

Licence  
Appeal  
Tribunal

Tribunal  
d'appel en  
matière de permis



DATE : 2014-09-30  
FILE: 8701/MVDA  
CASE NAME: 8701 v. Registrar, *Motor Vehicle Dealers Act, 2002*

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

On-Time Auto Services Ltd., o/a On-Time Auto Sales and Services  
and Bishaar Awale

Appellants

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

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### REASONS FOR DECISION AND ORDER

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**ADJUDICATOR:** Richard Macklin, Vice-Chair

**APPEARANCES:**

**For the Appellants:** Bedawi Tago, Counsel

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

Heard in Toronto: September 17, 2014

## REASONS FOR DECISION AND ORDER

### OVERVIEW

By Notice of Proposal dated March 3, 2014 (“the Notice of Proposal”), the Registrar, *Motor Vehicle Dealers Act, 2002* (“the Registrar”) seeks to suspend the registration of On-Time Auto Services Ltd. o/a On-Time Auto Sales and Services (“On-Time”) as a motor vehicle dealer. On-Time (the “Dealer” or “Appellant”), by Notice of Appeal dated March 21, 2014, has appealed the Notice of Proposal.

The Notice of Proposal also sought to suspend the salesperson’s licence of Mr. Bishaar Awale. An Order directing the Registrar to carry out that aspect of the Notice of Proposal was granted on July 30, 2014. Mr. Awale did not oppose that Order.

### THE FACTS

It is helpful to understand the proceedings by way of the following chronology:

- September 16, 2004- Bishaar Awale is registered as a motor vehicle salesperson.
- December 16, 2008 - On-Time Auto Services Ltd. is registered as motor vehicle dealer.
- April 20, 2012- The Registrar issues a Notice of Proposal to revoke registrations of the Dealer and Mr. Awale. The grounds for the proposal centered on concerns regarding non-disclosure on bills of sale.
- January 18, 2013- The Tribunal released a Consent Order. Paragraph 25 of the Consent Order required Awale and all directors and officers of the Dealer to complete a certification course within 60 days of release of the Consent Order.
- March 22, 2013- A representative of the Registrar informed counsel for the Dealer and Awale that they were in breach of the Consent Order and requested that the course be completed within 30 days.
- December 16, 2013- A representative of the Registrar inquired after counsel for the Appellant as to whether Awale and all officers and directors had taken the certification course.
- December 2013- Abdillahi Elmi (a part owner of the Dealer) completes the certification course.

- December 31, 2013- Counsel for the Dealer and Awale advised that Awale had registered for the Certification course on December 19, 2013.
- March 3, 2014- The Registrar issues a Notice of Proposal to suspend Awale and the Dealer for failure to complete the Certification course.
- March 4, 2014- Mr. Awale fails the certification course.
- May 2, 2014- A pre-hearing on the Notice of Proposal issued on March 3, 2014, is conducted. Mr. Awale is not present but his counsel is. The Tribunal notes that dates for attending the certification course are available on May 23, 30 and June 18 or 19, 2014. A hearing date is set for July 25, 2014, to allow Mr. Awale further time to complete the course.
- July 25, 2014- At the hearing of the appeal, Mr. Awale does not oppose an order carrying out the Notice of Proposal as against him as he has not successfully completed the certification course. Accordingly, Mr. Awale's portion of the appeal is dismissed and the Registrar is directed to carry out the proposal to suspend Mr. Awale. The hearing in respect of the Dealer is adjourned to September 17, 2014.
- September 17, 2014 Mr. Awale attends the hearing and confirms that he has still not successfully completed the certification course.

## **EVIDENCE**

### **A. REGISTRAR'S EVIDENCE**

The Registrar called one witness, Mr. Brian Osler. Mr. Osler has been employed by Ontario Motor Vehicle Industry Council ("OMVIC") since June 2012 and has been OMVIC's Acting Director of Legal Services since September 8, 2014.

