



Citation: Pilon, Easywheels Inc., Main Street Auto Importers Ltd. o/a Gold Street Subaru & Main Street Auto Importers Ltd. o/a Easywheels.ca v. Registrar, Motor Vehicle Dealers Act, 2002, 2023 ONLAT MVDA 13540

Date: 2023-01-12

File Number: 13540/MVDA

Appeal from the Notice of Proposal by the Registrar, Motor Vehicle Dealers Act, 2002 to Refuse and Revoke Registrations

Between:

**Clifford Ernest Pilon, Easywheels.ca Inc., Main Street Auto Importers Ltd. o/a
Gold Fleet Subaru & Main Street Auto Importers Ltd. o/a Easywheels.ca**

Appellants

and

Registrar, Motor Vehicles Dealers Act, 2002

Respondent

ORDER AND DECISION

ADJUDICATOR: Kevin Lundy, Member

APPEARANCES:

For the Appellants: Justin Jakubiak, Counsel

For the Respondent: Jillian Sisken, Counsel
Carina Reider, Counsel

Observers: Adam Varro, Counsel for Appellant
Michael Rusek, Counsel for Respondent
Husein Panju, Counsel for Respondent
James Hamilton, Used Car Dealers Association
Warren Bernard, Used Car Dealers Association

Court Reporters: Michelle Gordon
Martyna Majewska
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Laura Tang (in training)

Heard by Videoconference: December 12, 19, 20, 21, 22, 23, 2022

REASONS FOR DECISION AND ORDER

OVERVIEW

- [1] On July 25, 2021, the Registrar, *Motor Vehicle Dealers Act, 2002* (the 'respondent') issued a Notice of Proposal to Refuse and Revoke Registration ('NOP') pursuant to section 9 of the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30 (the 'Act') to refuse the registration of Easywheels.ca Inc. as a motor vehicle dealer; to revoke the registrations of Main Street Auto Importers Ltd. o/a Gold Fleet Subaru and Main Street Auto Importers Ltd. o/a Easywheels.ca as motor vehicle dealers; and to revoke the registration of Clifford Ernest Pilon ('C.E.P.') as a motor vehicle salesperson under the Act.
- [2] C.E.P. is the sole owner and director of the corporate appellants. The respondent takes the position that C.E.P.'s past conduct and provision of false statements in applications to renew registration for himself and the corporate appellants and grant registration for Easywheels.ca Inc. are inconsistent with the consumer protection intention and objective of the Act that requires registrants to carry on business in accordance with the law and with honesty and integrity, thereby disintitling the appellants to registration under the Act.
- [3] On August 10, 2021, the appellants filed a Notice of Appeal with the Licence Appeal Tribunal (the 'Tribunal'). The appellants maintain that the allegations in the NOP and the subsequent Notice of Further and Other Particulars, dated April 26, 2022, do not rise to a level of severity that warrants disintitlement to registration and request the Tribunal to direct the respondent not to carry out the NOP to revoke or deny the registrations of any of the appellants. In the alternative, the appellants take the position that if a penalty is necessary, given the circumstances of the case, the Tribunal should grant the registrations subject to appropriate terms and conditions.

ISSUES

- [4] The issue to be determined on this appeal is whether the respondent has established that it has reasonable grounds to revoke the licences of Main Street Auto Importers Ltd. o/a Gold Fleet Subaru and Main Street Auto Importers Ltd. o/a Easywheels.ca as motor vehicle dealers; to revoke the registration of C.E.P. as a motor vehicle salesperson; and to refuse registration of Easywheels.ca Inc. as a motor vehicle dealer. To make this determination, I must consider whether the respondent has established that the appellants' past or present conduct affords reasonable grounds for belief that they will not perform the activities of licensees in accordance with the law and with integrity and honesty pursuant to subsections

6(1)(a)(ii) and 6(1)(d)(iii) of the Act. If I am satisfied that there are reasonable grounds to believe that one or more appellants will not act in accordance with the law and with honesty and integrity, then I must decide the appropriate outcome for each appellant. I am not bound by the respondent's position on outcome as set out in the NOP.

RESULT

- [5] For the reasons set out below, the appeal is dismissed and the Tribunal directs the Registrar to carry out the Notice of Proposal to refuse the registration of Easywheels.ca Inc. as a motor vehicle dealer; to revoke the registrations of Main Street Auto Importers Ltd. o/a Gold Fleet Subaru and Main Street Auto Importers Ltd. o/a Easywheels.ca as motor vehicle dealers; and to revoke the registration of C.E.P. as a motor vehicle salesperson under the Act.

THE LAW

- [6] Pursuant to subsections 6(1)(a) and 8(1) of the Act, the Registrar may revoke, suspend, or attach conditions to an individual's registration where the registrant's past conduct affords reasonable grounds for belief that the registrant will not carry on business in accordance with the law and with integrity and honesty, or where the registrant provides a false statement in an application for registration or for renewal of registration. Pursuant to subsections 6(1)(d) and 8(1) of the Act, the registration of a corporate registrant may be revoked, suspended, or placed under conditions on the same basis in respect of the conduct of its directors or officers.
- [7] Where the Registrar proposes to revoke or refuse the registration of a dealer or salesperson, subsections 9(1) to (3) of the Act require the Registrar to issue a notice of proposal to the affected parties and serve it accordingly, which includes the right to request a hearing. Section 9(5) empowers this Tribunal to hold the hearing and may direct the Registrar to carry out the NOP, or substitute its opinion for that of the Registrar and attach any conditions to its order or to a registration.

EVIDENCE AND ANALYSIS

- [8] The appellants did not contest the majority of the respondent's allegations contained in the NOP and the Notice of Further and Other Particulars and acknowledged that the business manager, Belinda Brown ('B.B.'), at Main Street Auto Importers Ltd. o/a Gold Fleet Subaru ('Gold Fleet') forged the signatures of multiple sales associates and one customer and that C.E.P. repeatedly provided false information on renewal applications to the Ontario Motor Vehicle Industry Council ('OMVIC').

