

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



DATE: 2013-01-18
FILE: 7625/MVDA
CASE NAME: 7625 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 Registrations

Sarkoun Samanou and 1711621 Ontario Ltd o/a Sam's Auto Service

Applicants

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Kenneth W. Koprowski, Vice-Chair

APPEARANCES:

For the Applicants: Mutaz Hammuri, Paralegal

For the Respondent: Michael Rusek, Student-at-law

Heard in London: November 30 and December 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 August 23, 2012, proposed to refuse to grant the registration of 1711621 Ontario Ltd., o/a Sam’s Auto Service (the “corporate Applicant”) as a motor vehicle dealer and the registration of Sarkoun Samanou (“Mr. Samanou”) as a motor vehicle salesperson (collectively referred to as the “Applicants”) under the Act.

The grounds for refusing to grant the registrations of the Applicants are that Mr. Samanou provided incomplete and/or inconsistent information to the Registrar in his application for registration as a motor vehicle salesperson. He failed to disclose his involvement in previous proceedings in front of the Licence Appeal Tribunal to refuse to renew his commercial, professional or business registration certificates or licences under the Ministry of Transportation’s Motor Vehicle Inspection Stations (“MVIS”) programme.

Similarly, concerning the corporate Applicant, Mr. Samanou, as owner, president and sole employee of the corporate Applicant, failed to disclose, in the application for registration of the corporate Applicant as a motor vehicle dealer, his involvement in the previous Tribunal proceedings under the MVIS programme.

In addition, the individual Applicant, operating as Sam’s Auto Service, engaged in conduct that resulted in convictions for industry-related offences under the MVIS programme.

Consequently, the Registrar considered that the history of disregard for regulatory obligations provided reasonable grounds to believe that the Applicants were unlikely to act in accordance with the law and with integrity and honesty in the conduct of business. Furthermore, Mr. Samanou provided false, misleading and/or inconsistent information to the Registrar in both the corporate and individual applications for registration under the Act.

PARTICULARS

The particulars set out in the Notice of Proposal are lengthy. In summary, the particulars were that, on or about September 19, 2011, Mr. Samanou, on behalf of the corporate Applicant, submitted to the Registrar an application to register the corporate Applicant as a motor vehicle dealer. On or about October 25, 2011, Mr. Samanou, on his own behalf, also submitted an application for registration as a motor vehicle salesperson. The applications revealed that the Applicants intended to sell used automobiles to the general public through an existing repair facility, Sam’s Auto Service.

Sam's Auto Service had been licensed previously by the Ministry of Transportation ("MTO") as an MVIS facility and Mr. Samanou had been licensed as an MVIS mechanic. A hearing before the Tribunal took place on September 19 and 20, 2011, as a result of a Notice of Proposal by the Registrar to refuse to renew the registrations of both the corporate Applicant and Mr. Samanou under the MVIS programme. The decision of the Tribunal, released December 16, 2011, considering the past conduct of Mr. Samanou, was to order the Registrar to carry out the Notice of Proposal to refuse to renew the registrations.

However, in the application for registration of the corporate Applicant as a motor vehicle dealer, dated September 14, 2011, and received by the Registrar on September 19, 2011, the Applicant failed to report that he and his corporation had been involved in the proceeding before the Tribunal on September 19 and 20, 2011. He also failed to report his previous convictions for failing to comply with the regulatory provisions of the Act. The previous convictions were factors that the Tribunal had considered in reaching its decision in the previous hearing.

In addition, in Mr. Samanou's application for registration as a motor vehicle salesperson, dated October 11, 2011, and received by the Registrar on October 25, 2011, the Applicant also failed to report both the previous convictions and that he had been the subject of the previous Tribunal proceedings

FACTS

Evidence of Mary Jane South

Mary Jane South was the only witness to testify on behalf of the Registrar. The facts were not substantially in dispute.

Ms. South is the Deputy Registrar with the Ontario Motor Vehicle Industry Council ("OMVIC"). OMVIC is the regulator of motor vehicle sales in Ontario and oversees the administration of the Act, which Ms. South described as a public protection statute. In her position, she acts on the Registrar's behalf, handles complaints from consumers and makes recommendations to the Registrar about applications for registration under the Act.

By way of background information, Ms. South stated that, to be registered as a motor vehicle dealer or as a motor vehicle salesperson under the Act, an applicant must complete the appropriate application form. The answers on the form represent the first test of honesty and integrity of an applicant because the Registrar relies on an applicant's disclosure in the application form. More particularly, the application form is to disclose, among other things, whether an applicant has been a party to proceedings by which a previous licence has been revoked or suspended or whether a previous application for, or renewal of, a licence has been refused.

The information disclosed in the application form permits the Registrar to assess the past conduct of an applicant and to assess whether the applicant has complied with the Act and its Regulations.

The application form specifically asks for details of any convictions and whether charges are pending under any law, not just those convictions and charges under the Act and its Regulations. The answers to those questions in the application form are important to the Registrar because they go to the issue of the applicant's honesty and integrity and compliance with the law.

In addition to completing an application form, an applicant who applies to be registered as a motor vehicle dealer or salesperson under the Act must first successfully complete an exam in a certification course offered by Georgian College. An applicant must obtain a score of at least sixty per cent on the exam. An applicant studies the materials on his or her own and then writes the test. The materials are provided in both English and French, so that an applicant should be proficient in either language.

Ms. South emphasized that the course materials stress that disclosure is important to the automobile industry to protect the consumer because a motor vehicle dealer or salesperson is in a position of trust in relation to any consumer.

The foregoing testimony was relevant to the current case before the Tribunal. Ms. South referred to the Notice of Proposal (Tab 1 of Exhibit #1) dated August 23, 2012, to refuse the Applicants' applications in this matter. The Notice of Proposal was partly based on the decision of this Tribunal (the "previous decision") released December 16, 2011, after a two-day hearing on September 19 and 20, 2011. That hearing involved a consideration of the Registrar's Notice of Proposal to refuse to renew the registrations of the corporate Applicant as a motor vehicle inspection station and of Mr. Samanou as a mechanic under the MVIS programme of the MTO. The previous Decision is cited as *Re: 1711621 Ontario Ltd. (c.o.b Sam's Auto Service)* [2011] O.L.A.T.D. No. 405.

