

Licence Tribunal
Appeal d'appel en
Tribunal matière de permis



DATE: 2013-05-15
FILE: 7804/MVDA
CASE NAME: 7804 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 a Registration

Mohamad Assaf

Applicant

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Marc D'Amours, Vice Chair

APPEARANCES:

For the Applicant: Self-represented

For the Respondent: Michelle Samaroo, Counsel

Heard in London: March 5, 2013

REASONS FOR DECISION AND ORDER

BACKGROUND

The hearing arises out of a Notice of Proposal (the "Proposal") dated November 28, 2012, issued by the Registrar (the "Registrar") under the *Motor Vehicle Dealers Act* (the "Act") to refuse the registration of Mohamad Assaf (the "Applicant") as a motor vehicle salesperson under the Act.

The Notice of Proposal alleges that Mr Assaf's past conduct is inconsistent with the intention and objective of the Act, that is, to protect the public interest, and sets out in detail the particulars relied upon.

The Applicant gave the following as his reasons for appealing the Registrar's Proposal.

He has been out of a job since March 2011.

Tiger Auto Sales has offered him a job as a salesman pending his approval by the Registrar.

Since his last appeal in May 2010, he has not engaged in any buying or selling in vehicle. Since then, it has been very difficult to find a job.

He has three children and would like to give them as much as he can.

He is financially responsible for his family and he has never declared bankruptcy.

He is agreeable to follow any conditions in order to obtain his salesman licence.

EVIDENCE

The Registrar's evidence consisted of documentary evidence and one witness. The documentary evidence consisted of a Book of Documents, marked as Exhibit 3, and Exhibit 4 being a certified copy of an Information laid against the Applicant on May 19, 2009 identifying twelve offences under the *Motor Vehicle Dealers Act*. The Applicant testified and filed, as Exhibit 5, five letters confirming his unsuccessful employment search.

Michael Rothe

Mr Rothe is the Director of Legal Services for the Ontario Motor Vehicle Industry Council ("OMVIC"). In 2003, he was OMVIC's counsel at hearing of the Applicant's initial suspension. He confirmed the Applicant's registration history.

The Applicant's first registration as a motor vehicle salesperson was in 1999. On May 28, 2003, this Tribunal suspended his registration for a period of six months. At that hearing, the evidence was that Tiger Auto Sales, unregistered at that time, was involved in three of nine transactions for which the Applicant was ultimately suspended.

While under that suspension, the Applicant continued to be involved in the sale of motor vehicles. On September 3, 2003, his registration was revoked without a hearing. The Applicant has not sought registration as a salesperson since that revocation.

On November 16, 2009, the Applicant pleaded guilty to twelve counts pursuant to Section 22 of the Motor Vehicle Act. He was sentenced to a \$1000 fine with a hundred and eighty (180) days to pay.

On May 12, 2010, this Tribunal ordered the Registrar to carry out his proposal to refuse the Applicant's registration, operating as A & S Auto Sales, as a motor vehicle dealer. He states that the Tribunal then determined that the Applicant was "misleading, incomplete or untruthful". It has been more than two years since the Applicant last applied as a motor vehicle dealer.

Mr Rothe reviewed Mr Assaf's application. Under Section E, the Applicant confirms that he has been convicted of a criminal offence. It is particularized as a 1999 assault for which he was sentenced to a suspended sentence with one year probation. While on probation, he failed to comply, and was sentenced to a \$400.00 fine.

He adduced a copy of an OMVIC Discipline Committee decision against Tiger Auto Sales Ltd. The decision was issued on June 1, 2011. It was alleged that the dealership had infringed sections of the Code of Ethics as set out in Ontario Regulation 332/08. Approximately thirty (30) deals were reviewed. The Panel determined that Tiger Auto Sales Ltd., despite receiving written warnings, had violated several sections of the Code of Ethics. It penalized, Tiger Auto Sales Ltd, with an \$8000.00 fine and required the Dealer and its staff to receive re-training on all aspects of the *Motor Vehicle Dealers Act*.

Mr Rothe stated that he was fearful that Tiger Auto Sales Ltd., being a small dealership and given the non-arm length relationship between the parties, would not afford a good environment for the Applicant. Given Tiger Auto Sales' infringements, he believed that it would not be a suitable sponsor for the Applicant.

Mohamad Assaf

The Applicant relies on previous cases before this Tribunal that have granted conditional registration to Applicants. He suggests that he would comply with conditions in order to be registered.

He proposes to be employed by Tiger Auto Sales as a salesperson. This dealership is operated by his uncle, Khaled Ismail. It would seem that it's the only motor vehicle dealership, in London, that has offered him a salesperson position. The Applicant filed with his Notice of Appeal, Tiger Auto Sales Ltd.'s employment confirmation. They are willing to accept the Applicant's conditional registration as well. Also included was a professional certificate in leadership from the University of Western Ontario issued September 22, 2006.

At the hearing, the Applicant filed five letters, three from registered motor vehicle dealerships and two from an unregistered dealership corroborating the Applicant's evidence that they do not have a salesperson's position for him. He said that he applied at other dealerships, however, no others had responded.