Mr. Osler explained that the certification course that is the subject of paragraph 25 of the Consent Order is not a mere formality, but is useful to anyone who is involved in the motor vehicle sales industry. The course, amongst other things, helps salespeople and dealers understand what to disclose to buyers, what the rules are for advertising and how to keep proper records. For that reason, obtaining the agreement, embodied in paragraph 25 of the Consent Order, was important to the Registrar, in the case of Mr. Awale and the Dealer. As noted in

the chronology above, disclosure to consumers was an area of non-compliance for Mr. Awale and the Dealer, at the time of issuance of the first Notice of Proposal.

Mr. Osler further explained that the Registrar has "bent over backwards" to work with Mr. Awale and the Dealer, as reflected in the above chronology. The Registrar reasonably believes it will not obtain compliance by the Dealer in respect of paragraph 25 of the Consent Order. He further stated that a registrant's deficiency in respect of knowledge of his or her disclosure obligations is an important consideration for the Registrar, as disclosure to consumers is at the heart of the motor vehicle dealer legislation.

In cross-examination, documents marked as Exhibit 3, were put to Mr. Osler. Exhibit 3 comprises a Form 1 Notice of Change, Agreement of Purchase and Sale, Bill of Sale, and a purported "Certified Copy" of a Resolution of the Board of Directors of the Dealer. In essence, Exhibit 3 purports to be a sale by Mr. Awale to Mr. Elmi, of Mr. Awale's interest in the Dealer, for \$5,000. Mr. Osler stated that the sale documents are not clear, the transaction has not closed and that the Registrar was concerned primarily, with whether Mr. Awale, nonetheless still had signing authority with the Dealer's bank and whether he remained an officer or director. The documents in Exhibit 3, according to Mr. Osler, did not answer these concerns.

## **APPELLANT'S EVIDENCE**

The Appellant called one witness, Mr. Awale. Mr. Awale acknowledged that the Dealer was guilty of disclosure shortcomings when it was investigated, prior to the first Notice of Proposal. He noted, however, that the Dealer has not been the subject of any consumer complaints and that the dealer passed the inspection that followed the Consent Order. In other words, according to Mr. Awale, the Dealer is now in compliance in regard to the disclosure concerns that emerged from the inspection that preceded the first Notice of Proposal.

Mr. Awale further acknowledged that he had failed the certification course twice and that it may be his lack of familiarity with the English language that is standing as an obstacle. He further stated, in light of Exhibit 3 and his efforts to extricate himself from the business, that his failure to pass the course can be visited on him but should not be visited on Mr. Elmi and the Dealer. He also stated that he presented the documents contained in Exhibit 3, to a representative of the Registrar, in early September 2014. He testified that that person did not express the concerns regarding the sale of the business that are now being expressed by Mr. Osler. Mr. Awale did acknowledge that the sale of the business, however, has not been formally completed and that the necessary changes in bank signing authority have not been made. In fact, Mr. Elmi is on holidays until the end of 2014 and his absence is holding up the completion of the transaction. In the interim, since he is suspended as a salesperson and is no longer the *de facto* operating mind of the Dealer, he will not be signing cheques for the business.

## THE LAW

The *Motor Vehicle Dealers Act, 2002*, S.O. 2002 c.30 (the "Act"), states, in part, as follows:

6. (1) An applicant that meets the prescribed requirements is entitled to registration or renewal of registration by the registrar unless,...

(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

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. 2004, c. 19, s. 16 (10).

Notice re: refusal, suspension, etc.

9. ...

Hearing

(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. 2002, c. 30, Sched. B, s. 9 (5).

