

**LICENCE APPEAL
TRIBUNAL**

**TRIBUNAL D'APPEL EN MATIÈRE
DE PERMIS**



**Safety, Licensing Appeals and
Standards Tribunals Ontario**

**Tribunaux de la sécurité, des appels en
matière de permis et des normes Ontario**

Citation: Sheik Alli v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2018 ONLAT MVDA 11161

Date: 2018-08-01
File Number: 11161/MVDA

Appeal from a Notice of Proposal of the Registrar, *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c.30, Sch. B – to Apply Conditions on a Registration

Between:

Sheik Omar Alli

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

DECISION and ORDER

ADJUDICATOR: Stephen Scharbach, Member

APPEARANCES:

For the Appellant: Justin M. Jakubiak, Counsel

For the Respondent Michael Rusek, Counsel

Heard at Toronto, Ontario: May 16, 2018

A. Overview

- [1] The appellant, Mr. Sheik Alli, applied to the Registrar, *Motor Vehicle Dealers Act, 2002* (“Registrar”) for registration as a motor vehicle salesperson for 1207036 Ontario Limited o/a Motor City Auto Sales/The Approval Store (“Motor City”), a motor vehicle dealership owned and operated by the appellant’s brother, Mr. Ashiq Alli.
- [2] The Registrar is willing to grant registration to the appellant subject to several conditions and issued a notice of proposal to apply conditions.
- [3] The appellant appealed the Registrar’s proposal to this Tribunal. Although he is content with most of the Registrar’s proposed conditions, he objects to the following two conditions:
 - (a) Condition 6: “The Applicant will not apply to be dealer.”
 - (b) Condition 9: “The Applicant agrees that he will not work for 1207036 Ontario Limited o/a Motor City Auto Sales/The Approval Store for a period of four (4) years or 2 renewal cycles from the date of signing of the original terms and conditions.”

B. Issue

- [4] Are conditions 6 and 9 as proposed by the Registrar appropriate conditions to be attached to the appellant’s registration as a salesperson?

C. Decision

- [5] I find that condition 6 is an appropriate condition to be attached; and condition 9 is not an appropriate condition to be attached to the appellant’s registration as a salesperson.
- [6] I have decided to direct the Registrar to carry out his proposal to grant registration as a salesperson to the appellant subject to all of the proposed conditions except condition 9.

D. The Act

- [7] The Registrar’s proposal to impose conditions was made under the authority of the *Motor Vehicle Dealer’s Act, 2002* (“Act”).
- [8] The Act and its regulations attempt to regulate the business of dealing in motor vehicles in Ontario to ensure that the public receives ethical and competent services from motor vehicle salespersons and dealers who are qualified and suitable to do business with the public.

- [9] The Act prohibits anyone from acting as a motor vehicle dealer or salesperson unless that person holds a registration under the Act.
- [10] When applying for a new registration or a renewal, applicants are required to truthfully answer a series of questions designed to provide information to enable the Registrar to assess the applicant's suitability.
- [11] Those questions include whether the applicant has ever had a licence or registration suspended or revoked, whether there are outstanding judgements, garnishments or collections, whether the applicant has been involved in bankruptcy proceedings, found guilty of any offence, or has any pending charges.
- [12] If the applicant answers yes to any of those questions, the Registrar will conduct further inquiries to determine whether granting a registration with or without conditions is appropriate. According to the Act, the Registrar may approve a registration "...on such conditions that he or she considers appropriate."
- [13] If the Registrar proposes to refuse an application or to approve it with conditions, the Act (s. 9(1), (2)) requires the Registrar to give the licensee or applicant written notice of the proposal setting out the reasons and the applicant's right to request a hearing by this Tribunal.
- [14] If no hearing is requested, the Registrar may carry out the proposal. If, as in this case, a hearing is requested, the Tribunal shall hold a hearing. At a hearing, the onus is on the Registrar to establish the facts supporting the proposal on a balance of probabilities.
- [15] After holding a hearing, the Tribunal may, by order, direct the Registrar to carry out the proposal or substitute its opinion for that of the Registrar, and may attach conditions to its order or to a licence.