- [9] C.E.P. has worked in the automobile sales industry since 1981 and has been registered as an automobile salesperson since March 1983; he became a Subaru dealer in 1987. He has also served on the Board of Directors for OMVIC since 2006. Prior to the incidents that form the basis of the present NOP, he and his dealerships have never been the subject of a consumer complaint to OMVIC or any disciplinary action.
- [10] C.E.P. is the owner of Gold Fleet, a Subaru dealership located in North Bay. He has also owned Easywheels.ca, a used car dealership in New Liskeard for approximately two and half years. Johnson Collins ('J.C.') is the person in charge of the latter dealership. While C.E.P. intends to sell Gold Fleet in early 2023, he prefers to retain a controlling interest in Easywheels.ca for several years to provide a more gradual transition to J.C. for financial reasons. As of the date of the hearing, he remained the only officer and director for all three corporate entities, including Easywheels.ca Inc., the unregistered company.

Forged Signatures

- [11] It was not contested that B.B., the business manager for Gold Fleet, signed bills of sale on behalf of members of the sales staff on at least thirty nine occasions and in one instance, forged the signature of a consumer, Phoebe Bruce ('P.B.'). The parties also agreed that B.B. gained no advantage or benefit from these actions and that no consumer was harmed as a result.

Lack of Formal Training

- [12] C.E.P. testified that he and B.B. had been in a "companionship" relationship for approximately six months when C.E.P. offered her a contract as the business manager at Gold Fleet in January 2019. This offer was made primarily in response to their shared interest in the automobile sales industry, her relevant experience and his desperate need to fill this position at Gold Fleet. He set up a database at her residence in Burlington with the understanding that she would conduct a substantial portion of her work for the dealership remotely.
- [13] C.E.P. and his general manager at Gold Fleet, Craig Propp ('C.P. '), testified that few of the other employees were aware of the personal relationship between C.E.P. and B.B. However, this assumption may have been somewhat naïve on their part since every other witness who had worked in the dealership readily confirmed an awareness of the situation. Even B.B. testified that "they all knew about it" and stated that her co-workers often leveraged her relationship against any requests she made, insinuating that she would "run and tell Cliff" if she did not get her way. In particular, she stated that Cody LeFebvre ('C.L. '), the sales

manager, treated her with disrespect and appeared to rally the sales associates against her.

- [14] Nonetheless, she claimed that she never discussed her problems at the dealership with C.E.P. pursuant to a strict agreement against intermingling their work and private lives. While the evidence as a whole suggested that the only tangible special treatment that C.E.P. offered to B.B. was bringing her lunch when he attended at the dealership, knowledge of their relationship spawned a presumption of favouritism amongst the employees leading C.L. and others to suspect that B.B. had been installed to relay unflattering information about them to C.E.P. while he was out of the office. Although B.B.'s contract with Gold Fleet permitted her to work at home for a significant portion of the week, this was not known to the salaried employees. As a result, C.L. and others including sales associate Alex Wheeler ('A.W.'), generally assumed that her shorter hours in the dealership represented an unfair advantage flowing from her relationship.
- [15] Despite their other differences, B.B. expressed a shared complaint with others in the dealership that there was little to no in-house training and the particulars of her day to day responsibilities were vague and subject to frequent changes. Similarly, C.L. testified that he relied primarily upon off-the-cuff advice from his predecessor and sales managers at other dealerships with respect to procedures. In his own testimony, C.E.P. acknowledged that he largely presumed that C.L. was fully aware of his duties as a sales manager based upon his prior experience.
- [16] A.W. worked at Gold Fleet from October 2019 to March 23, 2022. He was hired as a sales associate with a plan to advance to manager for used car sales. He recalled that training at the dealership was limited to online certification modules for his salesperson registration with no formal shadowing of experienced sales associates, let alone any direct instruction from C.E.P. He learned how to sell cars largely through repetition and with the assistance of his colleagues, but made mistakes that he attributed to a lack of more formalized training.
- [17] C.L. also described C.E.P. as removed from the day-to-day operations of the dealership, usually only calling in by Zoom from Florida or elsewhere for updates and even then, almost solely with respect to profits. Although C.E.P. strongly disagreed with this assessment, the evidence indicated that he rarely communicated with anyone other than his general manager, C.P. when away from the dealership.
- [18] Ultimately, C.L., A.W. and B.B. all described a confusing environment in which training was largely non-existent and job duties were vague and unsettlingly fluid. None of this served to foster a harmonious workplace where B.B. could feel free to

seek guidance on office procedures from her co-workers. While C.P. denied much of this disorder, it is worth noting that unlike C.L. and A.W., he remains employed by C.E.P. and candidly acknowledged that he has an incentive to portray the company in a positive light. C.E.P. insisted that extensive training materials were available to all employees but did not establish that their existence was widely known or accessible to anyone other than himself and C.P.