In the matter now before this Tribunal, the Registrar was basing its position on two main grounds: the past conduct of Mr. Samanou as reviewed in the previous decision and the false information contained in the applications for registration under the Act by both Mr. Samanou and on behalf of his corporation.

The Previous Tribunal Decision

The previous decision considered Mr. Samanou's pattern of conduct in the period 2000 to 2010 relating to breaches of the *Highway Traffic Act* in the issuance of Safety Standards Certificates ("SSC") while he was registered as a mechanic under the MVIS programme. The previous decision confirmed that in May of 2002, April, 2003, December, 2010, and April, 2011, Mr. Samanou was convicted of issuing an SSC without ensuring that the vehicle that was inspected complied with safety standards, contrary to section 90(3)(a) of the *Highway Traffic Act*. He had been warned in the year 2000 about the need to fill out the SSCs properly, yet was still completing them incorrectly ten years later.

In addition, in May, 2002, Mr. Samanou was convicted of three counts under section 92(1) of the *Highway Traffic Act* for having signed an SSC when his mechanic's licence had expired.

After considering the foregoing convictions and Mr. Samanou's failure to comply with the warnings that he had received about filling out SSCs correctly, the previous Tribunal concluded as follows, at paragraph 40 of the decision:

40 The facts surrounded (*sic*) Consumer A are particularly disturbing. Mr. Samanou not only failed to do an adequate job when first issuing the SSC, but when the vehicle was brought back, he did not take the care he should have to ensure that it was in fact a safe vehicle. Brake repairs were not properly done and the car was given back to the Consumer in an unsafe condition. When it was brought back he then had a third opportunity to ensure that the car met the prescribed standards but again he failed to do so. *This is an indication to the Tribunal that either he did not take his responsibilities seriously or lacked the competence to carry out a proper inspection.*

(Emphasis is added)

Further, at paragraph 41, the Tribunal also concluded as follows:

41 Aside from these most recent incidents of not ensuring that the standards were met before issuing a SSC, there is a history of Mr. Samanou failing to fill out the SSCs properly. The evidence indicates that he was first warned of this in June of 2000, yet in 2010 none of the SSCs which were subject to an inspection by the MTO Officers had been properly filled out. Mr. Samanou has indicated he is sorry for this but now is filling out the certificates properly. At no time did he indicate he was not aware that he had to do this. An apology is frankly too little too late. There is a purpose to filling out these certificates, it provides important information to purchasers/owners as to what defects were found and were corrected, or that there were no defects found. *Mr. Samanou's failure to complete this portion of the certificate over and over again demonstrates a disregard for his regulatory obligations and an unwillingness to disclose, or commit to, his inspection findings which leads one to question whether or not a proper inspection was actually carried out.*

(Emphasis is added)

Ms. South confirmed that the significance to the Registrar of the findings in the previous decision, which was released after Mr. Samanou and his corporation applied for registration under the Act, lay in the fact that Mr. Samanou had to be licensed as a mechanic under the MVIS programme in order to inspect vehicles. Similarly, to sell motor vehicles, Mr. Samanou and his corporation also have to be licensed. Both are regulated under the Act, yet the fact that Mr. Samanou disregarded his obligations as a mechanic under the MVIS programme caused the Registrar to conclude that his past conduct afforded reasonable grounds for belief that he would not carry on business as a motor vehicle salesperson, and that his corporation would not carry on business as a motor vehicle dealer, in accordance with law and with honesty and integrity.

Making a False Statement in the Applications

In addition to relying on the previous decision of this Tribunal, Ms. South testified that the refusal to register the Applicants under the Act was also based on the fact that false statements were made in both the corporate Applicant's and Mr. Samanou's applications for registration.

At Tab 3 of Exhibit #1 is the application for registration of the corporate Applicant (the "business application").

Mr. Samanou dated and signed the form on September 14, 2011, five days before the previous Tribunal hearing was to begin. The Registrar received the application on September 19, 2011, which was the first day of the two-day Tribunal hearing.

On page 7 of the business application form (page 44 of Tab 3), there is space in which Mr. Samanou was to record the name of the person who completed the application, if different from the authorized individual/employer. The space was left blank. There is no mention that anyone else filled in the form for Mr. Samanou. However, subsequent evidence at this hearing revealed that another person, B.R., filled in much of the application form, but the form was signed only by Mr. Samanou and no reference was made to B.R.

Furthermore, in Section D of the form, entitled "Eligibility", question 1 asked for the following information:

1. Has the applicant ever had a commercial, professional or business registration certification or licence of any kind refused, suspended, revoked or cancelled, *or is the applicant currently under such a proceeding?*

(Emphasis is added)

The form gave only two choices for the answer, "Yes" or "No." The form had the box marked "No" filled in. However, as at September 14, 2011, the date on which Mr. Samanou signed the form, the previous Tribunal proceeding was still pending, to be commenced five days later. The person who completed the form should have filled in the box marked "Yes" because Mr. Samanou was still subject to those proceedings at that time. The answer as marked was, therefore, false.

Ms. South stated that the Registrar had further concerns with the business application form. On page 40 of Tab 3 (page 3 of the form), the answer to question 2 on that page stated that Mr. Samanou would be the only person selling and repairing cars once he received his licence.

Question 5 on the same page asks the question:

5. Does [or will] the applicant exist for any other purpose besides the operation of a motor vehicle dealership? If "yes," please provide particulars.

The answer to that question was as follows:

Auto repair for the past 12 years.

Further, on page 41 of Tab 3 (page 4 of the form), the answer to question 2 in section F on that page states that Mr. Samanou would also be expanding “from repairs to repairs and sales.”

The concern that the Registrar had with those answers was that the business of repairing vehicles, and the failure to complete the SSCs correctly, was what caused the Tribunal in its previous decision to refuse to renew Mr. Samanou’s mechanic’s licence. Mr. Samanou’s stated continuing involvement in repairing vehicles was troubling to the Registrar.

