

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



CHARLES ABOUASSALI

AN APPEAL FROM A NOTICE OF PROPOSAL BY THE
REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*, S.O.
2002, c. 30, Sch. B

TO REFUSE REGISTRATION

TRIBUNAL: GENEVIÈVE BLAIS, Member

APPEARANCES: CHARLES ABOUASSALI, unrepresented

SARAH AOUCHICHE, Student at Law, representing the Registrar,
Motor Vehicle Dealers Act 2002

DATE OF
HEARING: March 28, 2011

Ottawa

REASONS FOR DECISION AND ORDER

BACKGROUND

This is a hearing before the Licence Appeal Tribunal (the "Tribunal") arising out of a Notice of Proposal issued by the Registrar, *Motor Vehicle Dealers Act, 2002* (the "Registrar" and the "Act" respectively.) The Notice of Proposal dated September 20, 2010 proposed to refuse to grant the registration of Charles Abouassali (the "Applicant"), as a salesperson under the Act.

FACTS

The Registrar's Proposal is brought pursuant to section 9 of the Act as read with section 6 and section 8 of the Act.

The reasons given by the Registrar in his Proposal are as follows:

The intention and objective of the Act is to protect the public interest. In doing so, the Act prohibits the making of false statements in an application for registration or renewal and requires that Applicants be financially responsible in the conduct of business and that they

carry on business in accordance with the law and with integrity and honesty. Charles Abouassali's past conduct is inconsistent with the intention and objective of the Act, and therefore warrants disentanglement to registration under the Act.

In support of the Registrar's Proposal the following particulars are stated:

Charles Abouassali

1. Charles Abouassali (the "Applicant") applied for registration as a motor vehicle salesperson on or about March 18, 2010. The Applicant proposes to work for Select Car Sales Inc.

2. On the March 18, 2010 individual application question 6 of section E asks:

"Have you ever been found guilty or convicted of an offence under any law or are any charges pending? If "yes", provide the circumstances and particulars surrounding each. Make sure to include those cases where a conditional, absolute discharge or pardon has been ordered/granted."

The Applicant answered "Yes" and further wrote:

"I Charles Abouassali state that I was charged with assault and possession (sic) over 20 yrs ago I got a pardon two yrs ago and I am unable to get a list of charges from the Court House. Signed this 15th day of March 2010"

Charles Abou Assali (aka Charles Abouassali) o/a Monte Carlo Motors

3. Charles Abou Assali (aka Charles Abouassali) o/a Monte Carlo Motors applied for registration as a motor vehicle dealer on or about April 4, 2000. Monte Carlo Motors was refused dealership registration because the Applicant had failed to disclose his past criminal convictions as follows:

Assault Causing Bodily Harm	March 8, 1982
Possession of Stolen Property (x2)	June 8, 1983
Obstruct Justice	February 9, 1984
Robbery	March 12, 1985
Conspire to Commit Robbery	March 12, 1985
Theft under \$1000	October 1, 1987
Possession of Property Obtained by Crime	September 7, 1985

4. The Registrar issued a Notice of Proposal to Refuse on May 19, 2000 and a Final Notice June 13, 2000. Monte Carlo Motors did not appeal the Registrar's Notice of Proposal.

Genvieve Abou Assali o/a A-16 Auto Recycling (the "Sole Proprietorship")

5. Genvieve Abou Assali o/a A-16 Auto Recycling (the "Sole Proprietorship") is a sole proprietorship solely owned by Genvieve Abou Assali (aka Genevieve Bouassali). The Sole Proprietorship was registered as a motor vehicle dealer from August 31, 1992 to December 29, 1997.

6. At all material times the Applicant was in charge of the day to day operations of the Sole Proprietorship.

7. On or about September 18, 1998, the Sole Proprietorship's dealership registration was revoked. A Notice of Appeal was filed on or around January 28, 1998 and upon a hearing of the Appeal, the Licence Appeal Tribunal directed the Registrar to carry out his proposal to revoke the Sole Proprietorship's registration. A copy of which is attached as Schedule "a". The Registrar repeats and relies on the reasons for the Licence Appeal Tribunal's decision.

8. On or about December 07, 2000, the Sole Proprietorship was charged and subsequently convicted on four counts of selling vehicles while unregistered, contrary to subsection 3(1) of the Motor Vehicle Dealers Act.

A-16 Auto Recyclers Ltd (the "Corporation")

9. The Applicant is the sole director and officer of A-16 Auto Recyclers Ltd (the "Corporation"). The Corporation was incorporated on May 19, 1998 and was never registered as a motor vehicle Dealer under the Act.

