

Tribunals Ontario

Tribunaux décisionnels Ontario

Licence Appeal Tribunal

Tribunal d'appel en matière de permis



**Citation: *Martinez v Registrar, Motor Vehicle Dealers Act, 2002*, 2021 ONLAT-MVDA 12793**

**Date: 2021-11-18**

**File Number: 12793 MVDA**

Appeal from a Proposal of the Registrar under the *Motor Vehicle Dealers Act, 2002*, R.S.O. 2002, c.30, Sch. B, to apply conditions to a licence

Between:

**Natanael Leites Martinez**

**Appellant**

And

**Registrar, *Motor Vehicle Dealers Act, 2002***

**Respondent**

## **DECISION AND ORDER**

**Adjudicators:** Marisa Victor, Member

### **Appearances:**

For the Appellant: George Atis, Counsel

For the Respondent: Diana Mojica, Counsel

Heard by videoconference: July 19, 20, 21, 26, 27, 28, 2021

## OVERVIEW

- [1] Nathanael Leites Martinez appeals the Registrar's proposal to grant a motor vehicle salesperson licence with conditions (the "Proposal"). The Proposal was issued on June 11, 2020 under the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, C.S0, Schedule B (the Act).
- [2] The parties agree that the registration should be granted with conditions. The parties disagree on what the conditions should be, and a hearing was held before me to determine what conditions are reasonable.
- [3] The appellant argues that the conditions proposed by the Registrar are unreasonable because the Registrar is bound by a consent agreement reached between the parties in October 2017 resolving a previous notice of proposal to revoke a registration (the "2017 Consent Order"). The appellant argues that the respondent cannot consider any conduct that occurred prior to the 2017 Consent Order that resolved all issues between the parties. The appellant also argues, in the alternative, any conduct that occurred was not his fault but happened because he was a victim of fraud. The appellant is seeking registration with less restrictive conditions than those proposed by the Registrar.
- [4] The respondent argues that it is not bound by the 2017 Consent Order and in any event, the 2017 Consent Order does not prevent the respondent from considering conduct prior to 2017. The respondent issued the Proposal on the basis that the appellant's past conduct affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty. The respondent also alleges that the appellant submitted false statements to the Registrar. The respondent is proposing conditions on the registration of the appellant's salesperson licence that are nearly identical to those in the 2017 Consent Order.
- [5] The allegations in the Proposal are that the appellant breached the Act for numerous issues that put the public at risk including failing to remit warranties within 7 days of purchase, failing to discharge liens, engaging the services of an unregistered salesperson, and submitting documents with false statements regarding ongoing court cases to the respondent.
- [6] Following a hearing, the Licence Appeal Tribunal (the "Tribunal") may order the Registrar to carry out its proposal or substitute its opinion for that of the Registrar and may attach conditions to its order or to a registration.

## ISSUES

[7] This appeal of the Proposal to grant registration with conditions raises three main issues:

a. Issue 1: The 2017 Consent Order:

Does the 2017 Consent Order bind the parties such that the Registrar can only take further administrative actions related to acts or omissions that have taken place after October 17, 2017;

b. Issue 2: The Appellant's Past Conduct:

If the answer to Issue 1 is no, then does the appellant's past conduct afford reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty? If so, should conditions apply to his registration;

c. Issue 3: False Statements:

If the answer to Issue 1 is no, and the answer to Issue 2 is also no, then has the appellant submitted false statements to the Registrar? If so, should conditions apply to his registration;

d. Issue 4: Abuse of Process and Other Issues:

If the answer to Issue 1 is yes, has the Respondent engaged in an abuse of process and should costs, therefore, be awarded.

## RESULT

[8] The Tribunal finds that the Proposal should be carried out because:

a. The 2017 Consent Order does not bind the parties;

b. The appellant's past conduct affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty and, therefore, the proposed conditions should apply to his registration;

c. The issue of false statements need not be considered; and

d. There is no abuse of process and no costs will be ordered.

## THE PROPOSED CONDITIONS

[9] The proposed conditions in the Proposal are as follows:

1. Natanael Leites Martinez ("Leites Martinez") will be registered only as a motor vehicle salesperson.
2. Leites Martinez shall only be employed by a motor vehicle dealer acceptable to the Registrar (the "sponsoring dealer"). The Registrar shall not unreasonably withhold this approval.
3. Leites Martinez shall not act as a salesperson on behalf of any dealer other than his sponsoring dealer without having first obtained the prior written consent of the Registrar. The Registrar will not unreasonably withhold this consent.
4. Leites Martinez shall not transfer his registration as a salesperson to another sponsoring dealer without having first obtained the prior written consent of the Registrar. The Registrar will not unreasonably withhold this consent.
5. Leites Martinez shall inform his sponsoring dealer, and any other dealers for whom he is employed as a salesperson, of these conditions, and shall supply proof of this in a form satisfactory to the Registrar.
6. Leites Martinez shall not be partner, shareholder, officer, director, or controlling mind of a dealer.
7. Leites Martinez shall not be an interested person in respect of a dealer. An "interested person" is defined in section 6(4) of the Act.
8. Leites Martinez shall comply with all requirements of the *Motor Vehicle Dealers Act, 2002* and Ontario Regulation 333/08, the *Code of Ethics* in Ontario Regulation 332/08, and the Ontario Motor Vehicle Industry Council ("OMVIC") Standards of Business Practice, 2010, as may be amended from time to time.
9. Leites Martinez shall provide the Registrar with notice in writing, within five days, of any substantive changes to the information he provided in obtaining his registration, pursuant to section 31 of Ontario Regulation 333/08.

