

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



DATE: 2015-02-25
FILE: 8602/MVDA
CASE NAME: 8602 v. Registrar, *Motor Vehicle Dealers Act 2002*

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

Balwinder K. Sharma o/a World Wide Motors

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Laurie Sanford, Vice-Chair

APPEARANCES:

For the Appellant: Ajmer Mandur, Paralegal

For the Respondent: Elizabeth Maishlish, Counsel

Heard in Toronto: November 17, 21, 28, December 10, 2014; February 4, 2015

REASONS FOR DECISION AND ORDER

This hearing arises from an appeal by Balwinder K. Sharma o/a World Wide Motors to the Licence Appeal Tribunal (the “Tribunal”) from a Notice of Proposal issued by the Registrar, *Motor Vehicle Dealers Act 2002* (the “Registrar”) dated January 14, 2014, and a Notice of Further and Other Particulars dated May 14, 2014, which proposes to revoke the registration of Mr. Sharma as a motor vehicle dealer under the *Motor Vehicle Dealers Act, 2002* (the “Act”).

The grounds on which the Registrar proposes to revoke Mr. Sharma’s registration may be summarised as follows. First, the Registrar alleges that Mr. Sharma has a pattern of non-disclosure of material facts on his bills of sale to consumers. Second, the Registrar alleges that there are deficiencies in Mr. Sharma’s books and records which make regulation of Mr. Sharma’s business impossible. Third, the Registrar is concerned about evidence of the operation of unregistered businesses at unregistered locations, again making it impossible for the Registrar to effectively govern Mr. Sharma’s conduct of his business. Finally, after the Registrar served the Notice of Proposal on Mr. Sharma, he produced retail bills of sale showing disclosure of some material facts. The Registrar alleges that these bills of sale were altered from the originals in an attempt to mislead the Registrar and this Tribunal.

Mr. Sharma concedes that the bills of sale were altered but testified that this was done by his brother without his knowledge or consent. Mr. Sharma acknowledged mistakes and deficiencies in the preparation of the original bills of sale and in the record keeping but denied that any customers were hurt. He denied any of his unregistered businesses were trading in motor vehicles. Mr. Sharma undertook to do better if given a second chance.

FACTS

Giving evidence for the Registrar were Ms. Morrison, the Ontario Motor Vehicle Dealers Association (“OMVIC”) Inspector who inspected Mr. Sharma’s dealership in 2012, Ms. Halbert, the OMVIC Director of Compliance and four consumers. Mr. Sharma also testified. Credibility was an issue in this hearing and the findings of credibility are detailed below. Based on the oral and documentary evidence, the Tribunal makes the following findings of fact.

Mr. Sharma was first registered under the Act in 1999. He trades in used cars which he generally acquires at an auction. OMVIC, the organisation which administers the Act, inspected Mr. Sharma’s dealership in 2005. In the written report of the inspection, the OMVIC inspector noted deficiencies in Mr. Sharma’s purchase and sale documents. Specifically, Mr. Sharma was writing “AS IS” on his bills of sale rather than using the prescribed language and was not completing the retail bills of sale as required by the provisions of the then current statute and regulation. The inspector gave Mr. Sharma a

copy of the sections of the regulation relating to disclosure requirements. The “Inspection Findings”, signed by Mr. Sharma, note that Mr. Sharma is required to complete all bills of sale in accordance with the then current regulation.

In June, 2012, a second OMVIC Inspector, Ms. Morrison, again inspected the premises and records of Mr. Sharma. Ms. Morrison reviewed the sales documents of 35 transactions and found that 25 of them contained omissions or misstatements of facts which the Registrar believes are material facts required to be disclosed under the Act and under Ontario Regulation 333/08 to the Act (“Regulation 333”). Regulation 333 lists a number of statutorily required disclosures and ends, at subsection 42(25) with the following: “ 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.” This is the definition of “material fact” that the Registrar used in assessing Mr. Sharma’s compliance with the disclosure requirements of Regulation 333.

In the majority of cases, the auction or wholesale bills of sale to World Wide Motors partially or fully disclosed material facts about the vehicle. In a minority of cases, wholesale bills of sale did not contain the required disclosure. Regardless of whether the auction house had disclosed material facts or not, Ms. Morrison’s inspection showed that Mr. Sharma was not making the required disclosures on his retail bills of sale.