E. The Notice of Proposal

- [16] The present appeal relates to the appellant's second application for registration as a salesperson. He first applied for registration in 2012 as a salesperson working for his brother, Mr. Ashiq Alli, a registered motor vehicle dealer and the owner of Motor City, a motor vehicle dealership.
- [17] The Registrar issued a notice of proposal to refuse the 2012 application and that refusal was confirmed after a Tribunal hearing.
- [18] In September 2016, the appellant made a second application for registration as a salesperson working for his brother at Motor City.

[19] The Registrar may approve a registration on such conditions that he considers appropriate and in this case the Registrar issued a notice of proposal to grant registration as a salesperson subject to several conditions. The appellant objects to two of those conditions - conditions 6 and 9.

[20] The Registrar's present proposal to impose conditions mainly arise from concerns about the appellant's suitability that arose in the course of his 2012 application.

F. Reasons for Rejecting the 2012 Application

[21] On September 15, 2012, the appellant, then 22 years old, applied for registration as a motor vehicle salesperson with Motor City.

[22] The Registrar proposed to refuse that application and the appellant appealed that proposal to this Tribunal.

[23] In a decision dated June 5, 2014, the Tribunal directed the Registrar to carry out his proposal. The Tribunal concluded that the appellant's past conduct afforded reasonable grounds for belief that he will not carry on business as a salesperson in accordance with law and with integrity and honesty.

[24] The Tribunal found that the appellant provided false statements in his 2012 application and in his responses to follow-up questions from the Registrar's staff. The appellant answered "no" to questions that asked if a licence of any kind had been refused, suspended or revoked, and whether he had ever been found guilty of any offence, or had any charges pending.

[25] Those answers were false. The appellant's driver's licence had been suspended as a result of a drinking and driving offence, and he had been convicted of the following:

- July 16, 2010 – assault causing bodily harm resulting from a domestic altercation. Given a conditional discharge and an order was imposed prohibiting him from possessing firearms for 5 years.
- November 3, 2011 – pled guilty of driving with more than 80 mgs of alcohol in bloodstream – \$1500 fine and driver's licence suspended for one year.
- April 4, 2012 – pled guilty to possessing a firearm contrary to the prohibition order. \$700 fine and prohibition order.

[26] The Tribunal found that the appellant falsely answered the questions that would have revealed the above information but was also not forthcoming when asked about them by the Registrar's staff. The complete details of his criminal convictions and driver's licence suspension were only revealed when the Registrar obtained the appellant's criminal record as a result of a CPIC search.

[27] Also relevant to the Registrar's present proposal is the fact that Mr. Ashiq Alli provided a written statement in support of his brother's 2012 application. In that his statement Mr. Ashiq Alli stated:

...His criminal background is very minor to me since it was nothing compared to being a real criminal; and as for his DUI, he will not be driving my cars on the lot, as he has his own car, and he is currently valid to drive, so that is not a concern to me either...

[28] The Tribunal considered whether registration should be granted to the appellant with conditions that would include reporting requirements to his brother but rejected that option:

...The Appellant's prospective employer, his brother, maintained a cavalier attitude toward the Appellant's criminal charges. Thus, the Tribunal cannot see how conditions that are dependent on the prospective employer, will serve to protect the public or could be seen to assuage the significant concerns the Registrar holds regarding Mr. Alli's honesty and integrity.

G. The Conditions in Issue

(a) Condition 6

[29] Condition 6 is "The Applicant will not apply to be dealer." I agree with that proposed condition for the following reasons.

[30] According to the Act, a dealer registration allows a person to trade in motor vehicles on his/her own account. A salesperson registration allows a person to trade in motor vehicles only on behalf of the dealer that employs him/her.

[31] Section 23 of the Act requires the dealer to ensure that salespersons trading on the dealer's behalf comply with the Act and regulations. Thus, there is a legal obligation on registered dealers to supervise salespersons to ensure that they operate in accordance with the Act and regulations.

