

**LICENCE APPEAL  
TRIBUNAL**

**TRIBUNAL D'APPEL EN MATIÈRE  
DE PERMIS**



**Safety, Licensing Appeals and  
Standards Tribunals Ontario**

**Tribunaux de la sécurité, des appels en  
matière de permis et des normes Ontario**

Citation: 1855456 Ontario Inc o/a 1<sup>st</sup> Class Auto Sales and Rasheed Halbouni v. Registrar,  
Motor Vehicle Dealers Act, 2002, ONLAT MVDA 12130

**Date: 2020-05-08**

**File Number:12130/MVDA**

Appeal from a Proposal of the Registrar under the *Motor Vehicle Dealers Act, 2002*, to  
Revoke the Registration of a Motor Vehicle Dealer and of a Motor Vehicle Salesperson  
under the Act.

Between:

**1855456 Ontario Inc o/a 1<sup>st</sup> Class Auto Sales  
and Rasheed Halbouni**

**Appellants**

and

**Registrar, Motor Vehicle Dealers Act, 2002**

**Respondent**

**DECISION AND ORDER**

**ADJUDICATOR: Jennifer Friedland**

**APPEARANCES:**

For the Appellant: Steven Keyes, Counsel

For the Respondent: Thomas Felix, Counsel

**Dates and place of Hearing: London, ON, Jan 21, 22, 23, 24, 28, 2020**

## REASONS FOR DECISION AND ORDER

### A. OVERVIEW

- [1] The appellants in this case are Mr. Rasheed (“Rich”) Halbouni, a registered salesperson under the *Motor Vehicle Dealers Act, 2002* (the “Act” or “MVDA”), and 1855456 Ontario Inc, operating as 1<sup>st</sup> Class Auto Sales (“1<sup>st</sup> Class Auto”), a registered motor vehicle dealer under the MVDA. Mr. Haloubi is the sole director and owner of 1<sup>st</sup> Class Auto.
- [2] The respondent is the Registrar, appointed under the MVDA.
- [3] Mr. Halbouni on his own behalf and that of his dealership appeals against a Notice of Proposal issued by the Registrar to revoke his registrations on the basis that his past conduct affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty; and because he is in breach of the terms of his registrations and of a prior order of this Tribunal.
- [4] The alleged past conduct underlying the Registrar’s proposal revolves around the sale of two cars to two separate individuals in early 2018 which were sold as vehicles that had passed a safety standards inspection, but which clearly had not. In fact, within weeks of being driven off the lot, both vehicles were deemed “unfit” and taken off the road by an Inspector for the Ministry of Transportation (MTO).
- [5] Mr. Halbouni, in his defence, asserts that he was entitled to rely on the Safety Standards Certificate (“SSC”) issued by the Motor Vehicle Inspection Station (“MVIS”) where he purportedly took the vehicles before finalizing each sale; and that he never would have allowed the purchasers to drive away in the vehicles if he had known they were unsafe. He asks the Tribunal not to revoke his registrations.

### B. ISSUE

- [6] The issue in this case is whether the Registrar should be directed to carry out its proposal to revoke the registrations of Mr. Halbouni as a salesperson and of 1<sup>st</sup> Class Auto as a dealership under the MVDA.

### C. RESULT

- [7] For the reasons given below, I am directing the Registrar to carry out the proposal and to revoke the registrations of 1<sup>st</sup> Class Auto and of Mr. Halbouni as a salesperson under the Act.

## D. THE LAW

- [8] The MVDA and Ontario Regulation 333/08 (the “Regulation”) prescribe registration requirements for a motor vehicle dealer and a salesperson.
- [9] Section 6 of the Act sets out a number of factors which may disentitle an applicant or registrant from registration. If the Registrar believes that a registrant is no longer entitled to registration under s.6, the Registrar may propose to revoke the registrant’s registration pursuant to s.8 of the Act.
- [10] In this case, the basis for the Registrar’s proposal to revoke the appellants’ registrations is:
- i. Under s. 6(1) (a) (ii) and 6 (1) (d) (iii) that Mr. Halbouni’s past conduct affords reasonable grounds for belief that, as a director of 1<sup>st</sup> Class Auto and as a salesperson under the Act, he will not carry on business in accordance with the law and with integrity and honesty; and
  - ii. Under s. 6(1)(f), that Mr. Halbouni, as a director of 1<sup>st</sup> Class Auto and as a salesperson under the Act, is in breach of a condition of his registration and of an order of the Tribunal.
- [11] The onus is on the Registrar to prove, on a balance of probabilities, the facts relied on in support of its position that the appellants are not entitled to registration.
- [12] With respect to the question of whether the appellant’s past conduct affords reasonable grounds to believe that business will not be carried on in accordance with the law and with integrity and honesty, the standard is somewhat less than a balance of probabilities.<sup>1</sup> I need not be satisfied that it is more likely than not, that the business will not be carried on in accordance with the law and with integrity and honesty. At the same time, “the reasonable grounds for belief” has to be more than “mere suspicion” and will be found to exist “where there is an objective basis for the belief which is based on compelling and credible information”.<sup>2</sup> Moreover, there must be a nexus between the appellant’s past conduct and his or

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<sup>1</sup> See 2203099 Ontario Ltd. o/a Jax Bar & Grill v. Registrar, Alcohol and Gaming, 2013 CanLII 51164 (ON LAT) and Ontario (Alcohol and Gaming Commission) v. 751809 Ontario Inc. (Famous Flesh Gordon’s), 2013 ONCA 157 [“751809”].

