

**Licence
Appeal
Tribunal**

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



DATE: 2015-07-10
FILE: 9116/MVDA
CASE NAME: 9116 v. Registrar, *Motor Vehicle Dealers Act 2002*

A Motion to Stay the Order of the Licence Appeal Tribunal directing the Registrar, *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B to Revoke a Registration

Ikechukwu Nwaukoni o/a Zion Auto Sales

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Laurie Sanford, Vice-Chair

APPEARANCES:

For the Appellant: Terry Ramjit, Paralegal

For the Respondent: Michelle Samaroo, Counsel

Heard in Toronto: June 26, 2015

REASONS FOR DECISION AND ORDER ON A MOTION TO STAY

On April 24, 2015, this Tribunal issued a Decision and Order directing the Registrar (the “Registrar”), *Motor Vehicle Dealers Act, 2002* (the “Act”) to revoke the registration of Mr. Nwaukoni as a motor vehicle dealer. Mr. Nwaukoni intends to appeal and requests a stay of the Order revoking his registration pending the outcome of the appeal.

For the reasons set out below, the Tribunal denies the motion.

Subsection 9(9) of the Act states:

Even if a registrant appeals an order of the Tribunal under section 11 of the *Licence Appeal Tribunal Act, 1999*, the order takes effect immediately but the Tribunal may grant a stay until the disposition of the appeal.

The parties both cited the Supreme Court of Canada decision in *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311, 1994 CanLII 117 (SCC). The discretion of the Tribunal to grant or deny a stay is to be governed by a three part test, according to the *RJR MacDonald* decision. First, is there a serious issue to be tried? Second, will denial of the stay cause irreparable harm to Mr. Nwaukoni? Third, does the balance of inconvenience favour granting the stay? No one element is determinative and a strong case for a stay on one element of the test may overcome deficiencies in another element. The overarching consideration is that a just decision is reached, weighing the three factors.

The Court in *RJR MacDonald* held that the threshold of determining if there is a serious issue to be tried is a low one. At the motions level, the determination is a preliminary assessment of the merits of the case and the panel must be satisfied that the application is neither vexatious nor frivolous. Beyond that, the Tribunal should move on to consider the second and third elements of the test, even if the opinion of the Tribunal is that the appellant is unlikely to succeed on the appeal.

In this case, Mr. Nwaukoni raises several issues on the appeal. One of the grounds cited is “The Appellant was unrepresented at the hearing of April 24, 2015 [*sic*] and the Tribunal had a common law duty to assist the Appellant which they [*sic*] failed.”

Mr. Nwaukoni gave evidence at the hearing of this motion but his testimony did not address the question of whether or not he was offered assistance by the Tribunal during the hearing on February 16, 2015. Ms. Samaroo, Counsel for the Registrar, informed the Tribunal that she was at the hearing and Mr. Nwaukoni was given extensive time to present his evidence. Mr. Ramjit, representing Mr. Nwaukoni at this motion, submitted that the use in the Tribunal’s decision of certain judgmental words that were expressed as quotations from the testimony of the Registrar’s witnesses is evidence that Mr. Nwaukoni was not adequately assisted at the hearing.

The issue of the nature and degree of assistance that an administrative tribunal should extend to the self-represented party is an emerging area of law. Although Mr. Nwaukoni

produced no evidence to support this ground of appeal, the Tribunal is reluctant to characterise it as frivolous or vexatious. Given the very low threshold of this test and the importance of the issue, the Tribunal concludes that Mr. Nwuakoni has met the first element of this test.

Mr. Nwuakoni gave evidence about the harm that would be caused to him if the stay is not granted. He testified that he is currently studying Electrical Electronics, a course relating to automotive electronics. He has completed Level 2 of this training and was set to return in the fall to complete Level 3 by the end of the year. With a Level 3 certification, he testified that he would be able to open a mechanic operation in conjunction with his automotive dealership, thereby increasing the service he can provide customers. Without it, he testified that he would have to apprentice with Canadian Tire to obtain the same qualifications, a process he believes will take five years. His testimony initially was that he would have to pay Canadian Tire for this training. He subsequently testified that he would not be paid and finally conceded that he had no idea of the requirements or pay involved.

Mr. Nwuakoni testified that he would have to give up his dream, a dream he has held since childhood, of owning a car dealership if the stay is not granted. He currently buys cars in Canada and sells and ships them, whole or as parts, to his customers in Nigeria. If he loses his business pending the appeal, he testified, those customers will go elsewhere.

Mr. Nwuakoni testified that he sends money to Nigeria both to support his son, who is now talking about leaving school, and to assist his late sister's children. Mr. Nwuakoni also testified that he has a number of medical issues requiring medication which he can no longer afford. He conceded on cross-examination that he does have partial medical coverage and that he does not know the amount of his portion of the payments for the medicines.

