



Citation: Qasem v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2022 ONLAT MVDA 13774

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Appeal from a Notice of Proposal to Revoke the Registration of the appellant under the *Motor Vehicle Dealers Act, 2002*

Between:

Mohammad Rafi Qasem

Appellant

and

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

DECISION AND ORDER

Adjudicator: D. Gregory Flude, Vice-Chair

Appearances:

For the Appellant: Adam Varro, Counsel

For the Respondent: Vlad Bosis, Counsel

Heard by Videoconference: October 17 through 20, 2022

REASONS FOR DECISION AND ORDER

A. OVERVIEW

- [1] Pursuant to a Notice of Proposal dated November 24, 2021, the Registrar proposes to refuse to renew the registration of Mohammad Rafi Qasem (“Qasem”) as a motor vehicle salesperson, under the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 20, Sched. B (the “Act”) and Regulations.
- [2] Qasem has been registered as a dealer under the *Act* since September 2018. He has admitted that in February 2021 he transferred two cars on behalf of his father using two forged bills of sale and other unauthorized documents that flow from the improper bills of sale such as applications to replace lost vehicle ownerships and applications to transfer vehicles, firstly to his employing dealership and then to his father and grandfather.
- [3] The Registrar states that Qasem is disentitled to registration on the grounds that:
- a. his past conduct affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty pursuant to s. 6(1)(a)(ii) of the *Act*.
- [4] The appellant appeals the Registrar’s proposal to refuse to renew his registration to the Tribunal.
- [5] Based on all the evidence, I find that Qasem is disentitled to registration under the *Act* and direct the Registrar to carry out its proposal dated November 24, 2021.

B. ISSUES

- [6] The issues in the hearing are:
1. The first issue to be decided is whether the past conduct of Qasem affords reasonable grounds for belief that he will not carry on business as a motor vehicle salesperson in accordance with law and with integrity and honesty according to s. 6(1)(a)(ii) of the *Act*.
 2. If the answer to the above question is in the affirmative, then I must decide whether the public interest can be adequately protected through granting registration with conditions.

C. LAW

- [7] Under s. 6(1)(a)(ii) of the *Act*, an individual applicant is disentitled to registration as a motor vehicle salesperson if the past conduct of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty. The *Act* asks me to look back to determine likely future behaviour. It is broader than the interpretation urged on me by Qasem. The

question is not whether Qasem will commit the same type of actions that brought him before the Tribunal. The question is whether, having committed those actions, he cannot be invested with the public trust to act honestly, with integrity, and in accordance with law, in general, in his future dealings as a registrant.

- [8] The Ontario Court of Appeal has described the applicable standard of proof with respect to reasonable grounds for belief as follows:

The standard of proof provided by s. 6(2)(d) of the *Act* is that of “reasonable grounds for belief...” As applied to this case, s. 6(2)(d) of the *Act* required the Registrar simply to show that Mr. Barletta’s past or present conduct provides *reasonable grounds for belief* that he will not carry on business in accordance with law and integrity and honour. The Registrar does not have to go so far as to show that Mr. Barletta’s past or present conduct *make it more likely than not* that he will not carry on business as required.¹

- [9] At the same time, the “reasonable grounds for belief” must be more than “mere suspicion and will be found to exist “where there is an objective basis for the belief which is based on compelling and credible information.”² Further, there must be a nexus between the appellant’s past conduct and his ability to conduct business as a motor vehicle salesperson serving the interests of the public.³

- [10] Under s. 6(2) of the *Act*, a registration is subject to such conditions that are either consented to by the applicant, applied by the Registrar under s. 9 of the *Act*, as ordered by the Tribunal, or as are prescribed. Section 9 of the *Act* provides that the Registrar may apply conditions to a registration and that the Tribunal may direct the Registrar to carry out its proposal or substitute its opinion for that of the Registrar and attach conditions to its order or to a registration.