10. At the end of a period of two (2) years from the date of this Order, Leites Martinez may apply to the Registrar to have these conditions amended or removed from his registration. The Registrar shall not unreasonably withhold consent for this request.
11. The Registrar may take further administrative action, including a proposal to suspend or revoke registration, arising from any matters that have occurred or may occur related to honesty and integrity, financial responsibility or compliance with these terms and conditions.

### **THE 2017 CONSENT ORDER**

[10] The 2017 Consent Order contains nearly the identical terms to those in the Proposal. Nevertheless, since much of the argument related to Issue 1 relates to the language in the 2017 Consent Order, I am producing the relevant sections below:

NOW THEREFORE, upon the consent of the parties, this Tribunal orders that the proceedings in this matter are concluded and disposed of without a hearing on the basis of the terms set out in Schedule 'A', which are incorporated into and made part of the This Order.

...

### **SCHEDULE B**

Pursuant to subsection 6(2) of the *Motor Vehicle Dealers Act, 2002*...Nataneal Leites Martinez ("Leites Martinez"), and the Registrar, *Motor Vehicle Dealers Act, 2002* (the "Registrar"), in accordance with section 4.1 of the *Statutory Powers Procedure Act*, do hereby waive the requirements of a hearing and consent to an Order of the Licence Appeal Tribunal based on the following conditions:

1. Leites Martinez and the Registrar agree that Leites Martinez will be registered only as a motor vehicle salesperson.
2. Leites Martinez further agrees that he shall only be employed by a motor vehicle dealer acceptable to the Registrar (the "sponsoring dealer"). The Registrar shall not unreasonably withhold this approval.

3. Leites Martinez shall not act as a salesperson on behalf of any dealer other than his sponsoring dealer without having first obtained the prior written consent of the Registrar. The Registrar will not unreasonably withhold consent.
4. Leites Martinez shall not transfer his registration as a salesperson to another sponsoring dealer without having first obtained the prior written consent of the Registrar. The Registrar will not unreasonably withhold this consent.
- ...
6. Leites Martinez shall not be partner, shareholder, officer, director or controlling mind of a dealer.
- ...
10. At the end of a period of two (2) years from the date of this Order, Leites Martinez may apply to the Registrar to have these conditions amended or removed from his registration. The Registrar shall not unreasonably withhold consent for this request.
- ...
13. The Registrar may take further administrative action, including a proposal to suspend or revoke registration, arising from any matters that have occurred or may occur related to honesty and integrity, financial responsibility or compliance with these terms and conditions.

## **ISSUE 1: THE 2017 CONSENT ORDER**

### **The Appellant's Evidence and Submissions**

- [11] The appellant submits that the 2017 Consent Order is dispositive of the appeal.
- [12] The appellant states that if he had applied during the period the consent order was in force (October 2017 to October 2019), then the conditions in the consent order would need to be complied with. The appellant argues that condition 10 states that after two years the conditions can be amended or removed, and that unreasonable consent should not be withheld. The appellant states that the Registrar is unreasonably withholding consent to change the conditions.

- [13] The appellant submits that the 2017 Consent Order was breached by the Registrar. The appellant relies on paragraph 10 and states that the Registrar can only decide one of two things: either amend the conditions or remove them, but cannot insist that the same conditions apply now.
- [14] The appellant states that because the Registrar breached the 2017 Consent Order, this entitles him to a motor vehicle dealer salesperson licence. The appellant relies on several cases for this proposition.<sup>1</sup>
- [15] The appellant also argues that the Supreme Court decision in *Penner v. Niagara (Regional Police Services Board)*<sup>2</sup> is also relevant. The appellant submits that *Penner* shows that a party should not be harassed for the same issues and that issue estoppel operates to prevent repeated suits and prosecutions. The appellant submits that issue estoppel applies here and that the appellant is being harassed by the continual litigation brought by the respondent in this matter.
- [16] The appellant also alleges that the adjudication of these issues after the 2017 Consent Order is an abuse of process. The appellant relies on *Peter B. Cozzi Professional Corporation v. Szot*.<sup>3</sup> He states that this decision provides that the consent order cannot be reopened or else the administration of justice will be brought into disrepute.
- [17] The appellant seeks several other related orders related to abuse of process. These are considered under Issue 4.

### **The Respondent's Evidence and Submissions**

- [18] The respondent's position is that the 2017 Consent Order does not dispose of the appeal and does not prevent the respondent from considering the appellant's past conduct.
- [19] The respondent argues that the test for issue estoppel found in *Danyluk v. Ainsworth Technologies Inc.*<sup>4</sup> applies here.
- [20] The respondent argues that there are three factors that must apply before issue estoppel can be found. First, the issues must be the same. Second, the parties

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<sup>1</sup> 17-004564 v. Aviva Insurance Canada, 2018 CanLII 97833 (ON LAT) at para 35, 16-000433 v. Wawanesa, 2017 CanLII 9821 (ON LAT) at para 19, Law Society of Upper Canada v. Yau, 2016 ONLSTH 41 at para 33, and 1855456 Ontario Inc. o/a 1<sup>st</sup> Class Auto Sales and Rasheed Halbouni v. Registrar, MVDA, 2020 CanLII 34394 (ON LAT) at para 91.

<sup>2</sup> 2013 SCC 19 (CanLII) (no pinpoint provided)

<sup>3</sup> 2019 ONSC 1274 (CanLII) (no pinpoint provided)

<sup>4</sup> 2001 SCC 44, [2001] 2 S.C.R. 460 (*Danyluk*)

must be the same. Third, the decision must be a final decision. The respondent argues that this case does not have those three factors.

