



Citation: Faith Enterprise Motors Inc. o/a Faridi Motors & Shah Faridi v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2022 ONLAT MVDA 13402

Date: 2022-02-14
File Number: 13402/MVDA

Appeal from the Notice of Proposed Order to Revoke Registration under the *Motor Vehicle Dealers Act, 2002*

Between:

Faith Enterprise Motors Inc. o/a Faridi Motors & Shah Faridi

Appellants

-and-

Registrar under the *Motor Vehicle Dealers Act, 2002*

Respondent

DECISION

ADJUDICATOR: Laura Hodgson, Member

APPEARANCES:

For the Appellant: Michael Burokas, Counsel

For the Respondent: Diana Mojica, Counsel

Heard by Videoconference: December 6, 2021

Overview

- [1] This is an appeal from the Notice of Proposal revoking the registration of Faith Enterprise Motors Inc. o/a Faridi Motors as a Motor Vehicle Dealer and Shah Faridi as a motor vehicle salesperson under the *Motor Vehicle Dealers Act, 2002* (the Act). The Registrar proposes to revoke the appellants' registrations based on allegations that Mr. Faridi was found to have received prohibited assistance while completing the online Automotive Certification course. The appellant denies the allegations and asserts that the Registrar has not proven a basis for revocation.
- [2] For the reasons set out below, the Tribunal confirms the proposed order to revoke registrations. The Tribunal finds there are reasonable grounds to believe that, as a registrant under the Act, the appellant will not act in accordance with the law or with integrity and honesty, or in the public interest.

Background

- [3] The appellant, Shah Faridi, registered as a motor vehicle salesperson under the Act in May 2017 after completing the Automotive Certification Course. He registered his company, Faith Enterprise Motors Inc. o/a Faridi Motors as a motor vehicle dealer in August 2018. At all material times, Mr. Faridi was the Director and person in charge of the day to day activities of the dealership.
- [4] As part of the registration, the appellant agreed to abide by the Code of Ethics, and Standard of Business Practice; maintain books and records in accordance with regulations and to provide purchasers with written disclosure of all material facts. A Notice of Complaint was issued by the Registrar against the appellant in May 2020 because, between November 6, 2018 and January 9, 2020, the appellant failed to disclose the required information when selling vehicles. The Manager of Professional Conduct with the Ontario Motor Vehicle Industry Council (OMVIC), Andrea Korth, testified that at this time, the number of noncompliance trades in proportion to number of vehicles sold by the appellant was of concern.
- [5] The parties were able to negotiate a resolution and, according to Ms. Korth, the appellant was given a "second chance". The discipline decision dated February 4, 2021, included the condition that Mr. Faridi retake the Automotive Certification Course by April 30, 2021.
- [6] The Automotive Certification Course is administered, on behalf of OMVIC, by the Automotive Dealership Management program at Georgian College. The course

includes topics such as a dealer's disclosure obligations. In 2021, students were evaluated via an online examination. The applicant registered in the course and on March 15, 2021 took the online exam.

- [7] Prior to taking the online exam, all students agree to the terms of the exam which include not speaking to anyone during the course of the exam, having no one else in the room and not using unauthorized materials. The exam is video and audio recorded and then reviewed by a third-party proctor service, Oliver Solutions. If any compliance issues are noted, the student's exam is flagged for Georgian College staff to review and take steps they deem appropriate.
- [8] The third-party proctor of the appellant's exam, Stephanie Shaffee, testified that she was part of a team at Oliver Solutions that developed the online proctoring protocol. She had worked in the industry since 2015. Ms. Shaffee indicated that exams are recorded in their entirety. She reviews the exam videos at higher playback speed and watches sections of interest in real time.
- [9] When reviewing the appellant's exam, Ms. Shaffee noted that there appeared to be someone in the room with the appellant whom he spoke to during the exam. She testified that she observed "constant whispering" and the appellant "looking off to the side". In an email flagging the alleged noncompliance to Georgian College staff, Ms. Shaffee wrote, "It seems there is someone beside him during his entire exam session, the way he looks over to the side during the exam, he seems to also whisper throughout the exam. It is prevalent during the last one minute of his session...". She also noted that, that same day, someone else, Syed Faridi, also wrote the exam from the same address but there were no compliance issues with his exam.
- [10] Ms. Shaffee testified that, in her view, the appellant did not appear to have been accidentally interrupted by a family member during his exam. She stated that she has proctored exams where this has occurred. In her experience, when this happens, students, who understand that no one is to be in the room, very quickly have the family member leave and often apologize on screen. This was not what she observed in the appellant's video.
- [11] In cross examination, Ms. Shaffee agreed that she could view up to 30 exam videos in one day and, in some cases, viewed them very quickly. With respect to the appellant's video she agreed that she only heard whispering and did not know the content of the conversation. She agreed that she could not say "with

certainty” that there was someone else in the room. She stated, however, that she “was confident” based on her observations.