<sup>2</sup> 751809, *supra*, at para. 18, citing *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para. 114.

her ability to conduct business as a motor vehicle dealer or salesperson serving the interests of the public.<sup>3</sup>

- [13] Under s. 9 (5) of the Act, following a hearing I may by order direct the Registrar to carry out its proposal or substitute my opinion for that of the Registrar. In that regard, I may attach conditions to my order or to a registration.
- [14] A hearing of a notice of proposal is a hearing *de novo* in which the Tribunal does not owe deference to the Registrar's decision.<sup>4</sup> Thus, even if I find that the appellant is not entitled to registration for any of the reasons set out in the entitlement provisions of the statute, I must still consider whether revocation is the appropriate remedy.<sup>5</sup>

## E. THE FACTS

- [15] The facts on which I have based my decision were presented through documentary evidence as described below and through oral testimony heard over the course of five days from the following witnesses:

For the Registrar:

- a. Galyne Cini, an Inspector for the Ontario Motor Vehicle Industry Council (OMVIC) who conducted two inspections of 1<sup>st</sup> Class Auto prior to the issues arising in this case;
- b. CE (Consumer A) who purchased a 2006 Pontiac Montana from 1<sup>st</sup> Class Auto on March 1, 2018;
- c. KH (Consumer B) who purchased a 2004 Mitsubishi Lancer from 1<sup>st</sup> Class Auto on February 1, 2018;
- d. DB, a prior owner of the above Mitsubishi Lancer;
- e. William Dawson, a licenced mechanic and Inspector for the Ministry of Transportation (MTO), who handles complaints in relation to Safety

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<sup>3</sup> See *CS v. Registrar, Real Estate and Business Brokers Act, 2002*, 2019 ONSC 1652 (CanLII) at para 32.

<sup>4</sup> *Zahariev v. Ontario (Registrar of Motor Vehicle Dealers and Salespersons)*, 2005 CanLII 44815 at paras. 7-12 (Div. Ct.).

<sup>5</sup> *Arulappu v. Registrar, Real Estate and Business Brokers Act, 2011 ONSC 797 (Div Court)* (CanLII)

Standards Certificates and conducted an inspection of both vehicles in this case<sup>6</sup>;

- f. Ryan Little, a complaints investigator for OMVIC who handled the complaint of Consumer A; and
- g. Tim Hines, the Director of Complaints and Inquiries Department at OMVIC, who testified to the purpose and objective of the MVDA and OMVIC's role in regulating the industry. Mr. Hines also gave evidence concerning Mr. Halbouni's history of registration as a salesperson and dealer under the Act.

For the Appellants, I heard from:

- a. Elie Morcos, a salesperson at 1<sup>st</sup> Class Auto; and
- b. Rasheed Halbouni, the appellant.

[16] I also had before me two volumes of exhibits that were admitted on consent, plus various blow-ups, colour copies, or better-quality copies of some of those materials. During the hearing, I sought the parties' positions as to whether I could rely on documentary evidence contained in the exhibit books notwithstanding that a party may not have referred to it during the hearing. There was no objection to my doing so.

[17] From the above sources, the facts that I found proven on a balance of probabilities can be summarized as follows.

### **History of Registration**

[18] Mr. Halbouni was first registered as a motor vehicle salesperson under the Act in July 18, 2002. His registration was subject to terms and conditions on consent based on his disclosure that he had a criminal record for assault from when he was 18 and for which he received community service<sup>7</sup>. Although the Consent Order was not put before me, the relevant term according to Mr. Hines was that Mr. Halbouni had agreed not to apply for registration as a motor vehicle dealer.

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<sup>6</sup> I invited submissions on the extent to which I could rely on Inspector Dawson's opinion given that he was not being tendered as an expert in accordance with the LAT rules. Ultimately, I ruled that Inspector Dawson was entitled to give an opinion as a participant expert as per the Court of Appeal's ruling in *Westerhof v. Gee Estate*, 2015 ONCA 206 (*Westerhof*). See *J.S. v. Aviva General Insurance* 2019 CanLII 63355 (ON LAT) for a previous LAT decision applying *Westerhof* in the Tribunal context.

<sup>7</sup> Mr. Halbouni testified that he has received a pardon for this offence.

[19] Notwithstanding that condition, in 2012 Mr. Halbouni did apply for registration as a dealer and a further consent order was made allowing him to be registered as a motor vehicle dealer and a salesperson with conditions. For the most part, according to Mr. Hines, those conditions reflected what all dealers need to abide by in any case. He points, however, to a number of distinct terms that imposed additional disclosure obligations for Mr. Halbouni and an acknowledgement of responsibility for the quality of vehicles sold. For example, Mr. Halbouni agreed to the following terms:

21) The Dealer agrees that it is under a positive obligation to disclose, in writing on the bill of sale, all material facts about the vehicles it sells or leases to its customers, whether or not the Dealer agrees with the disclosure and whether or not the vehicle has been branded through the Ministry of Transportation. Material facts include, but are not limited to, disclosure of salvage, previous salvage, accidented and repaired, frame damage, theft recovery, unibody damage, previous taxi cab, previous police car, previous daily rental insurance write-off and any other material fact which, in the Registrar's opinion, may affect ones' decision to purchase or lease the vehicle. In the case of damaged vehicles, the Dealer further agrees to disclose as much detail as possible with respect to the nature and severity of the damage. The Dealer agrees to make reasonable efforts to research the history of all the Dealer's vehicles prior to sale to ensure all material facts are disclosed.

22) The Dealer agrees that, should any information come to light, which the Registrar deems to be a material fact concerning a vehicle the Dealer has sold, the Dealer will comply with all reasonable requests made by the Registrar to provide compensation to the purchaser whether or not the Dealer agrees with the disclosure and whether or not the vehicle has been branded through the Ministry of Transportation.

23) The dealer and Halbouni agree that all contracts for trades will comply with sections 40-45 of Ontario Regulation 333/08.

24) The Dealer agrees to accept full responsibility for the quality of any repairs or alterations to a motor vehicle that are completed by the Dealer's personnel, agents, assignees, affiliated repair facilities or anyone acting on behalf of the Dealer.