Some of these failures were comparatively minor. For example, Mr. Sharma frequently neglected to disclose whether the odometer reading was in miles or kilometres. For late model vehicles originally sold in Ontario, the odometers may be assumed to be calibrated in kilometres. Other areas of non-disclosure were more serious. For example, Mr. Sharma routinely neglected to identify the name or address of his dealership, World Wide Motors. The consumers who testified were unable to identify World Wide Motors as the dealer from which they purchased their cars, despite the fact that the bills of sale for these transactions were found in the records of World Wide Motors.

Mr. Sharma’s bills of sale also neglected to inform consumers that certain vehicles had been daily rental cars. Ms. Halbert testified that the fact that a car has been a rental vehicle is considered material as these cars may be expected to have received a lower standard of care than a privately owned vehicle. Similarly, in at least one case, Mr. Sharma neglected to disclose on the bill of sale that the car had been reported as stolen. Stolen cars, in Ms. Halbert’s testimony, are also assumed to have received a lower standard of care. Mr. Sharma’s bills of sale occasionally failed to disclose that a vehicle had been registered out of province for varying periods of time. Ms. Halbert testified that this was a material fact as it would alert a potential purchaser that a search of the vehicle’s history would need to be conducted in more than one province. The Ontario Ministry of Transportation only keeps records for cars during the time they are registered in the province.

In a number of cases, the non-disclosure was very serious. In over ten cases, Mr. Sharma did not disclose previous damage to the car that was over \$2,000. In one case, despite the disclosure of the wholesaler, Mr. Sharma did not disclose to the retail purchaser of the vehicle that it had previously incurred \$28,000 in damages in multiple accidents. Ms. Halbert testified that in her experience, purchasers of inexpensive used cars are not easily able to absorb unexpected maintenance or repair bills. Thus, it is very important that they be informed of prior accidents involving the car they are purchasing.

Ms. Morrison attended at the registered address of World Wide Motors and found that the site was shared by multiple motor vehicle dealers. While Mr. Sharma's premises complied with the Act, he was not keeping his books and records at the premises. He told Ms. Morrison he kept them at home, which is a violation of s 56 of Regulation 333. Regulation 333 and certain provisions of the *Highway Traffic Act*, R.S.O. 1990 c. H.8 which are incorporated by reference, provide that a dealer must maintain comprehensive records of the inventory of cars coming into and sold from the dealer's lot. Ms. Maishlish, Counsel for the Registrar, advised that the Ministry of Transportation, requires the records of this inventory to be maintained in the form of a "garage register". Ms. Morrison found that Mr. Sharma's garage register was not current.

Mr. Sharma's bank records were not available initially. Ms. Morrison asked Mr. Sharma to produce bank records for the prior 12 months. He eventually produced records for six months. Not all the amounts that Mr. Sharma receives from customers are going through his bank account, a violation of section 59 of Regulation 333. Mr. Sharma explained to Ms. Morrison that when he receives cash payments from customers he sometimes uses that cash to pay the auctioneer directly rather than first placing the money in his account as is required by Regulation 333.

Ms. Morrison inquired about Mr. Sharma's records of vehicles he had accepted as trade-ins. Mr. Sharma told her that he did not accept trade-ins. Two of the consumers who gave evidence testified that they had traded vehicles in to Mr. Sharma as part of their purchase. There appears to be no record of these trade-in vehicles and only one of the bills of sale referred to a trade-in. Mr. Sharma's evidence was that while he assisted certain clients in dealing with their pre-existing cars, he did not take ownership of them. He was unable to explain why there is a reference to a trade-in allowance on one of the bills of sale.

The consumers who testified had each signed a bill of sale which Ms. Morrison found in Mr. Sharma's files. In each of these bills of sale, Mr. Sharma was identified as the salesperson. One of the consumers testified that he bought his car at a private home in Brampton and purchased it from a man who will be referred to as "ZH" and that he never met Mr. Sharma. A second consumer testified that he purchased his car at "Balwinder Sharma's shop". He identified the location as a "garage body shop" known as T. Grewal Auto. Ms. Halbert identified a copy of T. Grewal Auto's web site. The site refers to T. Grewal as selling used cars and uses one of the phone numbers that Mr.