- [21] First, the issues are not the same. In 2017, the respondent issued a proposal to revoke a licence. Here the Proposal is to grant a licence with conditions.
- [22] Second, the parties are not the same. In the 2017 Consent Order, the parties were the appellant, Caliber and OnRoute. The named corporate parties are different in this proposal and the hearing is proceeding only on the basis of the appellant.
- [23] Third, issue estoppel requires a final decision. The respondent states that no final decision was made because of the language used in the 2017 Consent Order specifically permitted consideration in the future of past conduct prior to the 2016 Consent Order.
- [24] As result, the respondent states the factors set out in *Danyluk* do not apply.

### **Analysis**

- [25] I find as follows:
- a. Issue estoppel does not apply; and
  - b. The 2017 Consent Order is not determinative of this appeal.

### Does Issue Estoppel Apply?

- [26] Issue estoppel does not apply in this case. The leading case for the discretionary application of issue estoppel is *Danyluk*.<sup>5</sup> I need not get into the specifics of the case because issue estoppel relies on the re-litigation of issues, a precondition that does not apply here. The appellant's issues were never litigated before this Tribunal, or indeed anywhere. The parties reached an agreement before a hearing was held and there was no hearing of the merits. The 2017 Consent Order was entered into by the parties specifically for the purpose of not litigating the matter. As stated in the preamble to the 2017 Consent Order:

...this Tribunal orders that the proceedings in this matter are concluded and disposed of without a hearing on the basis of the terms set out in Schedule 'A'.

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<sup>5</sup> 2001 SCC 44, [2001] 2 S.C.R. 460



- [27] As a result, none of the cases relied on by the appellant are relevant to this matter as the prerequisite for issue estoppel, that the matter has been previously adjudicated, does not apply in this case.
- [28] Even if the matters had been previously litigated, the factors in *Danyluk* are not found in this case: the parties are not the same; the issues, though similar, are not the same; and the decision is not final.

Is the 2017 Consent Order Determinative of the Appeal?

- [29] The 2017 Consent Order, when read as a whole, required the applicant to be licensed under those agreed upon conditions for two years. It was not in dispute, however, that the appellant did not take the required steps to apply for the salesperson registration permitted by the 2017 Consent Order. As a result, he was not a licensed salesperson during the term of the 2017 Consent Order. As a result, the 2017 Consent Order was not adhered to, it was never followed and has now expired. I find that it is not determinative of the appeal.
- [30] The first paragraph states that the appellant will be licensed as a salesperson. The evidence is uncontested that the appellant did not apply for registration and pursued other endeavours outside of the motor vehicle salesperson regime for the entire period of the 2017 Consent Order – October 2017 to October 2019. The appellant therefore did not attempt to comply with the 2017 Consent Order. The respondent could not fulfill its duties within the 2017 Consent Order because the appellant was never registered as a salesperson during the term of the agreement.
- [31] As the 2017 Consent Order was never complied with, the further conditions that would have applied, namely that after two years the appellant could apply to have conditions lifted, do not apply. The intent was that the appellant would be under the conditions of the 2017 Consent Order for two years after which the appellant could apply to have those conditions amended or removed. The appellant never complied with the first step of the conditions therefore there is no process under the 2017 Consent Order that applies with regard to lifting those conditions.
- [32] If I am wrong, and the 2017 Consent Order is binding on the parties, I find that the wording of paragraph 13 does not preclude the respondent from considering the appellant's past conduct prior to 2017 in any future proceeding such as this one. At paragraph 13 of the agreement it is clear that the ability to continually consider the honesty and integrity of the appellant was reserved.

- [33] For clarity, I am not making a ruling that the 2017 Consent Order is being reopened. During the applicable time period, the appellant did not apply for registration, the 2017 Consent Order subsequently expired and no longer has any effect. I do not need to consider whether the respondent breached the 2017 Consent Order because the appellant did not take that first step to register as a salesperson in accordance with the agreement. The issues before me are not being re-litigated, they are being adjudicated for the first time. This does not bring the administration of justice into disrepute. There is no abuse of process.
- [34] As a result, this appeal may continue and I am required to consider the past conduct of the appellant including the time period prior to the signing of the 2017 Consent Order.

## **ISSUE 2: THE APPELLANT'S PAST CONDUCT**

### **The Law**

- [35] Section 8(1) of the Act permits the Registrar to refuse a registration if, in their opinion, the applicant or registrant, in this case the appellant, is not entitled to registration under section 6 of the Act.
- [36] Further, under s. 8(2), the Registrar may:
- (a) approve the registration or renewal of a registration on such conditions as are considered appropriate; and
  - (b) at any time apply to a registration such conditions as are considered appropriate.
- [37] Section 6(1)(a) states that a person is entitled to registration by the Registrar unless:
- (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.
- [38] The Registrar bears the onus of proving that the past conduct of the appellant affords reasonable grounds for belief that the appellant will not carry on business

in accordance with law and with integrity and honesty. The standard of proof is based on a reasonable ground for belief, a lower standard of proof than proof on a balance of probabilities. This is because the test considers the likelihood of future conduct. The test, however, is more than mere suspicion and the evidence providing the foundation of the reasonable grounds must be credible and compelling.<sup>6</sup> The Tribunal must consider evidence of past conduct, both good and bad, and determine whether the Registrar has discharged its burden.

- [39] With respect to the false statement allegations, the Registrar also bears the burden of establishing that ground but on a balance of probabilities.