## **Prior Inspections & Audits of 1<sup>st</sup> Class Auto**

- [20] An inspector for OMVIC, Galynne Cini, testified to two inspections having been carried out in relation to 1<sup>st</sup> Class Auto and specifically in relation to its books and records. The inspections took place prior to the events that led to the Registrar's current proposal. One inspection was on June 3, 2015 and the other on June 13, 2017. According to Inspector Cini, the inspections were triggered due to a "high volume of complaints" however the Registrar did not present evidence of such prior complaints other than one referenced in Ms. Cini's 2015 report about a parts dealer who claimed Mr. Halbouni owed him money, which was resolved; and another that was raised by Mr. Halbouni himself during the 2017 inspection from a consumer who wanted reimbursement for repairs while presenting a receipt pertaining to a different vehicle.
- [21] With respect to any issues noted, Ms. Cini observed in the 2015 inspection that a Car Proof report<sup>8</sup> was not always included in Mr. Halbouni's files.
- [22] In the 2017 inspection, Inspector Cini testified that there were no issues noted. The notes of her inspection indicate that 10 completed deals were reviewed, "All repair bills were in the file. Dealer runs reports on all vehicles and is writing the history on the bill of sale."

## **The MVIS Station Used by 1<sup>st</sup> Class Auto**

- [23] Mr. Halbouni used to own a licenced Motor Vehicle Inspection Station called "Richie's." However, he testified that he ceased operating that business in 2017 because he could not make any money from it. He explained that since he was not a mechanic himself, the majority of his profits went to his licenced mechanics.
- [24] Richie's was located at an address in London that is still used as the corporate address for 1<sup>st</sup> Class Auto, although the sales lot is elsewhere. This is also the address of Liem's Auto Repair ("Liem's"), the MVIS station where Mr. Halbouni sent his vehicles for safety inspections at the time relevant to this appeal.
- [25] Proof that Mr. Halbouni is still affiliated with this address was supplied through corporate records of Liem's and of 1<sup>st</sup> Class Auto. As well, it is noted that this is the address Mr. Halbouni provided for 1<sup>st</sup> Class Auto in his Notice of Appeal. However, Mr. Halbouni denies having any affiliation with Liem's. He testified that Liem's is in a different unit than where Richie's was, and that Mr. Liem is the landlord of the complex. He stated that he has no relationship with Liem other

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<sup>8</sup> A Car Proof report ("Car Proof") provides a vehicle history. Depending on the search conducted, it will show liens, reported accidents, and insurance claims among other details.

than as his tenant and that he used Liem's for repairs because he was familiar with that MVIS. The Registrar has not persuaded me of any closer connection between Liem's and 1<sup>st</sup> Class Auto or Mr. Halbouni.

- [26] The Registrar provided documents showing that Liem's had four convictions under the Highway Traffic Act for issuing false safety certificates. I have no basis to conclude that Mr. Halbouni had knowledge of those convictions.
- [27] Neither party called Mr. Liem as a witness in this case and, to the knowledge of the MTO witness in this case, no investigation was undertaken of Liem's in relation to the allegations to which I shall now turn.

### **The complaints that led to this proposal**

#### **CONSUMER A – 2006 PONTIAC MONTANA**

- [28] CE (Consumer A, as she is referred to in the Registrar's proposal) is from Sarnia. She is married with two children, one who was two-years-old at the time of the hearing and the other a 9-year-old who had some difficulty walking, making a vehicle a priority for CE and her family. CE's last vehicle had been written off following an accident and she had a budget of about \$6,000 for a replacement. She saw a Kijiji ad for a 2006 Pontiac Montana for sale at 1<sup>st</sup> Class Auto in London.
- [29] On February 24, 2018, CE drove to 1<sup>st</sup> Class Auto with her father and together they took the Pontiac Montana for a test drive. Her father drove. They heard some noises coming "more or less from the engine" but Mr. Halbouni assured them that any repairs would be taken care of as part of a safety inspection. CE put \$500 down as a deposit and was given a Bill of Sale which she signed and initialed.
- [30] The Bill of Sale is a stock form provided by the Used Car Dealers Association (UCDA). It shows that CE purchased the vehicle for \$3,495 plus \$650 for an extended warranty and taxes, totalling \$4,683.85 in all.
- [31] Under the comments section of the Bill of Sale, there is a space to "identify any items, inducements or specific repairs included in the sale price and indicate retail value of items or inducements." Mr. Halbouni wrote here, "Certified, fix right rear wheel well, paint bottom of rear taillight." This spot was initialed by CE.
- [32] CE returned with her father to pick up the vehicle on March 2, 2018. She paid the remaining amount and was provided with a Safety Standards Certificate, issued by Liem's Auto Repair and dated February 27, 2018. She also received a Car



Proof, which turned out to be for a different 2006 Pontiac Montana (this issue will be addressed below).

- [33] Upon finalizing the sale, CE's father got in the newly purchased van to drive it back to Sarnia while CE drove the rental vehicle. She states that before she was off the lot, her father texted saying there was a problem with the tires, and that at least one was bald. She returned to the lot where she and her father had an argument with Mr. Halbouni about whether the tires were to have been included with the safety. Ultimately, Mr. Halbouni put a replacement tire in the van, gave them \$20 and provided directions to a nearby garage where they could have it changed.
- [34] CE testified that she and her father could not find the garage Mr. Halbouni had suggested and were returning to 1st Class Auto when they noticed that the turn signal was flashing very quickly. They took this to be a further problem with the vehicle and drove back to 1<sup>st</sup> Class Auto to demand a refund. However, Mr. Halbouni refused. Instead, he took the car himself to get the tire changed. In the meantime, CE called the police, though she did not acknowledge this as part of her own chronology of events, only in cross examination. The police told her it was a civil matter and declined to assist.
- [35] Eventually Mr. Halbouni returned with the van, having switched out the tire. CE and her father then drove home in the two vehicles, with CE's father driving the van. It was a snow storm. CE described that it took them 2 hours to drive back to Sarnia and that the van was sliding on the road. After taking the van over from her father, she noticed that she could not move the seat up. Also, the side door would not slide all the way open and there was an issue with the windshield wiper fluid. She texted Mr. Halbouni to express her further disappointment with the sale.

