

Licence Tribunal
Appeal d'appel en
Tribunal matière de permis



DATE: 2013-03-13
FILE: 7773/MVDA
CASE NAME: 7773 v. Registrar, *Motor Vehicle Dealers Act 2002*

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

Clifford Bentley

Applicant

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Mary Ann Spencer, Member

APPEARANCES:

For the Applicants: Clifford Bentley, self-represented

For the Respondent: Jane Samler, Counsel

Heard in Toronto: March 1, 2013

REASONS FOR DECISION AND ORDER

BACKGROUND

This is a hearing before the Licence Appeal Tribunal (the "Tribunal") arising out of a Notice of Proposal issued by the Registrar, *Motor Vehicle Dealers Act 2002* (the "Registrar" and the "Act" respectively.) The Notice of Proposal dated November 14, 2012 proposed to refuse to grant the registration of Clifford Bentley (the "Applicant"), as a salesperson under the Act. This notice was supplemented by a Notice of Further and Other Particulars issued by the Registrar on January 9, 2013.

In summary, the grounds for the Proposal are:

- 1) That Mr. Bentley made false statements in his application for registration; and
- 2) That the past conduct of Mr. Bentley affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty.

PRELIMINARY MATTERS

The Applicant acknowledged and waived his right to counsel.

There were no matters in dispute between the parties and the hearing proceeded.

EVIDENCE AND FACTS

The Applicant was registered as a motor vehicle salesperson under the Act from November 24, 1986 until January 31, 2005. On September 14, 2012, he submitted an application for registration as a motor vehicle salesperson proposing to work for Mancuso Motor Car Company Ltd ("Mancuso").

Registrar's Evidence

The evidence of the Registrar comprised books of documents and the testimony of Carey Smith, Director of Investigations at the Ontario Motor Vehicle Industry Council ("OMVIC"); Ralph Bayley, Investigator, OMVIC; David Dailly, Business Standards, OMVIC; and Officer Harry Wirtz, Durham Regional Police.

Carey Smith has been the Director of Investigations at OMVIC for ten years. He testified that OMVIC has been delegated the authority to administer the Act which is consumer protection legislation designed to give the public confidence in motor vehicle sales transactions by providing disclosure, documentation controls and a compensation fund.

Mr. Smith stated that an application for registration by OMVIC is the first test of an applicant's integrity. Referring to Mr. Bentley's September 14, 2012 application for

registration as a salesperson (Exhibit 3, Tab 4), Mr. Smith noted that the Applicant's responses to question 1, asking if he has a valid driver's licence and to question 8, asking if he has a record of offences, are both false. In both instances Mr. Bentley ticked "no". However, the records of the Ministry of Transportation (Exhibit 3, Tab 22) indicate that at the time Mr. Bentley completed his application, his driver's licence was suspended for failure to pay fines. Mr. Smith observed that the driver's record includes a number of "fairly routine" traffic convictions and a series of suspensions for failure to pay fines with subsequent reinstatements and stated that this record concerns the Registrar because the inference can be drawn that the Applicant does not respect the law. With respect to Mr. Bentley's response relating to the record of offences, on September 20, 2012, Mr. Bentley forwarded to OMVIC a CPIC report (Exhibit 3, Tab 11) which discloses that he was convicted of the charge of theft under \$200 in 1983.

Mr. Smith testified that in 2008, OMVIC received a consumer complaint regarding a transaction for which Mr. Bentley was the salesperson. OMVIC's record of the complaint (Exhibit 5, Tab 1) indicates that in the course of their investigation in October, 2008, OMVIC staff discovered Mr. Bentley's registration as a salesperson had expired on January 31, 2005 and advised him he needed to look into the situation. However, no application for registration was received until September 14, 2012.

Mr. Smith noted that Mr. Bentley did receive the automotive certification required as a condition of registration as a salesperson in August, 2010, after passing the required course offered by Georgian College (Exhibit 3, Tab 3). The course curriculum makes it clear to students that passing the course does not constitute registration. It also clearly sets out the requirements for salespersons to carry their registration certificate (Exhibit 5, Tab 3) and the disclosure requirements for dealer advertising (Exhibit 5, Tab 4).