In addition, Mr. Samanou neglected to complete question #6 in Section E of the form, (page 40 of Tab 3) under the heading “Business Plan.” Question #6 required the corporate Applicant to indicate whether it had an offsite repair facility or a repair agreement or arrangement for the repair, servicing and safety inspection of vehicles. The response was left blank. Consequently, by letter dated September 30, 2011 (page 54 Tab 4), the Registrar asked Mr. Samanou to reply to question #6

Mr. Samanou’s reply is found at Tab 5A, received at the Registrar’s office on October 25, 2011, where he states that he is a class “A” certified mechanic and had his own repair shop. A lengthier response is found on page 76 of Tab 5B, also received at the Registrar’s office on October 25, 2011. In that response, Mr. Samanou again refers to the fact that he has had a repair shop and that he is in the repair business. However, as with Mr. Samanou’s previous references to repairing vehicles, and because of the findings in the previous Tribunal decision, the Registrar had concerns about Mr. Samanou repairing vehicles.

The letter of September 30, 2011, also asked Mr. Samanou to complete an individual application for registration as a motor vehicle salesperson. A copy of the application form (“individual application”) is found at Tab 5. However, under the heading, “Eligibility” in section E of the individual application form, Mr. Samanou answered “No” to question 2. That question reads as follows:

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 a proceeding?*

(Emphasis is added)

The wording is very similar to the wording in question 1 of section D in the business application form, referred to earlier, and to which the answer, “No,” was also given.

The answer to question 2 in the individual application form was false, for Mr. Samanou signed the application form on October 11, 2011. The Registrar received it on October

25, 2011. The previous Tribunal hearing had been held on September 19 and 20, but the decision was not yet released by the date of Mr. Samanou's individual application. The proper answer should have been "Yes" because the decision of the Tribunal after the previous hearing had yet to be released.

Furthermore, question 7 of section E of the individual application asks Mr. Samanou if he had ever been found guilty or convicted of an offence under any law. The question reads as follows:

7. Have you **ever** been found guilty of an offence **under any law**, or are there any charges pending? **Make sure to include those cases where a conditional, absolute discharge or pardon has been ordered/granted. 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.**

(Bold print and underlining in the original question)

In reply, the "Yes" box was checked off. However, the question also required Mr. Samanou to provide the circumstances and particulars surrounding each conviction. In reply to this requirement, the application form had the words "provided detail (*sic*) previously" printed in hand beside the question. No other details were provided. The form made no reference to the previous convictions referred to earlier in this decision, and that were reviewed in detail in the previous Tribunal decision. Despite that answer, Ms. South stated that the Registrar could find no record of having received from Mr. Samanou any details of any convictions.

The individual application form also contained the same undertakings as were found in the business application form. Ms. South emphasized the undertakings found on page 5 of the individual application form (page 60 of Tab 5) in section F, under the heading, "Consent and Undertaking." The parts she emphasized read as follows:

I confirm that I have not misrepresented or omitted any material facts in any document or statement made in support of this application. I understand that each statement is subject to verification. I understand it is a serious offence to knowingly provide false information in connection with this application. **I further understand the provision of false, incomplete or misleading information, or the omission of information in this application or the documents submitted with it, may result in the refusal, suspension or revocation of registration.**

...

I understand I must notify OMVIC in writing within five days of any changes to this information that occurs following this application being filed. I confirm I have retained a copy of this application for my records.

(Bold print and underlining in the original application form)

In addition, even though Mr. Samanou signed the individual application form, he neglected to provide the name of the person or interpreter who completed the form (page 5 of the form, page 60 of Tab 5). Subsequent evidence revealed that the same

person, B.R., who completed the business application form, also completed the individual application form, but his name is not noted in the form.

Ms. South acknowledged that, at page 65 of Tab 5, there is a Police Records Check filed on behalf of Mr. Samanou. However, such a form refers to a criminal record, but does not record any convictions under Provincial legislation and under any Regulation and does not record that his previous licence as an MVIS mechanic was not renewed. Therefore, Mr. Samanou's previous convictions under the *Highway Traffic Act* and the refusal to renew his licence under the MVIS programme would not appear on the form.

Ms. South also acknowledged that Mr. Samanou had obtained his automotive certification from Georgian College. A copy of the Certificate is found at page 67 of Tab 5.

The Registrar required more information from Mr. Samanou relating to his individual application. Consequently, the Registrar sent a further letter dated November 25, 2011 (page 77 Tab 6) asking for more details. More particularly, Ms. South stated that the letter required more details about Mr. Samanou's convictions. The Registrar required signed and dated statements explaining Mr. Samanou's infractions that he alluded to in question 7 in section E of the form. Mr. Samanou's response is found at Tab 7. The document found at that Tab, received at the Registrar's office on December 13, 2011, is merely the Registrar's proposal, dated March 29, 2011, to refuse to renew the MVIS licence of Mr. Samanou's corporation and Mr. Samanou's registration as an MVIS mechanic. That proposal had already been dealt with at the previous Tribunal hearing held on September 19 and 20, 2011.

Ms. South stated that the Registrar was not satisfied with this response because it did not provide the circumstances of the convictions, as requested. Therefore, a further letter, dated January 23, 2012 (Tab 8), was sent to Mr. Samanou. Of the several requests for further information made in that letter, one of the requests again asked for signed and dated statements explaining the infractions and a copy of the Ministry of Transportation inspection report relating to same. Mr. Samanou did not respond to that letter. Consequently, by e-mail message dated April 24, 2012 (Tab 9), the Registrar again asked for more information.

Question 1 of the e-mail was very specific. It asked why the proposal to refuse/renew Mr. Samanou's registration under the MVIS programme was not disclosed in response to question I in section D of the business application and in question 2 of section E of the individual application. In response, Mr. Samanou attended personally at the offices of OMVIC on April 26, 2012, as confirmed by the memo found at pages 88 and 89 of Tab 10. Mr. Samanou personally delivered a letter, dated April 25, 2012, a copy of which is found a page 90 of Tab 10A. Ms. South referred to a portion of Mr. Samanou's letter which stated as follows:

My name is Sarkoun Samanou, (*sic*) I will answer all your questions in the order you wrote them.

