

Licence Tribunal  
Appeal d'appel en  
Tribunal matière de permis



DATE: 2013-03-15  
FILE: 7622/MVDA  
CASE NAME: 7622 v. Registrar, *Motor Vehicle Dealers Act 2002*

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An Appeal from a Notice of Proposal by the Registrar, *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B - to Refuse and Revoke Registrations

Ahmed Salami o/a Lifetime general, LTG Auto Sales Ltd. and  
Ahmed (a.k.a.Abbey) Salami

Applicants

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

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**REASONS FOR DECISION AND ORDER**

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**ADJUDICATOR:** Patricia McQuaid, Vice-Chair  
Terrance Sweeney, Vice  
Chair

**APPEARANCES:**

**For the Applicants:** Robin Spinks, Counsel

**For the Respondent:** Angela La Viola, Counsel

Heard in Toronto: February 7, 2013

## 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 August 23, 2012 proposed to revoke the registration of Ahmed Salami o/a Lifetime General ("Lifetime") as a motor vehicle dealer and to refuse registration to LTG Auto Sales Ltd ("LTG") as a motor vehicle dealer and Ahmed (a.k.a. Abbey) Salami as a salesperson under the Act.

As a preliminary matter, Ms La Viola advised that the Registrar wished to withdraw the allegations against Lifetime set out in paragraphs 26 and 27 of the Notice of Proposal. The Tribunal accepted that withdrawal.

### DECISION

After considering all the evidence and submissions, the Tribunal directs the Registrar not to carry out the Notice of Proposal and to continue and/or grant the registrations, subject to terms and conditions for the following reasons.

### EVIDENCE

Lifetime was first registered as a wholesaler under the Act in November 2008. Ms Mary Jane South, Deputy Registrar at the Ontario Motor Vehicle Industry Council ("OMVIC") gave evidence at the hearing and stated that she first met with Mr. Salami in 2008 when he filed his first application, as the sole proprietor of Lifetime. At that time, the Registrar had concerns about Mr Salami's lack of assets. The issue for the Registrar was whether Mr. Salami had the financial wherewithal to meet the obligations of a dealership.

Despite those concerns, the Registrar offered registration to Mr. Salami, though subject to terms and conditions, one of which was that he provide an irrevocable letter of credit in the amount of \$10000. The purpose of the letter of credit is to ensure that a dealer has funds to draw upon in the event of consumer complaints against the Motor Vehicle Dealers Compensation Fund, (the "Fund"). Mr Salami obtained the required letter of credit and Lifetime was registered as a wholesaler. The registration was subsequently changed to "dealer".

In 2009, Mr. Salami asked that the letter of credit be released. As a follow up to that request, an OMVIC representative attended at Lifetime's business address in February 2010 for an inspection. The representative discovered that the business premise was a "camping type trailer" with no heat or hydro and concluded that he could not conduct an inspection there. The inspection was ultimately completed at the OMVIC head office. The OMVIC representative, after reviewing the records, and noting the low volume of sales at

2-3 vehicles per year as well as the \$10,000 overdraft, concluded that it would not be prudent to rescind the letter of credit as 'business activity does not appear stable and profitable'.

In October 2010, Mr. Salami completed and signed a standard form renewal application for Lifetime (Exhibit 1, Tab 9B). The application, at section "G" asks several key questions, one of which asks: "Are there any unsatisfied judgments, court orders or collections currently pending against the registrant?" Mr. Salami responded "No".

Investigation by OMVIC revealed that Mr. Salami was served with a Statement of Claim issued by the Royal Bank of Canada ("RBC") on May 4, 2010 and that a default judgment was entered against him by RBC on May 31, 2010. This claim arose from an unpaid Visa credit card in the amount of \$21,406.82.

Mr Salami then, on behalf of LTG filed an application for registration in or about October 2011. He incorporated LTG on October 25, 2010 and is its sole officer and director. On that application, under Section "D" – Eligibility, the question is asked: 'Are there any unsatisfied judgements, court orders or collections currently pending against the applicant?' The answer was "No". At the same time, Mr Salami also applied to OMVIC for registration as a salesperson. Again, Mr Salami responded "no" to the question of whether there were any unsatisfied judgements, court orders or collections pending against him.