10. On or about October 29, 2007 the Applicant was charged with 11 counts of selling vehicles while unregistered, contrary to subsection 3(1) of the Motor Vehicle Dealers Act.

11. On or about October 29, 2007, the Corporation was charged and subsequently convicted on 20 counts of selling vehicles while unregistered, contrary to subsection 3(1) of the Motor Vehicle Dealers Act.

12. On or about November 1, 2007, the Corporation was charged and again subsequently convicted on nine counts of selling vehicles while unregistered, contrary to subsection 3(1) of the Motor Vehicle Dealers Act.

13. Genevieve Bouassali is an interested person as defined under the Act, in relation to the Applicant

Ministry of Transportation records indicate Genevieve Bouassali and the Applicant currently reside at the same residential address.

14. The Registrar relies on section 12 of the Act on the basis that the Applicant has failed to demonstrate a clear change in material circumstances.

15. The Registrar further relies on section 6 of the Act on the basis that the Applicant has failed to demonstrate a reasonable period of unsupervised reliable conduct in accordance with the law and with honesty and integrity.

The evidence introduced by the Registrar consisted of a Book of Documents and the oral testimony of Mary Jane South.

The evidence introduced by the Applicant was his own testimony.

Mary Jane South

Ms. South is the Deputy Registrar of the Ontario Motor Vehicle Industry Council (OMVIC). Her duties include overseeing the registration of dealers and salespersons under the Act. She explained that OMVIC has been delegated with authority to administer the Act, which is a consumer protection statute.

Ms. South testified that there are four main issues of concern to OMVIC with respect to the Applicant's request for registration. These are his past criminal offences, his activities while working in his wife's dealership, extensive traffic offences and the convictions of selling vehicles while unregistered under his business name.

Ms. South stated that the Applicant's first application for registration as a salesperson was in September, 1992. Although he made a false statement on the application concerning his criminal record, he was issued a registration. At that time, OMVIC did not conduct record checks on applications and accepted statements by applicants as true. While registered as a salesperson the Applicant was employed at a registered dealership owned by his present wife. On September 15, 1996 the Applicant did not renew his registration and it expired.

Ms. South stated that between 1995 and 1998, OMVIC conducted a number of inspections at the Applicant's wife's dealership. These inspections resulted from a number of irregularities in the businesses' practices, record keeping and financial management. In June, 1998, during an inspection, OMVIC was told by the Applicant's wife that the Applicant was handling the day to day operations and the buying and selling of cars. The Applicant was acting as an unregistered salesperson. This information, as well as other violations under the Act led to the revocation of the dealership's registration in September, 1998. Ms. South added that the Applicant acted as agent for his wife in the appeal of the revocation. The appeal was not successful. The Registrar relied on the reasons of the Licence Appeal Tribunal's decision in their review of the Applicant's current application for registration.

Ms. South further testified that the Applicant successfully completed the compulsory Georgian College automotive course in March, 2000. This course is designed to ensure that anyone entering the industry is fully aware of the law and the ethics related to the statutes and the importance of disclosure to the Regulator. She testified that within weeks of completing the course, the Applicant applied for a dealership registration. In June, 2000, his application for registration was refused as he provided false information on the application and failed to disclose past criminal convictions. She stated that OMVIC's last involvement with the Applicant was in late 2007 when the Applicant was convicted under the *Motor Vehicles Dealers Act* (MVDA) of 29 counts of selling vehicles while unregistered.

On the current application before the Registrar, Ms. South acknowledged that the Applicant answered question 6 with a ``yes`` He disclosed more information about his involvement with the law and stated he was granted a pardon for his criminal record. However, he failed to fully disclose all the previous criminal offences related to the pardon, and the 2007 convictions under the MVDA, and furthermore he did not disclose any information about the numerous convictions from 1981 to 2010 under the *Highway Traffic Act*. (HTA)

Ms. South added that the Applicant provided misleading information in his Notice of Appeal to the Licence Appeal Tribunal. He stated "I was never personally convicted of selling vehicles illegally". Although OMVIC accepts this statement as factually correct, she stated that the Applicant was the owner of the corporation and sole officer and director of the company. Although the convictions were registered against the Applicant's company, it remains that the only person involved in the business was the Applicant. The Applicant should know the importance of full disclosure required by the motor vehicle industry. She believes that he chose to deliberately withhold critical information with the intent to mislead the Registrar. The failure of the Applicant to honestly and fully disclose the circumstances around his convictions under any law is a concern.