### **Problems discovered with the Pontiac Montana – March 3, 2018**

- [36] Concerned about the quality of the vehicle she had just purchased, CE took the van to a Canadian Tire the following day and had it inspected. A number of problems were identified including with respect to the control arm bushings; the left rear e-brake cable not releasing; the driver seat being stuck; holes or supports missing in the radiator saddle, the rocker panel and the rear wheel well; gas straps almost broken; and cords exposed on the front tires, among other defects. CE was advised that the vehicle would not pass a safety inspection. She wrote again to seek a remedy from Mr. Halbouni, who offered to have the problems looked at and fixed if she brought the van back to London. She refused to do so, stating that she was told she should not drive the vehicle. CE then complained to the MTO, OMVIC, and the UCDA.

- [37] CE also learned at this time that the warranty provided to her at the time of purchase was for three months and not two years, which is what she paid for.
- [38] She further noted that the Car Proof provided to her was for the same make and model of vehicle but with a different VIN. She paid for her own Car Proof which showed a lien on the vehicle she had purchased.

#### **Further inspections, March 14 & 20 – vehicle deemed unfit, plates taken**

- [39] The MTO inspector, William Dawson, examined the vehicle in CE's driveway on March 14, 2018 and made observations of various deficiencies that he could see just from a visual inspection. The van was then towed to Canadian Tire and on March 20, 2018, it was inspected again. The vehicle failed to meet safety standards. Inspector Dawson removed the plates and deemed the vehicle unfit.

#### **Deficiencies noted re: Pontiac Montana**

- [40] The deficiencies found in relation to the Pontiac Montana on March 20, 2018, were as follows:
- a. 3 of 3 fuel tanks straps were deficient and did not meet OEM<sup>9</sup> standards. 2 of 3 rivets on each strap were broken and straps were separated;
  - b. Left and right front lower control arm bushings were separated;
  - c. Left and right front area floor repair was not to OEM standard, repaired with thin metal held in place with tar;
  - d. Right front tire was split with exposed cord and no tread on the inside major tread groove area;
  - e. Left front tire appeared to have belt shifting on the inside major tread groove area;
  - f. Radiator support/cradle mount was completely missing. Observed plastic tie straps around radiator filler neck to hold it in place;
  - g. Left rear emergency brake cable was badly corroded and did not release;
  - h. Left and right rear wheel wells had holds and non-standard OEM repairs, again thin metal held in place with tar;

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<sup>9</sup> OEM = Original Equipment Manufacturer

- i. Left side rocker panel had a large hole due to rust corrosion;
- j. Front end steering alignment had excessive/extreme toe-out causing front of vehicle to wobble and pull left/right when driving in a straight line;
- k. Driver's side sliding door failed to completely open (opened approx. 6" to 8");
- l. Driver's front seat would not adjust position forward or rearward.

[41] Inspector Dawson elaborated on the above observations during the hearing and identified the safety concerns. Photographs taken of the vehicle during Inspector Dawson's inspections supported his findings.

[42] Inspector Dawson concluded that the vehicle sold to Consumer A had multiple defects, was not in compliance with safety regulations and should not have been issued a Safety Standards Certificate deeming it fit for highway/road use. He pulled the plates and designated the vehicle "unfit".

[43] An estimate of the cost to repair the vehicle was provided in evidence. The estimated cost was \$5,334.49.

### **Efforts to resolve CE's complaint**

[44] As noted above, on March 4, 2018, CE lodged a complaint with OMVIC, the MTO and the UCDA. After her plates were pulled, she also complained to her local MPP's office. Various attempts were made to resolve CE's complaint which I find unnecessary to detail at length for the purposes of this decision. Suffice to say, I do not accept the Registrar's submission that Mr. Halbouni did little to resolve this complaint. I find that Mr. Halbouni was generally responsive to attempts at resolution. These attempts included discussions with a UCDA representative who made early efforts to mediate a solution; efforts by OMVIC's complaints handler, Ryan Little; and communications with a paralegal hired by CE in anticipation of proceeding civilly against Mr. Halbouni. In each instance, Mr. Halbouni responded to communications and made a number of attempts to follow up on his proposed resolution which was to have the car fixed at his expense. Ultimately, however, CE and Mr. Halbouni could not agree on certain terms, such as whether Mr. Halbouni would pay for a loaner vehicle if the repairs were not complete in 30 days. As well, there appears to have been a lack of communication as to when and where he would pick up the vehicle (CE's paralegal having said pick up the keys by May 18, and Mr. Halbouni subsequently writing to ask again where and when he could pick up the vehicle.) CE also had concerns with the extended

warranty she was expecting and the fact that it would be rendered void if an oil change were not completed within 3 months.

- [45] By mid April 2018, CE had abandoned efforts to resolve the matter with Mr. Halbouni and decided instead to proceed against him in Small Claims Court. Those proceedings were still underway at the time of this hearing. Although CE purported not to know the damages sought in that proceeding, she admitted in cross-examination that her claim was for approximately \$12,000.