OMVIC wrote to Mr. Salami in October 2011 advising him, among other things, that it was aware of the outstanding judgment against him and that he had failed to disclose that fact. OMVIC requested an explanation both for the failure to disclose and regarding the intended resolution of the claim. Mr. Salami contacted OMVIC in response, stating that he was not aware of the judgment and that he would go to the bank and check it out.

On the evidence, there is little doubt that Mr. Salami was served with the Statement of Claim (Exhibit 1, Tab 26), though he states that he did not recall receiving it. He was aware of money owed on his personal Visa card, but said he had no money to pay the debt so therefore did not respond to the letter from the bank, or to the court proceeding. Furthermore, Mr. Salami stated that because it was his personal Visa card, he did not understand that it would be pertinent to his business application. Furthermore, he stated that he understood the word 'judgment' to relate to a criminal matter hence his 'no' response.

At the same time, OMVIC reiterated its concern about his financial viability noting that he had little more than \$1000 in his account (Exhibit 1, tab 15). Mr Salami responded that he had 11 cars in inventory with a value of \$30,000 as well as a cheque due to him in the amount of \$4000 for a car that had been sold.

Mr Salami did contact the bank at this point to try to resolve the issue. He was not able to reach an agreement with it so he sought advice and filed a Consumer Proposal under the Bankruptcy and Insolvency Act through an administrator, Rumanek and Company ("Rumanek"). The Proposal was to pay the amount of \$6600 over a period of 60 months.

The bankruptcy record filed by Rumanek in support of the Proposal revealed that \$23,050.00 was owing to creditors, with assets stated to be \$1001.00. The record did not disclose the 11 vehicles as assets. The stated cause of the insolvency was "business slowdown".

Mr Salami also filed, in November 2011, a business short form renewal application on behalf of Lifetime. On that form, he did disclose an "unsatisfied judgement, court order or collection" on his personal credit card.

OMVIC obtained documentation from the Trustee's office in relation to Mr Salami's Consumer Proposal and upon review of this, wrote to Mr. Rumanek pointing out several inconsistencies, in particular, that Mr Salami had disclosed that he was a salesperson, not a dealer under the Act. The Consumer Proposal does indicate that he is operating as Lifetime. However, nowhere on that Proposal does it indicate that Mr Salami had 11 cars on his lot, an asset of approximately \$30, 000 as described by him in his dealings with OMVIC. Mr Salami's evidence on this point is that he made the administrator aware of the sole proprietorship (which appears to be the case), but was asked only if he owned a vehicle as opposed to the business. Mr Salami's answer to the question as to his reason for incorporating does suggest that he did seem to become aware, at some point, that by incorporation, the personal assets (or liabilities) become separate from that of the business. By inference, this might suggest that he knew at the material time, that the assets of the sole proprietorship are indeed, his.

Mr. Rumanek responded to OMVIC's email, stating that the statement was prepared based on information provided by the debtor and further, that "If he owned 11 cars and the business was a sole proprietorship, then the vehicles should have been listed as assets." Mr Rumanek went on to state that his office would be writing to Mr Salami and would report the findings to the creditors (Exhibit 1, tab 40). From the evidence, it appears that nothing further transpired on this issue. There is no evidence of follow up from Mr Rumanek's office on behalf of creditors. In fact, Mr Salami paid off the amount owed as per the Proposal, in a period of nine months. He also stated that his line of credit has been paid off.

On cross examination, Ms South was asked about the existence of any consumer complaints made against Mr. Salami. She stated that OMVIC had record of two complaints though the Registrar chose not to make these an issue. Their records suggest that no action beyond the initial complaint was taken and OMVIC never pursued these with Mr Salami. There have been no claims against the Fund.

Mr Salami's evidence did suggest a lack of sophistication and certainly a lack of attention to detail which is the reason given for the intended involvement of his wife in the business going forward. Ms Salami, a registered nurse, gave evidence that she would be assisting with the paperwork as her husband "needs help with papers."

## THE LAW

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;

(b),(c) REPEALED: 2004, c. 19, s. 16 (5).

(d) the applicant is a corporation and,

(i) having regard to its financial position or the financial position of an interested person in respect of the corporation, the applicant cannot reasonably be expected to be financially responsible in the conduct of its business,

(ii) having regard to the financial position of its officers or directors or an interested person in respect of its officers or directors, the applicant cannot reasonably be expected to be financially responsible in the conduct of its business,

(iii) the past conduct of its officers or directors or of an interested person in respect of its officers or directors or of an interested person in respect of the corporation affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty, or

(iv) an officer or director of the corporation 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).