### **The Respondent's Evidence and Submissions**

- [40] The respondent submits that its mandate is to enforce the Act and the regulations. The Act has, at its core, a purpose of protecting the public and preventing consumer harm in a purchase of a vehicle. For most individuals this is a very significant purchase, often the most significant purchase other than a home. As a result of the Act, the motor vehicle sales industry is highly regulated and is intended to promote professionalism for those involved in the automobile sales industry in Ontario. A person registered under the Act is required to adhere to the Act and any Regulations made under it, as well as to abide by any terms and conditions that may be attached to their registration.
- [41] The respondent submits that those who wish to be licenced must pass a conduct test. The statutory test for compliance with the law, honesty and integrity is found under s. 6 of the Act.
- [42] The respondent alleges that the appellant's past conduct shows that he does not meet the test. The respondent knows the appellant's position is that he was a victim of fraud and that it was the actions of another person that caused the problems. The respondent's position is not changed by this. The respondent is not proposing to refuse registration, but instead to grant registration with conditions. These conditions are almost identical to the ones that were in the 2017 Consent Order and that would have applied if the appellant had applied for registration while the 2017 Consent Order was in effect.
- [43] The respondent called several witnesses for the respondent:

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<sup>6</sup> *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc. (Famous Flesh Gordon's)*, 2013 ONCA 157 at para.18

- a. Marcela Coellar – acting Manager of Inspectors
- b. Jennifer Andrew – Investigator with the Ontario Motor Vehicle Industry Council (“OMVIC”)
- c. Bruce Mitchell – Investigator with OMVIC

Marcela Coellar – acting Manager of Inspectors

- [44] Marcela Coellar (“Coellar”) testified on behalf of the Registrar. She has been an employee at OMVIC since 2002. She provided background information about the mandate of the Registrar and the promotion of a fair and honest market. She stated that once an application is received, it is assessed including background checks. The salesperson license is scrutinized because consumers rely on salespersons and their expertise and trust that the salesperson will conduct themselves with honesty and integrity.
- [45] Coellar testified that the duties of a salesperson are broad. They are employed by a registered dealer to trade on behalf of that dealer. In order to buy, sell, or induce a transaction, you must be a registered dealer.
- [46] Coellar testified that the Registrar issued the Proposal under appeal on June 11, 2020. The Proposal was to allow the appellant to register as a salesperson but with conditions. These conditions are set out in the particulars in the Proposal.
- [47] Coellar testified regarding the chronology of this matter. The following dates are not in dispute:
- a. August 29, 2016 – NOP issued to revoke the appellant’s registration (“NOP 2016”)
  - b. December 2, 2016 – Further and other particulars regarding NOP 2016
  - c. October 2017 – 2017 Consent Order issued by the Tribunal
  - d. June 11, 2020 – Proposal issued.
- [48] As a result of the NOP 2016 and the 2017 Consent Order, the dealership licences for Caliber Motors Inc. (“Caliber”) and OnRoute Auto Leasing Corp. (“OnRoute”) were revoked. The appellant was the sole officer and director of both Caliber and OnRoute.

[49] The particulars set out in the Proposal summarize and include as a schedule the NOP 2016. The particulars are summarized below:

- a. The appellant was first registered as a motor vehicle salesperson in February 2008;
- b. The appellant was at all material times the sole Officer and Director of Caliber and OnRoute;
- c. Caliber was first registered as a motor vehicle sales dealership in February 2008. OnRoute was first registered as a motor vehicle sales dealership in January 2015;
- d. An inspection took place in November 2010 and it was found that Caliber had failed to remit warranty payments received by the dealer from the consumer to the warranty company within 7 days;
- e. An inspection took place in 2013 and the same warranty type breaches were found;
- f. Numerous inspections took place between April 12, 2016 and May 6, 2016 and the following issues were found:
  - i. The failure to discharge liens registered against vehicles sold by Caliber and OnRoute;
  - ii. Caliber's failure to comply with a contract to pay off an outstanding loan and discharge a lien related to a consumer trade-in;
  - iii. OnRoute's failure to comply with an agreement to reimburse consumers for payments made towards vehicles which were returned to them due to mechanical issues;
  - iv. Caliber traded motor vehicles from a location other than the one authorized by the Regulations;
  - v. That between November 7, 2015 and July 29, 2016, OnRoute and Caliber retained the services of Jon Saliba ("Saliba") as a salesperson even though he was not a registered salesperson, contrary to s. 4(3) of the Act;
  - vi. The failure to remit warranty payments within 7 days. In some cases, remitting them, seeking a refund, and then keeping the funds rather

then returning them to the customer. These allegations related to 12 different vehicles.

- vii. The appellant's failure to ensure that Caliber and OnRoute complied with the Act.
- viii. The failure of OnRoute and Caliber to notify the Registrar to changes of officers and directors and ownership of OnRoute.

[50] Coellar testified that imposing conditions for two years is a standard practice as it allows the Registrar the opportunity to assess the situation. The Registrar has issued the Proposal with virtually the same conditions in the 2017 Consent Order. Because the appellant did not register as a salesperson in accordance with that agreement, the Registrar has not had the opportunity to assess the appellant's compliance with the requirement to act in accordance with the law, with integrity and with honesty.

[51] With regard to the specific requirement in the conditions that the appellant be registered with an approved dealer, Coellar clarified that the Registrar wishes to have the appellant supervised by a dealership. The Registrar requires that the dealership have sufficient ability to provide the appropriate oversight and that therefore the Registrar should approve the dealership.

[52] Coellar testified that the Registrar looks at the application as a whole including employment history, past conduct, outstanding judgements, and any other factors that may be present. Coellar stated that the Registrar in this case also considered that the appellant has received an MBA while not registered as a salesperson under the Act. However, since the appellant has not been registered within the industry since 2017, there has been no opportunity for the Registrar to see if the issues identified in the past have now been rectified.

