

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



DATE: 2013-05-23
FILE: 7892/MVDA
CASE NAME: 7892 v. Registrar, Motor Vehicle Dealers Act, 2002

Appeal from a Proposal of the Registrar under The *Motor Vehicle Dealers Act, 2002*
S.O. 2002, C. 30, Sch. B to Refuse a Registration

Brij Lal Badhan

Applicant

-and-

Registrar, Motor Vehicle Dealers Act, 2002

Respondent

ORDER

ADJUDICATOR: D. Gregory Flude, Vice-Chair

APPEARANCES:

For the Applicant: Baldev Mehta, Agent

For the Respondent: Jane Samler, Counsel

Heard in Barrie: May 17, 2013

Reasons for Decision and Order

[1] The Applicant, Brij Lal Badhan, appeals a Notice of Proposal to Refuse Registration issued by the Registrar under the *Motor Vehicle Dealers Act, 2002*, S. O. 2002, c. 30 Sched. B (the “Act”) on January 23, 2013 (Ex 1). A Notice of Further and Other Particulars (Ex 5) was served on the Applicant on or about March 14, 2013. The Applicant has a previous history as a registrant under the Act. He had his registration revoked in 2001 as a result of convictions for odometer tampering. He applied for registration in 2005 and was refused. He appealed to this Tribunal and the Registrar’s decision was upheld (Ex 3 tab 1A). As a result of this history, this appeal triggers the provisions of s. 12 of the Act as well as the general registration provisions of s. 6. For ease of reference, those provisions are set out:

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;

12. A person whose registration is refused, revoked or refused renewal may reapply for registration only if,

(a) the time prescribed to reapply has passed since the refusal, revocation or refusal to renew; and

(b) new or other evidence is available or it is clear that material circumstances have changed.

[2] The Tribunal heard evidence from three witnesses, T. J. Lotton, an employee of the Ontario Motor Vehicle Industry Council (OMVIC), Mary Jane South, the Deputy-Registrar at OMVIC and the Applicant. OMVIC is the office of the Registrar and is charged with administration of the Act. The focus of the evidence was on a number of answers in the Applicant’s application for registration dated March 5, 2012 and received by the Registrar on March 6 Ex 3 Tab 3). A second issue, set out in the Notice of Further Particulars, is that the Applicant has been selling cars without the benefit of registration.

[3] The impugned answers on the Applicant’s application are found in Section E:

2. Have you ever had a commercial, professional or business registration certificate or licence of any kind refused, suspended, revoked or cancelled, or have you ever been a party to such proceedings?
3. Are there any unsatisfied judgments, court orders or collections currently pending against you?

5. Have you been involved in bankruptcy proceedings or had a petition filed against you under any banking or insolvency legislation in any jurisdiction in the last ten years?
6. Have you ever been found guilty or convicted of an offence under any law, or are any charges pending?

[4] The Applicant answered “No” to the above questions. With respect to questions 2. and 3, the answers were changed from “Yes” to “No” and the Applicant made several assertions about how the changes came about. Ms Lotton’s testimony centred around her involvement in those changes. She also reviewed a security tape recording of her dealings with the Applicant and his agent, Baldev Mehta, taken at the time the Applicant submitted his application and made the disputed answers. In 2001, his registration was revoked and he was refused registration by the Tribunal in 2006. In January 2011, the Applicant filed a consumer proposal under the *Bankruptcy Act* and is currently bound by an order arising out of that proposal to pay \$375.00/month for the benefit of his creditors. At least one of the grounds for the revocation of his registration in 2001 was his involvement in and conviction for odometer tampering.

[5] Ms. Lotton testified that when she reviewed the Applicant’s registration she paid particular attention to the questions and answers in Section E. It was her practice to advise applicants, in general, that if the answer to any of the questions was “Yes” then there might be a delay in registration as the Registrar would require further information. She then read question 2 to the Applicant and Mr. Mehta and asked them for the correct answer. Each stated “No” and this is heard clearly on the video footage. She then advised them that they had answered “Yes” and therefore they should change it and initial the changes. The procedure was repeated with respect to question 3. Her version of the events is supported by a review of the video footage.

[6] Ms South reviewed the purpose of the Act and the functions of the Registrar’s office. She described the disclosure requirement on the application form as a first test of honesty in an industry where full disclosure of vehicle history and defects to consumers is essential. She reviewed the Applicant’s regulatory dealings and noted that there appeared to be recurring themes of behaviour, particularly with regard to the findings of this Tribunal in 2006 and the current allegations made against this Applicant. She expressed the view that there was no new or other evidence and no material change in circumstances.