In cross-examination, he confirmed that the last time he completed the Georgian College automotive certification was prior his 2010 application as a motor vehicle dealer.

THE LAW

The following provisions of *Motor Vehicle Dealers Act* are particularly relevant:

Prohibition

4. (1) No person shall,

(a) act as a motor vehicle dealer unless the person is registered as a motor vehicle dealer under this Act; or

(b) act as a salesperson unless he or she is registered as a salesperson. 2002, c. 30, Sched. B, s. 4 (1).

...

Unregistered salesperson

(3) A motor vehicle dealer shall not retain the services of a salesperson unless the salesperson is registered in that capacity. 2002, c. 30, Sched. B, s. 4 (3).

...

Salespersons

(5) A salesperson shall not trade a motor vehicle on behalf of a motor vehicle dealer unless the salesperson is registered to that dealer. 2002, c. 30, Sched. B, s. 4 (5).

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. 2004, c. 19, s. 16 (10).

Conditions

(2) Subject to section 9, the registrar may,

- (a) approve the registration or renewal of a registration on such conditions as he or she considers appropriate; and
- (b) at any time apply to a registration such conditions as he or she considers appropriate. 2002, c. 30, Sched. B, s. 8 (2).

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. 2002, c. 30, Sched. B, s. 12.

Ontario Regulation 333/08 of the Motor Vehicle Dealers Act**Restriction on time to reapply for registration**

15. The prescribed time for the purpose of clause 12 (a) of the Act is two years. O. Reg. 333/08, s. 15.

APPLICATION OF LAW TO FACTS

The *Motor Vehicle Dealers Act* is consumer protection legislation. Any motor vehicle dealer is required to be registered under the Act. The Registrar is given statutory powers to refuse or revoke registration on specified grounds.

In this matter, the Applicant was notified of the refusal by a Notice of Proposal dated November 28, 2012. The Applicant appealed the Registrar's Refusal by filing a Notice of Appeal dated December 5, 2012.

The Applicant's first registration as a motor vehicle salesperson was in 1999. On May 28, 2003, his registration was suspended for a period of six months. He failed to comply with suspension, and on September 3, 2003, the registration was revoked without a hearing. The Applicant has not sought registration as a salesperson since that revocation, however on May 12, 2010, this Tribunal confirmed the Registrar's refusal to register Mohamed Assaf o/a A&S Auto Sales as a motor vehicle dealer.

The proper interpretation of section 12 of the *Act* is set out in the matter *Alireza Arshadnejad v. Registrar, Motor Vehicle Dealers Act*:

"...on a proper reading of section 8 (now section 12) in the context of the *Act* as a whole, the section is not intended to allow an applicant to simply re-litigate a matter already decided. The section is not worded as a simple opportunity to obtain a 'reconsideration' on the same facts. The construction of the section is such as to clearly imply that there must be 'new or other evidence', or a material change in circumstances, on which to base the further application. As a result, the focus of any appeal from a refusal under this section must be squarely on the new evidence or material change. Such a focus is necessary to guard against a risk of inconsistent decisions by the same adjudicative body on the same evidence. I would not be free to grant registration where this Tribunal had previously refused it solely on this basis that I took a different view of the case. This Tribunal should not make decisions overruling itself. If there is to be a different result, that result must be based on the 'new or other evidence' or a material change in circumstances"

The Applicant submitted that he had waited the two year period and that if registered he would work for Tiger Auto Sales Ltd., his only available employer. The Applicant did not adduce any other evidence nor did he allege any material change in circumstances.

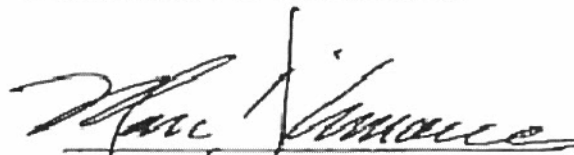
Section 12 of the *Act* puts the onus on the Applicant; he is required to demonstrate that the circumstances that warranted his revocation or refusal have changed. There is no healing process, and the Applicant can not only rely on the passage of time as a material change. Prior transgressions may be absolved if they have been pardoned or if successful counselling can be shown. The Applicant cannot account for either.

The Applicant concedes that his only possible employer is Tiger Auto Sales Ltd., operated by his uncle, Khalid Ismail. Tiger Auto Sales Ltd. has been either directly or indirectly involved in the Applicant's prior registration revocation. It has been recently disciplined and sanctioned by the OMVIC Discipline Panel in regards to violation of the Code of Ethics. The Tribunal is not convinced that an employment at this dealership, even conditionally, would ensure that the Applicant would carry on business in accordance with law and with integrity and honesty.

ORDER

Pursuant to the authority vested in it under subsection 9(5) of the *Act*, the Tribunal directs the Registrar to carry out his proposal to refuse the registration of the Applicant.

LICENCE APPEAL TRIBUNAL



Marc D'Amours, Vice-Chair

Released: May 15, 2013