

Licence  
Appeal  
Tribunal

Tribunal  
d'appel en  
matière de permis



DATE: 2016-04-07  
FILE: 9521/MVDA  
CASE NAME: 9521 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 Revoke a Registration

Xpress Auto Sales and Service Inc. and Pirouz Yazdani

Appellants

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

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**REASONS FOR DECISION AND ORDER**

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**ADJUDICATOR:** Laurie Sanford, Vice-Chair

**APPEARANCES:**

**For the Appellants:** Kenneth Page, Counsel

**For the Respondent:** Brian Osler, Counsel

Heard in Toronto: March 7, 8, 10, 11 and 24, 2016

## REASONS FOR DECISION AND ORDER

At the outset of the hearing, Mr. Page, Counsel for the Appellants, advised that Express Auto Sales and Service Inc. had withdrawn its appeal. Pirouz Yazdani continues his appeal from the proposed revocation of his registration as a motor vehicle salesperson.

### OVERVIEW

The Registrar, *Motor Vehicle Dealers Act, 2002* (the “Registrar”) proposes to revoke the registration of Mr. Yazdani as a motor vehicle salesperson on several grounds. The Registrar alleges that Mr. Yazdani induced several motor vehicle dealers to rent business locations from his company under the pretence that the property was zoned for use as a motor vehicle dealership. The Registrar also alleges that Mr. Yazdani forged zoning documents which appeared to come from the Town of Bradford West Gwillimbury (“Bradford”) and which falsely showed the property as zoned for this purpose. These documents were submitted to the Registrar in support of the applications for registration by the motor vehicle dealers in question. Finally, the Registrar alleges that Mr. Yazdani misled the Registrar in a statement provided by his lawyer.

Mr. Yazdani appeals the Registrar’s proposal to the Licence Appeal Tribunal (the “Tribunal”). Mr. Yazdani denies the allegations. He asserts that it was his business partner who was responsible for all arrangements regarding the rent and the zoning of the property.

The Tribunal finds that the Registrar has not demonstrated that Mr. Yazdani prepared the forged zoning letters. Nor did Mr. Yazdani mislead the Registrar in the statement provided by his lawyer. However, Mr. Yazdani knew that false zoning documents were being prepared and provided to would-be motor vehicle dealers. He knew that these forged documents would be used to support applications for registration. Mr. Yazdani knew that the property was being misrepresented in advertisements as being appropriately zoned. Mr. Yazdani was complicit in a scheme to induce would-be registrants to rent space from him under false pretences. Mr. Yazdani does not accept responsibility for his role in the deception and denied his involvement in unconvincing testimony before the Tribunal. The Tribunal concludes that Mr. Yazdani’s registration must be revoked.

### LAW

The *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B (the “Act”) provides that an applicant for registration who meets the qualifications for registration is entitled to be registered unless certain specific actions disqualify him or her. The relevant provisions are as follows:

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 . . .

## BACKGROUND

Mr. Yazdani has been a motor vehicle salesperson and dealer since 2005. He testified that in 2008 he obtained a letter from the Town of Bradford stating that the property he had recently purchased was zoned for use as a motor vehicle dealership. The Ontario Motor Vehicle Industry Council (“OMVIC”), the agency which administers the Act, requires applicants to include evidence of appropriate zoning as part of their applications.

Mr. Yazdani’s business at his new premises did not go well and by 2009 or 2010 he was attempting to sell the property. Mr. Muzaffer Walji, a motor vehicle dealer Mr. Yazdani had previously done some business with, suggested that it might be profitable to sub-lease part of the premises to other businesses, including other motor vehicle dealers. Mr. Walji eventually invested over \$125,000 in the property, becoming a partner in the subleasing business. In time, Mr. Walji’s relatives took the first mortgage on the property while Mr. Walji’s wife held the second mortgage.

In August 2011, for reasons not made clear, Mr. Yazdani sought clarification about the zoning of the property from the Bradford planning department. The Senior Planner, Ms. Tami Kitay answered on August 29, 2011 as follows:

. . . It is our understanding that the property is currently occupied by a motor vehicle sales, leasing and/or rental establishment. This use is only permitted on the subject lands if it was legally established on or before the effective date of Zoning By-law 2010-050 (June 8, 2010).