;

### 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.

**APPLICATION OF LAW TO FACTS**

The Registrar cites the grounds set out in s. 6(1)(a) and 6(1)(d) above as the basis for revocation and /or the refusal to register the Applicants. The Tribunal will address each of the grounds, as follows.

**Section 6(1)(a)(i) - financial responsibility**

Ms South testified that OMVIC was aware of, and concerned about, Mr Salami's financial situation at the time of his initial registration. The letter of credit was obtained for that reason and the registration was granted. Mr Salami has now been registered for over four years. An inspection took place in February 2010 as a result of Mr. Salami's request to have the letter of credit released. The letter of credit was not released, but no action was taken against Mr. Salami at that time even though OMVIC was then very much aware of the nature of Mr's Salami's business and the low sales volume. At that time, it was readily apparent that Mr. Salami was not operating a very sophisticated business, however, business acumen is not a prescribed ground for registration.

Mr Salami did have personal debt, as evidenced by the RBC judgment. Salespersons and dealers are not prohibited from registration by the mere fact of personal debt. Many persons might be prohibited from any number of regulated occupations if that were a proscribed ground. Personal debt may, however, become relevant to registration if it is such that it "affords reasonable grounds for belief that a person will not carry on business in accordance with the law and with integrity and honesty.' There is no evidence of that here. Again, Mr Salami's business acumen may be minimal, but there is no evidence before the Tribunal that his personal debt situation has negatively affected his business dealings. There is no evidence of consumer complaints that have resulted in claims against the Fund. Mr Salami made a Consumer Proposal to eradicate his debt. That Proposal was accepted and the amount due pursuant to it was paid off expeditiously.

The Tribunal does not find, on the evidence before it, that Mr. Salami o/a Lifetime, or LTG, "cannot reasonably be expected to be financially responsible in the conduct of business".(Emphasis added)

**Section 6(1)(a)(iii) - false statement**

OMVIC alleges that Mr Salami on his own behalf as Lifetime and on his application as salesperson falsely answered the question " Are there any unsatisfied judgements,



court orders or collections currently pending against the registrant?" The same answer was given on the corporate application for LTG, however, in that discrete context, there is no issue with that answer.

The Tribunal accepts, given the evidence, that Mr. Salami was not aware of the RBC judgment. While he was served with the Statement of Claim, which one can presume was preceded by a demand letter for the amount owing to RBC, he may not have had actual knowledge of the judgment. A logical inference is that if one does not respond to a Statement of Claim, a default judgment is the result. However, forms and documentation are not Mr Salami's strength. The Registrar, however, is placed in a difficult position. As counsel for the Registrar submits, the registration process is the first opportunity by which the Registrar can assess the honesty of an applicant, and the obligation to disclose continues with each subsequent renewal of a registration. The failure to disclose warrants sanction. The question is the severity of that order. The Tribunal will address that in the latter part of this decision.

The omission of eleven vehicles on the Consumer Proposal concerns the Registrar and that concern is valid. It was suggested by Ms Spinks that the administrator, as a professional, and being aware that Mr Salami was operating a sole proprietorship as evidenced on the proposal documentation, should have probed further in his questioning of Mr Salami to determine if there were assets held by him. The Tribunal understands Mr Salami's evidence to be that, as this was a personal debt, he assumed when he was asked if he owned any vehicles, this related to personal ownership, to which he responded truthfully. He does not personally own a vehicle. The administrator was not called as a witness. What the Tribunal does have, in Exhibit 1, is an email from Mr. Rumanek, responding to information received from OMVIC to the effect that Mr Salami did not advise his office of this fact and that these assets should have been listed. Mr Rumanek stated he would be following up with Mr Salami and would report to the creditors in due course. The Tribunal has only this email from Mr. Rumanek. There is no evidence of follow up by either the administrator or creditors on this issue, nor any follow up from the Registrar.

### **Section 6(1)(a)(ii) - past conduct**

The Tribunal will next address the issue of whether the failure to disclose as described above and the fact of the RBC debt itself is such that "the past conduct of the applicant (or an interested party) affords reasonable grounds for the belief that the applicant will not carry on business in accordance with law and with integrity and honesty." The Tribunal concludes that it does not. While it may be too generous to Mr. Salami to suggest that the failure to disclose was completely inadvertent, it is fair to infer on the evidence that he was somehow oblivious to the bank's collection efforts. However, the fact that Mr. Salami sought advice upon having the judgment brought to his attention and that he has successfully gotten himself out of the debt situation speaks to the a greater understanding and awareness of financial concerns.