### **The Car Proof Report provided to Consumer A**

- [46] One of the allegations against Mr. Halbouni is that he supplied a false or deceptive Car Proof report to CE.
- [47] I had three Car Proof reports before me, two that related to the vehicle CE purchased from Mr. Halbouni and one that related to a vehicle of the same make, model, and year but had a different VIN. This latter Car Proof was the document provided to CE upon purchase. It was dated September 13, 2018 and showed no liens and no accidents on the vehicle, though it does not appear that a lien check had been run as part of this Car Proof. Mr. Halbouni said he pulled this one off the screen for CE from the online wholesaler where he purchased the vehicle and did not notice that it was for the wrong VIN.
- [48] The second Car Proof was sent by Mr. Halbouni to Mr. Little when the issue of a lien was first brought to Mr. Halbouni's attention. This one was for the correct 2006 Pontiac Montana SV6. It was in Mr. Halbouni's records and was dated September 12, 2017. This Car Proof also showed no accidents and no liens, (though again, it does not appear that a lien check had been run as part of this Car Proof). Mr. Halbouni sent a photo of this document to Mr. Little in response to CE's allegation that there was a lien.
- [49] Finally, there was the Car Proof pulled by CE herself which was dated March 4, 2018 and showed that there was a lien on the vehicle. Mr. Halbouni took prompt action to have the lien removed once this was brought to his attention. He testified that he could not understand how a lien would have been placed on the vehicle after purchase and that he was ultimately told by the company who had imposed the lien that it was a mistake. He provided proof to the Registrar that the lien was no longer on the vehicle.
- [50] On the evidence before me, I cannot conclude that Mr. Halbouni provided a false or deceptive car proof to CE, as that would require some intent on his part to deceive. Whereas, his explanation that he obtained that Car Proof online from the

wholesaler where he purchased the vehicle and did not notice that the copy he pulled for CE had the wrong VIN is reasonable given that it was otherwise for the same year, model and make. Moreover, the correct Car Proof that he initially obtained from the wholesaler and sent to Mr. Little showed the same lack of history as the one he provided to CE, so he had nothing to gain by providing the wrong document to CE. I accept that this was simply an error.

### **OMVIC's request for documents**

[51] As he was closing his complaint file, Mr. Little asked Mr. Halbouni by email to send him the following documents with respect to the sale of the vehicle to CE:

- a. Wholesale bill of sale
- b. Retail bill of same
- c. Reconditioning records
- d. Safety certificate
- e. And any other documents that would be related to this transaction.

[52] Mr. Halbouni promptly responded saying he was out of the office until the following week. He said he could get them but thought Mr. Little had closed the file. Mr. Little explained that he was "just putting the finishing touches on the file at my end, and that requires the following documents" which he then listed again. Mr. Halbouni said "ok I will get them for u" but, according to Mr. Little, never did. Mr. Halbouni claimed that he faxed them but I do not find that claim credible for reasons that I will explain in my analysis below. That said, I note that Mr. Little's request for the documents was very informal and did not reference s. 14 (3) of the Act which is the provision that requires the dealer to respond to requests for information during the course of a complaint. I therefore attach little weight to this factor in my ultimate determination.

### **CONSUMER B – 2004 MITSUBISHI LANCER**

[53] KH (Consumer B) purchased a Mitsubishi Lancer from 1<sup>st</sup> Class Auto on February 1, 2018.<sup>10</sup> She was also from Sarnia and looking for a family vehicle.

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<sup>10</sup> There were some discrepancies between the dates provided in KH's testimony and the documents provided in evidence, which included a chronology written by KH on February 28, 2018. Where this was the case I have relied on the documents and dates provided in the exhibit book as being more reliable, having been prepared on or closer to the dates in question.

She was pregnant with her baby due within weeks. She had seen the following advertisement on Kijiji for a Mitsubishi Lancer:

Jan 11, 2018 - this **2004 mitsubishi lancer** car is fully loaded, for only \$2495.00 plus taxes certified and etested, includes a coast to coast powertrain warranty, 3month/3000km/\$600 claim. This vehicle is waiting to go home with you, come check us out. 1<sup>st</sup> class auto sales need financing as low as 0% on o.a.c. buy here pay ...

- [54] KH testified that she was attracted to this car because it was advertised as being safety certified and e-tested. She also liked the price.
- [55] On February 1, 2018, KH and her husband went to 1<sup>st</sup> Class Auto and took the car out for a test drive, with her husband driving. They liked the car, filled out the paperwork and then were told by Mr. Halbouni that the car still needed to be "safetied." KH testified that although they were disappointed that the car was not, in fact, "waiting to go home with them," they put down a deposit and tolerated the delay because they wanted the vehicle and wanted to ensure it was safe. According to Mr. Halbouni's own testimony, they had heard a "bang and a clang" during the test drive and Mr. Halbouni assured them that any concerns would be "part of the safety".
- [56] On February 3, 2018, KH called Mr. Halbouni, hoping the car was ready. He said that there was a problem with the "Anti-Lock Braking System" (ABS) light after the safety and they could pick it up on February 5, 2018.
- [57] On February 5, 2018, KH and her husband drove back to London to pick up the vehicle; however, they were informed by Mr. Halbouni that there was still a problem with the ABS light and that a part would have to be ordered. He said it would take 2-8 days to get the part. KH testified that they received the SSC and the Bill of Sale on that date and paid the remaining money.
- [58] On the Bill of Sale, it is noted, "Certified Car Proof Received" however, KH testified that she never received a Car Proof. Although she initialed that item, she explained that she did not turn her mind to what she was signing at the time, she just initialed where she was told. I accept that KH did not receive a Car Proof from Mr. Halbouni.
- [59] On February 19, 2018, KH was told she could pick up the vehicle on February 21<sup>st</sup>, however when she returned with her husband on that date, the ABS light still was not fixed. They waited 5 ½ hours while, according to Mr. Halbouni, the vehicle was taken back to Liem's for repair. The light was still on when he came

back, though Mr. Halbouni denies this. According to KH, whose evidence I prefer over Mr. Halbouni's where it differs, as it was less self-serving, Mr. Halbouni told her the ABS light would go off as they were driving. It did not go off. She stated they also heard a "very clunky sound" while they were driving home. She described this as a "loud noise".

