Licence Appeal Tribunal

Tribunal d'appel en matière de permis

Ontario

DATE: 2014-05-01
FILE: 7825/MVDA
CASE NAME: 7825 v. Registrar, Motor Vehicle Dealers Act, 2002

Appeal from a Proposal of the Registrar under The *Motor Vehicle Dealers Act, 2002* S.O. 2002, C. 30, Sch. B to Refuse a Registration

Vincenzo Joseph Sacripanti

Applicants

-and-

Registrar, Motor Vehicle Dealers Act, 2002

Respondent

Reasons for Decision and Order

ADJUDICATOR: D. Gregory Flude, Vice-Chair

APPEARANCES:

For the Applicants: Rodney M. Godard and Daniel S. Ableser, Counsel

For the Respondent: Brian Osler, Counsel

Heard in Windsor: April 24 & 25, 2014

Reasons for Decision and Order

[1] The Applicant appeals the decision of the Registrar under the *Motor Vehicle Dealers Act, 2002* S.O. 2002, C. 30, Sch. B (the "Act") to refuse his registration as a motor vehicle salesperson. The original Notice of Proposal was issued on August 3, 2012 and involved several parties. The Applicant's appeal was severed from the appeals of the other parties and the hearing of it was deferred until the conclusion of the other proceedings.

[2] The Registrar relies on s. 6 (1) (a) (i) and (iii), (g) and (1.1) of the Act which read:

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

It is the Registrar`s position that all of the above cited provisions apply to the Applicant.

[3] The Tribunal heard evidence from three witnesses on behalf of the Registrar and from the Applicant. The evidence focussed on events surrounding the receivership and bankruptcy of a company formerly owned and operated by the Applicant, VSJKJ Automotive Limited o/a Banks Mazda ("Banks"). The first witness, Stephen Burnham, was an investigator for the Bank of Nova Scotia (ScotiaBank). The second witness, Aldis Makovskis, acted as a receiver/manager of Banks when ScotiaBank made demand for the repayment of its loans and that demand was unsatisfied. Mary Jane South is the Deputy-Registrar at the Ontario Motor Vehicle Industry Council ("OMVIC"), the office of the Registrar under the Act. Her evidence addressed the scope of the

disclosure made by the Applicant in several applications for registration and at a meeting between Ms South and the Applicant in 2012.

[4] The factual background that has given rise to the Registrar's concerns is not disputed by the Applicant. The Applicant takes the position that he may be a poor dealer and general manager but that he is applying for registration as a salesperson. As a salesperson he will be subject to supervision by his employing dealer. He is prepared to accept terms of registration to ensure that the Registrar's concerns are met and the public is protected. A review of the factual background is in order.

[5] The Applicant was first registered as a salesperson under the Act in June 1986. In and around 1996 he entered into an agreement to purchase a Ford dealership, Marathon Ford. He had no experience as a dealer so he worked as the general manager of Marathon Ford to build up experience and finally become approved as a dealer by Ford. Part of Marathon Ford's business involved leasing vehicles financed by Ford Credit Canada Ltd. The dealership could make an extra $200.00 per vehicle if certain accessories were installed on the vehicle. The Applicant, in his capacity as General Manager, claimed the extra payment but did not install the accessories. Following a complaint from a competitor, Ford conducted an audit and discovered the scheme. Mr. Sacripanti was terminated by Marathon Ford and OMVIC moved to revoke his registration. At a hearing before the Ontario Commercial Registration Appeal Tribunal, the predecessor to this Tribunal, the Applicant was forthright about his malfeasance. The Tribunal accepted that he had taken responsibility for his actions and permitted registration on terms (Ex 3. Tab 1B). Paragraph 69 of the decision is enlightening, given the position taken by the Applicant in this appeal:

> **69** [The Applicant] stated that consumers had not been harmed by his behaviour, and that he honestly believed that, had he stayed at Marathon, he would have been in a position to rectify any discrepancies which would have affected the customer or Ford Credit at the end of each lease.

[6] In and around 2000 the Applicant purchased Banks with a partner. In 2005 the Applicant bought his partner out of the business for a price of $375,000.00 plus some other consideration. He paid $175,000.00 with the balance being paid out over time. Around that time, Mazda informed the Applicant that it wished him to carry out extensive renovations at Banks at an estimated cost of $800,000.00. Over the next couple of years the parties negotiated. The Applicant was prepared to do a face lift at the dealership at a cost of $200,000.00 but Mazda insisting on a more complete overhaul. Mazda threatened to terminate the dealership if the Applicant did not satisfy its demands. The Applicant stated that he was "asset rich and cash poor." He "saw an opportunity" to generate enough cash flow to fulfil his financial obligations. Commencing in March 2007 the Applicant started requesting funding from ScotiaBank for vehicles that Banks had allegedly purchased. In fact, the paperwork was false. According to Mr. Burnham, the Applicant found Vehicle Identification Numbers ("VIN") on the Internet. He then informed ScotiaBank that he had purchased the vehicles and delivered paperwork to support his claim. Banks had a long relationship with ScotiaBank so there was very little scrutiny of the Applicant's paperwork before funds were advanced. Using this

fraudulent scheme, the Applicant was able to keep Banks going. He would eventually pay back each individual car loan after several weeks and in that manner kept a cash float of several hundred thousand dollars.