On cross-examination, Mr. Bentley asked Mr. Smith if Mancuso had acknowledged that Mr. Bentley had in fact completed two applications for registration that it had failed to forward to OMVIC. Mr. Smith agreed Mancuso had done so.

Ralph Bayley has been an investigator with OMVIC since July 2001. His role is to enforce the Act and includes laying charges when required. In February, 2012, OMVIC received a complaint relating to difficulties a consumer was having processing a warranty claim for a vehicle purchased from Mancuso. During the course of the investigation, OMVIC staff discovered that the salesperson who had dealt with the complainant was not registered. The bill of sale for the complainant's vehicle (Exhibit 3, Tab F) is signed by Mr. Bentley and includes the number from his registration which expired on January 31, 2005. On July 30, 2012, Mr. Bayley swore an Information under the *Provincial Offences Act* charging Mr. Bentley for acting as a salesperson during the period June 16, 2011 to June 28, 2011 when not registered (Exhibit 3, Tab 13). Similarly, Mancuso, the dealer for which Mr. Bentley was working, and its principal, Dian Mei, were charged with retaining the services of an unregistered salesperson (Exhibit 4, Tab 1). On September 24, 2012, both Mr. Bentley and Mancuso pled guilty to the charges and were ordered to pay a fine of \$1,500.

Mr. Bayley testified that he introduced Mr. Bentley to OMVIC's Counsel, Brian Osler, before the court proceedings commenced but he was not aware of the details of their conversation. After the proceedings, Mr. Bentley asked Mr. Bayley if his guilty plea would impact his application for registration as a salesperson. Mr. Bayley told him that the entire application would be considered. Mr. Bayley further testified that while speaking to Mr. Bentley, he asked him about his website "cliff.mycarguy.com" which was advertising vehicles for sale without any dealer identification. Mr. Bentley acknowledged that the website should not be running and told Mr. Bayley that while it had been operational for some time, it was no longer being updated and had not been removed from the Internet down because Mr. Bentley did not know how to accomplish this.

Exhibit 3, Tab 19 contains various screen shots of pages from "cliff.mycarguy.com" printed on November 29, 2012. Mr. Bayley testified that he believed some of the photographs of vehicles for sale were taken at the warehouse of dealer Mancuso but others, such as that at page 219 of Exhibit 3, were taken at Mr. Bentley's residence, with which Mr. Bayley was familiar having attended there to serve a summons.

On cross-examination, Mr. Bayley agreed that the vehicles pictured on Mr. Bentley's website could all be vehicles belonging to Mancuso. Mr. Bentley asked why he would be openly advertising if he had in fact been directly selling vehicles to the public, that is "curbsiding". Mr. Bayley stated that some curbsiders do indeed advertise. Mr. Bentley then asked if an individual registered as a broker could advertise vehicles and was advised that a broker could only advertise his or her services. Mr. Bentley also asked Mr. Bayley if his investigation into Mr. Bentley's background had revealed many complaints against him when he was registered. Mr. Bayley stated it had not.

Officer Harry Wirtz, who has been employed with the Durham Regional Police for approximately fourteen years, testified that on January 29, 2013 (Exhibit 5, Tab 5), he stopped Mr. Bentley driving a vehicle with dealer plates after Mr. Bentley failed to signal when turning. The driver's licence Mr. Bentley provided to Officer Wirtz was expired. Mr. Bentley explained that he had recently paid off a number of fines and therefore believed his licence was reinstated. Officer Wirtz testified that Mr. Bentley seemed unaware that there was a fee that must be paid in order for his licence to be reinstated. A Provincial Offences notice was issued.

David Dailly is employed by OMVIC in its Business Standards department. One of his responsibilities is to review dealership advertisements to ensure their compliance with the Act and regulations. Mr. Dailly explained that compliance is important because it creates a level playing field for dealers. Among others, the requirements include that an advertisement contain the name of the registered dealer and its contact information.