1A) the proposal to refuse is just a proposal. I was not guilty at the time when I apply (*sic*) for my business and individual application. I believe that after I got charged later that year I disclose (*sic*) all to you with great detailed (*sic*). I did not mean to hide any information from any body (*sic*).

Ms. South stated that Mr. Samanou's response did not satisfy the Registrar. The reference in Mr. Samanou's letter to the proposal to refuse to renew his MVIS licence being only a proposal was incorrect. At the time the letter was written on April 25, 2012, the decision of the Tribunal that considered that proposal had been released, on December 16, 2011. Therefore, the proposal was not merely a proposal on April 25, 2012. It was a firm and final decision of the Tribunal. In addition, the letter still did not provide sufficient information about the circumstances of Mr. Samanou's previous infractions.

Ms. South concluded her testimony by saying that, beginning with the Registrar's letter of November 25, 2011, asking for details about the infractions and inspection reports, the reports were never provided. As well, from the time of the previous Tribunal proceedings in September, 2011, until Mr. Samanou's letter of April 25, 2012, Mr. Samanou never disclosed his involvement with those proceedings. Therefore, the concerns that the Registrar had concerning Mr. Samanou's business application and individual application for registration under the Act were that his responses were indicative of someone who was not forthcoming and who provided a minimum of information and who was reluctant to provide details of the circumstances of his past involvement with the law.

The conduct of Mr. Samanou that resulted in the Registrar refusing to renew Mr. Samanou's MVIS registration, the problems and convictions related to the improper completion of the SSCs and the difficulties in making full disclosure in the applications being reviewed in this proceeding and the false statements contained in the application forms all contributed to the Registrar concluding that the past conduct of the Mr. Samanou and the false information contained in his current applications afforded reasonable grounds for belief that the applicant and his business will not carry on business in accordance with law and with honesty and integrity.

In cross-examination, the testimony of Ms. South was not discredited in any significant way. She acknowledged that, in obtaining his automotive certificate from Georgian College, Mr. Samanou would have had to know how to read English. The exam consisted of eighty questions that he would have to complete in one hour and that he would have to obtain a minimum mark of 60 per cent.

Ms. South repeated her concerns that the reference in the business application to Mr. Samanou conducting repairs was a concern to the Registrar because of his past conduct that was dealt with in the previous Tribunal Decision. He also failed to disclose the circumstances of the numerous convictions under the *Highway Traffic Act*, but should have.

Ms. South felt that Mr. Samanou was minimizing the seriousness of his previous conduct when he stated, in his letter of April 25, 2012, that the proposal of the Registrar was only a proposal, whereas the matter was a final decision of the Tribunal by that time and not merely a proposal. Mr. Samanou applied for registration before the previous decision was released on December 16, 2011. Therefore, Mr. Samanou should have disclosed his involvement in those proceedings in both the business and individual applications. Ms. South did acknowledge, however, that, eventually, Mr. Samanou did disclose his previous convictions to the Registrar.

Mr. Samanou's representative raised with Ms. South the possibility that Mr. Samanou had difficulty with the English language since English was not his native tongue. However, on re-examination, Ms. South stated that the Registrar had not received any indication that Mr. Samanou received help in completing his application forms. Nor did Mr. Samanou give any indication, during his calls or other communications with OMVIC, that he did not understand the English language or that he needed assistance with it.

Evidence of Sarkoun Samanou

Mr. Samanou testified that he came to Canada in 1991 from his native country, where he had been a certified mechanic since 1987. English was not his first language. After coming to Canada, he obtained a diploma as a mechanic from a community college in Ontario, worked for one year at a well-known auto repair chain and became a licensed mechanic, able to issue SSCs, in 1996. He was licensed as a mechanic under the MVIS programme in 1996 or 1997. His work as a mechanic for 7,000 hours during the time he was in Canada and during the time before he came to Canada was credited to allow him to qualify as a licensed mechanic in Ontario.

He opened his own business in 1999 at a particular location in a city in southern Ontario and then moved to a different location in that city where he was doing business at the time of the previous Tribunal hearing and where he intended to continue his business if he and his corporation were allowed to register under the Act at the conclusion of the current proceeding.

Mr. Samanou confirmed that, beginning in the year 2000, there were ten complaints about him, relating to his issuing SSCs, and four charges that resulted in convictions under the *Highway Traffic Act*, each conviction resulting in increasingly higher fines. He further confirmed that, in 2005, he received two warnings from the MTO requiring him to fill out the SSCs correctly. He compared the number of complaints and convictions to the total number of SSCs that he would issue each month. He estimated that he issued about 80 SSCs each month, on average, since he started his business in 1999. According to him, the number of complaints that he received and the number of charges were a small percentage of that total.

He stated that he did not issue false SSCs intentionally. Nevertheless, on cross-examination, he acknowledged that, despite the warnings that he received, beginning in the year 2000, he was still filling in SSCs incorrectly in 2011. He admitted in cross-examination that, after each warning, he corrected his practice by spending more time in checking the vehicles that he repaired, but the complaints continued into 2011. In that year, the previous Tribunal decision resulted in an Order that led to the Registrar refusing to renew his MVIS mechanic's licence. That year was also the year in which he submitted the business application and his individual application to be registered under the Act as a motor vehicle dealer and salesperson, respectively.

He stated that the previous Tribunal decision affected his business income. He was the only wage earner in his family of four children. His wife did not work. Consequently, he wished to register his corporation as a motor vehicle dealer and himself as a salesperson in order to earn income.

If granted a licence under the Act, he intended to sell vehicles and repair them, but have another mechanic issue the SSCs. He also would ensure that he would comply with all the rules and regulations under the Act.

Mr. Samanou testified that he never issued an SSC for a vehicle that should not be driven. However, the Tribunal notes that his testimony conflicts with the findings in the previous Tribunal decision, where the Tribunal found that one vehicle that he inspected and repaired, belonging to a consumer identified as Consumer A in the decision, was taken off the road as being unroadworthy.

