised him, as evidenced by the letter submitted in these proceedings, and it is not reasonable, in the Tribunal's opinion, to conclude based on these comments that the Appellant does not accept the seriousness of his wrongdoing. The Appellant testified, and the Tribunal accepts, that having spent four years in a Florida prison he fully understands the seriousness of what he did and the price he paid for it. The seriousness of the Appellant's crime is not in dispute.

The Tribunal did not find the Appellant's explanation as to how he came to be involved in criminal activity lacking: he got involved with certain people who were open to this type of conduct and was compelled by greed. It is a simple explanation which the Tribunal finds believable.

The Registrar is concerned that the public will lose confidence in the regulation of the industry if individuals are registered prematurely, for example, prior to the termination of their parole and/or probation. In this particular case, the Appellant has a lengthy unblemished history as a registrant – from sometime in 1994 until 2009. In the Tribunal's opinion, this is one significant distinguishing factor. There have been no incidents of wrongdoing before or since the 2009 conviction. This distinguishes him from applicants who have a history of repeated criminal activity and are asking the regulator to trust that this historical pattern is at an end.

The Appellant's conviction was not industry related, nor did it involve fraud or breach of trust. He has an informed prospective employer, who is an experienced registrant, willing to provide any and all supervision mandated to ensure the public is protected. The Registrar raised no concerns regarding Mr. McLeod as an employer of the Appellant. In addition to Mr. McLeod, seven other individuals have provided letters of support and/or good character for the Appellant, which suggests to the Tribunal that public confidence will not be lost in the regulation of the industry by the registration of this particular individual given these particular facts.

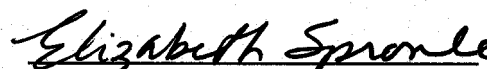
Based on all of the evidence of the Appellant's past conduct, the Tribunal concludes that it does not provide reasonable grounds for belief that the Appellant will not carry on business in accordance with law and with honesty and integrity.

ORDER

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar to not carry out the Proposal and further directs that the Registrar approve the Appellant's registration as a motor vehicle salesperson subject to the following conditions:

1. The Appellant will comply with all requirements of the Act and Ontario Regulation 333/08, the *Code of Ethics* in Ontario Regulation 332/08, the Ontario Motor Vehicle Industry Council ("OMVIC") "Standards of Business Practice" and OMVIC Guidelines, as may be amended from time to time.
2. The Appellant shall not transfer his registration as a salesperson under the Act, to another Dealer without prior consent from the Registrar. The Registrar shall not withhold her consent unreasonably.
3. If the Appellant's registration is transferred to another, or additional, Dealer, he will ensure that the new Dealer is informed of the Terms and Conditions contained in this document, and shall provide the Registrar with proof thereof within five (5) days of the transfer.
4. Pursuant to section 31(1) of Ontario Regulation 333/08, the Appellant will provide, within five (5) days, notice in writing to the Registrar of any findings of guilt, convictions and/or pending charges under any law, with the exception of those commenced or prosecuted under Part I or Part II of the *Provincial Offences Act*.
5. The Appellant will ensure that the notification referred to in paragraph 4 above will be acknowledged by, and will bear the signature of, the sponsoring Dealer.
6. The Appellant will ensure that the sponsoring Dealer is informed of the Terms and Conditions contained in this document, and shall provide the Registrar with proof thereof within five (5) days of the date of this Order.

LICENCE APPEAL TRIBUNAL


Elizabeth L. Sproule, Vice-chair

Released: March 31, 2015