D. EVIDENCE AND ANALYSIS

Admitted Past Conduct

- [11] While I will get into the details of Qasem’s justification for his actions more fully later, at the time of the transfers Qasem’s father, Mohammad Qasem, was involved in a dispute with Farhad Achekzayee, owner of Carrally Auto Sales, over the transfer of two vehicles from Carrally, a 2015 Nissan Altima and a 2014 Chevrolet Cruze. Mohammad Qasem had had possession of these cars for some time and had asked Mr. Achekzayee to transfer the ownership documentation as he had paid all of the funds owing on them. Mr. Achekzayee was delaying that transfer, alleging general indebtedness between the extended Qasem family and himself.

¹ *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc. (Famous Flesh Gordon’s)*, 2013 ONCA 157 at 18-19.

² *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para.114

³ *CS v. Registrar, Real Estate and Business Brokers Act, 2002*, 2019 ONSC 1652 at para. 32

- [12] Mohammad Qasem asked his son to look into having the transfers completed in the face of Mr. Achekzayee's intransigence. Qasem states that he sought advice from Service Ontario on or around February 5, 2021. He was advised that the most cost-effective way was to transfer the cars from Carrally to Mr. Automotives, the dealer with whom Qasem was registered at the time, and then to his grandfather and father respectively. The general tenor of this advice is corroborated by an unsworn statement from Andrea Fernandes, an employee of Service Ontario.
- [13] On February 9, 2021, Qasem attended again at Service Ontario. He filled out an application for a replacement ownership on behalf of Carrally on the basis that the ownership was lost. Qasem also tendered a signed Bill of Sale transferring the Nissan Altima from Carrally Auto Sales to Mr. Automotives. He admits that he had forged the signature of Farhad Achekzayee on the Bill of Sale.
- [14] Qasem filled out the back of the replacement ownership to transfer the Altima from Carrally Auto Sales to Mr. Automotives and, once that transfer was completed, he then completed the transfer documents to transfer the Altima to his grandfather, Mohammad Alim Shahrawan. Qasem was not and never has been an employee, officer or director of Carrally Auto Sales and had no authority to act on its behalf.
- [15] Qasem then followed the same methodology on February 22, 2021, to transfer the Cruze into his father's name, through an application to replace a lost ownership that was not lost, a forged bill of sale from Carrally to Mr. Automotives and then a transfer to his father.
- [16] Qasem states that he was acting on the advice of Andrea Fernandes at Service Ontario. He points to her corroborating written statement. The statement was drafted by his counsel, and Qasem states that he took it to Ms. Fernandes, gave her time to review it, after which she signed it. Recognizing that the statement is unsworn hearsay and not greatly probative, it is apparent that it has errors. Particularly, Ms. Fernandes' statement that she saw proof of payment of the purchase price for the Nissan of \$5,650 payable to Carrally is incorrect. That amount was a number made up by Qasem to reflect the initial purchase price of the salvaged Altima at auction together with an amount to reflect the repairs Mohammad Qasem had performed on the car. There is a similar error with respect to proof of payment of \$3,995 for the Cruze.
- [17] From my perspective, I find the most glaring omission from the statement is any suggestion that Ms. Fernandes counselled Qasem to commit fraud. As I read her statement, she merely did her job. On February 5 she advised Qasem what documents he would need to effect the transfer. She then processed the transactions on February 9 based on documents Qasem produced for the Altima and again of February 22 for the Cruze.
- [18] The regulations governing dealerships require all purchase and sale transactions to be recorded, at a minimum, in a garage register. {see s. 60 of the *Highway Traffic Act* and s. 53 O. Reg 333/08} Thus, Carrally would be obliged to show the transfer

out of these two vehicles and Mr. Automotives would need to record the transfer in and out of the vehicles. When approached by the Registrar's investigator, Mr. Automotives confirmed that there were no records of the purchase and sale of these two vehicles. There was no "deal file" for these two transactions, and nothing was entered into the garage register. The Registrar submits that the lack of documentation shows Qasem's clandestine intent. While Qasem had authority to authorize purchases and sales and enter the transactions into Mr. Automotives' records by way of a deal file, his failure to keep the requisite records shows he intended to keep the transaction secret. When asked about this Qasem was vague in his reply, agreeing that he had not created a deal file, but that it was Mr. Automotives' responsibility to enter data into the garage register.