[12] Sebrina Westbrooke is the Manager and Program administrator of OMVIC Automotive Dealership Management Programs at Georgian College. Among other things, she is responsible for administration of the Georgian College program content and overseeing student issues, including academic noncompliance. The matter came to her attention following the proctor’s March 16, 2021 email outlining the noncompliance.

[13] Ms. Westbrooke then reviewed the appellant’s video herself. She testified that Georgian College relies on the expertise of the third-party proctor service but also independently assess exam videos when there is alleged noncompliance. After watching the appellant’s exam video, she agreed with the proctor’s conclusion. Ms. Westbrooke testified that she observed the appellant looking to the side and heard him whispering in another language. She disagreed with the assertion that the appellant could have been looking at a propped-up text as he was looking over his shoulder, not down, and never moved his arms to turn pages. She testified that she watched the entire video once and select portions more than once.

[14] Ms. Westbrooke concluded that the appellant received prohibited assistance while completing the online examination. She testified she was confident in her decision and does not make these determinations lightly. In her view, this specific exam is very important as it is a “stand alone” assessment that leads to provincial registration. Ms. Westbrooke testified that she understood someone’s employment could potentially be at stake.

[15] As per the College policy, Ms. Westbrooke called the appellant to indicate there had been noncompliance and to give him an opportunity to explain. She testified that, only after speaking to the student does she decide if there has been a violation of College policy. Ms. Westbrooke recalled that, during their initial conversation on March 18, 2021, the appellant did not state that his daughter was in the room during the exam but only asked for an opportunity to rewrite. She found it unusual that no explanation was given for his behaviour during the exam. In a subsequent call, the appellant indicated that his daughter had entered the room. In Ms. Westbrooke’s view, this explanation was implausible as there was a large volume of ongoing talking not indicative of a child suddenly entering a room.

[16] After speaking with the appellant, Ms. Westbrooke completed the Georgian College 'Academic Misconduct Form' noting the appellant's noncompliance and the imposed penalty. In the comments section she wrote:

Student wrote OMVIC examination (provincial certification examination) through online proctored portal. It is evident that on recorded video that he is receiving help from another individual in the room. Someone else is turning the pages of the textbook and the student is looking over and speaking to someone else. It is clear in the exam instructions that this is not permitted. Upon speaking with the student, he denies it and begs for another chance, however, does not show any remorse for his actions. Due to the importance of this exam (provincial certification), I am recommending a grade of zero on the exam plus suspensions from current term plus one term.

[17] Ms. Westbrooke first testified that, when they spoke, the appellant didn't deny that he was speaking at the end of the video. In cross examination, after reviewing the Academic Misconduct Form, Ms. Westbrooke agreed that when they spoke on the phone, the appellant did deny receiving any help.

[18] The College's finding of noncompliance and penalty were set out in an email to the appellant dated March 22, 2021. With this correspondence came information with respect to appealing the College decision. The appellant did not appeal.

[19] In accordance with College policy at the time, the appellant's exam video recording was deleted after 85 days. Ms. Westbrook testified that the policy had been created because of a concern about an "overcollection" of data. Partly as a result of this case, this policy has been changed to permit retention of exam videos for an extended period.

[20] As a result of Georgian College's finding of noncompliance and the appellant's resulting mark of zero and two term suspension, OMVIC determined that the appellant was disentitled to dealer and salesperson registration under the Act (pursuant to section 6(1)(a)(ii) and section 6(1)(a)(d)(iii)). A Notice of Proposal to revoke registrations was issued on May 28, 2021.

[21] Ms. Korth, the OMVIC Manager of Professional Conduct, testified that the appellant's noncompliance with the Automotive Certificate exam demonstrated a failure to act with integrity and honesty. She was further concerned by the appellant's lack of remorse and delayed explanation that his daughter had entered the room. She also considered that the appellant was mandated to

rewrite this exam as a condition of a prior discipline order. Ms. Korth noted that, within two years of entering the industry, the appellant had noncompliance issues, came before the OMVIC discipline committee and was given the opportunity to rehabilitate himself. In her view, he failed to do so.