We have reviewed our files as they pertain to this property and there does not appear to be a Change of Use Permit as required by the *Building Code Act, 1992* and a site plan agreement as contemplated by the *Planning Act, 1990*. As such, the motor vehicle sales use does not appear to have been lawfully established and is therefore not considered to be a legal non-conforming use. . . .

Mr. Yazdani’s testimony was that he interpreted this letter as meaning that his motor vehicle operation was “grandfathered” and was therefore a legal use but that any premises leased or rented to tenants would not be zoned for motor vehicle sales.

Mr. Yazdani testified that he asked Mr. Walji to deal with Bradford to see if zoning for motor vehicle sales could be obtained on the property. On September 17, 2011, Mr. Walji sent an email to Ms. Kitay stating that “we” “had several small dealers wanting to open used car sales offices on the property and other small businesses also interested

in renting space.” Mr. Walji represented this as an opportunity to create employment in downtown Bradford.

Ms. Kitay replied on September 19, 2011, stating in part,

A motor vehicle sales, leasing, and/or rental establishment is only permitted on the subject lands if it **lawfully** existed prior to June 8, 2010. While we understand that a site sketch of the lands was submitted prior to this date, the property did not comply with the zoning by-law at that time. Furthermore, the business was started prior to applying and receiving a change of use permit. Therefore, the property does not enjoy legal non-conforming status as it was never lawfully established prior to its operation. . . . .

As a preliminary comment, the Planning Department is not confident that the subject property is adequately sized to contain a motor vehicle sales establishment and a retail store. . . .

Mr. Walji testified that while he recalls the correspondence, he does not believe he received the portion of the email which stated that the property did not have legal non-conforming use status.

From 2011 to 2014, Mr. Walji, with the knowledge of his partner Mr. Yazdani, placed a succession of advertisements on Kijiji, the online auction and advertising site, for office space and parking space at the property. Some of the advertisements were directed to start-up motor vehicle dealerships and referred to the property as “OMVIC legal” or “OMVIC compliant”. Mr. Walji testified that he took the wording from other similar advertisements. A number of start-up motor vehicle dealerships became tenants of the partners as a result of these advertisements.

The partners had trouble making the mortgage payments on the property and it was sold under power of sale in late 2015.

## **ISSUES AND ANALYSIS**

The Registrar produced nine zoning letters dated from September 12, 2011 to December 6, 2013 which she alleges were forged. Each of these zoning letters was submitted to the Registrar by a different tenant of Mr. Yazdani and Mr. Walji in support of an application for registration as a motor vehicle dealer. The first question to be determined was whether or not the letters are forgeries.

Ms. Kitay, the Senior Planner, who advised Mr. Yazdani and Mr. Walji that the property did not qualify as a legal non-conforming use, was the person who prepared and signed Bradford zoning letters at the relevant times. She identified characteristics of legitimate zoning letters from the Bradford planning department. Legitimate letters have a letterhead which consists of three components. There is a logo. The logo has several features. The Town of Bradford and West Gwillimbury is identified in a distinctive font and arrangement of the script. Beneath the identification of the Town is a symbol of a valley and a river. Beneath that is the slogan “A Growing Tradition”. The second component is the address and phone and fax number of the planning department which is to the right of the logo. The third component is a banner with contains the Town’s web

site address which sits below the address. Letters are addressed to the owner of the property and signed by the Senior Planner.

Ms. Kitay reviewed the nine suspect letters, eight of which were purportedly signed by her. One of the letters was unsigned. She denied signing the remaining eight letters and pointed out a number of discrepancies between the suspect letters and legitimate zoning letters issued by the Bradford zoning department. Not all of the letters had the same discrepancies and some had more than one. In summary:

- Six of the letters have an incorrect address for the planning department.
- Five of the letters have the wrong font for the identification of the town in the logo.
- Four of the letters lack the symbol of the valley and river.
- One of the letters lacks the slogan “A Growing Tradition”.
- Four of the letters are missing the banner with the web site address.
- Eight of the letters are addressed “To Whom it May Concern” rather than to an individual.
- Five of the letters misspell the name of the Town “Gwillimbury” in the text of the letter.

Ms. Kitay characterized all of the letters as more vague than would be the case with a legitimate letter.

Ms. Kitay was a credible witness and Mr. Yazdani conceded that the letters appeared to have been altered. The Tribunal finds that the nine letters at issue were altered or forged and were not legitimate zoning letters from the Bradford planning department.