Ms. South concluded her testimony stating that the Registrar does not believe the Applicant would act with honesty and integrity and in accordance with the law in the motor vehicle business.

In cross-examination, Ms. South acknowledged that OMVIC views favourably a pardon granted to an Applicant's criminal record. Notwithstanding, she added that, on all requests for registration, the Registrar carefully weighs all factors which include the type of offences, past behaviour and an Applicant's full disclosure of information

The Applicant

The Applicant testified that he regrets not telling the truth on his past applications for registration. When he was first registered as a salesperson in 1992 he worked at his wife's dealership. He maintains that the business was managed by several members of her family and he did not play a major role in the day to day operations. He feels that OMVIC has unjustly held him responsible for the violations of the Act and the dealership registration revocation in 1998.

In his testimony, the Applicant stated that he operated his own company as an auto parts recycler from 1998 to 2005. During this period, he was not registered as a dealer as his business was only the sale of auto parts. He handled a large volume of cars and some of the cars were roadworthy. It made good business sense to sell the roadworthy vehicles as a whole and not for parts. According to the Applicant, he had obtained advice from a government ministry on the disposal of the roadworthy vehicles and accordingly sold some cars. He maintains the charges of curbsiding (selling cars while not registered) were unjustified. He elected to plead guilty to the numerous charges to avoid potential exorbitant fines, should he be convicted at trial. He stated that the convictions were registered against his company and therefore he believed that disclosure of this information on the application for registration was not necessary. He thought that only criminal offences had to be disclosed.

The Applicant testified that he is not proud of his involvement in criminal activity or of making false statements on previous applications. He has changed his behaviour and was successful in obtaining a pardon. He considers his thirty seven convictions under the HTA from 1981 to 2010 as average for a person in his line of business. In his opinion, his driving record should not be a negative factor in his application for registration. The Applicant stated that he considers himself financially stable and adequately supports his wife and two children from rental revenue from residential and commercial properties.

During cross-examination, the Applicant was questioned regarding his activities while working at his wife's dealership. He maintains that he did not play a significant role in the daily operations of the business. When his salesperson registration expired, he purchased vehicles for recycling only and not for resale. He added that OMVIC has misinterpreted the business activities of his wife's dealership to further assist in the refusal of his request for registration. He further added that when he operated his own business, he did not mislead any consumer or hide any information concerning the condition of vehicles. At no time was his company investigated for complaints.

When questioned on the convictions in 2007, for selling vehicles while unregistered, the Applicant stated that in his mind he was not in violation of any law. He pled guilty to avoid heavy fines. In further cross-examination, the Applicant acknowledged that his future employer is his tenant, who leases one of his commercial properties for the purpose of operating his dealership. He sees no impropriety with this working arrangement as he will be employed only as a salesperson and will not engage in the day to day operations of the dealership. In reply evidence, Ms. South indicated that the Registrar has concern regarding the ability of the employer to exercise any supervision over the Applicant and the potential conflict of interest.

The Applicant concluded his testimony by stating that he feels he has learned from his past mistakes and has changed personally. His wife is no longer involved in any capacity in the motor vehicle industry. He feels that sufficient time has passed to allow him another opportunity to work as a salesperson in the industry.

THE LAW

The Act states in part as follows:

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.

Unregistered salesperson

(3) A motor vehicle dealer shall not retain the services of a salesperson unless the salesperson is registered in that capacity.

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.

Regarding the right to registration, the Act states:

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;
- (e) the applicant or an interested person in respect of the applicant is carrying on activities that are, or will be if the applicant is registered, in contravention of this Act or the regulations, other than the code of ethics established under section 43;
- (f) the applicant is in breach of a condition of the registration; or
- (g) the applicant fails to comply with a request made by the registrar under subsection (1.1).

Request for information

- (1.1) The registrar may request an applicant for registration or renewal of registration to provide to the registrar, in the form and within the time period specified by the registrar,
- (a) information specified by the registrar that is relevant to the decision to be made by the registrar as to whether or not to grant the registration or renewal;
 - (b) verification, by affidavit or otherwise, of any information described in clause (a) that the applicant is providing or has provided to the registrar.

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.

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.

Notice re: refusal, suspension, etc.

9. (1) The registrar shall notify an applicant or registrant in writing if he or she proposes to,
- (a) refuse under subsection 8 (1) to grant or renew a registration;
 - (b) suspend or revoke a registration; or
 - (c) apply conditions to a registration or renewal to which the applicant or registrant has not consented.