[7] It came out in the Applicant’s evidence that he had known Mr. Mehta since 1973. He confirmed that Mr. Mehta had testified on his behalf in 2006. He confirmed that Mr. Mehta was aware of his regulatory history, financial problems, including his 1994 bankruptcy and his 2011 consumer proposal and his conviction in 2001. The Applicant acknowledged that Mr. Mehta was his agent and had made the changes in the answers from “Yes” to “No” and initialed them on his behalf. Mr. Mehta is the Applicant’s supporting dealer and will employ him if he becomes registered as a salesperson. Ms South expressed concern that any registration of the Applicant under the supervision of Mr. Mehta is problematic. She asserted that Mr. Mehta colluded in making false statements to the Registrar when, in full knowledge of the Applicant’s past, he made

and initialed changes he knew to be false. She felt she could not rely on Mr. Mehta to properly supervise the Applicant.

[8] An issue in the 2006 hearing, and a finding of the Tribunal at that time, was the fact that the Applicant had been selling cars without the benefit of registration. He used both his own name and that of his wife to register cars. Records produced by the Registrar (Ex 4 tabs 10 and 11) indicate that the Applicant and his wife have sold 85 cars over the years. Since 2006, the Applicant has sold eleven cars using his own name and sixteen cars in his wife's name. There are currently nine cars in total showing as actively plated in the name of the Applicant and his wife. In some cases, these cars were in his possession for a very short time. The Applicant denies dealing in cars and says that these vehicles were simply sold to family and when "I needed money."

[9] In his Notice of Appeal (Ex 2), the Applicant asserts that he should receive his registration because he is in dire financial straits, has had to sell his house and move in with his brother and selling cars is the only business he knows. His evidence before the Tribunal mirrored those sentiments. The difficulty for the Tribunal is the fact that his evidence before this Tribunal and his dealings with the Registrar indicate that he has not yet appreciated that he must be truthful and forthright in all his dealings. It appears that he puts short term thinking ahead of honest dealings. Nothing highlights this trait more than the discussion surrounding the changed answers.

[10] On reviewing the application, on March 14, 2012, the Registrar wrote to the Applicant seeking clarification of the "No" answers in Section E (Ex 6 Tab 13). That letter advised the Applicant that those answers did not accord with the Registrar's records. The Applicant and Mr. Mehta responded to the Registrar on the same day stating:

According to your letter dated March 14, 2012 some of the answers to the questions on the application Brij Badhan and Baldev Mehta came to the office to submit where [sic] changed by the receptionist (female) working at the front desk in the OMVIC office. The answers were changed from the YES option to the NO option. The same female initialed all the changes according to her recollection. Below are the correct answers.

The Tribunal can only surmise that the Applicant was unaware that his visit to OMVIC's offices had been captured on video. In the Notice of Appeal, the Applicant states:

I personally applied to OMVIC to get my salesman license accompanied by my dealer. When at OMVIC, the lady at the front desk asked for some changes to be made on the application which I made. Afterwards, I received a phone call from OMVIC that the changes I was asked to make by the lady were incorrect and that the original application was correct.

[11] Having viewed the video evidence during the hearing, the Applicant's oral evidence was even more at odds with the actual interchange that took place. He stated that when Ms Lotton read the questions to him he had answered "Yes." He went on to say that Ms Lotton had told him that "Yes" was not the right answer and he had to put

“No.” On cross-examination, Ms Samler showed the video extract to the Applicant again and pointed out to him that it clearly shows the he and Mr. Mehta had answered “No” when Ms Lotton read the questions to them. He then admitted that he had answered “No” but it was a misunderstanding.


[12] The Applicant provided no new or other evidence or evidence of a material change of circumstances other than the dire financial consequences to him of not being registered under the Act. This Tribunal is concerned with suitability for registration not with the impact that unsuitability may have on an applicant. The Applicant has failed to satisfy the test set out in s. 12 of the Act, and while the wording of that section denies the Applicant the right to reapply, a fair reading of it, in light of the legislative scheme, indicates that the true intent behind the words is that the Applicant is not entitled to registration following refusal or revocation unless he satisfies the test therein.

[13] The Applicant must also fail on every ground set out in s. 6. The Tribunal finds that the Applicant’s financial history, a bankruptcy in 1994 and a consumer proposal in 2011, which he is still discharging, indicate a financial position such that he cannot be reasonably expected to be financially responsible in the conduct of business. His continued failure to be forthcoming with the Registrar in his application together with a long history of similar behaviour leading to both a revocation and a refusal give reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty. That ground is reinforced by his clearly false testimony before this Tribunal. Finally, he has made false statements in his application for registration. The Tribunal can have no confidence that the Applicant will discharge his duties to the consuming public of Ontario in a highly regulated industry honestly. It can think of no terms for registration that will guarantee that the Applicant abandons his short term expediency approach to the truth in favour of full, frank and honest disclosure.

Order

[14] In accordance with the authority invested in it by the provisions of s.9(5) of the Act, the Tribunal orders the Registrar to carry out the proposal dated January 23, 2013 to refuse registration to the Applicant.

LICENCE APPEAL TRIBUNAL



D. Gregory Flude, Vice Chair