The Phoebe Bruce Forgery

- [19] Jennifer McDonald ('J.M') was the comptroller at Gold Fleet until she left in November 2021. She recalled two sales associates complaining to her that B.B.'s aggressive sales approach to selling supplemental services had alienated their customers, a troubling issue confirmed by A.W. She also described an incident when B.B. permitted someone to bring a vehicle into the service bay without an appointment. She otherwise denied any negative issues with B.B., particularly as they worked in different departments and had limited interaction.
- [20] B.B.'s illegal actions came to light on or about December 29, 2020 when J.M's accounting clerk J.C. discovered a discrepancy of approximately \$60.00 between the bill of sale for P.B.'s purchase and other documents related to the transaction. After J.C. returned the document to her, B.B. corrected the figures and destroyed the original copy with the customer's real signature, rather than contact P.B. for additional money or alter the figures to fit the numbers "on the back end" as she claimed C.L. had instructed her. As this latter allegation was never put to C.L. to adopt or deny, I find that it must be accorded virtually no weight.
- [21] J.M. noticed that B.B. returned the signed bill of sale within a matter of minutes, an improbable feat given that P.B. resided out of town. J.C. flagged the signature on the replacement bill of sale to J.M. who asked B.B. how she had obtained the signature so quickly. J.M. testified that B.B. initially lied to her, claiming that P.B. had been in the dealership. J.M. brought the matter to C.L., who could not verify the authenticity of the signature on the replacement bill of sale. As C.L. was aware that P.B. had not been in the dealership that day and the doors had been locked pursuant to COVID-19 restrictions, he became suspicious with respect to the authenticity of the signature. He contacted the sales associate who had completed the transaction as well as P.B., both of whom confirmed that she had not attended at the dealership that day.
- [22] When C.L. examined the purported signature, it was apparent that B.B. had signed on P.B.'s behalf. He brought this discovery to C.P.'s attention, who directed him to review several other files to determine whether this was an isolated occurrence.

While no other forged customer signatures were discovered, all twelve of these randomly selected files contained forged sales associates' signatures.

- [23] While J.M. agreed that there was some urgency to completing all deals by the end of the year, she clarified that this is simply the reality of the industry since expedient processing of the sales allows the dealership to pay sales associates their commissions before the end of the year rather than delay payment to the following month. Nonetheless, she denied applying any particular pressure to B.B. to rush her part of this process. While B.B. and C.E.P. suggested to the OMVIC investigators that pressure from the accounting department motivated her decision to forge signatures, both appeared to distance themselves from this explanation at the hearing. C.L. also testified that he never observed anyone in the dealership pressuring her B.B. to expedite paperwork for a sale or otherwise.
- [24] Like others in the dealership, J.M. expressed discomfort with respect to addressing C.E.P.'s relationship with B.B. However, her ethical responsibilities as a chartered accountant obliged her to inform C.E.P. of the P.B. forgery. To that end, she took the lead in informing C.E.P., who was in Florida at the time, as the accounting department had caught the mathematical error on the original bill of sale. She described C.E.P.'s language towards this news as dismissive and felt that he was brushing off her concerns. C.E.P. denied being angry with J.M. during this conversation and emphasized that he was simply upset at the situation and wanted to halt the illegal activity immediately. He agreed that J.M. had a duty to bring the matter to his attention, particularly given the human resources component of her position. C.E.P. contacted B.B. and she initially claimed to have obtained a digital signature from the customer but subsequently admitted to the forgery.
- [25] While B.B. described a similar sequence of events with respect to the P.B. forgery, on the balance of probabilities, I prefer the more forthright and objective narrative offered by J.M. Unlike J.M., B.B. attempted to shift responsibility onto C.L., alleging that he encouraged her to sign on behalf of others as a matter of expediency, an allegation not supported by the evidence as a whole.
- [26] C.L. vehemently denied B.B.'s claim made to OMVIC that he had instructed her to forge sales associates' signatures, including his own, should they be unavailable, and noted that she had never advised him of any issue with obtaining the signatures of absent employees. He also denied her statement to OMVIC that he had described signing for others as "no big deal." He noted that since her office was adjacent to the sales floor, if she were present in the dealership on a full-time basis, she should not have experienced difficulty flagging down a sales associate

to sign a bill of sale. While sales associates occasionally leave the dealership to conduct test drives and for other reasons, they generally return in comparatively short order. If absolutely necessary, she could use a temporary substitution method.

- [27] Specifically, C.L. had shown B.B. how to assign another sales associate's signature to a bill of sale if the actual salesperson was unavailable. C.P. confirmed that this practice could serve as a temporary measure until the correct signature could be later attached to the bill of sale in the electronic dealer management system. While such a substitution is not ideal as a general practice, it is better than forgery, since the system contains information with respect to who had actually conducted the sale and the substituted but authentic signature is used strictly as a placeholder to allow the accounting department to process commissions in a timely manner. I find on the balance of probability that, if anything, this option may have been the direction C.L. gave to B.B. with respect to the signatures of absent associates and not an endorsement of forgery as she alleged.
- [28] Moreover, the Agreed Statement of Facts signed by B.B. in resolution of OMVIC's disciplinary action against her contained no allegation that a fellow manager had encouraged her to sign a bill of sale on behalf of anyone else, a potentially mitigating factor that would seem highly relevant if true. As the respondent agreed to delete another clause included in an earlier draft of this document at her request, I find that she would have been aware that she was not obliged to accept the totality of the respondent's version of events if she deemed one or more details inaccurate. Lastly, her allegation that C.L. encouraged her to forge documents is wholly inconsistent with later evidence offered under cross-examination that she found C.L. unapproachable, a description she had repeatedly conveyed to the investigators. Given the significant distrust between them and the absence of any other evidence to support B.B.'s allegation, I find it highly unlikely that C.L. would have authorized or encouraged someone he viewed as a spy for the owner to engage in illicit conduct at his direction.

Internal Investigation and Forgeries of Sales Associates' Signatures

- [29] To avoid the appearance of a conflict of interest, C.E.P. properly delegated the company's internal investigation to his general manager, C.P. C.P. selected fifteen files at random and discovered all of them contained forged sales associate signatures. He then interviewed each of the sales associates, most if not all of whom advised him that they had not signed a bill of sale in several months. However, prior to December 29, 2020, no one in the dealership was aware that B.B. had been forging signatures for the sales staff. Given the uneven training and

nebulous policies at the dealership to that point, it would appear that many were unaware that they must sign the bill of sale for each motor vehicle sale. In the absence of a clearly communicated policy, a negligent practice of leaving bills of sale unsigned was allowed to develop, thereby creating an environment where B.B. was free to substitute forgery for proper file management in her haste to close accounts. As the sales associates were unaware of their obligation to sign their own bills of sale, this practice apparently continued for months with none of the participants bringing the issue to the attention of management.