- [60] On February 27<sup>th</sup>, feeling uncertain about the vehicle's safety, KH had the car examined by a local mechanic. A number of issues were identified including that the vehicle had a rusted-out hole in the engine cradle. She was quoted \$2000 for repairs. She testified that she called Mr. Halbouni to discuss a solution and described him as becoming "irate." He told her to bring him the car and he would fix it.
- [61] KH complained to the UCDA, OMVIC and MTO. At OMVIC's suggestion, she also sent a letter to Mr. Halbouni on February 28, 2018 outlining the complaint and giving him until March 2, 2018 to either refund her money or pay for all repairs required to recertify the vehicle by a mechanic of her choice in Sarnia.
- [62] KH's baby was born on March 13, 2018 and her husband took over most of the discussions from that time on.
- [63] On March 22, 2018, Inspector Dawson, from the MTO, inspected this vehicle at KH's home and then at the Canadian Tire in Sarnia and designated it "unfit".

#### **Deficiencies noted re: Mitsubishi Lancer**

- [64] The deficiencies found in relation to the Mitsubishi Lancer on March 22, 2018, were as follows:
- a. Headlamps badly glazed;
  - b. Rotted engine cradle, cracked & severe perforation on left side;
  - c. Right front wheel bearing noisy / growling;
  - d. Left front wheel speed sensor improperly installed causing ABS problems;
  - e. Left inner CV axle boot not installed properly, all the grease leaking;
  - f. The SES light (Service Engine Soon) did not work.
- [65] Inspector Dawson's conclusion was that the vehicle was "unfit for road use." The plates were removed, and the vehicle's status registered as "defective / unfit".

[66] With respect to the frailties of the engine cradle, Inspector Dawson explained that the cradle holds the entire engine and transmission and, if it were to fail, the cradle could drop down to the highway and anything connected to it would fall as well. This would pose an obvious risk to the occupants of the car and to others on the road at that time.

### **Efforts to resolve the complaint**

[67] The representative from OMVIC who handled consumer B's complaint was not called as a witness at this hearing. Nonetheless, some of her emails back and forth with the complainant and her notes of conversations with Mr. Halbouni were in evidence before me. Ultimately, this complaint was resolved on April 12, 2018 by Mr. Halbouni picking up the vehicle and refunding KH her money, less the HST which he stated he had already remitted to the CRA. Mr. Halbouni said he thought KH would have to recoup the HST on her own.

### **Prior Knowledge of Issues with Mitsubishi Lancer**

[68] The Registrar called DB, who was a previous registered owner of the same Mitsubishi Lancer for all of a few days in November 2017. Like KH, he had also seen Mr. Halbouni's ad. He was very familiar with cars and was just looking for something to last through the winter. He went to 1<sup>st</sup> Class Auto and took the car for a test drive. He heard "clunking" and thought it was likely the sway bar links. He noticed "buzzing" which he thought was the bearings. The car also pulled one way or another. As well, he suspected the exhaust was leaking. DB pointed out his concerns to Mr. Halbouni who assured him they would all be looked after with the safety. He put down a \$500 deposit and returned in a few days to pick up the car. Before completing the purchase, he took it for a drive to make sure the items were fixed and found that they were not. He asked Mr. Halbouni for his money back, saying the car was not safe, but Mr. Halbouni refused. DB returned the keys and left in anger. He testified that he wrote a google review alleging that 1<sup>st</sup> Class Auto was not safe and otherwise walked away from his \$500 deposit. He did not recall receiving any documents from the sale, such as the SSC or the Bill of Sale but thought this would be because he never took possession of the car.

[69] Mr. Halbouni's recollection was that DB walked away from the deal because he could not obtain financing for the car. DB denied this. I accept DB's evidence over Mr. Halbouni's where it differs. DB's evidence was detailed and straightforward. He had no interest in this case and I can see no basis for him to have lied about his experience with this vehicle.



## **The Date of the Safety Certificate for the Mitsubishi Lancer**

[70] The date on the SSC received by KH shows that it was issued before she purchased the vehicle. Although the date on the black and white copy of the certificate in evidence before me was not fully legible in terms of the day; the month and year are clear. The certificate was issued in January 2018, either on the 20<sup>th</sup> or 29<sup>th</sup>. On Inspector Dawson's report the date is identified as January 29, 2018. Either way, this is a significant piece of evidence against Mr. Halbouni's claim to have sent the vehicle for a safety inspection *after* its sale to KH.

## **MR. HALBOUNI'S POSITION**

[71] With respect to both vehicles, Mr. Halbouni's position is that he was entitled to rely on the safety inspections conducted by the licenced motor vehicle inspection station, Liem's. He is not a licenced mechanic and does not get underneath the vehicles or otherwise look at them in much detail after he purchases them, relying instead on the safety certificate to satisfy him that any concerns had been addressed. While he has a mechanic's bay on his lot, he does not have hoists or any pneumatic tools and does not do any repairs himself other than to tend to small items like changing a lightbulb or filling a tire, for example. This was corroborated by Mr. Halbouni's assistant, Elie Morcos. Mr. Halbouni testified that they do not even do oil changes at his dealership.

[72] With respect to Consumer A, Mr. Halbouni alleges that some of what was ultimately found to be wrong with the Pontiac Montana was because of interference by CE herself after the sale so that he would have to take back the vehicle. For example, he testified that he knows the sliding door opened at the time of sale, because he opened it to throw in the tire that CE's father wanted. He claims the plastic ties that Inspector Dawson observed holding the radiator neck had to have been added later, as anyone – including CE and her father – would have seen them had they been there at the time of sale. He insists that the hole in the rear wheel well would have been repaired at the time of the safety and suggested that the repair possibly came loose in the snow. It is noted, however, that the above allegations were not put to CE in cross-examination and I find them of limited value in any case. Even if some of the above-noted defects arose after the date on the SSC, this would not undermine the photos and testimony of Inspector Dawson which establish that the overall condition of the vehicle would not have met safety standards on the day it was purportedly inspected.