Mr. Nwuakoni has worked as a fork lift operator since 2005 to support his automotive business. It is a full time job and he is paid \$17 per hour. His testimony was that operating his fork lift has, since 2007, caused or aggravated his back pain and that his doctor has recently recommended he quit. Mr. Nwuakoni also holds marketing degrees from both a Nigerian college and university.

The credibility of Mr. Nwuakoni's testimony was undermined by his conflicting testimony on what options are open to him to complete his Electrical Electronics training if he leaves school before finishing his Level 3 certification. He also gave conflicting testimony on his medical costs, only disclosing the fact that he had partial insurance coverage on cross-examination. It was also on cross-examination that Mr. Nwuakoni testified that while he has an idea of what his medications cost per month, he does not know how much he must pay. In light of these contradictions, it is difficult to support the critical elements of Mr. Nwuakoni's testimony without further corroborating evidence. Quite apart from issues of credibility, it is not unreasonable to expect, for example, that when a witness testifies about an important fact such as having to leave work on a

doctor's recommendation, that the witness should produce written evidence of the doctor's report.

Mr. Nwuakoni gave no evidence to support his contention that his back pain will cost him his fork lifting job. He provided no documentary evidence for his testimony that he is supporting his son or his sister's children in Nigeria. Nor did he give any evidence beyond the bald statement that he will not be able to afford his medicine. Mr. Nwuakoni gave no evidence of any attempts to use his training and education to find other work.

Mr. Nwuakoni testified that he will lose his business if the stay is not granted. This is not necessarily irreparable harm. There is no evidence of what proportion of Mr. Nwuakoni's income is derived from his auto business. The Tribunal notes that Mr. Nwuakoni continued his employment as a fork lift operator while running his auto business. His testimony was that he used the proceeds of his employment to build his business. Mr. Nwuakoni gave no evidence that he employs anyone other than himself in the business nor did he give any evidence of any barriers to re-entry other than his customers going elsewhere. There is no evidence that the loss of Mr. Nwuakoni's auto business will render the appeal moot. There is no evidence that the business could not be re-started after a successful appeal. The Tribunal concludes that Mr. Nwuakoni has not demonstrated that he will suffer irreparable harm if the stay is not granted.

Concerning the third element of the test, the balance of inconvenience, the Registrar argues that the public interest, which is the purpose of the Act, should be given greater weight than a purely private interest in applying this test. It is not necessary to decide this point. Certainly, the public interest purpose of the Act is a consideration in weighing the balance of inconvenience. In this case, Ms. Samaroo submits there is a clear risk to the public interest in permitting Mr. Nwuakoni to continue to operate his business that outweighs the benefit to him. The Tribunal found that Mr. Nwuakoni operated in violation of the Act and in violation of terms and conditions put in place in order to govern his operations. There is no evidence that Mr. Nwuakoni would operate any differently during the period of a stay.

Mr. Ramjit submits that it is possible for the Registrar to monitor Mr. Nwuakoni's operations during the stay. He cites the decision of this panel on a motion to stay in the case of *8292 v Registrar, Travel Industry Act, 2002*, 2013 CanLII 94191 (ON LAT). In that case, the Tribunal found no evidence that the Registrant was operating in violation of the governing statute. This is an important distinguishing feature of the case cited from the case before the Tribunal on this motion. Further, in that regulatory regime, it was possible for the Registrar to monitor the operations of the Registrant during the period of the stay. In the motor vehicle industry, given the large number of motor vehicle dealers operating in this province, it is not realistic to require the Registrar to monitor the operations of any one registrant on a day-to-day basis. The Tribunal concludes that the balance of inconvenience is in favour of denying the stay.

A consideration of the three elements governing the Tribunal's discretion to grant a stay would suggest that the stay be denied. The serious question of law is raised by a bald

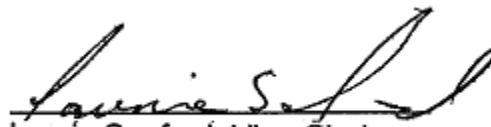
assertion with no supporting evidence. The issue of irreparable harm appears to be primarily a financial one. There was no evidence of Mr. Nwukoni's financial situation beyond his assertion that he cannot afford to pay for medicine or support his extended family. However, he continues to work and to earn money and it is not obvious that he has explored other employment options based on his education and training. Considering the third element of the test, the balance of inconvenience supports denying the stay.

The final consideration is whether a just decision will result from the assessment of the three elements of the test. For all the reasons noted above, the Tribunal is satisfied that denying this motion is a just decision.

ORDER

By authority of subsection 9(9) of the Act, the Tribunal denies the Appellant's motion for a stay of the Tribunal's Decision and Order of April 24, 2015 in this matter.

LICENCE APPEAL TRIBUNAL



Laurie Sanford, Vice-Chair

Released: July 10, 2015