The next question to be answered is what role, if any, did Mr. Yazdani play in the preparation of these forged letters. The Registrar called as witnesses nine motor vehicle dealers who had responded to the Kijiji advertisement for space at Mr. Yazdani's property. Of these, eight submitted forged zoning letters as part of their applications for registration. Two of these eight did not personally obtain the letters in question and one did not recognize it. Of the remaining five witnesses, one testified that he was “fairly certain” he had received the forged zoning letter from the Bradford planning department. This raises the theoretical possibility that a rogue Town employee was preparing forged zoning letters. However, the poor quality of the forgeries makes this improbable. A Town employee would have access to the correct letterhead at a minimum and would be familiar with the usual style of address used by the planning department. The Tribunal concludes that the forged letter was not obtained from the Town of Bradford.

Most of the remaining four witnesses initially contacted Mr. Walji, whose telephone number was listed on the Kijiji advertisement. Mr. Walji referred them to Mr. Yazdani. The four witnesses all testified to receiving tax bills and other documents, including the forged zoning letters from Mr. Yazdani. In one case, the witness received the zoning letter by fax from Mr. Yazdani's fax machine. Another of the witnesses exchanged a series of emails with Mr. Yazdani about the zoning letter. This witness offered to go to Bradford to get the zoning letter. Mr. Yazdani replied that he, Mr. Yazdani, had to do it himself. This witness

eventually had doubts about the zoning and went to the Bradford planning department himself. On being told that the property was not zoned for car sales, this witness moved. These four witnesses gave their testimony in a forthright way and freely admitted when they did not know the answers to questions put to them. The Tribunal accepts their testimony.

The suggestion was made that one or more of the tenants of the property might have, alone or together, forged the letters. This is very unlikely for three reasons. First, the various tenants testified that they did not know each other at all, or only slightly. Second, the tenants were there at various times, which would make conspiring difficult. Finally, and most persuasively, the risk of being discovered to have submitted false documents to the Registrar, a ground for revocation, greatly outweighed any benefit to be gained. As Mr. Olser, Counsel for the Registrar submitted, the tenants were not invested in the property. If it was not properly zoned, they could simply find a rental space that was.

The people who were invested in the property were the partners Mr. Walji and Mr. Yazdani. Mr. Yazdani testified that his ownership of the property was “disastrous” for him. Mr. Walji characterized his purchase of a partnership interest in the property as a “mistake”. The partners were having difficulty making the mortgage payments. Mr. Yazdani testified that it was Mr. Walji’s idea to seek out motor vehicle dealers as tenants of the property and that initially the plan worked well with multiple small dealerships renting offices and parking spaces.

Each of the partners denied any involvement in the preparation of the forged zoning letters. Mr. Walji testified that his involvement with the property was very limited. He acknowledged having placed the Kijiji advertisements but testified that he referred all prospective tenants to Mr. Yazdani for negotiations. The Registrar produced rental agreements signed by the various motor vehicle dealers who testified about the forged zoning letters. The rental agreements refer to both partners and are purportedly signed by both of them. Mr. Yazdani testified that Mr. Walji prepared the leases. Mr. Walji denied this and questioned whether it was his signature on them. Mr. Walji testified that he was unaware of whether the property was offered for sale as part of the exercise of the power of sale and that he was unaware of whether the sale proceeds cleared the mortgage. He testified that he was aware that his wife, who held the second mortgage, lost over \$30,000 on the transaction.

Mr. Yazdani testified that he focussed on running his motor vehicle dealership and left the paperwork for the tenants and the dealings with the planning department to Mr. Walji. Mr. Yazdani’s testimony was that he provided prospective tenants with copies of tax bills and with his original 2008 zoning letter for the property. He then referred them to the Town of Bradford to obtain their own zoning letters. He explained that although he knew that the Town of Bradford would not issue zoning letters stating that the property was zoned for motor vehicle sales, he “hoped” that his partner might have gotten the zoning changed before the various tenants applied for the zoning letter. He testified that the forged zoning letter he faxed to one tenant came to him from Mr. Walji. It was his testimony that when

he told another tenant that he had to get the zoning letter himself, he possibly meant that Mr. Walji was going to get it.

When Mr. Yazdani was asked why he continued to rent office space to motor vehicle dealers for years after learning that the property was not appropriately zoned, he said that Mr. Walji was working on obtaining a zoning change and he hoped the change would be forthcoming. Mr. Yazdani also testified that he asked Mr. Walji if there would be a problem with continuing to advertise the property to motor vehicle dealers and Mr. Walji assured him there would be no problem. Mr. Walji was not asked about this conversation.