- [22] Ms. Korth acknowledged that the appellant did comply with most of the other conditions set out in the February 2021 OMVIC discipline decision. She also acknowledged that the appellant's period of academic suspension has passed and that he very recently retook and passed the Automotive Certification exam. In Ms. Korth's view, this doesn't change the fact that he previously cheated and "displayed an ability to cut corners if it served him". Ms. Korth agreed with appellant's counsel that it would be less serious if the appellant didn't receive assistance but simply had another person, such as his daughter, in the same room. She noted that he would still have violated the terms of taking the exam and failed to provide an adequate explanation. She also agreed with appellant's counsel that the appellant may have not shown remorse when first contacted because he denied any wrongdoing.
- [23] The appellant testified that he has four children between the ages of 13 and 20 and is the main income earner in the home. He immigrated to Canada from Pakistan in 1998. In Pakistan, he obtained a Bachelor of Electrical Engineering degree and, after moving to Canada, obtained a Master's Degree in Applied Science. The appellant has worked for a number of large corporations in Canada and abroad. He testified that, throughout his career, he has taken numerous tests and exams, has obtained various trade certificates and has a private pilot licence. The appellant stated that he has never before been accused of cheating.
- [24] With respect to the Automotive Certification exam, the appellant acknowledged taking the exam in 2010 and not passing. He took the exam in 2017 and passed with a mark of 60%. The appellant has very recently retaken the exam and received a mark of 85%. With respect to the March 15 exam, the appellant denies receiving any assistance. He testified that he was whispering to himself throughout the exam and was not speaking to anyone else. He stated that he was looking to the left as his book was propped up on an angle. The appellant testified that he knew he was being recorded and only spoke to his daughter, who entered the room at the end of the exam, after he had finished.
- [25] The appellant's 20-year-old son, Syed Faridi, also took the Automotive Certification exam on the same day at the appellant's residence. As noted above, there were no compliance issues with this exam.

- [26] The appellant testified that he was notified of his noncompliance when he received a call from a staff member at Georgian College, Ms. Westbrooke. He testified that he was not given any opportunity to explain himself at this time. He testified that he had been unaware that he could appeal the College decision. He also stated that he did not fully read communications from the College that included links to the appeal policy. The appellant stated that he, instead, chose to appeal the Registrar's subsequent decision to revoke his dealer and sales registrations.
- [27] A former customer testified that, over the past two years, he has purchased three vehicles from the appellant. The last vehicle was purchased in 2020. In this customer's view, the appellant was "upfront" in explaining the condition of all the cars. He was a repeat customer because of the service received. With respect to the car this customer purchased in 2020, the respondent sought to establish in reply evidence that the appellant failed to properly report this transaction as required. For the purposes of this appeal, it is not necessary for the Tribunal to deal with this allegation.

Law and Analysis

- [28] The *Motor Vehicle Dealers Act, 2002* is a consumer protection statute which regulates the motor vehicle sales industry. Its main objective is to ensure that the public receives honest, ethical and competent services from motor vehicle dealers and salespersons. Registrants must be aware of and comply with the Act, and act with honesty and integrity and in the public interest.
- [29] The Registrar issues a proposed order to revoke a registration if there are reasonable grounds to believe that the registrant will not act in accordance with the law, or with integrity, honesty, or in the public interest having regard to his past conduct. The registrant can appeal the proposed order and request a hearing before the Tribunal. The Tribunal, after holding a hearing, can confirm or set aside the NOP and may substitute its opinion for that of the Registrar (see s.9 of the Act).
- [30] The onus is on the respondent to establish that the past conduct of the appellant affords reasonable grounds for belief that the business will not be carried out in accordance with the law and with integrity and honesty (see ss. 6(1)(a)(ii), 6(1)(d)(iii) of the Act). The Ontario Court of Appeal has found that as a standard of proof, 'reasonable grounds for belief' is lower than 'balance of probabilities'. It

requires more than mere suspicion and an objective basis for the belief which is based on compelling and credible information (see *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc.*, 2013 ONCA 157 at paras 18-19). The Court of Appeal emphasized that any and all past or present conduct can and should be considered. There must also be a nexus between the overall conduct and the appellant's participation in the regulated industry (see *Nagy v. Registrar, Real Estate Business Brokers Act*, 2012 ONSC 325 at paras. 58-61 (Div. Ct.); and *C.S. v. Registrar, Real Estate Business Brokers Act*, 2019 ONSC 1652 at para. 32 (Div. Ct.)).

- [31] The Registrar must establish the facts on which this belief is based on a balance of probabilities. In the circumstances of this case, the respondent must establish on a balance of probabilities that, as alleged, the appellant received assistance on the Automotive Certification exam and that this provides reasonable grounds for belief that he and his company will not carry on business as required by the Act.
- [32] After carefully reviewing the evidence, I find that the respondent has established on a balance of probabilities that the appellant received prohibited assistance on his certification exam. Two separate witnesses, both with extensive experience proctoring exams, reviewed the appellant's exam footage and found noncompliance and indicia of the appellant receiving prohibited assistance. The appellant argues that their conclusion is based on suspicion only. I disagree. Ms. Shaffee who has proctored hundreds of online exams testified that, based on the appellant's whispering and body language, she was confident with her assessment. Ms. Shaffee candidly agreed that she could not be 'certain' another person was in the room. Certainty is not the test. I found her to be a credible and reliable witness.
- [33] Ms. Westbrooke, program manager at Georgian College, also viewed the exam footage. She found the behaviour to be indicative of someone who was receiving assistance. She described the appellant's body language of continually looking to the side and his ongoing whispering. She disagreed that this could be characterised as either looking at a text or a reaction to a child entering the room. Ms. Westbrooke, who has extensive experience in the industry, clearly understood the importance and consequences of her assessment. I do note that this witness initially testified that the appellant did not deny the allegations when they spoke on the phone. In cross examination, however, when taken to the Academic Misconduct Form, she acknowledged that he did, in fact, deny receiving any prohibited assistance. This mistake does not raise questions with

respect to her overall veracity or her conclusions with respect to the exam footage.