Exhibit 3, Tab 17, A is an October 24, 2012 print out of the home page of the website "cliff.mycarguy.com". Mr. Dailly testified that the website sets out Mr. Bentley as the contact and includes a cell phone number. He noted that on the new vehicle page of the website (Exhibit 3, Tab 17, B), setting out pictures and details of six vehicles, the text reads "by going thru a broker you bypass the sales person who is really motivated in selling what

he has rather than advising you what is the best vehicle that meets your needs". Mr. Dailly testified that a registered broker can only advertise its services as a broker and cannot advertise vehicles. Only a registered dealer may advertise vehicles. Referring to Exhibit 3, Tab 17, C, Mr. Dailly noted that the website text which reads "We have a large network of dealers, autions (sic) and wholesellers (sic) we get our vehicles thru" makes it appear that the advertisement is from a broker.

Exhibit 3, Tab 17, D sets out a screen print of a "cliff.mycarguy.com" website page showing vehicles available for lease and the requirements to qualify for financing. The titles on the page are "Cliff My Car Guy" and "C.A.R. Leasing". Mr. Dailly testified that a search of records at the Ministry of Government Services indicated that in 2001, Mr. Bentley registered the business name "C.A.R. Leasing" (Exhibit 1, Tab 18).

Exhibit 3, Tabs 19 and 20 are screen prints respectively dated November 29 and December 12, 2012 from Twitter account "cliffmycarguy" and include pictures and prices of vehicles. Mr. Dailly testified that he identified a total of approximately thirty five Twitter posts. No dealer is identified on the posts.

On cross-examination, Mr. Bentley asked Mr. Dailly if anyone had tried to contact either Mancuso or himself using the Twitter account. Mr. Dailly responded that no one could have contacted Mancuso because it was not identified anywhere on the Twitter account. Someone had tried to contact Mr. Bentley but he had not replied. Mr. Dailly was also asked if he knew how many cars had been registered to C.A.R. Leasing since the business name registration in 2001 and replied that he did not.

Applicant's Evidence

The evidence of the Applicant comprised his testimony and that of Peter Mei, principal of Mancuso.

Mr. Bentley testified that he had been a salesperson since 1995 and had worked for only two dealers before Mancuso. He stated that he has always treated his clients with integrity and honesty and has had few if any complaints about him in his career. He indicated that he had some serious family issues over the past three years and may not have paid enough attention to paperwork as a result. He then stated that he did not make errors in completing paperwork for his clients.

Mr. Bentley discovered his registration was expired in May, 2010 when he began to work for Mancuso. He then began the process to obtain his registration. He obtained the required automotive certification in August 2010, after successfully completing the course offered by Georgian College. He then completed an application for registration which he gave to Peter Mei, Mancuso's principal, for completion of the dealership information and submission to OMVIC. He stated that during his employment with two previous dealers, his registration had always been renewed by his employers. Sometime after he provided the first application to Mr. Mei, he inquired about its status. When he discovered it had not been forwarded to OMVIC, he completed another application and again submitted it to Mr.

Mei. Mr. Bentley then assumed he was registered. While he did not have his registration certificate and was unaware of the need to carry this with him, he knew his previous registration number and used it on bills of sale he completed while at Mancuso. Mr. Bentley provided the Tribunal with a letter dated January 29, 2013, signed by Mr. Mei which states that Mr. Bentley completed two applications for registration in 2010 and that Mr. Mei did not in fact submit them to OMVIC (Exhibit 6).

Mr. Bentley stated that in September, 2012, he pled guilty to the charge of acting as a salesperson without being registered because of conversations he had with OMVIC counsel on the date of his court appearance. As a result of those conversations, Mr. Bentley understood that pleading guilty would expedite the processing of his pending application for registration whereas pleading not guilty would prolong the process.

