

**Licence**  
**Appeal**  
**Tribunal**

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



**DATE:** 2012-09-13  
**FILE:** 7340/MVDA  
**CASE NAME:** 7340 v. Registrar, *Motor Vehicle Dealers Act 2002*

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

Michael Kin-Lon Koo

Applicant

-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 Applicant:** Daniel McCormack, Agent

**For the** Elizabeth Maishlish, Counsel

**Respondent:**

Michael Rusek, Student-at-law

**Heard in Toronto:** September 5, 2012

## REASONS FOR DECISION AND ORDER

This is an appeal to the Licence Appeal Tribunal (the "Tribunal") by the Applicant, Michael Koo, from a Notice of Proposal issued by the Registrar, (the "Registrar") *Motor Vehicle Dealers Act 2002* (the "Act") proposing to refuse to register Mr. Koo as a salesperson under the Act.

Based on the facts found and the reasons given below, the Tribunal has decided that Mr. Koo's application for Registration as a salesperson should be refused.

## FACTS

On January 6, 2009, Mr. Koo was employed as a forklift operator and shipper/receiver at the warehouse of a major manufacturer of printers and printing supplies. According to evidence of the investigating police officer, on that night at approximately 1:30 am, Mr. Koo and others broke into the warehouse and, using the forklifts available, selected and moved 50 skids of printer cartridges from the warehouse to a 53 foot long tractor trailer at the loading dock. The operation took until about 4:00 a.m. The stolen cartridges had a wholesale value of almost \$ 1.5 million and a retail value of approximately four times that much. Mr. Koo was not one of the two ringleaders in the planning and execution of the theft but he was enlisted in the plan with the expectation that his share of the proceeds of the theft would be "upwards of \$100,000". This proved to be optimistic. At the time of his arrest, in June, 2009, Mr. Koo had received \$5,000 from the proceeds of the sale of the stolen goods.

On his arrest, Mr. Koo confessed to the crime and, in the opinion of the police officer, took responsibility for his involvement. He testified in the eventual trial of some of the co-conspirators. He was charged with and convicted of breaking and entering and theft over \$5,000. He received a conditional sentence of two years less a day and the forfeiture of the \$5,000 he was paid for the crime together with a taser gun and alleged illicit substances found in his bedroom at the time of his arrest. His Probation Officer testified that he assessed Mr. Koo as being at "low risk" of re-offending at the time of his sentence. Mr. Koo has complied with the conditions of his sentence without issue. The Probation Officer testified that Mr. Koo was in a relationship with a woman who works as a registered nurse, the couple now have a child and Mr. Koo is active in the care of his son. The conditional sentence was completed in June, 2012.

Mr. Koo found employment in the construction industry during his probation and took two courses in stone masonry. In November, 2011, Mr. Koo applied for registration as a salesperson under the Act. The Registrar has refused to register Mr. Koo for several reasons. First, the Registrar is concerned about the criminal activities of Mr. Koo. The Registrar is also concerned that not enough time has passed since Mr. Koo's sentence was completed to establish a record of unsupervised positive conduct. The Registrar is further concerned that Mr. Koo, while he did disclose his criminal record in his application,

did not disclose sufficient details to satisfy the Registrar until he was prompted for more information.

Another area of concern for the Registrar stems from an inspection of the dealership where Mr. Koo is working now and where he hopes to work as a salesperson when registered. An inspector for the Ontario Motor Vehicle Industry Council ("OMVIC"), which administers the Act, testified that when she inspected the payroll of the dealership, she found payments to Mr. Koo that were characterised as commissions. She spoke to an employee of the dealership who told her that they only pay commissions to salespeople. She concluded that Mr. Koo was trading in motor vehicles without being registered and specifically, that he was negotiating dealer-to-dealer trades and engaging in activity known in the industry as "bird dogging". The OMVIC inspector described bird dogging as bringing a prospective buyer into the dealership. The Sales Manager for the dealership gave evidence and disagreed with OMVIC's interpretation of what Mr. Koo's role is. According to the testimony of the Sales Manager, Mr. Koo drove the motor vehicles involved in dealer-to-dealer trades but did not participate in any trading activity regarding these transactions. Mr. Koo also referred some people to the dealership, an activity which the Sales Manager does not regard as engaging in the activities of a salesperson.

On March 28, 2012, the Registrar issued the Notice of Proposal proposing to refuse Mr. Koo registration as a salesperson under the Act.

## **DECISION**

Under subsection 6(1) of the Act, a person who otherwise qualifies is entitled to be registered under the Act unless certain conditions are met. Subparagraph 6(1)(a)(ii) sets out one of these disentitling conditions as follows:

"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."

The question for the Tribunal is whether subparagraph 6(1)(a)(ii) applies to disentitle Mr. Koo to registration. The Registrar has raised a number of concerns which are outlined above. Beginning with the suggestion that Mr. Koo has traded in motor vehicles without being registered, the Tribunal is not persuaded that this is the case or that, if it is, it disentitles Mr. Koo to registration. The Tribunal accepts the evidence of the sales manager of the dealership involved that Mr. Koo transported motor vehicles involved in dealer-to-dealer trades and that the findings of the OMVIC inspector that Mr. Koo negotiated some of these trades are the result of a misunderstanding.