[53] Coellar also testified that even if the appellant was a victim of fraud, as the appellant has claimed, and that fraud was what led to the deficiencies in the business, the Registrar would still require conditions on the licence.

[54] The appellant cross-examined Coellar regarding the time it took to issue the Proposal. While the normal length of time is 4-8 weeks, in this case it took 7 months. Coellar stated that this was due to the detailed correspondence back and forth and the complexity of the file.

[55] The appellant also took issue with Coellar testifying on behalf of the Registrar.

- [56] The appellant made serious accusations against Coellar's credibility and alleged that she is biased against Spanish-speaking persons. Coellar rebutted this allegation stating that she is Spanish speaking and of Spanish descent and to be biased against her own culture would be a disgrace.
- [57] The appellant stated that he would call a rebuttal witness to support the above allegation but did not do so.

#### Investigator Bruce Mitchell

- [58] Investigator Bruce Mitchell ("Investigator Mitchell") also testified for the respondent. He has been an investigator with the respondent since January 2010. His duties involve the enforcement of the Act together with the *Sales of Goods Act* and the *Consumer Protection Act*. Prior to his career with OMVIC, he served 18 years as a police officer.
- [59] Investigator Mitchell stated that he investigated Saliba, Caliber and OnRoute. He was familiar with the appellant as the director and officer of the two corporations. The 2016 investigation was prompted by allegations that an unregistered salesperson, Saliba, was working at OnRoute. Investigator Mitchell went to the dealership three times. He posed as a consumer and observed Saliba engaging in the trade of vehicles. On the third occasion, three other investigators attended as well, all posing as consumers. He also investigated the sale of a vehicle by Saliba to another consumer, John Craig, who gave a statement that he was told he had a warranty but then told there was not one after the sale.
- [60] Investigator Mitchell's conclusion was that Saliba, an unregistered salesperson, was engaged in the trade of vehicles at OnRoute contrary to the Act. The Investigator said that the Act is a consumer protection act. Investigator Mitchell also stated that there is a chance of organized crime in the industry and the Act helps to guard against that.
- [61] In cross-examination, Investigator Mitchell confirmed he could not identify the appellant and had never met him or interviewed him.

#### Investigator Jennifer Andrew

- [62] Investigator Jennifer Andrew ("Investigator Andrew") testified for the respondent. She has been an investigator for 2.5 years and before that was an inspector with OMVIC for 20 years. At the time of the relevant inspections in 2016, Investigator Andrew held the position of inspector. She explained that investigators may lay

charges, whereas inspectors conduct inspections to ensure compliance with the Act.

- [63] Investigator Andrew testified that she conducted multiple inspections of Caliber and OnRoute between April and May 2016.
- [64] Investigator Andrew stated that the investigations began after a complaint regarding an unpaid lien. She reviewed investigative notes from the inspections in 2010 and 2013 when investigators met with the appellant. Beginning in April 2016, Investigator Andrew met with the appellant, Saliba, and Saliba's partner and a registered salesperson, Doreen Coutu ("Coutu"). Saliba informed Inspector Andrew that he knew he was not registered and as a result could not sell cars. The appellant, who was in charge of Caliber and OnRoute throughout, said he compensated Saliba by paying Coutu.
- [65] At the inspection, documents were not made available and so Inspector Andrew was unable to complete the inspection necessitating several more inspections until all documents were received in May 2016. Investigator Andrew noted several issues:
- a. Bank statements for OnRoute showed insufficient fund charges (NSF)
  - b. Different signatures on cheques, when only those with signing authority should be signing
  - c. Liens not discharged
  - d. Bills of sale from one dealership noting the address of the other when dealerships can only trade vehicles from their licensed premises
  - e. Warranties not remitted within 7 days and past due accounts from warranty companies for warranties customers paid for
  - f. Failure to disclose the past histories of vehicles.
- [66] In cross-examination, Investigator Andrew confirmed that the appellant was cooperative and that he eventually provided most, if not all, the documents requested.

#### Consumer Witnesses for the Respondent

- [67] The following consumers testified for the respondent:



- a. Saied Nia
- b. Lina Rocha
- c. Sayed Naqvi
- d. Jonathan Craig

- [68] Saied Nia (“Nia”) testified for the respondent. He testified that his company Nia Auto Dealership purchased a 2013 Ford Escape vehicle from Caliber on April 10, 2016. After the purchase he discovered, through his own searches, that a lien on the vehicle had not been discharged. He contacted Caliber to have the issue resolved. In the end, he sold the vehicle to a financing company and was not sure whether the lien was ever discharged. He testified that not disclosing and not removing a lien is a type of fraud on the purchaser and that a seller has a responsibility to make sure that the lien is discharged when sold.
- [69] In cross-examination, Nia testified that he met Saliba when he was at the dealership. He said Saliba was working for the appellant at the dealership. However, he testified that his primary dealings were with the appellant.
- [70] Lina Rocha (“Rocha”) testified for the respondent. She purchased a car so that she would be able to work. She purchased a white 2008 Mercedes car and extended warranty from OnRoute on January 17, 2015. She was told the vehicle was safe but immediately noticed there was something funny with the wheels. She took the vehicle to her own mechanic who fixed the problem and advised her that her warranty was not active. She contacted OnRoute and dealt with Coutu who told her it was her responsibility to fix the issue. Rocha’s bill of sale confirmed she purchased an extended warranty. In the end, she paid for the extended warranty and the repair. She said she would not purchase a car from OnRoute again.
- [71] Sayed Naqvi (“Naqvi”) testified for the respondent. He works in Ottawa. He testified that, in 2015, he assisted his wife in the purchase of a 2009 Mercedes vehicle from Caliber, and that the person who assisted them was named Jon. They purchased the car with a warranty.
- [72] Naqvi testified that they put a \$7,000 deposit on the vehicle. Saliba called after the test drive to advise that the engine seized and a new engine would be needed or they could use the deposit on a different vehicle. Naqvi testified that they asked for a different vehicle. Initially, Saliba said he would go to a car auction and purchase a car for them but then he stopped responding. Naqvi and

his wife asked that the deal be cancelled and their deposit refunded. Saliba gave them a cheque but it did not go through. Further, the National Bank of Canada, through which the initial purchase was financed, contacted Naqvi and his wife as they had missed 3 or 4 payments even though Saliba had assured them the deal had been cancelled.