- [30] At the conclusion of his investigation in early February 2021, C.P. issued a formal letter to B.B. warning her that repetition of this conduct would result in her termination. This letter was dated effective December 31, 2020 to cover the time period when the forgeries were discovered. When asked why he chose not to terminate B.B.'s contract immediately, C.E.P. explained that he took his lead from OMVIC as the Registrar had opted to discipline her rather than revoke her registration and he believed that the penalties ordered against her were sufficient. He acknowledged however that she would require close supervision, perhaps in perpetuity.
- [31] C.P. testified that he and C.E.P. opted to use the forgeries as a training opportunity. To that end, C.P. issued a formal statement of the company's policies to all employees and required that each sign his or her copy as acknowledgement. He also moved his desk from the service area closer to the sales floor to better observe B.B.'s work area. He also presently reviews all commissioning of transactions. He acknowledged that the policies that he drafted should have been in place at the time that B.B. committed the forgeries.
- [32] In contrast to C.L.'s perceptions, he emphasized that C.E.P. was heavily involved in the daily operation of the dealership and communicated with him regularly by email when he was not physically present, an assessment echoed by C.E.P. in his own testimony. He also confirmed that C.E.P. returned promptly from Florida after he was informed of the forgeries, but was subject to fourteen days of quarantine upon his return to Canada.

The OMVIC Investigation

- [33] OMVIC became involved after receiving two or more anonymous emails starting on or about January 11, 2021 from a whistleblower, later revealed to be C.L.'s fiancée, alleging that B.B. had forged signatures at Gold Fleet. As a result, OMVIC investigators, Norm Payeur ('N.P.') and Marc Duval ('M.D.'), commenced an investigation. When asked by the investigators, C.L. vacillated between claiming and denying that he personally made the complaint. However, at the hearing, he

explained that since C.E.P. was on the board of directors for OMVIC, he would have known if C.L. had been responsible and feared retaliation. C.L. explained that his fiancée made the complaint as he had observed no apparent consequences to B.B. from the dealership. While the appellants took the position that C.L.'s evidence should be accorded significantly reduced probative weight as a result of this prevaricating, I find C.L.'s explanation reasonable and that little if anything turns on his actions to conceal the identity of the whistleblower, particularly as the substance of the complaint was supported by other evidence.

- [34] N.P. spoke with C.E.P. by telephone on January 21, 2021 since C.E.P. was still in Florida and had not planned to return to Ontario until April. At C.E.P.'s request, N.P. arranged for a virtual interview for January 25, 2021. During that interview, C.E.P. informed the investigators that J.M. did not like B.B. and volunteered that there was some unknown animosity between them. He stated that the accounting department regularly pressured B.B. to have her documents completed and sent to J.M.'s office as soon as possible for month end commissions and suggested that B.B. may have cut corners to "get [J.M.] off her back." At the hearing, he dismissed the underlying tension between them as some nebulous conflict between "two women in the workplace" that B.B. had opted not to clarify and he chose not to investigate. He also advised the investigators that C.L. also disliked B.B. and described a dysfunctional relationship between them. It was apparent to N.P. that C.E.P. disliked C.L. and offered unsolicited criticism of his work performance, leading the investigators to believe that C.E.P. was attempting to deflect responsibility onto his employees.
- [35] When N.P. asked if the forgeries were limited to the single signature on P.B.'s transaction, C.E.P. provided a truthful if rather misleading response, indicating that he was aware of no other forged customer signatures, without volunteering that he was then aware that C.P. had discovered fifteen forged sales associates' signatures. Nonetheless, he offered the investigators access to C.P.'s report of his investigation which contained this information. For his part, C.P. advised the investigators that he believed that B.B. may have forged signatures simply to expedite the closure of files rather than hunt down each sales associate for a genuine signature, a theory he reiterated at the hearing.
- [36] OMVIC's investigation revealed a further twenty-four contracts with false sale associates' signatures with respect to sales completed between September 2019 and October 2020. Despite the high mathematical probability that other forgeries existed, C.P. and C.E.P. conducted no further investigation and deemed the matter closed upon the issuance of the letter of reprimand and the changes posted at the dealership.

- [37] C.P. also denied that the terminations of C.L. and A.W. related to the OMVIC investigation or represented an attempted cover up by the appellants. He stated that C.L. was terminated due to performance issues relating to used vehicle trades and a terrible attitude within the dealership. He explained that he personally fired A.W. for offering unauthorized deals to customers that resulted in substantial losses to the dealership. Whether or not these terminations were retaliatory relates to an employment law issue, irrelevant to the present appeal. However, the evidence established that the grounds advanced for the dismissal of both was tied at least in part to deficient training within the dealership.
- [38] B.B. readily admitted her conduct to the investigators and advised that she did not receive formal training and did not know her day to day duties as these changed daily. By contrast, at the hearing, she and C.E.P. both claimed that the changing duties in question referred solely to changing rules related to COVID-19 lockdown protocols. On the balance of probabilities, I find that B.B.'s altered evidence at the hearing flowed from a motive to protect C.E.P. since her clear prior statement to the investigators included no reference whatsoever to pandemic restrictions. As a result, I prefer her earlier statements to OMVIC as the more truthful version of events.
- [39] In resolution of the disciplinary complaint issued against her, B.B. paid a \$4,800.00 fine and completed an ethics course. Although OMVIC allowed her to continue working in the industry, she was not permitted to work for any dealership owned by C.E.P. Ostensibly to that end, the appellants terminated her employment with Gold Fleet on May 15, 2022. However, this parting of ways proved quite fleeting since she was rehired in July 2022 and remained under contract to Gold Fleet as of the date of the hearing, albeit at a reduced level of involvement with the physical dealership. There was no indication that the appellants were unaware of the terms imposed on B.B.'s registration when she was rehired.