Content of notice

- (2) The notice of proposal shall set out the reasons for the proposed action and shall state that the applicant or registrant is entitled to a hearing by the Tribunal if the applicant or registrant mails or delivers, within 15 days after service of the notice, a written request for a hearing to the registrar and to the Tribunal.

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.

ISSUE

The issue in this case is whether or not the past conduct of the Applicant affords reasonable grounds for the belief that the Applicant will not carry on business in accordance with the law and with integrity and honesty.

APPLICATION OF LAW TO FACTS

The onus falls upon the Registrar to prove his case on a balance of probabilities. The Tribunal is required to make an independent assessment as to whether the criteria for depriving the Applicant of registration has been proven, showing no deference to the Proposal of the Registrar.

Whether or not the Applicant provided full and correct information to the Registrar is a crucial matter in assessing the honesty of an applicant, as this information is clearly intended to be relied upon by the Registrar. If any information is intentionally concealed, or if false information is given, the Registrar has good reason to have serious concerns that the applicant will withhold information or provide false information in the future in his dealings with the Registrar or with others and thus, perhaps, with members of the public.

A motor vehicle salesperson deals with members of the public who are purchasing or selling products of substantial value, and who depend upon the salesperson not to misrepresent the value or quality of the vehicles. By withholding or falsifying information, motor vehicle salespersons are in a position to take advantage of a vulnerable consumer and the public

Counsel for the Registrar argued that the Applicant fails to meet the criteria for registration as identified in section 6(1) (a) of the Act. His lengthy pattern of illegal and unethical conduct, taken as a whole and not independently raises serious issues of credibility and makes the Applicant unfit to conduct business. The Applicant has been involved with the motor vehicle industry since 1992. He clearly understood the process of providing honest and accurate information to the Registrar, as he had experience with this registration process in the past. On three applications to the Registrar, the Applicant has made either false or incomplete statements. These instances of concealment are serious and point to the potential for further deception by the Applicant.

The Applicant provided an explanation as to why he failed to disclose details of his convictions under the MVDA and the HTA on his application. The Tribunal has considered his explanation and does not find it credible. It is difficult to understand how he could have misinterpreted question 6, which contains bold and underlined words "under any law" in such a way to conclude that it only meant criminal offences. He is an informed, experienced and articulate person whose lack of forthrightness raises real concern.

The Applicant would like the Tribunal to accept his statement that he felt pressured into pleading guilty to the charges of selling vehicles while unregistered to avoid the threat of exorbitant fines that may have resulted with a trial. The Tribunal concludes that the Applicant's explanation is weak and the convictions under the Act are seen as a further instance of the Applicant's disregard of regulations and the law.

The Applicant stated that he has changed his conduct. Two years ago, he obtained a pardon for his past criminal record and his offences under the MVDA occurred in 2005. He feels he attempted to provide adequate disclosure on his application for registration and maintains that he is an honest person. Although financially stable, he wants the opportunity to return to the motor vehicle industry as a salesperson and engage in meaningful employment.

The Tribunal finds that the Applicant has a long history of incidents with the motor vehicle industry and the law and it is just over three years that the charges under the MVDA were disposed of. This is relatively little time to demonstrate a reasonable period of reliable conduct.

The intention and objective of the Act is to protect the public interest. It is essential that it be applied in a way that does protect consumers. The Applicant's past conduct and his non-disclosure to the Registrar of the details of his offences under any law and the circumstances around them demonstrate he did not act with honesty and integrity and within the law during the application for registration process.

On the basis of the facts as found and the application of the law to those facts, the Tribunal finds that the past conduct of the Applicant, taken as a whole, provides reasonable grounds to believe that the Applicant would not carry on business as a salesperson with honesty, integrity and in accordance with the law.

ORDER

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar to carry out the Proposal.

LICENCE APPEAL TRIBUNAL


Geneviève Blais, Member

Released: April 12, 2011

The hearing was recorded. Transcripts can be made available at your expense. The period to appeal a decision to the Ontario Superior Court of

Justice or Divisional Court (<http://www.ontariocourts.on.ca/>) is 30 calendar days from the date of release of the decision. Please arrange to pick up your Exhibits within 30 days after that period has passed. The Tribunal requires seven days notice prior to releasing Exhibits.

This decision, which is being released to the parties in this proceeding, may also be posted on the Licence Appeal Tribunal's website <http://www.lat.gov.on.ca/> within three weeks time. The decision may also be available on Quicklaw at a later date.