Sharma uses for World Wide Motors. T. Grewal Auto is not registered under the Act. OMVIC conducted a corporate search of the numbered company trading under the name T. Grewal Auto and found Mr. Sharma was the sole officer and director.

OMVIC records also show another corporate entity trading under the name "B.S. Auto" applied for registration as a dealership but did not complete the application. An OMVIC corporate search shows the sole officer and director of this company as Mr. Sharma. Ms. Halbert introduced evidence showing the company remitting goods and services tax ("HST") but there is no evidence of what goods or services the company is trading in. It was Ms. Halbert's evidence that the combination of the inadequate and missing records and the evidence of multiple businesses and trading locations makes it impossible for the Registrar to determine what motor vehicle trades Mr. Sharma is engaging in.

In his Notice of Appeal, Mr. Sharma stated that he would produce and rely on bills of sale for all the vehicles sold to retail customers, presumably, the bills of sale in the 25 cases where Ms. Morrison found examples of non-disclosure. Mr. Sharma did produce over 15 of these bills of sale. However, an examination of them showed that they were not different bills of sale from those inspected by Ms. Morrison. Rather, they were the same bills of sale with alterations made to them. In some cases this is very clear on the face of the bill of sale itself. Over ten of these altered bills of sale purport to disclose previous accidents involving the vehicle being sold. One of the consumers who testified purchased a car which had been in an accident. His original bill of sale did not disclose the accident but an altered bill of sale did. His evidence was that he was unaware of the accident and had not received the altered bill of sale.

Mr. Sharma concedes that the bills of sale were altered. His testimony was that he relied on his brother to run the motor vehicle dealership while he focussed on the garage operations. It was his brother who altered the bills of sale, according to Mr. Sharma. Mr. Sharma testified that his brother refused to attend at the hearing and give evidence. Mr. Sharma also testified that he did not intend to employ his brother in the future. However, Mr. Sharma conceded that his brother is still selling cars at the dealership.

Mr. Sharma's testimony was that he repaired a number of the cars in question and that he stood behind his work. Indeed, the customers who testified expressed satisfaction with the way their cars operated. At least one of the customers who testified had done business with Mr. Sharma in the past.

Mr. Sharma explained that he did not feel that he needed to keep his records in his registered place of business, as it was not secure. In 2005 and again in 2010 and 2012, Mr. Sharma was asked to produce his records. It is safe to assume that on at least one of these occasions he was advised to keep his records at his place of business and available for inspection. His testimony was that the premises on which his dealership was located had been upgraded and that in future he would keep his records there. Apparently, he continues to keep his records at home.

Concerning his failure to deposit sales proceeds into a bank account, Mr. Sharma acknowledged that he knew of his obligation but testified that he didn't have a lot of money and that his customers often paid over time. His understanding was that he was obliged to deposit the total amount of the sale price at the time of the transaction, regardless of whether or not he had been paid. Mr. Sharma testified that he could not afford to deposit the full amount of the sales price in the account and so elected to deposit none. Mr. Sharma apparently made no effort to contact OMVIC and determine whether his understanding was correct. Nor did he apparently ask if alternate arrangements might be made.

Mr. Sharma referred to taking one customer with him to the auction house, where most of his cars are sourced. He knew it was against the auction house rules to have a customer on site but he explained that the auction house did not stop him. When the auction house increased their enforcement of the rules, he complied.

Mr. Sharma testified that he relied on the disclosure that the auction house made to its wholesale customers rather than doing his own research on any of the sites available to dealers for that purpose or doing his own inspection of the vehicle. His testimony was that the auction houses were bigger businesses than he was and they had better resources for determining the history of the motor vehicle in question. When asked to explain why some disclosures made by the auction house to him were not disclosed by him to his customers, he offered a variety of explanations, mainly that his brother had completed the paperwork. Ms. Halbert testified that it is the obligation of the registrant to conduct such searches and inspections as are necessary to be able to disclose material facts to the consumer. It is not acceptable, in OMVIC's view, to rely on the disclosure of an auction house. An auction house, Ms Halbert testified, is a wholesale operation and has different disclosure obligations from a dealership such as Mr. Sharma's which sells to consumers. Ms. Halbert testified that the obligation of a dealership to conduct such research as is necessary to disclose material facts is communicated to registrants in ongoing industry bulletins.