Mr. Yazdani testified that he learned in 2012 that his property was not in fact grandfathered for automobile sales. He left the property as a result. However, he continued to rent office space to motor vehicle dealers and the last forged zoning letter was sent to the Registrar in December, 2013. Mr. Yazdani testified that he made a mistake in not telling his tenants in 2012 that the property was not zoned for their businesses. When asked about the 2013 zoning letter, Mr. Yazdani suggested that the would-be tenant forged the letter himself.

When Mr. Yazdani was asked to produce the original 2008 zoning letter he received from Bradford and which he supplied to the various tenants, he initially referred to a letter in the Registrar's disclosed documents. This letter was undated, an anomaly for Bradford zoning letters and addressed to OMVIC rather than to the owner of the property, another anomaly. The salutation in the letter is "To Whom It May Concern", a salutation that Ms. Kitay identified as a hallmark of a forgery. When challenged on these points, Mr. Yazdani produced two further letters from his personal files. Each of these letters is dated November 15, 2008 and each purports to be a zoning letter from the Bradford planning department signed by Ms. Kitay. Ms. Kitay was not asked about these letters but one of them is missing the symbol of the valley and river in the logo and is also missing the banner. The second version of the letter has these elements in the letterhead. Both letters are addressed to OMVIC and both begin, "To Whom It May Concern". The text of all three letters is identical. Mr. Yazdani was unable to explain why he had two different versions of the same zoning letter in his possession or why there was a third, undated version with the same text in the Registrar's files.

Neither partner was a credible witness. Mr. Walji is not credible when he testified that he had not received that portion of the email from Ms. Kitay that advised him that the property was not zoned for use as a motor vehicle dealership. It is not credible that Mr. Walji, having made an investment of over \$125,000 in the property and having involved his family, including his wife, in the mortgage of the property, would be unaware of the efforts his family were making to realize their mortgage. Any excess in the proceeds of sale over the mortgage would be available to the partners and any creditors and so may be expected to be of great interest to Mr. Walji. Mr. Walji doubted that it was his signature on the various leases but did not explain why anyone would forge his signature on the documents.

Mr. Yazdani was not credible when he testified that he sent prospective tenants to the Town of Bradford to get zoning letters despite knowing that such letters would not be issued. He was not credible when he attempted to explain his email statement that he had to get the zoning letters himself. His explanation for why he permitted Mr. Walji to continue advertising the property to motor vehicle dealers for years after learning that the property was not properly zoned is telling. He deflected responsibility to his partner but he knew as well as Mr. Walji did what the zoning was on the property. In a case involving altered zoning documents, Mr. Yazdani's possession of two different versions of the same zoning letter seriously undermines his credibility.

The Tribunal finds that it is more probable than not that one or both of the partners participated in the forgery of the nine zoning letters. However, the Registrar has not demonstrated, on a balance of probabilities, the Mr. Yazdani prepared the forgeries. It is equally probable that Mr. Walji prepared them or that they were prepared by an employee or someone else connected with the partnership acting on the direction of one or both of the partners. What has been established is that Mr. Yazdani continued to permit advertisements to be made to motor vehicle dealerships and continued to permit motor vehicle dealers to rent space from the partnership despite knowing that the property was not zoned for that use. Mr. Yazdani knew that the Town of Bradford would not issue letters stating that the property was zoned for motor vehicle dealerships. Mr. Yazdani provided at least one forged zoning letter to a would-be registrant by fax and, according to the testimony of his tenants, provided other false zoning letters to three more tenants or would-be tenants. Mr. Yazdani was complicit in a scheme to rent property to small car dealerships under false pretences. He was complicit in supplying forged zoning documents to some of his tenants knowing that these false documents would be sent to the Registrar in support of applications for registration.

The Registrar also alleges that Mr. Yazdani misled the Registrar about the status of certain criminal charges arising from the forged letters. Mr. Yazdani apparently disclosed these criminal charges. In response to a query from the Registrar, Mr. Yazdani's criminal lawyer wrote to say that he expected the criminal charges to be withdrawn shortly. In fact, the charges were withdrawn as part of a plea agreement whereby Mr. Yazdani pled guilty to the lesser offence of a bylaw violation. The lawyer's letter was technically correct, but the Registrar testified that the letter was misleading in not disclosing that plea agreement. While the disclosure of the status of the criminal charges may not have been as fulsome as the Registrar wanted, there was nothing misleading on the face of the letter. We do not know what instructions Mr. Yazdani gave his lawyer. There is no evidence that Mr. Yazdani intended to mislead or to withhold information from the Registrar or indeed that he knew what his lawyer was going to write.