Concerning the business and individual applications involved in this proceeding, he stated that he had a trusted friend, B.R., fill in the forms for him. Mr. Samanou stated that it took about "a couple of hours," to quote his testimony, to complete the application forms. However, the Tribunal notes that this evidence conflicts significantly with the testimony of B.R., who stated that it took three or four days to complete the forms.

Mr. Samanou also stated that his friend translated the questions in the forms for Mr. Samanou and then Mr. Samanou provided the answers to his friend. This testimony also conflicts significantly with that of B.R., who stated that there were many questions that he did not translate for Mr. Samanou, but which B.R. filled in on his own.

Once the forms were completed, Mr. Samanou stated that he signed them, but could not remember if he reviewed the answers to ensure they were correct.

Mr. Samanou confirmed that B.R. filled in everything on the application forms, and that Mr. Samanou just signed them. Despite the fact that someone else filled in the forms for him, Mr. Samanou could not explain why he did not insert B.R.'s name as the person who completed the forms, as requested in both the business and individual applications.

Concerning the business application form, Mr. Samanou stated that he did not fill anything out on it. In his words, he stated that, "as far as I know" he told B.R. what to

write. As stated earlier in this decision, the evidence of B.R. was that he completed parts of the forms on his own, without translating the questions for Mr. Samanou. If there was any misinformation on the business application form, Mr. Samanou stated that he could correct it. On that matter, the Tribunal notes that the evidence of Ms. South was that OMVIC had asked for more information after Mr. Samanou submitted his applications, but he did not provide all the information that OMVIC requested.

On cross-examination, Mr. Samanou confirmed that it was his accountant who did most of the paperwork for Mr. Samanou's business, but admitted that he knew that he was still responsible for their contents.

When confronted with the previous Tribunal's conclusion, quoted earlier, that Mr. Samanou either did not take his responsibilities seriously or was not competent to do the work, Mr. Samanou explained that there was too much pressure on him in his business, so that he might have forgotten what he was told by way of the warnings received from the MTO. Also, the pressure of his work resulted in his not filling out the SSC forms correctly.

He further acknowledged that, in both the business application and the individual application, he should have answered "Yes" to the question that asked if he was a party to any proceedings dealing with a refusal, suspension or revocation of his or his corporation's registration licence. He said that the mistake was his, not B.R.'s.

When confronted with the fact that Mr. Samanou had a history of getting into trouble with the MTO during the period 2000 to 2011, he responded that he was simply human and that anyone could miss something before completing an SSC.

On re-examination, Mr. Samanou stated, in answer to the question whether B.R. explained the questions to Mr. Samanou in both the business and individual application forms, Mr. Samanou stated, "Yes, I think so," to quote his testimony. As noted earlier, this testimony directly conflicts with that of B.R.

Evidence of B.R.

B.R. described himself as a "good friend" of Mr. Samanou's for about ten or twelve years. He socialized with Mr. Samanou. Their families knew each other. Their mother tongue is the same.

At the time of this hearing, B.R. had been a realtor for two years. He has been a licensed motor vehicle salesperson for twenty-two years. He used to own a used car dealership, but did not renew his dealership licence.

He stated that he often sent motor vehicles to Mr. Samanou for repairs. He has referred his sister and brother to Mr. Samanou and trusts him with the safety of his family's vehicles because he considers Mr. Samanou to be trustworthy.

He confirmed that he had filled out the business application (Tab 3) and the individual application (Tab 5) for Mr. Samanou because Mr. Samanou's English "was not that great," to quote B.R.'s testimony. The completion of the forms took three to four days. He confirmed that he did not translate every question for Mr. Samanou, contrary to Mr. Samanou's testimony.

Concerning question 1 in the business application (whether the business applicant was involved in a proceeding to refuse, suspend or revoke a business registration certificate), B.R. stated that he answered "No" instead of the correct answer, "Yes." He did this because he had just received an SSC from Mr. Samanou earlier that week, so that B.R. "assumed," to quote his testimony, that the correct answer was "No." He did not confirm the answer with Mr. Samanou. However, the Tribunal notes that his testimony is in direct conflict with that of Mr. Samanou who testified that he told B.R. how to answer the question. Mr. Samanou had stated that the mistake was his, not B.R.'s.

On page 7 of the business application form (page 44 Tab 3), B.R. stated, at first, that he was unsure why he failed to insert his name as the person who completed/translated the application. He then altered that testimony somewhat by saying that he completed the application over several days, and forgot to insert his name. But, in cross-examination, he said nothing about forgetting to insert his name. Instead, he stated that he did not insert his name in either the business or individual applications as the interpreter because he had not completed the application forms all at once and thought that he would finish them at a later time. This testimony conflicts with his response to questioning from Mr. Samanou's representative as to why he did not insert his name as interpreter in the individual application form (page 60 Tab 5). B.R. replied that he was not sure why.

Also, on page 7 of the business application form, B.R. filled in everything except Mr. Samanou's signature. That page contains a check list of the documents that had to accompany the business application form. Although B.R. did not translate anything on that page, he stated that he made Mr. Samanou aware of what was required.

He also completed all but question 6 on page 3 of the business application form (page 40 Tab 3) concerning the corporate Applicant's business plan. Question 5 asked whether the applicant will exist for any other purpose besides the operation of a motor vehicle dealership. B.R. inserted the answer "Auto repair for the past 12 years," quoted earlier in this decision. He acknowledged that he now believed that the answer was incorrect. He then became busy and did not complete the page, leaving question 6 blank, intending to fill it in later, but did not. He repeated that it took him four days to complete the form.

On cross-examination, B.R. stated that he was aware of the warnings that Mr. Samanou had received, but was not aware of “the M.T.O. incidents,” to quote his words. He believed Mr. Samanou had received warnings, not that he had been convicted of offences. He discovered more information about the offences after he completed the application forms. He minimized the convictions when he stated that four convictions out of five or six thousand SSCs were “not relevant.” Mr. Samanou also did not tell him that he was involved in the previous Tribunal hearing at the time B.R. was completing the business application in September, 2011.