- [73] Naqvi testified that they were eventually refunded the \$7,000 deposit but not before many months had passed and many hours were spent on the phone to the bank. The issues were only resolved once Naqvi contacted OMVIC and they got involved. Naqvi testified that the vehicle had been important for visits to family in Toronto. They were living in Ottawa and were new to the city at the time. The vehicle purchase caused them a great deal of stress. He stated it was a horrible experience and he would never deal with that dealership again even though they did eventually get refunded the deposit and bank charges in May 2016.
- [74] In cross-examination, Naqvi agreed that he did not meet the appellant personally but spoke with him over WhatsApp.
- [75] Jonathan Craig ("Craig") testified for the respondent. In 2016, he purchased a 2005 Subaru Outback from OnRoute. He testified that he dealt with the appellant and Saliba. When purchasing the car, he asked Saliba for a warranty and was told there was a 90-day, 3,000 km warranty on the vehicle. He asked about why the warranty was not on the bill of sale and Saliba told him the warranty information would be sent to his house by mail. The day after Craig bought the vehicle, it began to shake, and he took it to a mechanic. Craig contacted OnRoute right away, but they denied he had a warranty.
- [76] Craig testified that he then contacted OMVIC who helped him navigate the dispute. He was eventually reimbursed for half the cost of the repairs needed to the vehicle. He accepted \$700 from OnRoute in order to end the dispute process and get some reimbursement.
- [77] Craig testified that a husband and wife team assisted him in the purchase of vehicle. One did the talking and the other did the paperwork.
- [78] Craig testified that the purchase of the vehicle was a significant decision for him. He needed a car to get around especially as he has a family. He found the situation extremely challenging.
- [79] In cross-examination, Craig agreed he could not identify the appellant. He was not certain, but he thought one half of the husband and wife team was Saliba.

[80] In redirect, Craig agreed that it was possible he simply did not recall the appellant's face. He thought the appellant's name was familiar from the Bill of Sale but was not sure.

### **The Appellant's Evidence and Submissions**

[81] The appellant's position is that he was a victim of fraud at the hands of Saliba and therefore the breaches of the Act cannot be imputed to him.

[82] The appellant testified on his own behalf. He also relied on his own affidavit, sworn April 14, 2021, that he had previously submitted for a preliminary motion before this Tribunal. He testified that he recently completed a master's degree in business administration and supported that with documentation.

[83] The appellant testified about his background. He stated that he came to Canada and initially worked in television for a Spanish-speaking show. While working in television, he became aware of numerous complaints by Spanish-speaking community members about car dealerships. He then decided to open his own car dealership to service the Spanish-speaking community and did so in 2008. His business did very well and expanded over the years. He stated that the two dealerships, Caliber and OnRoute, were running very smoothly. Caliber sold higher end vehicles and OnRoute offered lower end cars. OnRoute had two employees. All was going well until he met Saliba.

[84] The appellant hired Saliba to work at OnRoute in 2015. He was given references that Saliba was professional. However, a few weeks after Saliba began working at OnRoute, the appellant noticed that the financial books did not balance. The appellant claims that Saliba began to blackmail him and said that he had dangerous connections with the Italian mafia in Woodbridge. The appellant testified that Saliba owned a gun. In April 2017, the appellant arrived at his dealerships to discover it had been cleared out overnight. Everything, cars, furniture, even the office chairs, were gone. The appellant was left with 1 million in debt. It was then that the appellant called OMVIC.

[85] The appellant testified that after notifying OMVIC, his licence was suspended. He testified that he was advised by US police in Florida that Saliba was a professional scammer with over 20 convictions for financial fraud in that country.

[86] The appellant testified that he fell into a deep depression. His insurance denied coverage for the loss because the fraud was perpetrated inside the company.

- [87] The appellant signed the 2017 Consent Order believing that after two years he would have a “clean slate”.
- [88] The appellant testified at great length about his conversations with counsel to OMVIC in 2017 regarding the signing of the consent order. He believes he was tricked. He also testified regarding his perceptions of the Registrar, that OMVIC uses a very heavy-handed approach and forces conditions on licensees. He was also upset about the length of time it took to respond to his application for a salesperson licence in 2019. The appellant described his time away from the sale of cars as “serving a sentence.”
- [89] The appellant also testified regarding negotiations between his counsel and OMVIC. There were numerous and repeated objections that the appellant was revealing privileged information regarding settlement discussions. The appellant’s counsel denied that these conversations and emails were subject to settlement privilege<sup>7</sup> (further discussed below).
- [90] The appellant also testified as to what he had proposed as conditions to his own licence. His proposal had provisions including that he could work for any dealership of his choice; understood that he could not be a shareholder for a period of time; and had some conditions respecting the follow-up of small claims matters where the appellant is named as a defendant (the false statement issue).
- [91] In cross-examination, the appellant agreed that he was the sole officer and director of Caliber from 2008 to 2017. He also agreed he was in charge. With regard to OnRoute, registered in 2015, he stated that he was not the sole officer and director and that from 2015 to 2017 Doreen Coutu was in charge.
- [92] The appellant agreed that he took the required courses in order to be registered and was aware of the high standards in the industry. He was also aware that the sale of motor vehicles in Ontario is a regulated industry. He was aware that every dealer was required to ensure that every salesperson employed carried out their duties in accordance with the Act and that only those registered could be salespersons. He was aware of the requirement that every officer and director of a corporation, and that he himself as a registered dealer and salesperson, was required to act within the law, with honesty and integrity.