Additionally, the Registrar alleges that in providing the forged letters to his tenants, Mr. Yazdani effectively provided a false statement to the Registrar in an application for registration. As noted above, the provision of such a false statement is potentially grounds for revocation or refusal to register an applicant. This provision, contained in subparagraph 6(1)(a)(iii), can, in itself, be grounds for the loss of a livelihood. Unlike



the provision in subparagraph 6(1)(a)(ii), where the Tribunal is called upon to weigh the totality of the registrant's past conduct, 6(1)(a)(iii) creates the possibility of a motor vehicle dealer losing his or her registration for a single transgression. While the phrasing of the provision underscores the importance of honesty in an application, the Tribunal should be cautious about extending the scope of the provision beyond its clear wording. The provision refers to an applicant being disentitled to registration if the applicant "or an employee or agent of the applicant . . . provides a false statement." In this case, Mr. Yazdani was not the applicant in question; his tenants were. The Registrar has not demonstrated that Mr. Yazdani, in providing the false zoning letters, was acting as either an employee or agent of the applicant. In fact, he may be seen as acting in the capacity of landlord or prospective landlord. Even if he had been an agent of the various applicants, the wording of the section is quite specific. It is the applicant, not the agent, who faces the sanction for providing the false statement. The Registrar has not demonstrated that subparagraph 6(1)(a)(iii) applies to Mr. Yazdani in this case.

What remains to be decided is what sanction Mr. Yazdani should face as a result of his misconduct. Mr. Page, Counsel for Mr. Yazdani, submits that other registrants have behaved far worse and that Mr. Yazdani's conduct should be considered comparatively. It is true that the Tribunal has in the past considered registrants who have committed previous criminal misconduct. On occasion, the Tribunal has concluded that despite such conduct, the registrant can remain in the regulated industry. What the Tribunal considers is the totality of the past conduct. Past misconduct can be offset by sincere and concrete actions to take responsibility for the misconduct, learn from it and minimize the chance of a recurrence. On the other hand, far too often the original misconduct is compounded by attempts to cover up the misdeeds and by a refusal to accept responsibility. That is the case here.

Mr. Yazdani does not take responsibility for his role in inducing motor vehicle dealers into renting property from him on the false understanding that the property was zoned for use in that business. He does not take responsibility for providing false zoning letters to some of his tenants knowing they would be used in an application for registration. He does not take responsibility for putting his tenants at some risk of losing their registrations for providing false statements in an application. Instead, he attempted to deflect responsibility onto his former partner and, in the process, he attempted to mislead the Tribunal. He continued in an illegal and dishonest course of action for years, even after he had moved his own dealership due to the lack of zoning. He has apparently learned nothing from his misconduct and the Tribunal can have no confidence that he will not engage in similar illegal and dishonest acts in future if the temptation arises.

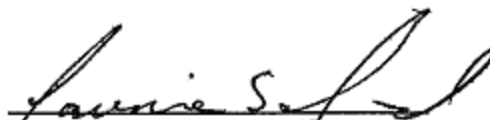
In this case, the Tribunal has very little evidence about Mr. Yazdani's past conduct other than the evidence about his involvement in the scheme to rent office space by providing false documents and his attempt to deceive the Tribunal about that involvement. Based on this, the Tribunal finds that Mr. Yazdani's past conduct affords reasonable grounds for the belief that he will not carry on his business in accordance with law and with integrity and honesty.

The Tribunal considered whether some sanction short of revocation might be possible. In this case, given how narrow the scope of the evidence is before the Tribunal and how negative that evidence is, including the negative impression created by Mr. Yazdani himself in his testimony, the Tribunal concludes that revocation is the appropriate sanction.

## **ORDER**

By authority of subsection 9(5) of the Act, the Tribunal directs the Registrar to carry out the Proposal to revoke the registration of Mr. Yazdani as a motor vehicle salesperson.

LICENCE APPEAL TRIBUNAL



Laurie Sanford, Vice-Chair

*Released: April 7, 2016*