Person in Charge and Board of Directors

- [40] While a "person in charge" is not defined in the Act, there was no dispute that despite his often physical absence from the building, C.E.P. was ultimately responsible for the day-to-day operation of the business and directed his managers with respect to all activities which took place in the dealership. As the Registrar, Maureen Harquail ('M.H. '), explained, a person in charge is expected to have a strong understanding of what goes on in the dealership regardless of its organizational structure or the person's physical absence from the building. A person in charge is expected to provide sufficient oversight and ensure compliance with the Act. As a result, it is imperative that a registrant in this role take all

necessary regulatory action to safeguard the integrity of the dealership. To that end, the sales associates should have been made aware that it was not acceptable for another person to sign documents on their behalf. However, until C.P. was appointed as the person in charge of Gold Fleet in 2021 and set out clear guidelines for the dealership's procedural responsibilities in light of B.B.'s actions, the evidence indicates that the oversight provided by C.E.P. as the person in charge fell far short of sufficient. As well, C.E.P. was accountable for the actions of his employees, a responsibility of which he advised N.P. he was unaware until he later acknowledged it in a letter to OMVIC dated March 6, 2021.

- [41] M.H. took no particular issue with C.E.P. running for re-election to the board of directors primarily as she has no involvement with that process. However, in light of his visible leadership position, she took additional precautions to ensure that the NOP was properly drafted. As she explained, this accounted for its issuance after he was re-elected and should therefore not be viewed as inconsistent with the membership's earlier endorsement of C.E.P. as a board member. As well, as former chair of the board of directors, Kevin Bavelaar ('K.B. '), explained, the eligibility criteria for membership on the board is substantially different from that of a registrant and presupposes a threshold compliance with the ethical responsibilities of that role as set out in section 6 of the Act.
- [42] Much of the procedural ambiguity at Gold Fleet has likely been resolved through C.P.'s implementation of more coherent training and clarification of duties. As well, C.E.P. expressed a willingness to submit to legal oversight and review to prevent future incidents and not to allow B.B. to work for any of his companies. However, although she and C.E.P. were both aware of the employment restriction imposed on her registration, they have flouted this prohibition for the sake of convenience. C.E.P. attempted to justify her resumed relationship with his dealership on the grounds that the company was searching for a replacement and B.B. was working under the supervision of C.P. While he insisted that no other qualified candidate was available locally, it should be recalled that he was previously able to cast his recruitment search far wider than North Bay when he hired C.P. from his former position in Thailand.
- [43] The appellants took the position that the respondent ultimately failed to demonstrate that C.E.P.'s past conduct affords reasonable grounds for belief that the registrants will not carry on business in accordance with the law and with integrity and honesty. In *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc.*, the Ontario Court of Appeal found that as a standard of proof,

“reasonable grounds for belief” is lower than the “balance of probabilities.”¹ It requires more than mere suspicion and an objective basis for the belief based upon compelling and credible information. The Court of Appeal also noted that when examining past conduct, the registrar is not limited to the operation of licensee’s business and may consider both criminal and noncriminal conduct.² Further, according to *CS v. Registrar, Real Estate and Business Brokers Act, 2002*, there must be a nexus between the appellants’ past conduct and their ability to conduct business under the Act serving the interests of the public.³

[44] As a result, the appellants advocated for a contextual perspective that considers C.E.P.’s career in the automotive sales industry as a whole rather than focussing upon the more recent years in which these events took place. This is appropriate given the serious consequences of revocation. Indeed, the Divisional Court has confirmed that the Tribunal is not limited to the particulars set out in the NOP and to that end, I must consider the totality of C.E.P.’s past and present conduct. To that end, the appellant relied upon the Divisional Court’s analysis in *D. Michael Goldlist v. Registrar, Alcohol, Cannabis and Gaming Regulations and Public Protection Act, 1996*.⁴ However, in *Hodge v. Registrar Real Estate and Business Brokers Act, 2022*, the Court offered a more cautious approach to evidence not referenced in the NOP to maintain procedural fairness.⁵ In *Hodge*, the Tribunal confirmed the suspension of a real estate broker licence. The regulator led evidence that Mr. Hodge used derogatory language towards his employees and used his brokerage ownership status to terminate an investigation, none of which was pled in the NOP. The Tribunal relied on these allegations in addition to those pled in the NOP by assigning unspecified probative weight to the evidence. However, although the workplace conduct could arguably fall within scope of integrity and honesty as one of the pleaded bases for revocation, the Divisional Court remitted the matter to the Tribunal for a new hearing as the order did not specify the role the workplace misconduct played in the penalty.

[45] In the present case, it is the appellants who request consideration of the absence of disciplinary issues that they assert are not reflected in the NOP. As mentioned above, there is no evidence of a history of complaints against the appellants or charges under the Act. Through his general manager, he also clarified the policies at Gold Fleet to prevent future incidents of illegal activity such as those perpetrated by B.B.

¹ 2013 ONCA 157.

² *Ibid.* at para. 29.

³ 2019 ONSC 1652.

⁴ 2022 ONSC 2505 at paras. 68-69 (CanLII).

⁵ 2022 ONSC 7206 (*Hodge*).