- [34] I carefully considered the appellant's evidence. I note that he has an impressive resume of academic and vocational achievements. He has clearly taken and passed numerous tests throughout his career. Among other things, this means he should understand the importance of closely following terms and conditions of an assessment.
- [35] The appellant disagreed that there was any noncompliance or assistance received when he wrote his online Automotive Certification exam. When initially contacted by the College about his alleged noncompliance in March 2021, no explanation for his behaviour during the exam was provided. According to the appellant, he was not asked for an explanation at this time. On this point, I accept the evidence of Ms. Westbrooke who testified that, as per College policy, she specifically contacts students to provide them with an opportunity to explain.
- [36] In his Notice of Appeal filed in June 2021, the appellant indicates that his daughter entered the room during the exam and that this is perhaps what the proctor heard in the exam video. Before the tribunal, the appellant testified that his daughter had entered the room but only spoke after the exam was over. This explanation was found implausible by both witnesses who assessed the exam. Before the tribunal, the appellant also offered the explanation that, throughout the exam he whispered to himself and would look sideways at his material. Again, the assessors did not accept this explanation given that the appellant never turned pages and was not looking at an angle that made this explanation reasonable.
- [37] It is unfortunate that the appellant's exam footage is no longer available and could not be made an exhibit at this hearing. As noted, Georgian College has since changed its policy with respect to archiving exam footage. At the hearing, it was highlighted that, when exams are conducted in person, video footage is unavailable, and findings of noncompliance are based solely on the proctor's assessment. Similarly, here, my findings are based on an evaluation of the proctor and college staff assessment of the student's behaviour during the exam.
- [38] The evidence of each witness must be tested against its harmony with other evidence, the preponderance of the probabilities and with its reasonableness (see *Faryna v. Chorny*, 1951 CanLII 252 (BCCA)). In the circumstances, I do not accept the appellant's explanation for his talking and unusual body language

during the exam as reasonable. I accept the evidence of the two independent assessors that his actions are consistent with receiving prohibited assistance. They are inconsistent with someone looking at materials, whispering to himself or speaking to a family member who suddenly enters the room. I find that the respondent has established, on a balance of probabilities, that the appellant failed to comply with the terms of the exam and received prohibited assistance.

- [39] Dealers and salesperson in the automotive industry are required to conduct themselves with honesty and integrity. The appellant did not demonstrate these qualities when he received prohibited assistance on a provincial certification exam. Prior to this, the appellant had failed to appropriately disclose all required vehicle information to purchasers. His conduct affords reasonable grounds for belief that the business will not be carried out in accordance with the law and with integrity and honesty.
- [40] Within three years of registering as a salesperson and two years of registering as a dealer, the appellant was before the OMVIC discipline committee for failing to properly disclose vehicle information. There was an agreed resolution that included the condition that the appellant retake the Automotive Certification course. This course provides an essential foundation for a registrant to understand his role and obligations to the public. Rather than learn from prior mistakes, the applicant chose to not comply with the terms of the online exam and received prohibited assistance. I find that the totality of the appellant's past conduct gives reason to believe that he will not, when acting as a salesperson or dealer registrant, act in accordance with the law or with integrity, honesty, or in the public interest.
- [41] In closing submissions, counsel for the appellant suggested that the appellant would comply with disclosure conditions and "any other reasonable conditions". I have carefully considered whether, in the circumstances of this case, conditions are appropriate. I note the appellant presented as hardworking and very motivated to return to his automotive business. He complied with a number of the conditions imposed by OMVIC in their February 2021 discipline decision. His noncompliance with respect to the Certification exam, however, is extremely serious. Receiving prohibited assistance on this mandated, provincial exam strikes at the heart of the issue: the appellant's honesty and integrity and his ability to comply with conditions. In the circumstances, the revocation of the appellants' registrations is warranted. This protects public interest and promotes public and industry confidence in the used motor vehicle sales industry.

ORDER

[42] The Tribunal confirms the Registrar's proposals to revoke the appellant's registrations.

LICENCE APPEAL TRIBUNAL



Laura Hodgson

Released: February 14, 2022