With respect to the questions on his September 14, 2012 application for registration relating to his driver's licence status and his criminal record, Mr. Bentley testified that he in fact believed his driver's licence was valid and that he had simply forgotten about his 1983 criminal charge for theft under \$200, given how long ago it has occurred. He stated that given he provided OMVIC with an unaltered CPIC report, he was not attempting to hide this conviction. He simply made a mistake. With respect to his driver's licence, he acknowledged that there were a number of tickets and convictions on his driver's record, but stated he believed he had been targeted by police because he was driving vehicles with dealer plates. His licence is currently cancelled because he was unaware he was required to pay a reinstatement fee following its suspension for unpaid fines. He also indicated that he has successfully appealed some of the driving convictions.

With respect to the registration of the business name C.A.R. Leasing, Mr. Bentley stated that he established this in 2001 on the advice that earning income within this company would reduce his personal income tax payable. He testified that the company was not active at this time.

Mr. Bentley testified that he established the "cliff.mycarguy.com" website in 2006 before he was aware of the advertising rules. All the vehicles posted on the site, with the exception of the new vehicle page, were dealer vehicles. He acknowledged he did not put the dealer's name or contact information on the site. He indicated that he could only update pictures and details of vehicles to the site; he could not edit the general information it contained. Recently, Mr. Bentley began to have trouble with uploading pictures. He was unable to contact the original site designer and he subsequently approached another designer to address this issue. A hold was placed on this project, however, when he learned that the website violated the advertising rules. Mr. Bentley provided the Tribunal with a print out of an e-mail message from the web designer which verifies the project was placed on hold in the fall of 2012 (Exhibit 7). When asked by Ms Samler if he had not realized the website was an issue when he took his automotive certification course in 2010, Mr. Bentley stated that he only learned it was an issue when he spoke to Mr. Bayley at his court appearance in September, 2012. He then stated that the website was finally taken down by the host when pre-authorized payments for hosting fees could not be processed on what is now an invalid credit card.

With respect to the Twitter account, Mr. Bentley stated he established this only to “test the concept” of using Twitter as a vehicle to attract new clients. He posted vehicles on Twitter between September and early December, 2012. All vehicles posted belonged to Mancuso. He indicated that because it was a test only, he did not return any calls he received.

During the course of his testimony, Mr. Bentley expressed his opinion that there should be no prohibition on salespersons advertising, stating “I still have the right to draw the people to me”. He also expressed his concern that he would lose past clients should they call him wanting to purchase a new vehicle if he was not allowed to broker deals by referring them to other dealers. He stated that “OMVIC doesn’t have the right to limit” his business.

Peter Mei is the principal of Mancuso. Mr. Mei testified that Mr. Bentley had been working for Mancuso since 2010 and did in fact complete two applications for registration and provide them to him but he failed to submit them to OMVIC. Mr. Mei further testified that he was not aware of the advertising that Mr. Bentley was placing on his website and on Twitter. Finally, Mr. Mei stated his opinion that “it’s terrible to say that the best salesmen are the best liars” but indicated that Mr. Bentley is an exception and is ethical in dealing with customers and noted that at Mancuso, customers are encouraged to take vehicles to their own mechanics for independent assessments before purchasing.

THE LAW

Regarding the right to registration, the Act states:

Registration

6. (1) An applicant that meets the prescribed requirements is entitled to registration or renewal of registration by the registrar unless,

(a) the applicant is not a corporation and,

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

(ii) the past conduct of the applicant or of an interested person in respect of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty, or

(iii) the applicant or an employee or agent of the applicant makes a false statement or provides a false statement in an application for registration or for renewal of registration;

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

(d) the applicant is a corporation and,

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

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

- (iii) the past conduct of its officers or directors or of an interested person in respect of its officers or directors or of an interested person in respect of the corporation affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty, or
- (iv) an officer or director of the corporation makes a false statement or provides a false statement in an application for registration or for renewal of registration;
- (e) the applicant or an interested person in respect of the applicant is carrying on activities that are, or will be if the applicant is registered, in contravention of this Act or the regulations, other than the code of ethics established under section 43;
- (f) the applicant is in breach of a condition of the registration; or
- (g) the applicant fails to comply with a request made by the registrar under subsection (1.1).

Refusal to register, etc.

8. (1) Subject to section 9, the registrar may refuse to register an applicant or may suspend or revoke a registration or refuse to renew a registration if, in his or her opinion, the applicant or registrant is not entitled to registration under section 6.

