CITATION: Registrar, *Motor Vehicle Dealers Act* v. Vernon, 2016 ONSC 304
DIVISIONAL COURT FILE NO.: 601/14
DATE: 20160114

2016 ONSC 304 (CanLII)

SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT

RE: REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*, Appellant

AND:

ROBERT VERNON, Respondent

BEFORE: Aitken, Swinton and C. Horkins JJ.

COUNSEL: *Brian Osler*, for the Appellant

No one appearing for the respondent.

HEARD at Toronto: January 12, 2016

ENDORSEMENT

Swinton J.:

[1] The Registrar, *Motor Vehicles Dealers Act, 2002* ("the Registrar") appeals from a decision of the Licence Appeal Tribunal ("the Tribunal") dated November 25, 2014 in which the Tribunal ordered the Registrar not to carry out a proposal to refuse registration as a motor vehicle salesperson to the respondent Robert Vernon. The respondent did not file any materials on the appeal, nor did he appear at the hearing of the appeal.

[2] Pursuant to s. 6(1)(a) of the *Motor Vehicle Dealers Act,2002*, S.O. 2002, c. 30, Sch. B ("the Act"), an applicant is entitled to be registered as a salesperson unless he or she comes within certain criteria, including

> (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 …

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[3] The Tribunal found that the respondent did not come within either provision, despite a criminal conviction arising from the arson of a Department of Motor Vehicles office in New York State and despite the inaccurate and misleading disclosure of the details of that conviction in the course of the application process for registration.

[4] An appeal lies to this Court only on a question of law (*Licence Appeal Tribunal Act, 1999*, S.O. 1999, c. 12, Sched. G, s. 11(3)) and in accordance with the rules of court (s. 11(1)).

[5] The Registrar submits that the standard of review of the Tribunal decision is reasonableness. I agree.

[6] In my view, the Tribunal made errors in law, with the result that its decision does not fall within a range of reasonable outcomes.

[7] With respect to s. 6(1)(a)(iii), the Tribunal stated that it would not go behind the conviction or allow the respondent to argue that he did not have the requisite criminal intent. It found that the respondent did not attempt to conceal his criminal conviction, although in a letter to the Registrar he had attempted to exculpate himself (Reasons, para. 11). The Tribunal then held that the "minimization of his behavior" was not a "deliberate attempt to mislead the Registrar" with respect to his conviction and the plea bargain (Reasons, para. 13).

[8] The task of the Tribunal, in applying s. 6(1)(a)(iii), was to determine whether the respondent made a false statement to the Registrar and whether he knowingly did so (*Racco v. Ontario (Registrar, Real Estate and Business Brokers Act, 2002)*, 2015 ONSC 6233 (Div. Ct.) at para. 28). In my view, the Tribunal focused on whether the respondent **deliberately** tried to mislead the Registrar. The Act does not speak to intent or motive; rather, the concern is whether the applicant knowingly made false statements in his application – in this case, about his past criminal activity.

[9] The respondent's letter of June 2, 2014, sent to the Registrar during the application process, contains a misleading description of significant details underlying his criminal conviction. He stated in the letter to the Registrar that he had expressed discontent about the regulator to two clients. Subsequently, the clients told some "unknown hoodlums", who set the fire on their own, in the hope that they could extort money from him. In a telephone call to the Registrar's office in July 2014, the respondent stated that the information in the American court file would be no different from what he had already said, as he was telling the truth.

[10] The version of events given to the Registrar was highly misleading. Documents obtained by the Registrar from the American court file show that the respondent paid an individual $1,000 to set fire to the DMV office, showed him the window of the office where the fire should be set, and indicated when he wanted the fire set.

[11] In my view, the Tribunal erred in law in focusing on whether the respondent deliberately attempted to mislead the Registrar with respect to his conviction. As described above, the respondent made false statements with respect to the facts underlying the conviction. The issue

for the Tribunal was whether the respondent knew the statements were false. The only reasonable conclusion is that he did know of the falsity of the information. There is no indication that he made an honest mistake about the details as in *Kamali-Mafroujaki v. Ontario (Registrar, Motor Vehicle Dealers Act, 2002)*, 2015 ONSC 3989 (Div. Ct.). Given that the respondent knowingly made false statements about important facts, it was unreasonable for the Tribunal to conclude that s. 6(1)(a)(iii) was not applicable.

[12] In addition, the Tribunal unreasonably concluded that s. 6(1)(a)(ii) did not apply. The Tribunal concluded that the respondent's past behaviour did not raise concerns about his honesty and integrity. That conclusion rested, in part, on the finding that the respondent had not misled the Registrar with respect to his criminal conviction.

[13] The respondent was required to be honest in the application process. Clearly, he was untruthful with respect to important facts underlying the plea bargain and conviction. His lack of candour is highly relevant to the issue whether his past conduct gave rise to reasonable grounds for belief that he would not carry on business in accordance with law and with integrity and honesty. The Tribunal's failure to consider this aspect of his behaviour renders its finding on s. 6(1)(a)(ii) unreasonable as well.

[14] Accordingly, the appeal is allowed and the decision of the Tribunal is set aside. Normally, on an appeal from an administrative tribunal, the matter is referred back to the Tribunal for a new hearing. However, in the present case, there is no reason to send this matter back, as the only reasonable conclusion on this record is that the false information provided by the respondent disentitles him from registration under s. 6(1)(a)(iii) and, taking into account the criminal conviction as well, disentitles him under s. 6(1)(a)(ii). Therefore, the Registrar is directed to carry out the proposal to refuse the respondent's registration.

[15] Costs to the Registrar are fixed at $3,000.00 on a partial indemnity basis. The respondent's approval of a draft order is dispensed with.

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Swinton J.

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Aitken J.

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Horkins J.

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Date: January 14, 2016

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