

Licence Tribunal
Appeal d'appel en
Tribunal matière de permis



DATE: 2017-03-15
FILE: 10418/MVDA
CASE NAME: 10418 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 Refuse and Revoke Registrations

6442765 Canada Corporation o/a AM Auto and Abdul Majeed

Appellants

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Patricia McQuaid, Vice-Chair

APPEARANCES:

For the Appellants: Abdul Majeed on his own behalf and on behalf of AM Auto

For the Respondent: Michael Burokas, Counsel

Heard in Toronto: January 30 and 31, 2017

REASONS FOR DECISION AND ORDER

BACKGROUND

This is a hearing before the Licence Appeal Tribunal (the “Tribunal”) arising out of a Notice of Proposal issued by the Registrar, *Motor Vehicle Dealers Act 2002* (the “Registrar” and the “Act” respectively). The Notice of Proposal dated January 27, 2017 proposes to refuse the registration of 6442765 Canada Corporation o/a AM Auto (“AM Auto”) as a motor vehicle dealer and to revoke the registration of Abdul Majeed as a salesperson under the Act. The Notice of Proposal was first issued on August 10, 2016. It proposed to revoke both registrations; however, because AM Auto failed to renew its registration on September 26, 2016 as required by the usual renewal cycle, its registration lapsed which led its application to re-register and the re-issuance of the Notice of Proposal on January 27, 2017.

The Registrar is proposing to refuse AM Auto’s registration and revoke Mr. Majeed’s registration on the basis that the past conduct of the Appellants affords reasonable grounds for belief that they will not carry on business in accordance with the law and with integrity and honesty.

For the reasons set out below, the Tribunal directs the Registrar to carry out the Notice of Proposal.

BACKGROUND

Mr. Majeed was first registered as a motor vehicle salesperson in June 2009, AM Auto, of which Mr. Majeed is the sole officer and director, was first registered as a motor vehicle dealer in September 2014. AM Auto only deals in used motor vehicles. Between September 2014 and September 2016, it has sold a total of 65 vehicles. Though Mr. Majeed is still registered as a motor vehicle salesperson, he is not currently affiliated with any dealership nor has he made an application to work with another dealership and therefore is prohibited pursuant to s. 4(5) of the Act from working as a salesperson.

Selling motor vehicles, both new and used, is a highly regulated industry with a strong consumer protection focus. Responsibilities and obligations of salespersons and dealers are set out in the Act and its regulations. For example, s. 42 of Ontario Regulation 333/08 sets out a detailed list of information that must be disclosed and included in a contract for the sale of a new or used vehicle. For a used vehicle, this information includes the mileage on the vehicle, whether there had been any structural damage to the vehicle and whether the total costs of repairs to fix the vehicle exceed \$3000, and whether the manufacturer’s warranty on the vehicle was cancelled. Section 53 of the same regulation provides that a motor vehicle dealer shall maintain records of each sale and trade completed.

Ontario Regulation 332/08 under the Act establishes a Code of Ethics for registrants. A motor vehicle dealer is required to fully and truthfully describe the features of a vehicle not only to consumers but also in any contract for sale to another motor vehicle dealer. The Registrar alleges that the Appellants have failed to disclose material facts to consumers as required by s. 42 of Ontario Regulation 333/08 and failed to disclose materials facts to another dealer contrary to s. 5 of Ontario Regulation 332/08. The Registrar asserts that the disclosure obligations are important and must be enforced because consumers, and other dealers, need to be in a position to make informed decisions about their purchase, which they cannot do if the materials facts are not disclosed to them. In addition, the Registrar alleges that the Appellants failed to provide records of sales and tax returns to the Ontario Motor Vehicle Industry Council (“OMVIC”) inspector as requested and failed to file tax returns (specifically in relation to HST), the latter of which, the Registrar submits, is indicative of a lack of financial responsibility.

THE LAW

The Act states in part as follows:

Registration

- 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,
 - (i) having regard to the applicant’s financial position or the financial position of an interested person in respect of the applicant, the applicant cannot reasonably be expected to be financially responsible in the conduct of business,
 - (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;

...