Mr. Sharma conceded that he was running a numbered company as an unregistered business and paying HST on the proceeds of motor vehicle sales through that business. However, Mr. Sharma testified that the HST payments were made only in relation to sales made by his registered business, World Wide Motors. He also acknowledged that the garage he operates has a website that refers the garage being in the business of selling used cars. His testimony was that the reference to used cars was because his cell phone was listed on the site and he does do business relating to car sales on his cell phone.

Mr. Sharma testified that he does not wish to lose his business; he and his family depend on it for their livelihood. He intends to comply with the Act in the future. He notes that he received no training and little support from OMVIC in meeting his obligations under the Act.

Mr. Sharma's explanation that his brother ran the motor vehicle business is undermined by the extraordinarily detailed recollection of the individual transactions that Mr. Sharma demonstrated during his testimony. Neither can the Tribunal accept Mr. Sharma's testimony that he did not know or consent to the alteration of the bills of sale in preparation of this appeal. Mr. Sharma's knowledge of the business was too detailed for him not to have been aware that approximately 15 bills of sale had been altered. For example, it appears that Mr. Sharma signed all the bills of sale in question. While Mr. Sharma's explanation was that his brother asked him to sign them, this does not ring true. There is nothing in the Act which would prevent Mr. Sharma's brother, who is registered as a salesperson under the Act, from signing bills of sale in his own name. In any event, Mr. Sharma as owner is responsible for the actions of his brother, a responsibility that Mr. Sharma accepted.

Mr. Sharma's explanation for not keeping his business or financial records available for inspection by OMVIC is not credible. It may be assumed that Mr. Sharma had been advised in the past to keep his records on site. It is telling that there were serious deficiencies in the records when they were ultimately produced. The Tribunal does not accept Mr. Sharma's explanation of why he is operating an unregistered company and paying HST for car sales through that company. It simply does not make sense to go to the expense of maintaining an inactive business corporation for the purpose of paying HST on behalf of a second business. Nor does the Tribunal accept Mr. Sharma's explanation of why his garage advertises itself as a place to buy used cars despite being unregistered. One of the consumers who testified gave evidence that his transaction was completed at the garage and the Tribunal found that testimony believable. The consumer had no apparent reason to lie and Mr. Sharma did not directly contradict this version of events. The most probable explanation for all this behaviour is that Mr. Sharma wishes to conceal some aspects of his business from his regulator.

DECISION

Based on the evidence, the Tribunal has significant concerns about the way in which Mr. Sharma is operating his business. There is a pattern of non-disclosure, some of it material, in the bills of sale which Mr. Sharma signed. The inability of Mr. Sharma to produce complete records and his lack of compliance in his banking practices and records make it difficult to capture a complete picture of his business dealings. There is evidence of unregistered businesses owned by Mr. Sharma and having some connection with the trading of motor vehicles. There is evidence that at least one car was sold at the unregistered location of his garage. Finally, there is the evidence that bills of sale were deliberately altered after these proceedings commenced. These altered documents were filed with the Registrar and with the Tribunal in what must be assumed to have been an attempt to mislead.

The facts not disclosed on the bills of sale are in some cases material and the fact that this pattern of non-disclosure continued after the 2005 inspection is of concern. The

alteration of the bills of sale clearly falls short of the standards expected under the Act. Mr. Sharma's refusal to keep his records at his place of business coupled with the deficiencies in his banking and inventory records when these were obtained also raise serious concerns about whether Mr. Sharma is able or willing to comply with the Act. The evidence of other unregistered businesses raises the same concerns. In short, Mr. Sharma's operations are sufficiently opaque that it is difficult to know what motor vehicles he is trading in and how he might be regulated.

The provisions in the Act regarding registration include the following:

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, . . .

In this case, Mr. Sharma displays a startling disregard for the Act under which he is regulated. The Tribunal can have no confidence that he would comply with the Act if he were given another chance. In this regard it is important to note that he was inspected in 2005 and again in 2012. Mr. Mandur, Mr. Sharma's representative, submitted that there was no evidence of non-disclosure on bills of sale after the 2012 inspection. However, OMVIC did not inspect the business after then. It was open to Mr. Sharma to introduce evidence of his compliance with the Act following the 2012 inspection and he chose not to do this. What we do know is that Mr. Sharma's brother, whom he holds responsible for the problems with the bills of sale, continues to work at the dealership.