[7] In March 2008 ScotiaBank changed its loan application procedure. It informed all of its dealers that, henceforth, they were to use an Internet-based application system and they were not to send in paper application forms. The Applicant continued to use paper applications. When ScotiaBank`s account manager went on vacation in September 2008, his replacement noted that the Applicant was not following the new policy and took the matter to senior management. As a result, ScotiaBank called Bank`s loan. When repayment was not forthcoming, ScotiaBank appointed Mr. Makovskis as receiver/manager. Mr. Makovskis determined that, as of October 2008, there were 14 vehicles for which the Banks had received funding of approximately $1,100,000.00 but for which there was no paperwork or record of any kind and no vehicles. He also highlighted other asset shortfalls for a total unsecured indebtedness of $3,800,000,00.

[8] In and around the discovery by ScotiaBank of the false loan applications and calling its loan, the Applicant was in a major road accident and was in hospital for three months. He was out of work for 18 months in total. He was on his way from Chatham to Windsor to meet with another bank to seek replacement funding. Echoing his testimony at the 1999 hearing before the predecessor of this Tribunal, he testified that if he had not been in the accident, he would have been able to work through his financial problems and no-one would have been out of money.

[9] The major conflict in the evidence was over the Applicant’s knowledge of the collection efforts taken by ScotiaBank and an allegation that the Applicant was less than forthcoming at an interview with Ms South in January 2012. The Applicant applied to transfer his sales licence and Banks dealership licence a total of four times. In each case, the Applicant failed to disclose Banks’ receivership and bankruptcy or failed to disclose that ScotiaBank had commenced a collection action against the Applicant. Central to the determination of the Applicant’s knowledge when he made three of the answers turns on two facts. The first fact is whether a person receiving a demand letter from a bank under a personal loan guarantee would consider it a collection action. The second fact is whether the Applicant was served with a statement of claim commencing an action on the guarantee.

[10] Following the financial collapse of Banks, the Applicant received a letter from ScotiaBank putting him on notice that it intended to seek recovery from him under his personal guarantee of Banks’ debt. It was the Applicant’s evidence that he sought legal advice on the guarantee and responded to it stating he was injured and unable to work and had no money to satisfy the demand. According to the Applicant, he heard nothing more form ScotiaBank. That was not the end of the bank’s recover effort. The bank commenced an action on the guarantee seeking to recover $3,500,000.00. There is an affidavit of service indicating service of the statement of claim personally on the Applicant. The Applicant did not file a defence and was noted in default. The bank was granted default judgment for the full amount of the claim in March 2009.

[11] The Applicant vehemently denies any knowledge of being served with the Statement of Claim. The Tribunal finds that the Applicant was served. In addition to the affidavit of service which on its face identifies the date, time and location of service, and the fact that the Applicant identified himself to the process server, there are the Applicant's comments on the subject to Ms South in January 2012. The date of the interview is important because the Applicant asserts that he first became aware of the statement of claim in mid-February when it was sent to him by Ms. South. During the interview the Applicant was asked about the statement of claim. He says that it was all dealt with in 2008. Of interest is the fact that he uses the words statement of claim. When questioned about this fact he stated that it related to statements of claim relating to the receivership and bankruptcy of Banks. His own evidence is that he had no dealings with the receiver or the bank following his accident, a fact supported by Mr. Makovskis. The Tribunal also notes that receivership and bankruptcy proceedings are governed under federal bankruptcy legislation and proceed by way of petitions and orders not statements of claim. The Tribunal is satisfied that the Applicant was aware of the collection proceedings against him but was unaware of the default judgment as there is no evidence that ScotiaBank took steps to enforce the judgment. If follows from this finding that the answers to the questions in the three personal application forms are false.