In response to questioning from the Tribunal, B.R. acknowledged that, contrary to what Mr. Samanou stated in his testimony, it would not be accurate to say that B.R. translated everything in the application forms to Mr. Samanou and then received Mr. Samanou’s instructions on how to answer.

THE LAW

The Act states in part as follows:

Prohibition

4.(1) No person shall,

(a) act as a motor vehicle dealer unless the person is registered as a motor vehicle dealer under this Act; or

(b) act as a salesperson unless he or she is registered as a salesperson.

Regarding the right to registration, the Act states:

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,

...

(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;

(d) the applicant is a corporation and,

...

(iii) the past conduct of its officers or directors or of an interested person in respect of its officers or directors or of an interested person in respect of the corporation affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty, or

(iv) an officer or director of the corporation makes a false statement or provides a false statement in an application for registration or for renewal of registration;

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.

Notice re: refusal, suspension, etc.

9. (1) The registrar shall notify an applicant or registrant in writing if he or she proposes to,

(a) refuse under subsection 8 (1) to grant or renew a registration;

...

Content of notice

(2) The notice of proposal shall set out the reasons for the proposed action and shall state that the applicant or registrant is entitled to a hearing by the Tribunal if the applicant or registrant mails or delivers, within 15 days after service of the notice, a written request for a hearing to the registrar and to the Tribunal.

...

(5) If a hearing is requested, the Tribunal shall hold the hearing and may by order direct the registrar to carry out the registrar's proposal or substitute its opinion for that of the registrar and the Tribunal may attach conditions to its order or to a registration.

ISSUE

The issue to be determined by the Tribunal is whether the individual Applicant's past conduct disqualifies him and the corporate Applicant from registration either on the ground that his past conduct constitutes reasonable grounds for belief that he and his corporation will not carry on business in accordance with the law and with honesty and integrity or, on the ground that he has made or provided a false statement in the applications for registration of both the corporate Applicant and the individual Applicant.

APPLICATION OF LAW TO FACTS

Submissions of the Registrar

The Registrar argued that the applications of both the Applicants should be refused.

The Registrar relied on the ground that the past conduct of Mr. Samanou affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty. He also relied on the ground that Mr. Samanou made or provided a false statement on both his application and on the application on behalf of his corporation.

The Registrar argued that the Act is consumer protection legislation and requires comprehensive disclosure. Honesty and integrity are important when dealing with consumers. The focus of the Registrar in this case is consumer protection and not punishment of the Applicants.

Mr. Samanou did not disclose, in either application, his involvement in the previous proceedings before the Licence Appeal Tribunal relating to his MVIS licence. The Registrar received the business application on the first day of the previous Tribunal hearing. The application was dated five days before the hearing was to begin, yet Mr. Samanou made no mention of his involvement in the proceedings. The evidence of Mr. Samanou was that a friend, B.R., translated the questions to him and then Mr. Samanou provided the answers. On the other hand, the contradictory evidence of B.R. was that he filled in much of the applications without translating the questions, especially the important question, in each application, as to whether Mr. Samanou was involved in any proceedings related to his business registration.

Therefore, the Registrar further submitted that, if Mr. Samanou is to be believed about providing the answers to B.R., he deliberately made a false statement in the application. If B.R. is to be believed that he filled in much of the forms without first translating the questions to Mr. Samanou, then Mr. Samanou participated in the false statement by signing both applications. In either case, making the false statement does not bode well for the consumer. The Registrar had concerns about either case in that Mr. Samanou might make improper disclosure to consumers or else might participate in making improper disclosure to consumers. There is a high onus on the part of a motor vehicle dealer and salesperson. Non-disclosure cannot be blamed on someone else.

The Registrar further argued that there was no evidence that Mr. Samanou had difficulty with the English language. The Tribunal notes that Mr. Samanou did not require a translator at this hearing.

Furthermore, the Registrar argued that Mr. Samanou was vague in answering the subsequent requests from the Registrar to provide details of his previous convictions and warnings and an explanation as to why he did not disclose his involvement in the previous Tribunal hearing. The statement in Mr. Samanou's letter of April 25, 2012, that the previous Tribunal hearing was just a proposal, belies the fact that, by the date of his letter, the decision of the Tribunal to refuse the renewal of his MVIS licence was a final decision from the Tribunal and not merely a proposal.

The Registrar also had concerns over the fact that Mr. Samanou's MVIS licence was not renewed because he had signed SSCs for vehicles that were subsequently found to be unsafe or improperly repaired. In addition, he was convicted for those matters and also for completing SSC forms when he was not licensed to do so. There were also other complaints that did not result in charges, but only in warnings from the MTO.

In addition, Mr. Samanou did not complete some SSCs correctly, despite warnings from the MTO, beginning in the year 2000. By 2010, he was still filling them out improperly. The explanation from Mr. Samanou for improperly completing the SSC forms was that he was under pressure. The Registrar argued that such an explanation might be valid at the time of the first warning, but Mr. Samanou continued to repeat that conduct. Over a period of ten years, Mr. Samanou did nothing to correct those errors. The fact that Mr. Samanou stated, in his applications, that he would be the only person involved in the business caused concern for the Registrar that he would continue his errors in completing his paperwork and in dealing with consumers.

In addition, Mr. Samanou's stated concern that he wanted to make income as a dealer and salesperson because he was the only wage-earner in the family is not a proper consideration for this Tribunal. The Registrar relied on the Divisional Court decision in *Ontario (Registrar of Alcohol and Gaming) v. Hosseini-Rad* [2004] O.J. No. 1273 [at paragraph 19].

Submissions of the Applicants

Mr. Samanou's representative argued that there was much misunderstanding between Mr. Samanou and the Registrar. Mr. Samanou took full responsibility for the errors he made. Any subsequent errors were made because of the pressure of his work. Over a period of fourteen years, Mr. Samanou safetied over 10,000 vehicles, yet only five inspections resulted in convictions.