Mr. Mandur noted that there was no evidence of a customer being harmed as a result of Mr. Sharma's non-compliance with the Act. However, the test is not whether there has been actual harm. An inability to comply with the Act raises the prospect of potential customer harm. In any event, the test under the Act deals with Mr. Sharma's ability to carry on business in accordance with law, including the Act, and with integrity and honesty and does not expressly address the issue of whether or not a customer has been harmed by the conduct of the business.

Having said this, there are certain ironies in this case. It appears that, apart from Mr. Sharma and his family, the people who will care the most if Mr. Sharma must close his dealership are his customers. It seems that Mr. Sharma is a good and conscientious mechanic. He stands behind his work. The customers who testified on behalf of the Registrar professed themselves satisfied with their cars.

It is also ironic to consider that it might be possible to be in compliance with the Act and yet have customers who are disgruntled with the cars they purchase. There may well be dealers who are complying with the Act yet providing a lower standard of mechanical skill than Mr. Sharma. In finding and repairing cars which are badly used, it could be

argued that Mr. Sharma is providing a service to a vulnerable segment of the car buying public.

However, the Act is set up to govern tens of thousands of motor vehicle dealers. It cannot deal with a “special case” that might require extraordinary supervision, such as Mr. Sharma. Even if OMVIC did have the resources to closely scrutinise Mr. Sharma’s operation, the Tribunal would remain concerned about Mr. Sharma’s lack of transparency in the operation of his business. The unregistered businesses, the concealment of records and the provision of false documents all suggest that even tighter scrutiny would not give any confidence that Mr. Sharma would conduct his business in accordance with the Act.

Mr. Mandur sought to hold OMVIC responsible for its failure to train and regulate Mr. Sharma. However, it is a registrant’s obligation to bring himself into compliance with the regulatory regime, not the regulator’s responsibility to provide the level of oversight to ensure compliance. In this case, as noted above, it is not clear what level of oversight would be required to bring Mr. Sharma into compliance with the Act and keep him in compliance.

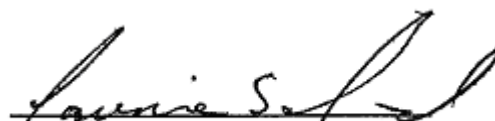
Mr. Sharma’s past conduct gives reasonable grounds to believe that he will not carry on business as a motor vehicle dealer in accordance with the law and with integrity and honesty. The question remains whether there is some other alternative. Mr. Sharma argued that he ought to be given a second chance. The time for that was after the 2005 inspection. If, after the 2005 inspection, Mr. Sharma had found a registered dealer to run the car sales part of his business and focussed on his garage, this hearing might not have been required. Instead, at some point Mr. Sharma brought in his brother to run the business and that appears only to have created problems.

Mr. Sharma is by all accounts a competent and conscientious mechanic. It remains open to him to align his garage operations with a registered dealership. The Tribunal considered whether any more formal arrangement might be open to Mr. Sharma and concluded that this is not possible. Such an arrangement would involve Mr. Sharma being registered as a salesperson working for a dealer who would be willing to accept responsibility for his conduct. There is no evidence that Mr. Sharma would be willing to resign his registration as a motor vehicle dealer and apply for registration as a motor vehicle salesperson. Nor was there any evidence that a registered motor vehicle dealer would be willing to employ Mr. Sharma and accept responsibility for his conduct. In the absence of a registered motor vehicle dealer willing to accept responsibility for the oversight of Mr. Sharma, it is difficult to envision how Mr. Sharma might continue to sell cars. It is clear that Mr. Sharma cannot operate a dealership himself.

ORDER

By authority of subsection 9(5) of the Act, the Tribunal directs the Registrar to carry out his proposal to revoke the registration of Mr. Sharma as a motor vehicle dealer.

LICENCE APPEAL TRIBUNAL

A handwritten signature in black ink, appearing to read "Laurie Sanford", written over a horizontal line.

Laurie Sanford, Vice-Chair

Released: February 25, 2015