Conditions

- (2) Subject to section 9, the registrar may,
 - (a) approve the registration or renewal of a registration on such conditions as he or she considers appropriate; and
 - (b) at any time apply to a registration such conditions as he or she considers appropriate.

Notice re: refusal, suspension, etc.

- 9. (1) The registrar shall notify an applicant or registrant in writing if he or she proposes to,
 - (a) refuse under subsection 8 (1) to grant or renew a registration;
 - (b) suspend or revoke a registration; or
 - (c) apply conditions to a registration or renewal to which the applicant or registrant has not consented.

Content of notice

(2) The notice of proposal shall set out the reasons for the proposed action and shall state that the applicant or registrant is entitled to a hearing by the Tribunal if the applicant or registrant mails or delivers, within 15 days after service of the notice, a written request for a hearing to the registrar and to the Tribunal.

ISSUES

The issues before the Tribunal are as follows:

Did the Applicant provide a false statement in his application for registration?

Does the Applicant's past conduct afford reasonable grounds for belief that he will not carry on business in accordance with law and with honesty and integrity?

ANALYSIS

The onus is on the Registrar to prove to the Tribunal, on balance of probabilities, that the Applicant's registration should be suspended. The Applicant is entitled to registration unless one of the grounds in section 6 of the Act applies. The Tribunal must make an independent assessment as to whether or not those grounds have been proven.

In reaching its conclusions, the Tribunal has considered the evidence of the parties and the decisions submitted by Counsel for the Registrar for consideration: *6378 v Registrar, Motor Vehicle Dealers Act, 2012 CanLII 50177* and *Youssef v Registrar, Motor Vehicle Dealers Act, 2002 CanLII 17237*.

In her closing statement, Counsel for the Registrar argued that the Applicant had demonstrated that not only does he not follow laws but also that he is not prepared to take responsibility for his failure to do so. The Applicant failed to ensure that his registration as a salesperson was in good standing and had been involved in curbsiding activity since his registration as a salesperson expired on January 31, 2005. Further, even if the Applicant believed he was registered, he improperly advertised vehicles both on a website he operated for six years and, after he knew the website was an issue, on Twitter. The Applicant drove without a valid driver's licence. He was not truthful in his answers to all questions on his September 14, 2012 application for registration. Counsel submitted that the Applicant's conduct demonstrates that he cannot be relied upon to comply with rules and therefore is not entitled to registration.

Mr. Bentley argued that he made a series of mistakes. He should not have relied upon his employer with respect to his applications for registration and he should have checked the rules before he put up his website. He stated he was not curbsiding but was always employed by a dealer and all inquiries that came through his website were referred back to his employer. Nor was he trying to hide his record on his application for registration: rather, he simply forgot a very old conviction. Over the course of his almost twenty eight years in the car sales business, he has always treated customers honestly and has had few complaints. He submitted that his livelihood was at stake and he would be prepared to accept conditions on his registration.

With respect to the issue relating to the provision of false statements on an application for registration, the Applicant does not dispute that he incorrectly answered questions numbered 1 and 8 on the application for registration submitted to OMVIC on September 14, 2012. Rather, he submitted that he believed his driver's licence to be valid because he had paid outstanding fines and did not know that a reinstatement fee also needed to be paid. With respect to his criminal conviction for theft under \$200, he stated he simply forgot about it given its 1983 date and his disclosure of the CPIC report indicates that he had no intent to conceal information.

The Tribunal notes that Mr. Bentley's driving record shows a long series of suspensions for failure to pay fines for traffic violations followed by reinstatements. It stretches credulity that he was not aware of the requirement to pay a reinstatement fee given the number of times the record indicates the licence has been previously suspended. With respect to the

his criminal conviction, the Tribunal accepts Mr. Bentley's argument that he was not trying to conceal his 1983 conviction when he answered "no" to question 8 on his application for registration. Given the conviction is thirty years old and the record shows Mr. Bentley received a suspended sentence, it is conceivable that Mr. Bentley did indeed simply forget its existence. However, the Tribunal also notes that Mr. Bentley did not disclose his numerous traffic convictions to OMVIC notwithstanding the fact that question 8 emphasizes it is asking about convictions under any law by underlining the words "any law".