### Character Witnesses

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<sup>7</sup> Settlement privilege prevents parties from using information as evidence when that information was obtained through confidential settlement discussions.

- [93] The appellant called several character witnesses:
- a. Kathleen Aubry, customer
  - b. Holmer Soto, customer
  - c. Rudy Muscoso, customer
  - d. Kevin Gilbert, business associate
- [94] Kathleen Aubry testified regarding two purchases, one in 2013 or 2014, a 2009 Ford Edge she purchased with her partner, and the second in 2016, a 2010 BMW X5. She testified that the appellant was professional and helpful, and she would purchase a vehicle from him again.
- [95] Holmer Soto testified about the purchase of 4 cars in 2014, a Ford Edge in 2015 and two in 2016, including a BMW his ex-partner purchased. He testified from Mexico where he now lives. He was in a wheelchair at the time of his first purchase and felt that the appellant treated him well and he would purchase from him again. In cross-examination, he testified that as a Latino he does not have protection, that people who come from Europe are corrupt. He testified that the appellant is a respected Latino. It also became clear through questioning that Kathleen Aubry is his ex-partner. He agreed that Kathleen wrote the letter he submitted. He testified that he told her what to put in the letter.
- [96] Rudy Muscoso testified about the purchase of a vehicle from the appellant, the last purchase in 2016. He testified that his father only spoke Spanish and so he appreciated a salesperson who could talk with him. He would purchase from him again. In cross-examination, he could not recall what cars he purchased, only their colours. He recalled meeting Saliba and visiting the dealership at two different locations, one of which was just a parking lot.
- [97] Kevin Gilbert (“Gilbert”) also testified from Mexico. His testimony and supporting letter set out that he used to share a house with Saliba. Gilbert testified that he lent Saliba money as a loan to invest in the dealership. He also got his father to invest. He believed he was partners with Saliba and the appellant, but the appellant told him to deal directly and only with Saliba. At first, loan payments were made but then Saliba missed payments. Gilbert started getting complaints from people he referred to the dealership and asked for his money back. Saliba became aggressive. He also testified that one day his daughter was at the shared house and saw that Saliba had a gun under his pillow. In the end Gilbert

lost \$38,000 and his father \$12,000. He testified that Saliba also “swindled” the appellant. He asked the Tribunal to deal with people like Saliba.

[98] In cross-examination, Gilbert agreed that he applied to be a registered salesperson in 2015 but was issued a Notice of Proposal to Refuse a Registration based on fraud charges and his involvement in a 1995 pyramid scheme. His in-laws invested a million dollars and lost all the money. Gilbert claimed he also lost money and was set up as the fall guy. He agreed he was convicted for fraud. Gilbert did not appeal the Registrar’s Notice of Proposal to Refuse a Registration.

### **Analysis**

[99] The appellant’s initial position was that none of the issues raised by the respondent were being challenged because the appellant’s position was that any conduct was caused by Saliba. However, throughout the hearing, the appellant challenged the evidence of the respondent, such that it was impossible to say whether the appellant accepted that the events that took place did occur. It was therefore necessary to consider all the allegations regarding past conduct.

[100] There is no dispute that the appellant is to be granted a registration with conditions. The question is whether the conditions proposed by the respondent are reasonable because of the appellant’s past conduct. I find that they are.

[101] The appellant testified that all of the conduct issues raised were the fault of someone else, namely Saliba. The appellant agreed that he hired Saliba but then he seemingly turned a blind eye to the significant problems that then occurred. The appellant believes that this shifting of responsibility to Saliba is enough to show that the conditions proposed by the respondent are not reasonable. I disagree.

[102] The appellant says he was threatened. That may be so, but it is not an excuse. Further, when threatened, the appellant failed to take appropriate action over several years. For two years he failed to make the right choice and inform OMVIC or the police about Saliba, about the threats and his resulting breaches of the Act. It appears he only informed OMVIC of any issues once Saliba had run off with all of the corporation’s stock valued at around a million dollars.

[103] The description put forward by the appellant regarding these perceived threats was also sparse. He testified that he was threatened, that Saliba had a gun, and that he purportedly knew some members of mafia. His affidavit simply states, “when I considered going to the police, I was threatened by Saliba, and, in

essence, I froze.” These descriptions of whatever threats were made are so lacking in detail, that I cannot give any weight to the allegations.