[32] Condition 6 restricts the appellant to registration only as a salesperson. It thus requires that if the appellant is registered, his business activities will be carried on under the supervision of a dealer who is legally required to ensure the appellant's compliance.

[33] In my view, such supervision is warranted in the present circumstances. The appellant has a criminal record and in 2014 was found by this Tribunal to have made a series of false statements and serious omissions in his 2012 application to the Registrar.

[34] Providing false information to the Registrar is of particular concern. Motor vehicle salespersons deal with members of the public who often lack the ability to assess the quality or value of vehicles, and may heavily rely on the salesperson's

information and representations. Providing false or incomplete information to the industry's regulator suggests that the appellant may similarly provide false, misleading or incomplete information in his dealings with the public.

[35] The evidence indicates that since 2012 the appellant has matured. The appellant was 22 years old when he made the 2012 application and younger when he engaged in the conduct that resulted in the criminal convictions.

[36] He is now 27 and has experienced the consequences of his conduct. There have been no further criminal convictions. He testified that he accepts the Tribunal's findings although he still appears to maintain that he provided the false information due to his confusion and misunderstanding rather than a deliberate attempt to conceal his past from the Registrar.

[37] In addition, since the Tribunal's decision in 2014, the appellant has completed two applications for entry into regulated industries (the present application as well as an application for a mortgage agent licence) and in both applications he provided full and accurate disclosure. That also suggests that the appellant has matured, or at least learned his lesson about being truthful with regulators.

[38] The Registrar acknowledges the appellant's positive changes and is willing to grant registration but with conditions that are designed to minimize any lingering risk to the public. Condition 6 ensures that the appellant will trade in motor vehicles as a salesperson under the supervision of a dealer who is legally required to ensure that the appellant operates in accordance with the Act and regulations.

[39] In my view this condition strikes a suitable balance between giving the appellant an opportunity to participate in the industry and protecting the public. I conclude that condition 6 is reasonable and appropriate in all of the circumstances.

(b) Condition 9

[40] Condition 9 requires that the appellant not work for Motor City for a period of 4 years or two renewal cycles from the date of signing the terms and conditions.

[41] Motor City is a registered dealer and its owner and general manager is Mr. Alli, the appellant's brother. The Registrar proposes this condition because he is not confident that Mr. Alli will effectively ensure that the appellant will carry on business in compliance with the Act and regulations.

[42] According to the Registrar, the family relationship between the appellant and Mr. Alli will likely cause Mr. Alli to give the appellant wider latitude than would be given to others. He points to Mr. Alli's written statement in which he minimised the appellant's criminal record, as well as his response to an incident in 2016 as reflective of what would likely be Mr. Alli's lax approach in the supervision of the appellant.

[43] I disagree with the Registrar's concerns for the following reasons.

(i) The 2012 Written Statement Minimizing the Appellant's Criminal Record

[44] While Mr. Alli's statement did exhibit a cavalier attitude toward the appellant's criminal convictions, it was written by him in October 2012, almost 6 years ago.

[45] Mr. Ashiq Alli testified at the present hearing and stated that he no longer agrees with that statement. He stated that he wrote that statement after owning Motor City for a year and a half when he was relatively inexperienced as a dealer. He testified that he does not now believe that his brother's criminal record is minor and acknowledges that his brother's criminal convictions are serious. He regrets making that statement and would seek advice before writing one like it again.

[46] I was given the distinct impression that Mr. Alli's understanding of the requirements and expectations pertaining to his regulated industry have evolved since he made that statement and I accept Mr. Alli's testimony that it no longer reflects his attitude toward his brother's criminal convictions.

(ii) The 2016 Incident

[47] In 2016 the appellant was stopped by police who requested a breathalyser sample. The appellant was charged with refusing to provide a sample but that charge was later withdrawn. The Registrar alleges that this incident and especially Mr. Alli's response to it, illustrates Mr. Alli's inability to effectively supervise the appellant.

[48] However, after considering all of the circumstances I cannot conclude that Mr. Alli's response to this incident was markedly inappropriate or that it leads to the conclusion that Mr. Alli is unsuitable to carry out his legal obligation to ensure that if registered, the appellant will carry on business in accordance with the law.