[12] The transcript of the January interview between Ms South and the Applicant is a study in evasion. At the hearing, the Applicant testified that he decided to be uncooperative because in preliminary discussions about his personal assets and lifestyle Ms South made comments that convinced him she was biased against him and had her mind made up. He justified his failure to answer specific questions by stating that he misunderstood the scope of the question. During cross-examination it became clear that the personal questions to which he took offence were asked at the end of the interview, not the beginning. Despite allegations about vagueness, he had no answer when it was pointed out how specific the questions were. Shortly after the interview, when Ms South asked his position on the allegations about his false document financing scheme, he refused to answer further questions.

[13] The Registrar submits that there are four areas of concern about the Applicant's behaviour: his behaviour at Marathon Ford, his behaviour at Banks, his false answers on applications and his evasions and refusals when interviewed by Ms South. The first two concerns are really one concern. At the earlier Tribunal hearing, the Tribunal found that the Applicant had been guilty of deceptive and dishonest dealings. It reviewed all of the evidence and came to an appropriate resolution. This Tribunal takes no issue with that earlier decision, but the Registrar submits that, having been given a second chance, the Applicant reverted to substantially the same deceptive and dishonest behaviour when the opportunity came his way again. The Applicant then exacerbated that behaviour by making false statements in his various applications and by trying to hide damaging facts from Ms South by avoiding her questions.

[14] The Applicant does not deny his wrongdoing at both Marathon Ford and Banks.

Indeed, he asserts that his free admission of the scheme is indicative of his remorse. He submits that his behaviour should disqualify him from becoming a motor vehicle dealer, but he is seeking employment as a salesperson. In the latter capacity, he will not have the opportunity to carry out schemes based on false documents. He suggests that terms can be imposed upon him to ensure his ongoing trustworthiness. One term he indicated as being acceptable is a lifetime ban from owning, operating or being in a management position at a dealership.

[15] The Applicant agrees that he has engaged in dishonest and deceptive behaviour but that he will be able to function in accordance with the Act if this Tribunal removes from him all opportunity to be deceptive and dishonest. Despite the very able submissions of the Applicant's counsel, the Tribunal is of the view that the Applicant's submissions miss the obvious intent of the legislation. It is trite to say that the purpose of the legislation is public protection. With respect to registrants, the Act sets out a filtering mechanism to be applied initially by the Registrar as doorkeeper and, finally, by this Tribunal if the Registrar's decision is appealed. This scrutiny is designed to identify and weed out those whose past conduct is such that the public can repose no confidence in them to deal honestly when buying and selling automobiles. It does not distinguish between the potential roles registrants may play in the industry. It does not set a higher standard of behaviour for dealers as opposed to salespersons. In short, the legislative scheme seeks to admit only individuals who will be self-policing because they lack a history of dishonest dealing.

[16] The wording of s.6 of the Act creates a presumption that applicants for registration will deal honestly and fairly with consumers. It places an onus on the Registrar to lay facts before this Tribunal sufficient to convince the Tribunal that an applicant's past behaviour rebuts to legislative presumption. In the current appeal, the Tribunal is more than satisfied that the Registrar has laid such facts before the Tribunal and has satisfied those provisions of s. 6(1)(a)(i) and (iii), (g) and s. 6 (1.1). On both occasions when the Applicant has had the opportunity to do so, the Applicant has carried out extensive frauds on financial institutions. He has then failed to disclose the collection efforts of one of those institutions on three occasions when he has applied for registration or transfer of registration. On the fourth occasion, the application to transfer the Banks dealership registration to All Cars, the Tribunal accepts that the form was ambiguous. In his dealings with Ms South the Applicant was evasive and vague. In his description of those dealings before this Tribunal his evidence was contradictory and unconvincing. The Applicant's suggestion in his Notice of Appeal that the Registrar was on a witch hunt against him because of the outcome of the 1999 hearing is ludicrous and offensive.

[17] Given that the Applicant was given the benefit of the doubt by the Tribunal in 1999, this Tribunal is of the view that this is not a case for registration on terms. At their heart, the terms contemplated by the Applicant are simply a means to transfer his responsibility for honest dealing onto a supervising dealer and, ultimately the Registrar as the party responsible for the implementation of the Act. It is one thing for a registrant to have made a professional blunder and, having shown remorse, to be given a second

chance with suitable transition terms to assist in the rehabilitation process. It is quite another thing to have the same registrant carry out almost identical but much more extensive fraudulent behaviour when given that second chance, and come before the Tribunal with the same formula by way of justification that had previously been successful.

ORDER

[18] Having reviewed the evidence and considered the submissions of the Parties, pursuant to the authority granted to it by s. 9(5) of the Act, the Tribunal orders the Registrar to carry out the proposal dated August 3, 2012 and refuse the Applicant registration as a motor vehicle salesperson.

LICENCE APPEAL TRIBUNAL

D. Gregory Flude, Vice Chair

Released on: May 1, 2014