In his closing statement, Mr. Bentley began by stating that this hearing was about his integrity. In his testimony, Mr. Smith explained to the Tribunal that OMVIC views the completion of an application for registration as the first test of an applicant's honesty and integrity. In this case, Mr. Bentley failed that test notwithstanding the fact that his lack of disclosure may well have been the result of negligence or oversight rather than intent to withhold information. Were this the only issue before the Tribunal, the fact that Mr. Bentley has admitted his mistake with respect to disclosure would bear some weight with the Tribunal in its decision making.

The second issue before the Tribunal is whether or not Mr. Bentley's past conduct affords reasonable grounds for the belief that he will not carry on business in accordance with law and with honesty and integrity.

There is no dispute that after his registration expired in January, 2005, Mr. Bentley operated as a salesperson without being registered in violation of section 4 (1) (b) of the Act which states "No person shall act as a salesperson unless he or she is registered as a salesperson". In 2008, in the course of the investigation of a complaint, Mr. Bentley was advised by OMVIC staff that he was not registered but took no action to remedy the situation. He did not provide the Tribunal with any explanation of his failure to follow up in 2008. It was not until he began to work for Mancuso in 2010 that he completed two applications for registration and gave them to Peter Mei for completion of the dealer's portion and for submission to OMVIC.

Mr. Mei testified that he did receive two applications from Mr. Bentley but failed to submit them to OMVIC. Both Mr. Bentley and Mancuso were charged and pled guilty. While the evidence indicates that Mr. Bentley did make some attempts to register, ultimately he failed to make sufficient effort to ensure his registration was in place and in his testimony, he did not appear to be prepared to accept responsibility for this failure, stating that his previous employers had always completed renewal applications on his behalf. The Act, however, places responsibility on both the individual salesperson and the dealer to ensure that salespersons are registered. While Mr. Bentley testified that he followed up on the first application he submitted to Mr. Mei, he did not follow up on the second. Notwithstanding the fact that he had successfully completed the automotive certification program through Georgian College in August 2010 which sets out the requirement that salespersons carry their registration certification with them at all times, and he had no such card, he simply continued to use his previous registration number which he had memorized. Further, he testified that he pled guilty to the charge of acting as a salesperson without being registered not because he accepted responsibility but because he understood from some

conversations he held with OMVIC staff on the day of his court appearance that a guilty plea would help expedite the processing of his pending application for registration.

Mr. Bentley also does not dispute that he posted advertisements to the Internet through his website "cliff.mycarguy.com" and through Twitter. Nor does he dispute that he registered a business name "C.A.R. Leasing" in 2001. With respect to advertising, section 36 (2) of O. Reg 333/08 states:

Subject to subsection (3), an advertisement that attempts to induce a trade in a motor vehicle shall include, in a clear, comprehensible and prominent manner, a registered name and the business telephone number of the motor vehicle dealer.

Mr. Bentley testified that, with the exception of the new vehicle page on his website, all vehicles advertised were Mancuso vehicles. However, the screen prints entered into evidence clearly show that neither the website nor the Twitter advertisements disclosed either Mancuso's name or business telephone number. Rather, the home page identifies the site as "Cliff My Car Guy" and sets out the business name "C.A.R. Leasing" (Exhibit 3, Tab 17, A). Furthermore, Mr. Mei testified that he was unaware of the advertising, indicating that Mr. Bentley was placing these advertisements solely on his own initiative.

The evidence also indicates that Mr. Bentley essentially advertised his services as a broker. His website contains pictures of vehicles for sale and reads: "We have a large network of dealers, autions (sic) and wholesellers (sic) we get our vehicles thru". This is in violation of section 20 (1) of O.Reg. 333/08 which states:

A motor vehicle dealer registered as a broker shall not act as a motor vehicle dealer, other than,
(a) to act on behalf of a customer who is not a registrant to facilitate a trade in a motor vehicle involving the customer as a party, where the broker has no property interest in the trade and where the broker does not take or handle the funds used to pay for the trade; or
(b) to advertise with respect to the activity described in clause (a).