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.

...

Further Application

- 12.** A person whose registration is refused, revoked or refused renewal may reapply for registration only if,
- (a) the time prescribed to reapply has passed since the refusal, revocation or refusal to renew; and

(b) new or other evidence is available or it is clear that material circumstances have changed.

Regulation 333/08 sets out the time in which a person may reapply:

15. The prescribed time for the purpose of clause 12(a) of the Act is two years.

The powers of the Tribunal are set out as follows in the Act:

9. (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.

EVIDENCE and ANALYSIS

Concerns about the conduct of the Appellants came to OMVIC's attention as a result of a routine inspection by Justin Brown, an OMVIC inspector. In that role, Mr. Brown goes to dealerships to review their books and records, checking for HST remittances and reviews bills of sale to ensure that the dealer has complied with the disclosure requirements set out in the Act and regulations. Mr. Brown testified that a dealer is required to disclose all material facts about the vehicle, which is especially critical when it is a used vehicle. Of particular importance is whether the vehicle has been in an accident, and if it has been, whether the total cost of repairs exceeded \$3000, and whether the vehicle was declared by an insurer to be total loss as a result of the accident. This is all information that, if disclosed, could reasonably be expected to influence the decision of a reasonable consumer in terms of their decision whether or not to buy the vehicle.

As part of the inspection, Mr. Brown reviews the dealer's garage register to determine where and when the vehicle was purchased by the dealer, its VIN, and the repair history for each vehicle. Mr. Brown made an appointment to meet with Mr. Majeed on February 23, 2016. He reviewed the garage register and noted that not all bills of sale were available for inspection. He took a sampling of files, 20 in total (both retail and wholesale deals), back to the OMVIC office for photocopying. They agreed that they would meet again on March 2, 2016 so that Mr. Brown could return the files and Mr. Majeed would have additional time to provide the records of other transactions.

On his review, Mr. Brown noted that 17 of the 20 files revealed nondisclosure issues: some vehicles had been in accidents with damage exceeding \$3000 and some were declared a total loss, but there was no statement on the bill of sale to that effect. These vehicles would have been purchased by Mr. Majeed at an auction, which is not open to the general public; however, at auction, the relevant details about the vehicle are disclosed to dealers.

When asked by Mr. Brown why he was selling vehicles without proper disclosure, Mr. Majeed responded that consumers were told verbally. Mr. Brown explained that this

was not sufficient; such information needs to be in writing, on the bill of sale, to protect both consumers and other dealers.

When Mr. Brown met with Mr. Majeed again on March 2nd, to return the files, Mr. Majeed was unable to produce additional records. At this meeting, Mr. Majeed repeated that the consumers were given disclosure verbally and added that some of the transactions were completed by two of his salespersons, referred to by him as Syed and Naveed (Syed was the person in charge of the dealership in Mr. Majeed's absence) who had then left his employ to set up their own dealership, DAR Motors. DAR Motors operates on the same property out of a different trailer. He suggested that Syed and Naveed were trying to sabotage his business. Mr. Brown reminded him that AM Auto, as the dealer, was responsible to ensure that every salesperson employed by it carries out his or her duties in compliance with the Act and regulations.

Mr. Brown met with Mr. Majeed again on March 16, 2016. He asked to see his bank statements and the notice of assessment for HST. Mr. Majeed was able to provide the bank statements which were positive with no "NSF" cheques noted. Mr. Majeed told Mr. Brown that he had not yet done his taxes and that his accountant was away until mid April, to which Mr. Brown responded that this was probably not compliant with Canada Revenue requirements and left Mr. Majeed with a written direction that Mr. Majeed had until the end of April 2016 to provide confirmation to OMVIC that taxes had been paid.

At this final meeting, Mr. Brown asked Mr. Majeed how he was going to rectify the nondisclosure issues. Mr. Majeed stated that he would reach out to the consumers and make things right by either providing restitution or he would buy back the vehicles.