- [19] I find on a balance of probabilities that the transfer of these two vehicles was deliberately clandestine, used Mr. Automotives as a fake purchaser without its knowledge and involved forging signatures. These false documents were then filed with the Ontario Government to facilitate an improper transfer. In considering the nexus test mentioned above, I am satisfied that Qasem's admitted misconduct has a direct and precise bearing on his activities as a motor vehicle salesperson. On these facts, I find that there are reasonable grounds for belief that Qasem will not carry on business in accordance with law and with integrity and honesty. The Registrar has satisfied its onus.

Remedy

- [20] The Tribunal has the statutory discretion to consider the appellant's circumstances and determine whether the public interest requires outright refusal of registration or whether the public interest can be adequately protected through granting registration with conditions.
- [21] This is not an appropriate case for registration with conditions. The misconduct of Qasem is serious. He accepts no responsibility. Throughout the hearing it was impossible to ignore his underlying attitude that his actions were justified because of the intransigence of Farhad Achekezayee. While I am satisfied that he is unlikely to do this specific type of transfer in the future, I am concerned that, until he accepts that his frustrations did not and never will justify forgery and fraud, or any other criminal type of behaviour, he may seek to cut corners or circumvent the law in future transactions, especially where he believes such illegal behaviour is justified.

The justification evidence

- [22] Qasem points to the actions of Farhad Achekezayee as creating a situation where his actions could be explained, if not actually justified. The extended Qasem family, including Qasem, his father Mohammad Qasem and his uncle, Salem Shahrawan, all had some form of business relationship with Farhad Achekezayee.
- [23] It is important to bear in mind that Mr. Achekezayee is not the subject of this hearing and any findings I make are based almost entirely on evidence from the

Qasem/Shahrawan family. These findings are made on a balance of probabilities based on the evidence in this hearing and are not binding on Mr. Achekezayee in any future proceeding.

Dealings between Salem Shahrawan and Farhad Achekezayee

- [24] Mr. Salem Shahrawan is a licensed auto mechanic and a registrant under the Act. He operates a car sales dealership called VIP Auto Sales and he also operates a garage from the same location. Starting several years ago he was in business with Mr. Achekezayee in a motor vehicle repair shop. Mr. Achekezayee left the business and set up Carrally Auto Sales. Mr. Shahrawan ultimately decided to sell the repair shop. He testified that the sale price was \$25,000 of which \$12,500 was payable to Mr. Achekezayee. While the sale transaction closed in March, 2020, Mr. Shahrawan testified that it was paid for by a post-dated cheque, post-dated to July of that year. According to Mr. Shahrawan, he explained the details of the transaction to Mr. Achekezayee and let him know that he would pay the \$12,500 once the cheque cleared. According to Mr. Shahrawan, Mr. Achekezayee felt that Mr. Shahrawan was holding out on him.
- [25] In and around the time of the sale of the business, Mr. Shahrawan owned four cars that were on the Carrally lot. When Mr. Achekezayee took the position that Mr. Shahrawan was holding back funds from him, he prepared a consignment agreement transferring the four cars to Carrally and forged Mr. Shahrawan's name on the document. Mr. Achekezayee testified that Mr. Shahrawan signed this document and that he did not forge the signature.
- [26] As a result of the alleged forgery, Mr. Shahrawan reported Mr. Achekezayee to the police resulting in criminal charges. Apparently, those charges have been withdrawn or resolved in some other manner without a finding of guilt.
- [27] During this same time period, Mr. Achekezayee told Mr. Shahrawan that he had a boat for sale. Mr. Shahrawan decided to buy it and paid \$14,000 for it. Mr. Achekezayee candidly admitted in his testimony that he misappropriated the \$14,000 to apply to his view of his share of the proceeds of sale of the business which he valued at \$21,000.