[73] With respect to Consumer B, Mr. Halbouni agreed that a rotting engine cradle posed a safety concern. He says that is why he refunded KH's money when the issue was brought to his attention. Regarding the timing of the safety certificate

showing that it was issued before the sale to KH, Mr. Halbouni wondered whether the certificate in evidence was a different SSC than the one he provided to KH but was not further cross examined on that issue and did not produce any such other certificate. I am satisfied that the SSC provided to KH was the one dated prior to the sale of that vehicle to her.

- [74] In response to questions from the Registrar as to why he would not have listed particular problems in relation to either vehicle, he explained that he lists any items that are specifically brought to his attention, but for general issues – for example “the bang and the clang” noticed by KH and her husband during the test drive – “everyone knows it’s part of the safety”.
- [75] Mr. Halbouni testified about having been in the motor vehicle sales business for approximately 20 years without issue other than with respect to these two vehicles. He is the sole income earner in his family and provides for his wife, three children, his in-laws, his parents and a family overseas.

#### **F. ANALYSIS OF THE FACTS AGAINST THE REGISTRAR’S ALLEGATIONS**

- [76] The past conduct particularized in the Registrar’s Notice of Proposal is that Mr. Halbouni:
- i. Supplied a false or deceptive Car Proof to Consumer A
  - ii. Falsified a Bill of Sale to Consumer B
  - iii. Failed to make the required disclosures to both consumers about the vehicle’s condition, pursuant to s. 42 of Ontario Regulation 333/08
  - iv. Sold a vehicle of unreasonable quality to both consumers
  - v. Failed to compensate the consumers for an unfair practice
  - vi. Failed to reply to the Registrar’s request for information re: Consumer A
  - vii. Breached a condition of his registration and of the LAT order.
- [77] It is not necessary for me to determine each allegation before reaching a conclusion in this case. The prevailing point is that Mr. Halbouni clearly sold two vehicles to two different consumers, each certified to be safe, but both manifestly unsafe and of unreasonable quality. In this regard, I accept Mr. Dawson’s conclusion that neither vehicle ought to have passed a safety inspection on the date that the respective SSCs were issued by Liem’s.

[78] Section 42 of Ontario Regulation 333/08 specifies that a motor vehicle dealer is required to disclose in writing certain facts relating to the sale of a used car. This includes making disclosure in the following circumstances:

(10) If there has been structural damage to the motor vehicle or any repairs, replacements or alterations to the structure of the vehicle ...

(11) If the motor vehicle is equipped with an anti-lock braking system that is not operational ...

(13) If the motor vehicle requires repair in any of the following, a statement to that effect:

i) the engine, transmission or power train

ii) the subframe or suspension

iii) computer equipment

iv) the electrical system

v) the fuel operating system, or

vi) the air conditioning;

...

(25) Any other fact about the motor vehicle that, if disclosed, could reasonably be expected to influence the decision of a reasonable purchaser or lessee to buy or lease the vehicle on the terms of the purchase or lease ...

[79] As noted above, Mr. Halbouni also had additional disclosure obligations attached to his registration under the terms agreed upon and ordered by the Tribunal when he was initially registered as a motor vehicle dealer. Among other conditions, pursuant to s. 21 of the Consent Order, Mr. Halbouni, as a motor vehicle dealer, was “under a positive obligation to disclose, in writing on the bill of sale, all material facts about the vehicles ... whether or not [he] agreed with the disclosure.” With respect to damaged vehicles, he agreed “to disclose as much detail as possible with respect to the nature and severity of the damage” and to “make reasonable efforts to research the history of all the Dealer’s vehicles prior to sale to ensure all material facts are disclosed.”

- [80] I find that Mr. Halbouni did not disclose the condition of the two vehicles sold to Consumers A and B in this case as mandated under the Act and the terms of his registrations.
- [81] In his defence, Mr. Halbouni asserts that he was entitled to rely on the SSCs issued by Liem's.
- [82] Therefore, the question I must address is the extent to which Mr. Halbouni can rely on the SSCs to absolve himself of his disclosure obligations as set out above.
- [83] Turning first to the SSCs themselves: given my acceptance of Inspector Dawson's conclusion that neither vehicle would have met the criteria for a Safety Standards Certificate on the date it was issued, I accept that the SSCs that were issued by Liem's were false. And although I cannot fix Mr. Halbouni with certain knowledge of that fact, he was at best wilfully blind to that possibility.
- [84] Mr. Felix pointed me to the reasons of Justice of the Peace Lau in *The Queen (Ontario Motor Vehicle Industry Council) v. R. Haydar o/a Signature Motor Cars Inc.* an unreported case brought under the *Consumer Protection Act* in which the defendants were found guilty of engaging in an unfair practice by making false, misleading or deceptive representations to a consumer in relation to the sale of a Mercedes Benz that had previously been written off following an accident with a repair estimate of over \$30,000. In the transcript of the Justice of the Peace's reasons, one factor underlying the convictions was that the defendants did not disclose the vehicle's prior history to the consumer, nor the fact that it had been rebuilt by a mechanic for approximately \$8,500, a fraction of the price estimated by the insurer. The defendant's defence of due diligence failed for a number of reasons including because he had relied solely on his mechanic who had returned the vehicle without any proof of the repairs purportedly completed and together with a safety certificate that was found to contain false information. Her Worship found that the defendant had "exaggerated the value of the safety certificate" and that he had no basis to assure the consumer that all parts required were changed and the vehicle was safe to operate.
- [85] While the facts of the above case are distinguishable from the case before me in that the dealer in *Signature Motor Cars* had far more knowledge of what was wrong with the vehicle and what needed repairs than has been established on Mr. Halbouni's part in this case, I do accept the proposition that a dealer cannot rely solely on having obtained a Safety Standards Certificate when the surrounding circumstances suggest that the certificate may not have been reliable.