If the Tribunal were to permit the Applicants to be licensed, the representative submitted that Mr. Samanou would arrange to have the vehicles that he sold to be inspected by another certified mechanic.

He further argued that Mr. Samanou did experience a language barrier, considering that English was not his native language. The fact that he had to write the certification exam several times was indicative of the language problem. As a further result of the language barrier, Mr. Samanou had to trust his friend, B.R., to fill out the applications. Mr. Samanou would avoid doing that in the future.

Case Authorities Cited

The Registrar relied on the Decision of this Tribunal in the case *Re: Fakhri (c.o.b. Crown Auto Repair and Used Car Sales)* [2009] O.L.A.T.D. No. 81, dated March 13, 2009. That case involved an appeal to the Tribunal by the applicant pursuant to a Notice of Proposal of the Registrar to revoke the applicant's registration as a motor vehicle

dealer under the former *Motor Vehicle Dealers Act* because of his past conduct. The facts in that case were very similar to the facts currently before this Tribunal. The pertinent facts were as follows:

- The applicant signed the required form, but the form was filled in by another person, his nephew.
- The applicant trusted the other person to complete the information correctly and relied on that individual.
- The applicant demonstrated a willingness to delegate to someone else the completion of his signed applications for registration without safeguards to ensure the veracity of their content.
- The past conduct of the applicant consisted, in part, of a number of convictions for contraventions of regulatory requirements undertaken by the applicant in reference to another, similar, business enterprise.
- Despite warnings and convictions, the applicant did not modify or improve his business operation in order to better abide by the registration.
- There was no indication that the applicant had trouble understanding or communicating in English.

Concerning the applicant's failure to disclose past convictions, the Tribunal stated, at paragraph 44 of that Decision:

44 The Tribunal is sympathetic to the Applicant's position that the fifteen personal convictions under the *Highway Traffic Act* for driving offences over the past twenty years were not wilfully kept from the Registrar. No doubt the Applicant, with weak reading skills and from a political and legal system foreign to that of Ontario, failed to consider such minor infractions as caught by section 6 on the application form. *There is, however, an expectation that, as a registrant in a regulated business activity, he must exercise some level of diligence in determining the extent of the disclosure required by the regulatory authority, especially when, as in this case, the application expressly requires disclosure.*

(Emphasis is added)

The Tribunal also held that, by virtue of being regulated, a business was subject to a higher standard of care, relying on the Supreme Court of Canada decision in *R. v. Wholesale Travel Group Inc.* [1991] 3 S.C.R.154. Following that decision, the Tribunal stated, at paragraph 49 of the *Fakhri* decision:

49 For the Applicant to excuse his false disclosure in the application form as a consequence of his reliance on an absent nephew is not sufficient. The standard is imposed upon him and *it is his responsibility to ensure the information in the form submitted is correct.* Indeed, the application advises that to do otherwise is an offence. Notwithstanding this, *the Applicant chose to justify the false information by the fact the*

Application was filled out by another. This is not a sufficient answer. A higher standard, reflecting some minimum effort to verify the disclosure, is required.

(Emphasis is added)

At the conclusion of the hearing, the Tribunal in *Fakhri* ordered the Registrar to carry out its proposal to revoke the registration of the applicant in that case.

In response, the representative of the Applicants submitted, in support of their position, the Decision of this Tribunal in *Re: Pouraziz* [2011] O.L.A.T.D. No. 252, dated September 9, 2011. That case involved an appeal by the applicant from a Notice of Proposal to refuse the registration of the applicant as a motor vehicle salesperson under the *Motor vehicle Dealers Act, 2002* because of his past conduct.

Paragraph 16 of the decision sets out the facts on which the Registrar relied in making his proposal, as follows:

16 The Registrar submits that the evidence provides ample grounds to believe that the Applicant will not conduct his business as a motor vehicle salesperson in accordance with the law and with integrity and honesty. These grounds may be summarized as follows:

1. a conviction under the Motor Vehicle Dealers Act, in 2000 on four counts of selling motor vehicles without a licence,
2. the failure to disclose this conviction on his application for registration as a motor vehicle dealer in 2001 and on his application as an operator of a MVIS in 2004.,
3. a breach of a condition imposed on his registration as a motor vehicle dealer in 2003,
4. a conviction in 2007 on five counts of failing to maintain measurements taken during inspections in his files contrary to a Regulation under the Highway Traffic Act,
5. the failure to disclose these charges on his application for registration as a sales person which is the subject matter of this hearing,
6. the receipt of 11 warning letters from the Ministry of Transport

In concluding that the Registrar in the *Pouraziz* case failed to prove that the applicant's past conduct afforded reasonable grounds for belief that the applicant will not carry on business in accordance with law and with honesty and integrity, the Tribunal distinguished the case before it from the *Fakhri* case, relied on by the Registrar. At paragraphs 21 and 22 of the *Pouraziz* Decision, the Tribunal stated the following:

21 In coming to this conclusion, the Tribunal gives particular weight to the fact that the offences were relatively minor and did not involve moral turpitude or dishonesty. In this respect, the offences fall far short of the 13 convictions for issuing false statements on safety standard certificates which the applicant failed to disclose on his application in the *Keramudin Fakhri* case.

22 The Tribunal also gives considerable weight to the fact that the offences took place

in one case more than 10 years prior to the present application and in the other case 5 years. During this time, the Applicant appears to have carried on his business in a largely satisfactory manner. The Tribunal gives little weight to the 11 warning letters as it is satisfied that there was no intent on the Applicant's part to deceive the Ministry. The Tribunal similarly gives little weight to the Registrar's concerns regarding the suitability of the sponsoring dealer in light of the fact that there is no evidence to date of any finding by any body that he has committed any offence or breach of any industry-related regulation.

In the *Pouraziz* case, the Tribunal directed the Registrar not to carry out its proposal to refuse registration of the applicant but to register him subject to six weighty conditions. Three of the conditions related to the applicant's employment and relationship with and oversight by his sponsoring motor vehicle dealership, a factor that is totally absent in the case now before this Tribunal. In the instant case, Mr. Samanou would be operating on his own as both a dealer and salesperson.