As part of his investigation, Mr. Brown did contact some of the consumers. Three of them testified at the hearing.

AM purchased a 2006 Ford Escape from AM Auto, in March 2015, for \$2505. He testified that he asked the salesperson (Syed) three times whether the car had been in an accident, to which Syed answered "no". He knew to ask, because, in his view, if you were buying a car that had been in an accident, you were buying a risk. Three days after he purchased the vehicle, he had an issue with the brake pedal requiring \$350 in repairs. Ten days after that, the vehicle broke down and this necessitated \$600 in repairs. To date, AM estimated that he had spent almost \$4000 on repairs. He did not contact AM Auto; however, approximately ten days before the hearing, he met with Mr. Majeed, at Mr. Majeed's request, and was told that the vehicle did have some problems previous to his purchase. Mr. Majeed asked him to sign a form indicating that he had been informed subsequent to the purchase about the vehicle's history. AM said he would only sign if he could return the car and get reimbursed for the purchase price and all the money he spent on repairs. AM reiterated that he would not have purchased the vehicle had he known that it had been in an accident previously.

The vehicle history documents reveal that this vehicle had been in an accident in 2012 and suffered over \$8000 damages.

DP purchased a 2006 Nissan Sentra in June 2015, for a total purchase price of \$2825, inclusive of HST. Naveed was the salesperson. She paid cash for the vehicle. She testified that no one told her that the vehicle had been in an accident previously, nor did she think to ask. The vehicle records reveal that the vehicle had in fact been declared to be a total loss by the insurer and the manufacturer's warranty had been cancelled. DP did have a mechanic friend attend with her when she purchased the car. He had them put the car on a hoist so that he could check it out. He said it looked good. A few months later, DP had a problem with the ignition. She paid \$300 to have it repaired.

When Mr. Brown contacted her and told her about the repair history for her car, he also told her that she could make a claim against the Motor Vehicle Dealers Compensation Fund. However, he suggested that she should first contact AM and try to settle a claim with him, which she did, and was reimbursed \$750. DP repeated that she would not have paid \$2825 for the car had she known its repair history.

The third consumer witness was PH. He purchased a 2007 Camry in March 2015. Syed was the salesperson. He paid approximately \$8000 for the car. When he first looked at the car, it would not start. The battery was dead, but he was, nevertheless, interested in the vehicle. Syed said that they would get it roadworthy. No one told him that it had been in an accident previously, nor did he ask. The records show that the car had suffered approximately \$17000 in damage in a 2007 accident. Since owning the vehicle, he had to dismantle the alarm system because it was draining the battery and had to repair a crack in the exhaust system. PH stated that had he known about the repair history, he would not have purchased it, or at least would have thought twice before buying a car with that much prior damage.

In his testimony, Mr. Majeed acknowledged his mistake in not disclosing vehicle history on the bills of sale, but stated that he was prepared to compensate the purchasers affected. He stated that his salespersons should have made the required disclosure and asserted that their nondisclosure was intentional, but also conceded that he knows he is ultimately responsible for their actions as the dealer. He also acknowledged that he did not review the sale documents completed by Syed and Naveed. Mr. Majeed explained that he was, at the time of most of the deals in issue, and is still, driving a limousine to make money to cover the expenses of the business. He is at the dealership about 2-3 hours per day. Syed was authorized to look after the business in his absence, but he did not appear to keep documents in order.

A review of the various consumer purchase documents filed in evidence shows that Mr. Majeed was the salesperson on only one of these deals. However, on this transaction, the sale of a 2005 Toyota for \$5700, in December 2014, the fact that the vehicle suffered damage in 2013 in the amount of \$5454 was not disclosed.

In response to questions in cross examination, Mr. Majeed also conceded that despite his assurances to Mr. Brown in March 2016, that he would make things right with the

affected consumers, he did not contact any of the consumers until January 2017, shortly before the hearing date.