- [86] In Mr. Halbouni's case, while I accept his evidence that he is not a mechanic and that he relied on the histories he received upon purchasing the vehicles; his own process – about which I heard evidence from all three consumer witnesses and Mr. Halbouni himself – fixes him with the knowledge that there were issues of concern with both vehicles prior to them purportedly coming back with a safety certificate. That is why he gave assurances to each consumer along the lines of *'all will be taken care of with the safety'*. In my view, this puts him under an obligation to confirm that those repairs were actually done and to disclose those repairs to the consumer.
- [87] For example, leaving aside all the other issues with the Pontiac Montana sold to CE; at a minimum, as the Bill of Sale reflects, she was promised that the hole in the rear wheel well would be repaired. Yet it does not appear that Mr. Halbouni took any steps to assure himself that it was. The OMVIC complaints investigator, Mr. Little, asked Mr. Halbouni for the records pertaining to this sale including the wholesale bill of sale, any reconditioning records and any other documents that would be related to this transaction. These records, if they existed, would have shown the repairs that were allegedly completed “as part of the safety”. Mr. Halbouni claimed he faxed them to Mr. Little, but I accept Mr. Little's evidence that he did not receive any such documents. Moreover, I find that if Mr. Halbouni actually had repair records from Liem's in his possession relating to this vehicle, he surely would have produced them at this appeal in his defence.
- [88] With respect to the Mitsubishi Lancer sold to KH, Mr. Halbouni had already been informed by DB a few months earlier of multiple issues pertaining to the Mitsubishi that might compromise its safety. Mr. Halbouni would also have known that the issues DB initially identified after his first test drive persisted after the purported safety inspection conducted by Liem's at that time. This pins Mr. Halbouni squarely with the knowledge that something was wrong with the vehicle and that the problems were not necessarily being taken care of with the safety. As well, Mr. Halbouni did not disclose to KH the issues that he knew from DB were wrong with the vehicle; nor were any steps taken by Mr. Halbouni to ensure that they were actually addressed the next time around by Liem's. Instead he just blindly relied on another safety certificate purportedly issued by that same MVIS.
- [89] I am particularly troubled by Mr. Halbouni's actions with respect to the Mitsubishi Lancer, as it does not appear he sent this vehicle out to be safetied at all after he sold it to KH, despite assuring her to the contrary. There was no conflict on the evidence in this regard. Even Mr. Halbouni testified to having assured KH and her husband that any concerns would be “part of the safety”. With that assurance, KH paid her deposit on February 1, 2018 and then waited for the purported safety to

be completed. Yet the certificate Mr. Halbouni ultimately supplied to KH was dated January 29, 2018, a few days *prior* to the sale. This fact persuades me that Mr. Halbouni knew that any concerns raised by KH or her husband could not possibly have been addressed by Liem's through a safety inspection. While Mr. Halbouni questioned whether the SSC in evidence was the wrong one, I do not find any explanation plausible other than that Mr. Halbouni endeavoured to pass off a previously completed SSC to KH and did not send the vehicle to be safetied at that time as he claimed.

## G. CONCLUSION

- [90] The motor vehicles that Mr. Halbouni sold to consumers A and B were in terrible, unsafe condition and clearly ought not to have been issued a safety certificate. I accept that the certificates were false and that the vehicles did not in fact meet safety standards on the date of their purported inspections. While I cannot go so far as to find that Mr. Halbouni was in cahoots with Liem's Auto Repair; nor can I fix him with knowledge that the certificates were false, I do find that he ought to have done more than rely blindly on the SSCs. He knew that repairs were required for each vehicle yet made no efforts to satisfy himself that those repairs were in fact completed. Further, he did not provide a list of the repairs allegedly completed which would have been so central to his position at the hearing that I can come to no other conclusion than that they do not exist. This is assuming that he even sent the vehicles out for an inspection when he said he did, which does not appear to be the case with respect to the Mitsubishi Lancer sold to Consumer B.
- [91] In my view, the above conduct affords reasonable grounds for belief that Mr. Halbouni will not carry on business as a motor vehicle dealer or as a salesperson in accordance with law and with integrity and honesty. His conduct in relation to the sale of these two cars was the opposite of what is required of a motor vehicle dealer and salesperson under the Act. Mr. Halbouni is also in breach of the conditions of his registration and the previous LAT Consent Order. On either front, this entitles the Registrar to revoke the registrations.
- [92] Nonetheless, following the Divisional Court's direction in *Arulappu*<sup>11</sup> I must still decide whether revocation is the appropriate remedy. I find that it is.
- [93] It is the dealer's responsibility to ensure that buyers are aware of what they are buying and that unsafe vehicles are not sold to unwitting consumers under the auspices of being safe. Mr. Halbouni failed in this regard in relation to the two

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<sup>11</sup> *Supra* note 5

vehicles at issue in this case. The facts of this case satisfy me that Mr. Halbouni should not remain registered as a motor vehicle dealer under the Act.

- [94] With respect to Mr. Halbouni's registration as a salesperson, I agree with the Registrar's submission that given the very small nature of 1<sup>st</sup> Class Auto, it is difficult to separate out Mr. Halbouni as a motor vehicle dealer and Mr. Halbouni as a salesperson. The MVDA is public protection legislation. I am satisfied that a motor vehicle dealer or salesperson who sells unsafe vehicles to unwitting consumers without disclosure ought not to maintain his or her registration.

#### **H. ORDER**

- [95] The Registrar is directed to carry out its proposal in relation to the revocation of the registrations of 1255456 Ontario Limited o/a 1<sup>st</sup> Class Auto Sales as a motor vehicle dealer and Rasheed Halbouni as a salesperson under the Act.

**LICENCE APPEAL TRIBUNAL**



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**Jennifer Friedland  
Adjudicator**

**Released: May 08, 2020**