Mr. Bentley became aware of the fact that his website was not compliant when he met Mr. Bayley at his court appearance in September, 2012. He testified, however, that he did not know how to remove the website from the Internet. While he provided evidence which indicates that he had held discussions with a web designer, that evidence indicates that rather than instructing the designer to remove the website from the Internet, Mr. Bentley placed a hold on a contract for its revision. Mr. Bentley testified that the website was in fact removed from the Internet because hosting fees were not paid.

Notwithstanding the fact that Mr. Bentley had been made aware of the fact that his website was an issue, he then proceeded to advertise on Twitter. Screen prints entered into evidence as Exhibit 3, Tab 19 were printed in November, 2012. Mr. Bentley testified that the vehicles advertised were all from Mancuso; however the Twitter ads appear under the name of "cliffmycarguy", again in violation of section 36 (2) of O. Reg 333/08.

During his testimony at the hearing, Mr. Bentley indicated that he believed that salespersons should be allowed to advertise. He also expressed his concern that he

should be able to broker deals for clients looking to purchase new vehicles. These statements, in addition to his actions set out above, indicate a lack of understanding of the requirements of the Act and its regulations.

Mr. Bentley presented a reason for each violation of the Act. He forgot about his 1983 conviction when he failed to disclose it on his September 14, 2012 application for registration. He believed he had a valid driver's licence because he had paid his outstanding fines. Notwithstanding the fact that he completed the course curriculum and received his automotive certification from Georgian College in August 2010, he believed he was registered when he was working for Mancuso because he had completed applications for registration and provided them to Mr. Mei. He pled guilty to acting as a salesperson while not being registered not because he believed he was guilty but because conversations with OMVIC staff led him to believe a guilty plea would expedite his pending application for registration. He was unaware that a dealer's name and contact information was required on advertisements. When he learned that his website was an issue, he did not know how to take it down from the Internet. The Twitter account was only a trial and he did not respond to any inquiries.

The Registrar did not present any evidence that Mr. Bentley had been the subject of consumer complaints when he was registered between the years 1986 to 2005. Nor was any evidence presented to indicate that consumers have been disadvantaged as a result of Mr. Bentley's activities other than the evidence presented relating to the consumer complaints which led to OMVIC's discovery of Mr. Bentley's registration status in both 2008 and 2012. Mr. Mei testified that Mr. Bentley was ethical in his dealings with customers. However, the pattern of Mr. Bentley's behavior indicates that he either does not understand or simply chooses not to comply with the regulatory requirements governing motor vehicle sales. In either case, consumers are placed at risk.

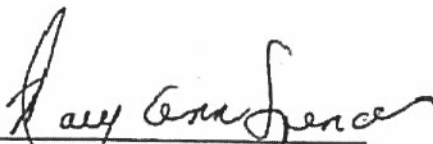
Mr. Bentley indicated he would be prepared to accept conditions on his registration. In 2010, he successfully completed the automotive certification course offered by Georgian College. The curriculum reviews the requirements of the Act and regulations. Notwithstanding what should have been his awareness of these requirements, Mr. Bentley did not take appropriate action with respect to his registration. Nor did he comply with advertising requirements on his website. In fact, he proceeded to set up a non compliant Twitter account after he had discussed the issues with his website with Mr. Bayley. The Tribunal is therefore not satisfied that Mr. Bentley would in fact comply with conditions were those to be imposed.

Given his pattern of non compliance with the Act and regulations, the Tribunal finds, on a balance of probabilities, that, in accordance with section 6 of the Act, the past conduct of the Applicant affords grounds for belief that the Applicant will not carry on business in accordance with law and with integrity and honesty.

ORDER

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar to carry out the Proposal to Refuse Registration dated September 14, 2012.

LICENCE APPEAL TRIBUNAL



Mary Ann Spencer,
Member

Released: March 13, 2013