Dealings between Qasem and Mr. Achekezayee

- [28] Mr. Shahrawan had introduced his nephew, Qasem, to Mr. Achekezayee when the relationship was less strained. Qasem was interested in developing a market for providing financing for purchasers with poor credit. Qasem, through his company, and Mr. Achekezayee, through Carrally, decided to set up a joint venture to purchase leads from a third-party, arrange financing and sell cars together. Qasem would profit from the commissions on the financing and Mr. Achekezayee would profit from the car sales. Shortly after they entered into the joint venture the COVID pandemic hit, and the market declined. The parties decided to cancel the joint venture. Carrally provided a final accounting of Qasem's liability, which, after negotiation, Qasem paid

in full and the parties entered into a mutual release. Despite the mutual release, Mr. Achekzayee would raise his own version of what was outstanding between the parties in the future as grounds for refusing to deliver transfer documentation for the cars in question.

Dealings between Mohammad Qasem and Mr. Achekzayee

- [29] Mohammad Qasem is training to become a certified auto mechanic. He needed practical experience and asked Mr. Achekzayee if he could work in the Carrally garage. According to Mohammad Qasem, he approached Mr. Achekzayee for assistance with a business idea. Mohammad Qasem would identify salvage damaged cars for sale at the Impact Auto Auction. He would provide funds to Carrally to buy them and then he would repair them and sell them for a profit. Mr. Achekzayee's version of this arrangement is somewhat different. In his evidence he said that the car purchases would be a joint venture and the parties would split the profits. Mohammad Qasem would fund the purchases and Carrally would reimburse. From the evidence I accept Mohammad Qasem's version of the relationship. There are simply aspects of Mr. Achekzayee's and other evidence that do not suggest a joint venture.
- [30] In reviewing the evidence, I am greatly hampered by the parties' lack of clear accounting and tracking of funds. While there is no specific requirement for documentary evidence and oral testimony is evidence, where there is contradictory or self-serving oral evidence, documentary evidence would be highly probative. In this case, Mohammad Qasem retroactively assigned transfers to Mr. Achekzayee to either the Altima or the Cruze, even months before the specific cars to be purchased had been identified. Mr. Achekzayee had a general sense of indebtedness and a feeling that he was being wronged, without any detailed accounting of transactions. He had a great sense of what he felt he was owed from the broader Qasem/Shahrawan family and used that to justify withholding the ownership of the two cars.
- [31] Mohammad Qasem produced bank statements showing several transfers to Mr. Achekzayee starting in April 2020, two months before the cars were identified and bought. He stated, and I accept, that he was building a credit account with Mr. Achekzayee and Carrally so when the time arrived, he would have funds to complete the transactions. The initial transfers were small, but in June he transferred several thousand dollars.
- [32] Mohammad Qasem and Mr. Achekzayee communicated mainly by text and phone. There is a text message exchange between them on June 8, 2020, that, in my view, can only support Mohammad Qasem's version of the events. In it, Mr. Achekzayee asks Mohammad Qasem how much money he has for the purchase of the cars. Mohammad Qasem responds that he has "9," meaning \$9,000. Mr. Achekzayee tells him to spend \$5,000 to purchase cars and he should use the balance to fix them up. Mr. Achekzayee says, "Bring your funds." This exchange makes no sense if the parties are engaged in a joint project to buy, repair, and sell cars. With

Mohammad Qasem's budget of \$5,000, Mr. Achekzayee informs Mohammad Qasem that he will try to buy two cars. There is no "we" in this exchange.