[49] The appellant presently works for Motor City as a lot manager and, as a family member, is allowed some access to dealership plated vehicles. There was limited evidence submitted of an incident in 2016 where the appellant was stopped by the police while driving a dealership plated car. He was apparently using the vehicle for social purposes but with the consent of Mr. Ashiq Alli.

[50] The appellant was charged with refusing to submit a breathalyser sample but that charge was later withdrawn. I was provided with no detail about the incident or why the charge was withdrawn. I am therefore unable to draw any conclusions about whether the appellant was illegally drinking and driving, or whether he committed an offence by refusing a breath sample.

- [51] The relevance of the incident appears to be Mr. Alli's response to it, which the Registrar alleges illustrates Mr. Alli's inability or unwillingness to effectively supervise his brother.
- [52] Both the appellant and Mr. Alli testified that they discussed the incident afterward. Mr. Alli warned the appellant and counseled him to take a taxi or an UBER and not a dealership plated car when going out to socialize in the evening, especially if alcohol is to be consumed.
- [53] The Registrar's counsel pointed out that Mr. Alli did not impose stricter limits or rules on the appellant's use of dealership plated cars. He argued that Mr. Alli's weak response indicates an unwillingness to appropriately supervise the appellant and confirms the necessity of the proposed condition that the appellant not work for Mr. Alli.
- [54] Given the available information about the incident, I cannot conclude that Mr. Alli's response was markedly inappropriate or that it indicates that he would be inappropriate as the appellant's ultimate supervisor. I have very little information about the nature of the conduct that led to the charge. Without knowing some details about that conduct, I cannot conclude that Mr. Alli's response to it was disproportionately lax.

(iii) No Regulatory Concerns About Ashiq Ali and Motor City

- [55] The Registrar has no regulatory compliance concerns involving Motor City or Mr. Ashiq Alli.
- [56] Andrea Korth, OMVIC's Manager of Business Standards, testified that Mr. Alli and Motor City are not subject to any POA charges or regulatory proceedings and apparently have no history of non-compliance with the Registrar.
- [57] While this factor is not determinative by itself, it is an indication that Mr. Alli and Motor City have a history of compliance with the Act and regulations. If the appellant was registered and employed as a salesperson, Mr. Alli would be required to comply with s. 23 of the Act by ensuring that the appellant carried out his duties in compliance with the Act and regulations. Mr. Alli's track record of compliance is positive.
- [58] In addition, failure to comply with that obligation would potentially put Mr. Alli's registration and his business' registration at risk. In my view that creates a strong incentive for Mr. Alli to ensure that this brother carries on business appropriately.

H. Conclusion

- [59] The Registrar has valid concerns about the appellant's registration given his previous convictions and the false information provided in 2012 initial application.

As a result, the Registrar proposes conditions which attempt to balance protection of the public with the appellant's interest in participating in the industry. In my view, all of the Registrar's proposed conditions are appropriate with the exception of condition 9.

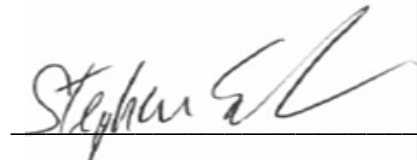
[60] In my view, condition 9 is unnecessary. If the appellant is registered as a salesperson and is employed by Mr. Alli, Mr. Alli will be legally required to ensure that his brother carries on business in compliance with the Act and regulations.

[61] Mr. Alli's own registration and his registered business will be at risk if he fails to comply. There is no suggestion that Mr. Alli has been non-compliant in the past and he has a strong incentive to meet his legal responsibility to ensure that the appellant carries on business as a salesperson appropriately.

I. **Order**

[62] Pursuant to s 9(5) of the Act, I direct the Registrar to carry out his proposal to grant registration as a salesperson to Sheik Omar Alli subject to all of the proposed conditions except condition 9.

LICENCE APPEAL TRIBUNAL



Stephen Scharbach, Member

Released: August 1, 2018