- [46] The appellants also relied upon the analysis in *Registrar, AGCO v. Kyron*, in which the Ontario Divisional Court upheld the Tribunal's finding that the registrar in that case had failed to meet its onus to demonstrate that there were reasonable grounds to believe that, when acting as a licensee, the appellant would not act in accordance with the law, or with integrity, honesty, or in the public interest, having regard to his past conduct.⁶ Given the previously exemplary record of the appellant in that case, the Tribunal reasoned that to focus only upon the period of the appellant's offences would be "unnecessarily myopic."⁷
- [47] However, there are marked differences between the impugned conduct in the two fact scenarios. In *Kyron*, the appellant and his son illegally trafficked chemicals available to them through part ownership in a chemical production company to an undercover police officer on various occasions over a nine month period. The appellant was charged under the *Controlled Drugs and Substances Act* (the 'CDSA') and the *Criminal Code* as the trafficked substances could be used to produce methamphetamine. However, this conduct, while criminal in nature, did not otherwise compromise the day-to-day operation of the appellant's regulated business raising standardbred horses.
- [48] By contrast, in the present case, C.E.P. failed to ensure that his sales associates and managers knew how to conduct each aspect of a transaction and how to access relevant training materials. This lack of clarity led to a business environment in which workers were unsure of their duties and sales associates were unaware of the basic requirement to sign the bills of sale for the contracts with the dealership's customers. This was also an environment in which the business manager committed thirty-nine forgeries that came to light by chance from a comparatively minor mathematical error rather than through the operation of coherent policies and oversight that should have rendered repeated forgery difficult if not impossible. Although B.B. conceded at the hearing that she was aware that forging signatures was wrong at the time that she engaged in this conduct, the confusion prevalent at the dealership fostered an environment that permitted this practice to go undetected for several months. Although the lack of training and oversight at Gold Fleet was not listed as a ground for revocation in the NOP and forms no part of the penalty, it is nonetheless relevant as an explanation for the illegal conduct that ensued.

⁶ 2019 ONSC 5039 ('*Kyron*').

⁷ *Ibid.* at para. 13 (para. 53 in original decision).

Providing False Statements to OMVIC

- [49] In 2006, C.E.P. purchased a property that had become an illegal waste disposal site for a plastic tarping product called fabrene. This material had become contaminated and could no longer be easily recycled. By 2014, the Ministry of the Environment and Climate Change (the 'Ministry') had already been working with C.E.P. for a few years to have the fabrene removed from the property. On June 20, 2014, a provincial officer inspected the property and found that the fabrene remained on the property, partially buried in the ground.
- [50] The Ministry continued to prompt C.E.P to take action to remove the waste from the property and eventually issued an order on August 20, 2014 for its disposal to a licenced landfill site or a facility capable of recycling it no later than October 1, 2016. C.E.P. explained that the cost of disposal to that point in time had proven extremely substantial and his dealership was only then beginning to flourish financially. As a result, rather than continue with disposal, he began to research more cost effective alternatives to the Ministry's suggested means of removal or a less costly disposal site.
- [51] However, when the property remained unchanged from its last inspection in 2014, on July 19, 2017, the Ministry charged C.E.P. with two counts of failing to comply with an order of a provincial officer under the *Environmental Protection Act* (the 'EPA').
- [52] C.E.P. removed the materials at some point thereafter between August and September 2017. He plead guilty to a single count of "failing to remove all fabrene material from a parcel of land to a licenced landfill site or to a recycling facility" at his second appearance in Provincial Offences Court on December 1, 2017. He received a \$3,500.00 fine which he paid the same day. At the present hearing, he explained that he missed the deadline to remove the fabrene because he failed to properly diarize the final date on his phone to either complete the work or request an additional extension.
- [53] The issue for the respondent related not to the substance of the EPA conviction, but instead to C.E.P.'s repeated failure to disclose it to OMVIC in subsequent applications to renew registrations for himself and his companies.
- [54] This series of false disclosure statements commenced on October 16, 2017 when C.E.P. submitted an application on behalf of Gold Fleet to renew its application. Question 5 in the Eligibility section of that application read as follows:

Has the applicant **ever** been found guilty or convicted of an offence **under any law**, or are there any changes pending?

Make sure to include those cases with a conditional, absolute discharge or stayed charges. Please note: This question refers to charges under any law. Accordingly, you may need to answer “yes” even if a criminal record (or other) check has come back clean. [Emphasis in original]

- [55] C.E.P. checked the “No” box for this question and confirmed the purported truth of his responses provided to all queries in the application through his signature. At the hearing, he acknowledged that because he had been charged with the EPA offences three months earlier, these responses represented false statements. He repeated the same false responses on nine subsequent applications or renewal applications either as officer, director and shareholder for the corporate entities or for renewal of his own personal registration as a salesperson. While he eventually acknowledged convictions on subsequent applications, he initially limited his disclosure to traffic infractions. He explained at the hearing that he did not believe that the EPA conviction was relevant to the disclosure requirement since, unlike speeding convictions, it did not relate to driving or the automotive industry. In the course of filling out subsequent applications, he also misrepresented the accuracy of the disclosure made on earlier forms.
- [56] Through its own open source search, OMVIC discovered a Court Bulletin that described the EPA proceeding and resulting conviction. As a result, on or about March 8, 2021, OMVIC sent C.E.P. an email, asking him to confirm whether he was the same Cliff Pilon described in the media release and if so, to explain why he had not disclosed the conviction in his applications to date. C.E.P. responded to this inquiry the same day and explained that the infraction was “due to an administrative oversight in dates” and that he did not understand how the matter was criminal in nature. I find that this explanation indicates that, despite the repeated references to offences under “any law,” C.E.P. had turned his mind to the distinction and decided that only criminal convictions required disclosure. At the hearing, he explained that he inadvertently focussed on the appearance of the word “criminal” in the question and failed to read the text fully. He attributed this lack of comprehension to an undiagnosed reading disorder and excessive haste in completing the paperwork, despite an assertion that he is otherwise very careful when filling out forms. Significantly, he did not mention this disorder in his response to OMVIC’s inquiry on March 8, 2021 or at any point prior to the present hearing.