- [33] Carrally bought the Altima and the Cruze at the auction on Mohammad Qasem's behalf. Mohammad Qasem took delivery of them and at various times kept them at Carrally, Mr. Automotives, and a garage he was setting up in Scarborough. He repaired them. Mr. Achekzayee testified in justification of withholding the ownerships that Mohammad Qasem used Carrally's account to purchase parts. While this might be indicative of a joint undertaking to buy, repair and sell cars as urged by Mr. Achekzayee, his insistence that it was wrong for Mohammad Qasem to have done so, and his insistence that Mohammad Qasem pay the supplier's account directly, belies that the undertaking was joint.
- [34] I am satisfied, on a balance of probabilities, that the Altima and Cruze were purchased by Carrally for Mohammad Qasem and that the intention was to transfer the cars from Carrally to him on request. Mohammad Qasem was always the owner of the cars, even if Carrally was the officially registered owner. Throughout the summer of 2020 there are multiple references in the texts by Mr. Achekzayee to deal with "your" cars and an offer to transfer them to anyone designated by Mohammad Qasem.
- [35] The texts continue through to February 2021, often in very salty language, dealing with multiple issues, but on February 2, they address the transfer of the ownerships for the Altima and Cruze. Mr. Achekzayee puts his first condition on the transfer: "Before you come to me tomorrow go to AMB part Javid. Pay him 1000 for parts u bought for your Nissan Altima." Later he says: "Go pay Javid and lets gets this sh**t done." Later that day, Mohammad Qasem sent proof of payment to AMB Japanese Auto Parts. Thereafter, communication appears to be partly with Qasem using his father's phone.
- [36] What is of note in the text exchange is Mr. Achekzayee does not raise any further issues with payment in full for the two cars. On February 4, he switches his argument to assert that Qasem owed him \$13,564. In his testimony, Mr. Achekzayee asserted, without documentary proof, that this amount represents amounts owing from the joint venture, notwithstanding that the parties had mutually released each other from liability in regard to that undertaking. He also raises his issues with Mr. Shahrawan and money he asserts is owed, again without documentary support. A fair reading of the text exchange at this point suggests that, as each hurdle raised by Mr. Achekzayee is cleared, he is going to raise another hurdle to justify hanging on to the two cars.

Conclusions from justification evidence

- [37] I cannot accept Qasem's opening submission that once I know the full story, I will order the Registrar not to carry out the proposal or will apply conditions. While there is ample evidence to suggest that Mohammad Qasem was entitled to be feeling a high degree of frustration as a result of his dealings with Mr. Achekzayee, Qasem's

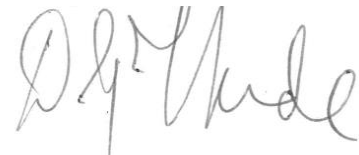
involvement before he engineered the impugned transactions was only a matter of days. There is no evidence that he considered other legal avenues before embarking on his illegal self-help remedy. There is no pause for consideration. He was advised of the best mechanism to effect the transfer of the cars from Carrally to Mr. Automotives and on to his father and grandfather, respectively. I have found above that while he was advised by Service Ontario of the mechanism, nothing in that advice suggests committing fraud. Nonetheless, Qasem did not appear to pause for a moment before producing fake bills of sale, forging signatures and supplying documents he knew to be false to the Ontario Government. Even if he did pause, he proceeded with those transactions nonetheless.

- [38] In light of his admitted criminal behaviour, apparently supported by a belief that it could ever be justified in any circumstances, I have no confidence that he can be invested with the public trust at this time, or that he will feel himself constrained by any conditions I could apply.

E. ORDER

- [39] The Tribunal directs the Registrar to carry out its proposal to refuse to renew the registration of Mohammad Rafi Qasem as a motor vehicle salesperson.

LICENCE APPEAL TRIBUNAL



D. Gregory Flude, Vice-Chair

Released: November 17, 2022