Regarding the tax payments, Mr. Majeed's evidence did suggest confusion surrounding the exchange in March 2016 between he and Mr. Brown. The HST payment was not made by the end of April 2016 as directed by Mr. Brown; however, it was Mr. Majeed's evidence that August is the fiscal year end for the business and that he had up to two years to pay HST, which he did, in August 2016 being the two year anniversary for his business. There is no evidence to contradict that assertion and the Tribunal accepts Mr. Majeed's evidence that the HST payment was made as required.

Some of the documents submitted by the Registrar showed dealer to dealer sales, specifically between AM Auto and DAR Motors, the dealership set up by Syed and Naveed. Though disclosure of vehicle history is also mandated by the Regulation in these wholesale type deals, this information was also missing from these bills of sale. Mr. Majeed acknowledged this, but stated that Syed was usually with him at the auctions and therefore was equally aware of the vehicle histories.

The evidence concerning material and relevant nondisclosure about the vehicles sold by AM Auto is not disputed. This was not a large volume business; only 65 sales were done in a two year period. OMVIC reviewed 20 deals- a relatively significant number of files- almost 1/3 of total sales. Of those, 17 were found to be deficient. The fact that Mr. Majeed has had to continue to work as a limousine driver to cover business expenses suggests that the business has been a challenge. His two salespersons have left to set up their own dealership; he has sold some of his vehicles to them to clear inventory.

While the Tribunal has some sympathy for Mr. Majeed's situation, the fact is that the evidence shows a pattern of material nondisclosure. The omissions were significant and not confined to the sales in which his salespersons were involved. This pattern suggests at best an ignorance of his obligations under the Act; at worst an intentional act of nondisclosure. Counsel for the Registrar submitted that consumers overpaid for the cars they purchased and AM Auto profited. There was no comparative evidence provided to support that contention and the Tribunal cannot make that factual finding.

Furthermore, Mr. Majeed's record keeping (and there is an obligation to maintain records under sections 52-54 of Regulation 333//08) was lacking, somewhat inexplicably in the context of a low volume business. The Tribunal agrees with the Registrar's submission that an inability to comply with the Act at a very basic level raises the prospect of potential consumer harm, and the particular omissions by Mr. Majeed are at the very heart of the consumer protection aspects of this legislation. The purchase of a used car is not a "buyer beware" situation; consumers are entitled to material information about the vehicle and want to be in a position to make an educated decision about their purchase – a fact that came through in the evidence of AM and PH in particular.

Mr. Majeed, when asked in March 2016 how he would make things right by the consumers, said he would contact them and make restitution. However, it was only on the eve of the hearing, nine months later, that he did so. He did provide "To Whom it May Concern" letters from three consumers, dated January 20 and 21, 2017, which state: "While certain disclosures about the vehicle were erroneously not mentioned on the Bill of sale at the time of purchase, I was subsequently informed verbally of the vehicle's history. I feel that the non-disclosure was not intended to deceive me and have signed the statement voluntarily."

None of these persons were called to testify. There was evidence that he contacted AM, but appeared not to be prepared to offer any reimbursement to him. The fact that Mr. Majeed only contacted the consumers in January is effectively "too little too late", suggesting that but for the hearing, he would have made no effort to "make things right". This does not invoke confidence that he fully understands his obligations under the Act and that he will independently comply with the Code of Ethics.

In addition, Mr. Majeed provided a letter from DAR Motors that the accident/claim history was disclosed to them by AM Auto with respect to six vehicles acquired by them. Again, no representative was called, nor is there any indication when the information was disclosed; it is clear that the information was not disclosed on the sale documents.

In conclusion, the Tribunal finds that the weight of the evidence with respect to the Appellants' noncompliance with disclosure requirements and the lack of records available documenting sales is sufficient for the Tribunal to conclude that the past conduct of the Appellants affords reasonable grounds for belief that they will not carry on business in accordance with the law and with integrity and honesty.

ORDER

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar to carry out the Proposal to refuse the application for registration of AM Auto as a motor vehicle dealer and to revoke the registration of Abdul Majeed as a motor vehicle salesperson.

LICENCE APPEAL TRIBUNAL



Patricia McQuaid, Vice -Chair