- [57] However, given that C.E.P. acknowledged an awareness that he may experience difficulty reading items with which he is not familiar, I find that he could have and should have taken steps to ensure accurate comprehension of this part of the application, particularly as he was aware that his registration could be jeopardized by providing false information. In addition, as a board member since 2006, he would reasonably have access to contacts within the OMVIC organization who could offer clarification on his responsibilities if he was truly uncertain with respect to the extent of disclosure required.
- [58] While the evidence may not have established that C.E.P. consciously intended to deceive the Registrar by concealing the EPA conviction, I find that at the very least, he was reckless or wilfully blind with respect to the informational requirements of Question 5 and its related acknowledgements. That he eventually listed provincial offences undermines C.E.P.'s evidence that he simply rushed through the application process and fixated on the inclusion of the word "criminal." I find that this incomplete disclosure strongly suggests that he consciously chose instead to substitute his own self-serving definition of "an offence" under "any law" to apply only to a driving context rather than either adhere to the clearly comprehensive language of the question or seek clarification from authorities readily available to him, both as a dealer and a board member.
- [59] In any event, subsection 6(1)(a)(iii) of the Act is silent with respect to the motive of an applicant furnishing false information. The wording of this provision relates only to whether the applicant knowingly made false statements in his or her application.⁸ As a result, the offence is complete upon the act of providing the false information thereby rendering the motivations of the applicant irrelevant to the offence. There was no dispute that at the time that he completed the renewal applications, he was aware that he had pending charges and later a conviction under the EPA. C.E.P.'s intentions or explanation could nonetheless be relevant to the potential imposition of terms and conditions in an order under subsection 9(5) of the Act.
- [60] However, if the Registrar cannot rely upon registrants to provide accurate and truthful information in their applications, it is hampered in its mandate to provide consumer protection to the public. As M.H. noted, if an applicant for registration or renewal is not honest when submitting an application, this serves as a cogent predictor of a future lack of honesty and integrity. Ironically, she speculated that had C.E.P. disclosed the EPA charge at first instance, it is probable that the respondent would not have sought revocation and refusal of registration. Rather, it

⁸ *Registrar, Motor Vehicle Dealers Act v. Vernon*, 2016 ONSC 304 at para. 8 (Ont. Div. Ct.).

was the intentional or wilfully blind actions to conceal this conviction that affords reasonable grounds for belief that the appellants will not carry on business in accordance with the law and with integrity and honesty.

- [61] As former board chair K.B. cautioned, revocation represents the most extreme sanction available to the respondent. However, while he recalled that the issue of the EPA conviction may have been raised at a meeting of the board of directors, he did not recall the details and could not state whether the repeated false statements on applications formed part of that discussion. He recalled however that new information had come to light that was not shared with the board. This incomplete overview of the investigation should necessarily temper his lack of concern that the respondent may have overreached in pursuing revocation and refusal of registration.
- [62] K.B. agreed that the industry functions best when all registrants are held to the same standards and if some are permitted to skirt the rules, this may offer them an unfair advantage. However, he noted that the Act and the Code of Conduct are drafted very broadly and may be open to varying interpretations by different registrants with respect to expectations. That said, he readily agreed that registrants need to fill out forms truthfully in order for OMVIC to protect consumers. His only dispute was in a perceived overbreadth in the requirement to report all offences given that some may be irrelevant to the role of a person in charge of a dealership. As M.H. clarified, the discovery of any conviction or pending charge may not necessarily disentitle an applicant to registration. However, as the application is presently drafted, this vetting and assessment process falls under the authority of OMVIC as the regulator and is not a matter left to the discretion of the registrant to decide which information to admit or withhold. As a result, only full disclosure permits OMVIC to determine whether a given conviction or charge represents a “red flag” that may result in refusal or revocation.
- [63] Again, the facts and analysis in *Kyron* offer instructive parallels to the present matter. Following his guilty plea and conviction, Mr. Kyron received an 18 month conditional sentence with significant supervision as well as a fine and a victim surcharge. When he completed the annual application to renew his licence to own standardbred horses, in response to the question whether he had been found guilty or convicted of an offence, he checked “yes” but minimized the severity of the offence as “selling a regulated chemical without a proper licence” and inserted “monetary settlement” in the section for disposition. As in the present case, a member of the registrar’s licensing department conducted a series of background checks and learned of the offences. However, unlike the present case, the appellant in *Kyron* had already served a lengthy suspension and demonstrated

genuine remorse that the adjudicator found “would have the requisite effect of deterring any future misconduct that could jeopardize his horse racing licence.”⁹ No such period of reflection or deprivation occurred in the present case.

[64] As well, following the issuance of the letter of reprimand to B.B., C.E.P. appears to have regarded the matter as fully resolved and in the past. Although C.P. has taken significant steps to resolve the training and policy issues at Gold Fleet, C.E.P. has continued to disregard a direction of the registrar by permitting B.B. to work for his dealership, suggesting that improvements will be implemented only if they represent minimal disruption to C.E.P.’s plans for his companies.

[65] In *Toronto Quality Motors v. Registrar, Motor Vehicle Dealers Act, 2002*, the Divisional Court upheld the Tribunal’s decision to revoke the appellants’ registration based upon a single failure to report multiple convictions under provincial legislation the previous year.¹⁰ As the Court stated,

The tribunal found that because Toronto Quality Motors had been found guilty of the provincial offences, there was no room for Mr. Mousa-Khaled to reasonably be confused about whether he was required to disclose them in the renewal application. We find no error in this finding of fact by the tribunal.¹¹

[66] In the present case, C.E.P. provided the first false information only three months after the charges were laid. While a single false instance of false information may have been attributable to carelessness, C.E.P. repeated the fiction that he had no convictions nine times, doling out partial admissions over time starting in 2018, but only disclosing the EPA conviction after OMVIC confronted him over its omission three years later.

[67] In *Racco v. Ontario (Registrar, Real Estate and Business Brokers Act, 2002)*, the Divisional Court confirmed that the Tribunal’s mandate was not to punish or denounce an appellant for past behaviour, but to protect the public.¹² In the regulatory context, the application form represents the very first test of a registrant’s honesty. Applicants are expected to answer all questions fully and

⁹ *Supra* note 5.