Analysis

Decisions of this Tribunal are not binding on subsequent Tribunal decisions. They are persuasive, but each case must be decided on its particular facts.

In the case now before it, the Tribunal makes the following findings of fact.

The answers on the application forms are the first test of the Applicant's honesty and integrity. Both application forms state, in bold print, so that those provisions would stand out clearly, that the provision of false, incomplete or misleading information or the omission of information may result in the refusal, suspension or revocation of registration. Mr. Samanou failed to provide information in the applications about his convictions, about the details of the warnings he received and about his involvement in the previous Tribunal proceedings.

The convictions relating to Mr. Samanou having filled out several SSCs without ensuring that the vehicles that were inspected complied with safety standards were not minor, as the convictions were in the *Pouraziz* case. Mr. Samanou signed SSCs for some vehicles that were found not to be roadworthy. The convictions were of the same serious nature as those found in the *Fakhri* case.

Mr. Samanou's offences did not occur ten or five years before his and his corporation's applications, as was the case in *Pouraziz*. On the contrary, they all occurred in the ten-year period from 2000 to 2010. The most recent conviction was in the same year (2011) in which he submitted the business and individual applications that were the subject matter of this hearing.

Despite warnings in 2000 about completing SSCs correctly, Mr. Samanou, relying on his claim that he was under pressure at his work, continued to fill them out incorrectly periodically throughout the following ten years. The Tribunal considers that there would be no less pressure on a salesperson and a dealer to comply with all the regulatory requirements under the Act and its Regulations. It would be illogical to think that he would fare any better in his compliance with the requirements imposed on a dealer and

salesperson.

The Tribunal also shares the concern that Mr. Samanou intends to continue to carry out motor vehicle repairs, a task that got him into trouble in the first place, in the previous Tribunal decision. It is no answer to say that, if registered as a dealer and salesperson, someone else will check the repairs, especially when there is no evidence as to the qualifications of any such person.

Mr. Samanou was careless in ensuring that the information was correct in the business and individual applications that B.R. completed. Mr. Samanou testified that he could not remember if he reviewed the answers to ensure that they were correct. In that regard, the Tribunal adopts the reasoning in the *Fakhri* case as applicable to the case now before it; namely, it was Mr. Samanou's responsibility to ensure that the information on the form was correct. The evidence clearly reveals that he was seriously wanting in that responsibility.

Mr. Samanou also failed to exercise diligence in determining the extent of the disclosure required by the regulatory authority, especially where the wording on the application forms and subsequent letters from the Registrar expressly required disclosure.

The application forms emphasized that Mr. Samanou was to disclose any conviction under any law, yet he failed to disclose his convictions under the *Highway Traffic Act*. He also failed to disclose the circumstances of those convictions, as the Registrar requested. He also failed to disclose his involvement in the previous Tribunal hearing, as he had been asked to do, both in the application forms and by letters from the Registrar. These failures demonstrate a lack of honesty and integrity.

The Tribunal agrees with the submissions of the Registrar, relying on the *Hosseini-Rad* case, referred to earlier, that Mr. Samanou's financial situation, in the circumstances of this case, are not to be considered in determining the outcome of this hearing.

The Tribunal does not agree with the submissions of Mr. Samanou's representative that the fact that Mr. Samanou had to write the certification exam several times was necessarily evidence that he experienced a language problem. Mr. Samanou himself did not state that in his evidence. He did not require a translator at this hearing. Throughout his dealings with the Registrar relating to the two applications in this appeal, he gave no hint that he was experiencing a language problem. It is true that B.R. stated that Mr. Samanou's English "was not that great" but that evidence falls short of saying that Mr. Samanou's transgressions resulted from any English language problem.

Mr. Samanou, B.R. and Mr. Samanou's representative, in his submissions, minimized the seriousness of Mr. Samanou's infractions in completing incorrect SSCs when vehicles were not properly repaired. They all stated that the incorrect SSCs constituted only a small percentage of the total number of SSCs that Mr. Samanou issued. But, the improper SSCs related to the roadworthiness of the vehicles and not to something such as information record-keeping as was the case in *Pouraziz*. The Tribunal considers that

carelessly or recklessly placing even one unroadworthy vehicle on the road, without regard to properly carrying out the responsibilities of a licensed person, is one vehicle too many, considering that consumer protection is the goal of the Act and its Regulations. Mr. Samanou's attitude demonstrated both a lack of understanding of the purpose of the Act and Regulations as well as a cavalier attitude towards his responsibilities under them. Neither is acceptable. That attitude is an affront to consumers and to the obligations that Mr. Samanou must carry out as a registered mechanic, salesperson or dealer.

CONCLUSION

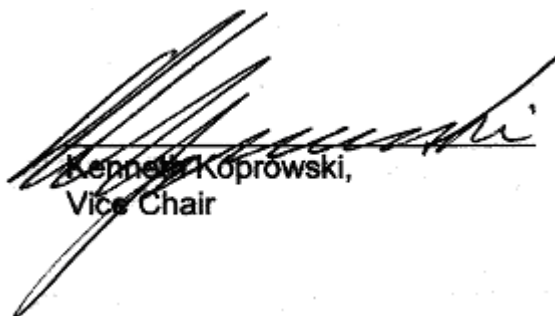
Considering all the above matters, the Tribunal finds that the Registrar has proved its case on a balance of probabilities that the past conduct of the Applicant affords reasonable grounds for belief that Mr. Samanou and his corporation will not carry on business in accordance with law and with honesty and integrity.

In addition, the Tribunal finds that the Applicants are also disentitled to registration because Mr. Samanou, for himself and as an officer and director of the corporate Applicant, made false statements or provided false statements in the applications for registration as a salesperson and motor vehicle dealer under the Act.

ORDER

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar to carry out the Proposal to refuse the registration of 1711621 Ontario Ltd., o/a Sam's Auto Service, as a motor vehicle dealer and to refuse the registration of Sarkoun Samanou as a motor vehicle salesperson.

LICENCE APPEAL TRIBUNAL



Kenneth Koprowski,
Vice Chair