The Tribunal cannot conclude on these facts that there was here, as was found in the

case of *Small v. Registrar, Motor Vehicle Dealers Act 2002* 2012 CanLII18380, a “deliberate attempt over a lengthy period of time to deceive the Registrar in respect to material facts in order to advance his own interest.” Nor is there here as in *Fakhri o/a Crown Auto Repair and Used Car Sales v. Registrar, Motor Vehicle Dealers Act 2002*, 2009 L.A.T.D., a large number and repetitive nature of the convictions which suggest “evidence of a certain preparedness of the Applicant to act outside the law when it is in his interest to do so”. The Tribunal has weighed Mr. Salami’s evidence and has concluded that the explanations given by him were, in the context of all the facts before it, both reasonable and probable. The evidence, in its totality, is therefore insufficient to support a finding that there are reasonable grounds for the belief that Mr Salami will not carry on business in accordance with law and with integrity and honesty.

## **Conclusion**

As noted above, there was a failure to disclose. A registrant in a regulated business activity must exercise some level of diligence in determining the extent of disclosure required. Mr Salami did exercised very little diligence. He has stated that with the involvement of his wife in his business, such an omission will not occur again. The Tribunal has fairly consistently reasoned that orders of revocation or a refusal to register are reserved for those situations in which there is a deliberate intent to deceive the Registrar and/or proven significant underlying criminal activity. Alternatively, orders of a remedial measure, to ensure corrective action, are made instead.

In this instance, the Tribunal requested submissions from both Counsel regarding terms and conditions that might attach to Mr Salami’s registration(s), for consideration. Those submissions were provided in writing subsequent to the hearing and have been reviewed by the Tribunal. The Tribunal does note that the Registrar remained firm in his position that the registrations should be revoked and/ or refused.

In assessing appropriate terms and conditions, the Tribunal must consider their responsiveness and proportionality to the underlying finding and the facts of the particular case. Terms and conditions must be sufficient to bring home the message to the Applicants – and others- that they must be more careful in filling out registration and renewal forms.

## **ORDER**

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar not carry out the Notice of Proposal dated August 23, 2012 but to continue Ahmed Salami o/a Lifetime General and /or to grant the registration of LTG Auto Sales Ltd as a motor vehicle dealer and to grant the registration of Ahmed (aka Abbey) Salami as a salesperson under the Act, subject to the following terms and conditions:

1. The Applicant(s) acknowledges and undertakes to provide full and complete disclosure on all future applications and discussions with the Registrar, regardless of whether disclosure has been previously provided to the Registrar.



2. The Applicant(s) shall notify the Registrar, in the event that the Applicant(s) is petitioned into bankruptcy or has filed a consumer proposal, within 5 days of such occurrence.
3. The Applicant (s) shall notify the Registrar within 5 days of any and all statements of claim, court orders or judgments registered against the Applicant(s).
4. The Applicant(s) shall fully and promptly cooperate with any inquiry by the Registrar in respect of occurrences described in paragraphs 2 and 3 above.
5. The Applicant Ahmed Salami undertakes to immediately enroll in the Ontario Motor vehicle Industry Council Certification Course in Automotive Law and Ethics, at his expense, and shall provide proof of successful completion within four months (120 days) of the date of the Tribunal's Order.

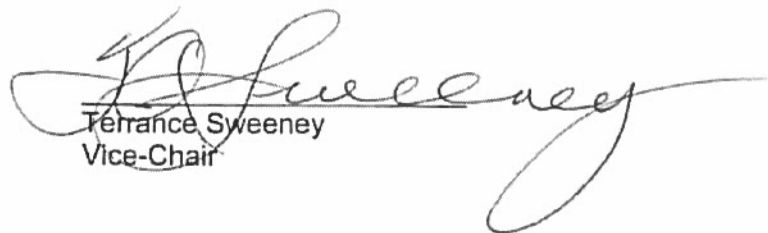
## LICENCE APPEAL TRIBUNAL



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Patricia McQuaid, Vice-Chair

## LICENCE APPEAL TRIBUNAL



Terrance Sweeney  
Vice-Chair

*Released: March 15, 2013*