- [104] The appellant also states that he froze (for years) and that this is the reason why he should not be blamed for the issues that occurred. However, if the appellant freezes when threatened, then there is more reason for him to have the support of a strong dealership team with the knowledge of how to deal with threats in the industry. It is precisely during times of great stress that there is a need for the registered salesperson to comply with the industry’s regulatory regime.
- [105] The appellant states that his slate should be wiped clean because the fault lies with Saliba, and because the appellant left the industry immediately afterwards and has only now applied for his licence again. This argument also fails. The responsibility lies with the appellant. If what he claims is true, then it was the appellant who allowed Saliba into his business and then allowed Saliba to dictate the working relationship including the breaching of the Act. The appellant must learn how to avoid such a situation in the future and how to deal with it should it arise again. These are all issues that supervision by a qualified dealer will assist with.
- [106] The appellant’s character witnesses unfortunately did not assist him at all. The appellant relied on customers who were less than forthcoming before the Tribunal and occasionally combative, particularly in cross-examination. The ex-couple did not reveal their connection until under cross-examination. Another witness claimed to have forgotten the vehicles he purchased, save for the colour, and was not believable. Gilbert was convicted of fraud for a pyramid scheme and then claimed he too had been taken advantage of by Saliba through a new scheme in the appellant’s dealership which appeared questionable at best. The witnesses did not assist his case.
- [107] The appellant, his lawyer, and some of his witnesses referred to the appellant’s years away from the regulated industry as “punishment.” This is not the case. The appellant has not been convicted of a crime. Despite significant breaches of the Act at the dealerships for which the appellant was the person in charge, the respondent agreed to allow the appellant to register with conditions in 2017. The appellant chose not to register. The responsibility for this choice to leave the industry lies with the appellant. As a result of that choice, the appellant has not worked in the regulated industry for four years. He has not shown that he can operate in a regulated industry. The conditions proposed are, therefore, reasonable to allow the appellant to show his ability to work in the regulated industry.

- [108] Unfortunately, I also find it necessary to comment on the manner of the proceedings before me. A great deal of this hearing and of the evidence of the appellant was a poor effort at colouring the issues at stake. The appellant repeatedly tried to introduce settlement privileged information. The appellant repeatedly accused the respondent and respondent's counsel of unethical behaviour. Some of the accusations were then levelled by the respondent against the appellant.
- [109] However, because the appellant's counsel threatened to take the matter to the courts, solely on what he termed the abuse of process on behalf of the respondent, the following comments are required.
- [110] I do not find that the respondent or respondent's counsel engaged in abuse of process. The facts of this case show that the appellant engaged in behaviour that does not show that he acted within the law, with honesty or with integrity. The evidence also supports that certain breaches regarding warranties existed at the appellant's dealership well before Saliba entered the picture. The respondent has a responsibility to the public to maintain the integrity of the regulated motor vehicle sales industry and the appellant was not in compliance. Nothing the respondent has done showed any kind of abuse of process.
- [111] On the other hand, some of the appellant's actions during this hearing caused me great concern. For example, in addition to trying to rely on material protected by settlement privilege, one moment stood out as particularly egregious. Appellant's counsel accused the respondent's key witness, Coellar, of being racist against people of Spanish-speaking descent. This accusation was made without any supporting evidence. Appellant's counsel said he would call a witness to support his allegations but did not. Coellar smoothly rejected the accusation and came across as credible and reasonable. Such accusations, if they are going to be made, should be done carefully and with at least some evidence to support them.
- [112] It is clear to me that the evidence supports the granting of a licence with conditions. In other similar cases, proposals to revoke have been confirmed by this Tribunal.<sup>8</sup> The conditions are not onerous and include the requirement that the appellant establish two years of work in the industry while being supervised by a dealer who has the capacity to supervise him. The respondent states that it

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<sup>8</sup> See for example, licences revoked in *1855456 Ontario Inc/ o/a 1<sup>st</sup> Class Auto Sales and Rasheed Halbouni v. Registrar, Motor Vehicle Dealers Act, 2002*, ONLAT MVDA 12130, *Marcel Motors Ltd o/a Eastside Better Used Cars and Nitin Chopra v. Registrar, Motor Vehicle Dealers Act, 2002*, ONLAT MVDA 11640.



is in the best position to determine who that supervising dealer should be. Given the facts of this case, I agree.

### **ISSUE 3: FALSE STATEMENTS**

[113] Given that I have found that the conditions proposed by the respondent are warranted given the appellant's conduct, I do not need to consider whether conditions are warranted based on the allegation that the appellant made false statements in his application.

### **ISSUE 4: ABUSE OF PROCESS AND OTHER ISSUES RAISED BY THE APPELLANT**

[114] The appellant is also seeking several other related orders:

- a. The appellant is also seeking an order that the Registrar breached the 2017 Consent agreement by failing to propose any amendments to the salesperson licence conditions after the applicant applied for a licence in 2019;
- b. The appellant is seeking an order declaring that the Registrar abused its statutory powers under the Act by:
  - i. Unduly delaying the application;
  - ii. Issuing a frivolous and vexatious Proposal;
  - iii. Refusing to consider reasonable amendments to the 2017 Consent agreement;
  - iv. Issuing ultimatums to the appellant's counsel;
  - v. Commencing a frivolous and vexatious application for judicial review of a procedural decision of the Tribunal;
- c. Costs "jointly and severally" for the Registrar's breach of the 2017 Consent agreement and for the respondent's counsel's bad faith conduct.

### **Analysis**

[115] The above requests for relief are not within my power as an adjudicator to give. In any event, I believe my findings under Issue 2 respond to most of the issues raised.

- [116] With regard to costs, I have no authority to give costs “jointly and severally” as is clear from the Act and the Rules. This is not a civil trial. I may, however, grant costs under Rule 19. Those are for when a party in a proceeding has acted unreasonably, frivolously, vexatiously or in bad faith. The maximum amount payable is \$1000 for each full day of attendance at a motion or case conference or hearing. Given my findings under Issue 2, that the Registrar did not breach the 2017 Consent Order and that the respondent’s counsel did not act in bad faith, I decline to grant any costs against the respondent.
- [117] The respondent did not request costs against the appellant. I therefore make no finding of costs against the appellant.

**ORDER:**

- [118] Pursuant to s. 9(5) of the Act, the Tribunal dismisses the appeal and orders the respondent to carry out the Proposal dated June 11, 2020.

**The Licence Appeal Tribunal**



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**Marisa Victor, Member**

**Released: November 18, 2021**