## POSITIONS OF THE PARTIES RE: FACTS AND LAW

### A. REGISTRAR

The Registrar submitted that there was a long history of non-compliance in this case, despite the efforts taken by the Registrar to work with the Dealer. The Dealer agreed that its officers and directors would take the certification course, within 60 days of the Consent Order (see paragraph 25 of the Consent Order). There were two individuals captured by that Order, Messrs. Awale and Elmi. Neither took the course within 60 days. Roughly one year later, Mr. Elmi passed the course. To date, Mr. Awale has failed to do so. As noted above, the course is an important component to having operators understand the motor vehicle sales

business and is particularly important to businesses that have shown an initial inability to grasp their responsibilities – as was the situation with the Dealer in this case. The failure of Messrs. Elmi and Awale to comply with paragraph 25 of the consent order is a failure to follow the law and the ongoing difficulties in Mr. Awale's case reflect poorly on him and Mr. Elmi – who is a part owner of the business and required to monitor its compliance with the law.

Moreover, submits the Registrar, the relief sought by the Registrar is not overly onerous. The Registrar would still accept a passing of the course by Mr. Awale as a basis to lift the suspension of the Dealer. An alternative basis to lift the suspension would arise if Mr. Awale fully removes himself from the Dealer's business, including removal as a signing officer for banking purposes and as an officer, director and shareholder. At present, Mr. Awale's efforts to remove himself are not complete and hence a suspension is necessary.

## **B. APPELLANT**

The Appellant argued that whatever problems the Registrar had experienced with Mr. Awale should not be visited on the Dealer. The Dealer has been licenced since December 2008. There have been no consumer complaints in that time. Mr. Elmi is now the controlling mind of the Dealer and he has complied with the Consent Order, including paragraph 25 (albeit not in a timely manner). Mr. Awale was suspended on July 30, 2014, and will continue to abide by that suspension. Thus, although the transfer of shares isn't complete and the banking signing authority has not yet been transferred, there is no risk to the public if the Dealer remains open for business.

## **ANALYSIS and CONCLUSION**

In the Tribunal's view, the Dealer has had ample time to get its affairs in order. Mr. Awale should have passed the certification course by now, which he hasn't. Alternatively, it was open to the Appellant, and it had ample time prior to the hearing of this appeal, to take steps so that Mr. Awale would be fully removed as a directing mind of the Dealer. It has failed to do so. As noted above, Mr. Awale has yet to remove himself as a signing officer on the Dealer's banking arrangements and the Dealer did not present, although it would have been simple to have done so, an up-to-date corporate profile showing that Mr. Awale had been removed as an officer and director. Moreover, the sale of the business from Mr. Awale to Mr. Elmi has not formally closed. It is not in the public interest to leave these issues unresolved and have the Dealer remain open for business.

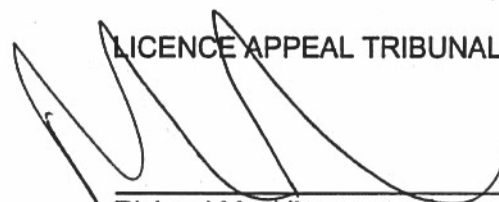
The Tribunal accepts the submission of the Registrar that as matters currently stand, a suspension of the Dealer is the appropriate order. Mr. Elmi is not returning to Canada until the end of 2014. Thus, no business could be transacted by the Dealer prior to the end of the year, in any event. On a practical basis, a suspension leaves the Dealer no further behind. In addition, the Dealer will have

ample opportunity to have Mr. Awale complete all steps to formally and fully remove himself as an owner, officer, director and bank signing officer for the Dealer. Once he is fully removed from the business, the Dealer can negotiate a removal of the suspension with the Registrar or simply file a new application for a dealership licence, unencumbered by Mr. Awale's past record.

## ORDER

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal Orders as follows:

1. The appeal of On-Time Auto Services Ltd. o/a On-Time Auto Sales and Service is dismissed and the Tribunal directs the Registrar to carry out the Notice of Proposal in respect thereof.

LICENCE APPEAL TRIBUNAL  
  
Richard Macklin,  
Vice-Chair

*Released: September 30, 2014*