Concerning the issue of Mr. Koo referring people to the dealership, OMVIC and the dealership disagree on whether this activity is a "trade" as defined in the Act. Trading in motor vehicles is prohibited unless a person is registered.

The Act defines a "trade" broadly, as follows:

"Trade" includes buying, selling, leasing, advertising or exchanging an interest in a motor vehicle or negotiating or inducing or attempting to induce the buying, selling, leasing or exchanging of an interest in a motor vehicle, and "trade" when used as a noun has a corresponding meaning.

The Registrar argues that referring someone to a dealership is "inducing or attempting to induce" the purchase of a motor vehicle. However, that definition cannot be read as including any referral, no matter how casual. Otherwise, a satisfied customer who recommends a dealer to a friend would find himself in violation of the Act.

For the purposes of this decision, it is not necessary to decide where the line is between a referral and an inducement or attempted inducement to trade or whether the line was crossed here. It is sufficient to note that the line is not clear cut and that the dealership did not think it had been crossed. If the dealership was confident that Mr. Koo's activities did not cross that line, it seems unduly onerous to expect Mr. Koo to determine on his own where the line between an innocent referral and prohibited trading activity was. If either the dealership or Mr. Koo were wrong in their assessment of whether Mr. Koo's referral activities were prohibited, it should be seen as an honest mistake and should not be taken as evidence a lack of compliance with the law, or a lack of honesty or integrity.

By the same token, the Tribunal is not persuaded that Mr. Koo failed to disclose his criminal activity. While the disclosure might have been more fulsome, nothing negative about Mr. Koo's character can be discerned from his application or his answers to the follow-up questions.

This leaves the issue of Mr. Koo's criminal activities and here the Tribunal has grave concerns. This was not a petty crime or a spur of the moment misjudgement. The amount of the theft is significant as was Mr. Koo's expected payment. The testimony was that the crime took hours to perpetrate and Mr. Koo was actively involved, although he was not the directing mind. Approximately six months elapsed from the date of the crime until Mr. Koo's arrest and confession.

Mr. McCormack, on behalf of Mr. Koo, argued that the crime did not involve consumers. He noted that it was a crime against an employer. Mr. McCormack is the principal of the dealership that employs Mr. Koo and that is sponsoring his application. He argued that if he, as the employer, was prepared to take the risk of employing Mr. Koo, then that should address the Registrar's concerns. There are several problems with this argument. First, the crime has effects beyond the harm to the company that was robbed. It affects society as a whole both quantitatively and qualitatively. Quantitatively, prices of merchandise go up when merchants have to cover losses due to theft. The costs of policing rise when the police, as here, have to conduct extensive investigations to apprehend criminals. Qualitatively, the fabric of society is undermined when people commit crimes like this one. Secondly, the argument breaks down as a matter of logic. There is no reason why a man who is willing to steal from his employer should be trusted not to steal from his customers.

Mr. McCormack argued that one crime should not prohibit Mr. Koo from ever becoming a motor vehicle salesperson. The Act does permit consideration of all the past conduct of a

potential registrant. Thus, if there is sufficient evidence that a criminal has paid his debt, taken responsibility for his actions, taken material and concrete steps to reform and achieved success in sustaining a life of honesty and integrity, then the Tribunal is entitled to take these factors into consideration in determining whether someone has taken themselves out of the operation of subparagraph 6(1)(a)(ii) of the Act.

In this case, the Tribunal does not have this evidence. Mr. Koo did not testify nor were any character witnesses called on his behalf. It is not possible for the Tribunal to determine whether Mr. Koo has taken any actions to understand what caused him to commit the crime or to learn any lessons from it. Apart from evidence of a longer term relationship and the birth of his son, the Tribunal has scant evidence that Mr. Koo has taken any steps to turn his life around. While he has completed his conditional sentence, there has not been a sustained period of unsupervised positive conduct. The Tribunal has no option but to conclude that Mr. Koo's past conduct does give rise to reasonable grounds to believe that he will not conduct his business in accordance with the law and with integrity and honesty as required under the Act.

Mr. McCormack advised that he did not understand that character witnesses would be significant as OMVIC had not requested them. He also advised that this is his first appearance before the Tribunal. Mr. McCormack requested the Tribunal to draw certain inferences from the fact that a dealership is not only prepared to employ Mr. Koo but was actively involved in this appeal. The Tribunal was asked to infer that the senior officers of the dealership believe that Mr. Koo has reformed and that this is strong evidence of a change in behaviour. However, in the absence of direct evidence to that effect, the Tribunal is unable to make these inferences.

Under the Act, Mr. Koo has the opportunity to renew his application in two years if new or other evidence is available or if material circumstances have changed. If Mr. Koo is in a position to bring forward evidence of a change in his ability to comply with the law and conduct his business with honesty and integrity, he will be free to re-apply then, on the basis of that evidence.

## ORDER

The Tribunal directs the Registrar to carry out the Proposal to refuse to register the Applicant as a salesperson under the Act.

LICENCE APPEAL TRIBUNAL



Laurie Sanford, Vice-Chair

*Released: September 13, 2012*