

Licence  
Appeal  
Tribunal

Tribunal  
d'appel en  
matière de permis



DATE: 2014-05-15  
FILE: 8358/MVDA  
CASE NAME: 8358 v. Registrar, *Motor Vehicle Dealers Act, 2002*

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

Ahmed Dirani

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

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## REASONS FOR DECISION AND ORDER

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**ADJUDICATOR:** D. Gregory Flude, Vice-Chair

**APPEARANCES:**

**For the Appellant:** Frank Alfano, Paralegal

**For the Respondent:** Michael Rusek, Counsel

Heard in Toronto: April 28, 2014

## REASONS FOR DECISION AND ORDER

[1] The Appellant appeals the decision of the Registrar under the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B (the "Act") to refuse his registration as a motor vehicle salesperson. The Notice of Proposal was issued on September 20, 2013. The allegations against the Appellant were not disputed. In particular, the Appellant admitted the report of the Registrar's investigator, Jodi Hughes, (Ex. 3, Tab 7) in its entirety, thereby shortening the hearing considerably.

[2] The Registrar relies on s. 6 (1) (a) (ii) and (iii) of the Act, which reads:

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, ...
    - (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; ...

It is the Registrar's position that both subsections apply to the Appellant.

[3] Mary Jane South, the Deputy-Registrar at the Ontario Motor Vehicle Industry Council ("OMVIC"), the office of the Registrar under the Act, testified as did the Appellant.

[4] As stated above, the facts are not in dispute. The Appellant was previously registered as a motor vehicle salesperson between 1996 and 1998. During that time he was charged and convicted of odometer tampering. In 2002 and in 2005, while he operated a garage, he was charged and convicted with issuing false safety certificates. In his application for registration received by the Registrar on March 12, 2013, he was asked:

8. Has the applicant ever been found guilty or convicted of an offence under any law, or are there any charges pending? **Make sure to include those cases with a conditional, absolute discharge or stayed charges. Please note: This question refers to charges under any law. Accordingly, you may need to answer "yes" even if a criminal record (or other) check has come back clean.**

The Appellant answered "No" (Ex. 3, Tab 3).

[5] Prior to his application for registration, the Appellant completed the OMVIC certification course offered by Georgian College. Ms. South testified that the course would have reviewed the regulatory scheme governing registration as a motor vehicle salesperson. While the curriculum of the course was not put into evidence, the Appellant did not disagree with Ms. South's characterization of the course content. Notwithstanding his recent training in the requirements for registration, the Appellant acted as a motor vehicle salesperson both before and shortly after submitting his registration application. The details are set out in Ms. Hughes' report. In summary, the Appellant advertised 8 vehicles for sale on Kijiji, an Internet sales service, between February 26, 2013 and March 8, 2013. He completed his application for registration on March 11, 2013 and it was received by OMVIC on March 12, 2013. Between April 5 and April 7, 2013 he advertised 7 more vehicles on Kijiji. All advertisements gave the Appellant's telephone number and identified that number as being the number of the "DEALER." Ms. Hughes and another investigator, Investigator Smiley, responded to one advertisement for a 2001 Volkswagen Cabrio. They met the Appellant at his place of business and he showed them not only the Cabrio but also a Pontiac. He fully disclosed the damage history of the Volkswagen, put a dealer plate on the vehicle, and invited Ms. Hughes to take a test drive. When asked, he informed them that he was showing cars for a dealership called Boomer's Auto Sales. All paperwork relating to sales made in this manner was completed by Boomer's Auto Sales.

[6] Ms. South reviewed the Registrar's concerns with registration of the Appellant. The failure to fully and frankly disclose past convictions is of concern. By failing to be completely honest, the Appellant has failed a first test of integrity. Unauthorized selling was a major concern, especially given the Appellant's relatively recent review of the regulatory requirements in the certification course. She was of the view that the Appellant should not be registered with his sponsoring dealer, Boomer's Auto Sales, because Boomer's had been complicit in the Appellant's unregistered sales. She was of the view that the Appellant should be registered on terms with a larger dealership, preferably a franchise dealership, where procedures are in place to ensure compliance with the Act.

[7] The Appellant asserted two reasons for failing to disclose past convictions. The first was that he rushed through the form and did not read the question properly. The second, with respect to the odometer tampering charge was that, since OMVIC was the prosecuting authority, it was well aware of the conviction so he did not think he had to disclose it. He explained the false safety certificate charges by explaining that he was a Motor Vehicle Inspection Station registration holder. As such, he had to countersign each certificate after the inspecting mechanic had completed an inspection. He is not a mechanic so he relied on his employee. His employee signed two certificates and the Appellant countersigned and issued them, but they had false information. He was convicted and accepts responsibility and no longer offers certification inspections.

[8] The Appellant justified his unregistered selling by complaining that he did not know it would take so long for OMVIC to licence him so he decided to start selling to make some money. This explanation does not hold water for a number of reasons.

The first batch of advertisements on Kijiji predates the Appellant's application for a licence. The second batch of advertisements was placed just over three weeks after he had submitted his application, hardly indicative of an unreasonable delay. The Appellant also admitted that his other businesses were a solid source of income and he did not need to sell cars to make a living. It is, in fact, clear from the Appellant's evidence that he advertised the vehicles on Kijiji because he thought he could get away with it. He was surprised to find out that OMVIC monitors Kijiji to root out unregistered or improper sales activity. He stated that had he known that OMVIC did so, he would not have placed the advertisements.


[9] On a review of all of the evidence, the Tribunal is satisfied that the Appellant has made a false statement on his application and that the past conduct of the Appellant affords reasonable grounds for belief that the Appellant will not carry on business in accordance with law and with integrity and honesty. The question for the Tribunal now becomes one of whether registration on terms is warranted or not. Ms. South testified that the Registrar would be prepared to register the Appellant on terms. In his evidence, the Appellant stated that terms are not acceptable to him. In his view, he is not a child in need of supervision. He wants to be registered to Boomer's Auto Sales unconditionally.

[10] At the heart of this tension is the extent of the Appellant's willingness to accept and be governed by the regulatory scheme. It appears from the Appellant's conduct that he is not prepared to be so governed. Nothing in the Appellant's demeanour or evidence led the Tribunal to conclude that he is aware of the seriousness of his actions. He appeared to consider the delay in becoming registered and having to appear before this Tribunal as an imposition both personally and economically. The Tribunal cannot conclude that he has embraced his obligations as a salesperson. Accordingly, the Tribunal does not believe that this is a suitable case for the imposition of terms of registration.

## ORDER

[11] Having reviewed the evidence and considered the submissions of the parties, pursuant to the authority granted to it by s. 9(5) of the Act, the Tribunal orders the Registrar to carry out the Proposal dated September 20, 2013 and refuse the Appellant's registration as a motor vehicle salesperson.

LICENCE APPEAL TRIBUNAL



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D. Gregory Flude, Vice Chair