¹⁰ 2022 ONSC 645.

¹¹ *Ibid.* at para. 18.

¹² 2015 ONSC 6233 at para. 37.

accurately so that the registrar can effectively and efficiently assess the application.¹³

[68] To allow C.E.P.'s wilful blindness or recklessness to serve as a reasonable basis for failing to disclose all convictions or pending charges would erode the respondent's authority to protect the public by removing a key mechanism for its gatekeeping function to assess who is entitled to registration under the Act. Subsection 6(1)(a)(iii) of the Act requires only the making of a false statement to disentitle a registrant. This is intended to address consumer protection to ensure that registrants carefully and truthfully provide full disclosure to the Registrar. Without this basic requirement and the recourse to deny registration in its absence, there is little else that the regulator can do to in the registration or renewal process to protect the public from false or incomplete disclosure. To that end, the Tribunal has held that even a single transgression is sufficient to disentitle a registrant to registration.¹⁴ Given the importance of providing full and truthful reporting, revocation is not disproportionate or excessive in instances, such as the present case, where a registrant fails or refuses to take reasonable and appropriate steps to provide truthful disclosure to the Registrar.

CONCLUSION

[69] As a result, I find that the respondent has demonstrated that C.E.P.'s past conduct affords reasonable grounds for belief that the appellants will not carry on business in accordance with the law and with integrity and honesty. Nonetheless, following the Divisional Court's direction in *Arulappu v. Registrar, Real Estate and Business Brokers Act*, I must still decide whether revocation is the appropriate remedy.¹⁵ I find that it is.

[70] When informed of B.B.'s conduct, C.E.P. quite properly delegated investigation to his general manager, but was less than forthcoming with OMVIC with respect to his knowledge of the extent of the problem. Although N.P. and M.D. initially described his conduct during the January 25, 2021 interview as "cooperative and forthcoming," this assessment preceded their discovery of the additional forgeries, which N.P. noted C.E.P. could have volunteered during the interview. At the hearing, he offered a reassessment of C.E.P.'s truthfulness in light of this key omission. Although he directed the investigators to his general managers' report, his reticence to acknowledge the larger issue B.B.'s forgeries of sales associates'

¹³ *8017 v Registrar, Collection Agencies Act*, 2013 CanLII 51149 (ON LAT); *12679698 Canada Inc. v. Registrar under the Alcohol, Cannabis and Gaming Regulation and Public Protection Act, 1996*, 2022 CanLII 92738 at para. 23 (ON LAT).

¹⁴ *9521 v Registrar, Motor Vehicle Dealers Act 2002*, 2016 CanLII 36674 at para. 33 (ON LAT).

¹⁵ 2011 ONSC 797 (Ont. Div. Ct.).

signatures represents a troubling reluctance to cooperate fully with the investigation.

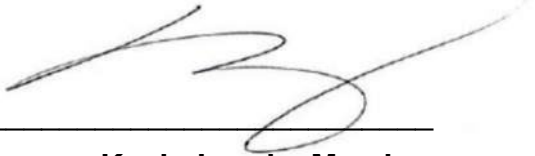
- [71] While the appellants suggested that terms and conditions are appropriate and sufficient to safeguard the public, the respondent rightly noted that any such conditions relate to pre-existing duties to take reasonable care when completing documents and prevent illegal activity within the dealership. While a lawyer may review documents to ensure complete disclosure, the very information to be reviewed ultimately would necessarily originate from C.E.P. and those ostensibly under his supervision.
- [72] In the present case, the best predictor of future performance is past conduct. Although the appellants lack a record of complaints or notices of proposal preceding this matter, a clean record does not necessarily outweigh the gravity of the present offences.¹⁶ As well, C.E.P. continues to allow B.B. to work for his dealership after at best a perfunctory gap and in open defiance of the terms imposed upon her registration. This indicates an ongoing predilection to skirt the consumer protection mandate of OMVIC whenever it may prove inconvenient to him. If the NOP related only to B.B.'s forgeries, it may have been reasonable to impose terms and conditions on the appellants' registration. However, his decision to disregard the terms and conditions on B.B.'s own registration and his own repeated concealment of the EPA conviction strongly suggest that he would continue to disregard future terms and conditions should they interfere with his plans for his businesses.
- [73] In my view, this is not an appropriate case for conditions. While conditions involving training and supervision may effectively address deficiencies in standards of practice, I am not satisfied that the conditions proposed would effectively address a failure to adhere to the law when non-compliance could result in expedience. In other words, having considered the conditions proposed, I conclude that none that would sufficiently protect the public given the findings I have made about C.E.P.'s past conduct and its likely impact on his future conduct. In addition to his laissez-faire approach towards the necessary education of his employees and compliance with an order of the Registrar, the persistent nature of C.E.P.'s concealment and later wilful minimization of his past conviction raises serious concerns that no oversight or conditions could be effective in protecting the public.

¹⁶ *Jhamtani and Simsons Management Inc. v. Condominium Management Regulatory Authority of Ontario*, 2022 CanLII 46850 at para. 37 (ON LAT).

ORDER

[74] For the reasons set out above, the appeal is dismissed and pursuant to subsection 9(5) of the Act, the Tribunal directs the Registrar to carry out the Notice of Proposal to refuse the registration of Easywheels.ca Inc. as a motor vehicle dealer; to revoke the registrations of Main Street Auto Importers Ltd. o/a Gold Fleet Subaru and Main Street Auto Importers Ltd. o/a Easywheels.ca as motor vehicle dealers; and to revoke the registration of Clifford Ernest Pilon ('C.E.P.') as a motor vehicle salesperson under the Act.

LICENCE APPEAL TRIBUNAL



Kevin Lundy, Member

RELEASED: January 12, 2023