

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de perms



DATE: 2012-03-05
FILE: 6929-MVDA
CASE NAME: Martin 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

Raymond Martin

Applicant

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Douglas R. Wallace

APPEARANCES:

For the Applicants: Self represented

For the Respondent: Jason Morische,
Counsel

Heard in Ottawa January 24, 2012

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 August 30, 2011 proposed to refuse to grant the registration of Raymond Martin (the "Applicant"), as a salesperson under the Act. The reason for the Registrar's Proposal is that the past conduct of the Registrant is inconsistent with the intention and objective of the Act, namely that registrants be financially responsible and carry on the business in which they are engaged in accordance with the law and with integrity and honesty.

FACTS

The evidence at the Hearing indicates that the Registrar based his conclusion primarily on two facts:

- 1) The Applicant's conviction on November 26, 2009 on a charge of conspiracy to traffic cocaine and
- 2) False statements on the Applicant's Application for Registration.

The Registrar filed as an exhibit, a Book of Documents containing the Application, the Proposal, the Notice of Appeal and the transcript of proceedings before the Superior Court of Justice on November 26, 2009. He also filed a copy of a letter from the Applicant dated January 14, 2011 and a letter from Georgian College certifying that the Applicant completed the OMVIC/CAI Automotive certification course. The Registrar also called two witnesses to testify.

The first witness was Detective Constable Dave Davies of the Durham Regional Police Service. Detective Davies testified that in the course of investigating a possible criminal offence involving the shipping of money to the Dominican Republic in the summer of 2007, he obtained a court order authorizing the interception of telephone conversations between the Applicant and others suspected of being involved in the importation of illicit drugs. Three conversations were intercepted between the Applicant and one member of a group of six persons. The six were subsequently charged and convicted of bringing 24 kilos of cocaine into the Pearson Airport illegally. One or more of the members of the group were members of the Hell's Angels. It was apparent from the telephone conversations that the Applicant was instrumental in the raising of the funds for the purchase of the drugs abroad and would have received a portion of the cocaine being imported if the drugs had not been intercepted by the police at the airport.

Detective Davis' evidence was that the importation of such a large quantity of cocaine required complex planning and organization, both in Canada and in the Dominican Republic. The interception of the cocaine was the largest, or one of the largest, drug busts

in Ontario to that date. The Applicant could not be located at his last known place of residence at the time the other members of the group were apprehended but was arrested nine months later when he returned to Canada from the Dominican Republic. The acknowledged leader of the group received a sentence of 14 years in jail for his part in the crime while the Applicant pleaded guilty and received a sentence of six years, less credit for time served. He was released on parole in May 2010 and will continue on parole until November 26, 2012.

The Applicant had two prior convictions at the time of his sentencing; one for Break Enter and Theft, and the other for trafficking in narcotics and possession of narcotics for the purpose of trafficking. The convictions were some 20 years previously.

Carey Smith also testified on behalf of the Registrar. Mr. Smith is the Director of Investigations for the Ontario Motor Vehicle Industry Council (OMVIC). He joined OMVIC in 2003 after 30 years service with the Halton Police Service. In 1997 he was appointed Officer in Charge of "Project Phantom", a major project by the Halton Police Service focused on the apprehension of car dealers who conspired to launder money through the use of their dealerships. Twenty dealers were charged as a result of this operation and Mr. Smith was decorated by the Governor General for exemplary conduct for his role in this operation. He still has a concern in seeing that car dealerships are not used for the laundering of money obtained by illegal activity.

Mr. Smith testified that he had two grounds for concern with the Applicant's request for registration. First, he felt that the Applicant's recent conviction for conspiracy to traffic cocaine, when coupled with his prior convictions, provides him with grounds to believe the Applicant will not, if registered, carry on his business in accordance with the law and with honesty and integrity. This belief is based not only on the nature of the offence, which involves a deliberate, and on-going disregard for the law, but on the fact that insufficient time has passed since the Applicant's conviction to demonstrate that there has been a change in the Applicant's moral outlook.

Secondly, Mr. Smith feels that the Applicant's application for registration contained "false, incomplete or misleading information" contrary to the undertaking contained in paragraph one of Section F. First, the details provided by the Applicant of his involvement in the crime for which he was convicted were certainly false. The details as set out in this letter of December 1, 2010 accompanying his application are as follows:

In 2007, I invested money in a venture which dealt with exporting gold purchased from pawnshop in the GTA. Only after my money was committed and something went wrong with the payment that I found out that my partner who proposed the whole venture was not receiving all of the payment in cash, he was also receiving a control substance illegal in Canada. The police subsequently arrested him and 9 months later arrested me. My error was not to alert the police when I found out, thinking that it was better to stay out of all this. Unfortunately that makes me an accessory in committing an indictable offence. I pleaded guilty to that, it was my error and I have taken responsibility for it.

This version of events is very much at odds with the testimony of Detective Davies to the effect that the Applicant was instrumental in raising the money necessary for the purchase of the illegal drugs.

Mr. Smith also expressed concern that the Applicant's statement that he was "unemployed" from June 2008 to June 2010 when he was in fact incarcerated was at best "incomplete" and at worse "misleading". He stressed how important it is for registrants under the Act to be able to make full and complete disclosure to prospective purchasers even when it is not to their advantage.

In cross-examination by the Applicant, Mr. Smith admitted that the Applicant had not tried to hide his criminal convictions but had in fact been the one to provide the Registrar with a copy of his criminal history and a copy of the transcript of his criminal trial. Mr. Smith also agreed to the Applicant's suggestion that someone not wanting to comply with the law could sell vehicles without being registered.

The Applicant called Andrew Mewett as his first witness. Mr. Mewett has been a Federal Parole Officer since 2007. He has a degree in criminology from the University of Ottawa and has supervised the Applicant's parole since it began in May 2010. Mr. Mewett explained that the Applicant was on accelerated day parole which is only available to those serving their first federal sentence who are judged low risk and unlikely to repeat. By the terms of his parole he must spend six to eight hours in a half-way house at night and his whereabouts are closely monitored during the day. He is prohibited from any form of contact with known criminals and his financial records are reviewed on a regular basis. He was judged a low risk to reoffend by his intake officer and is still considered a low risk offender by Mr. Mewett. Mr. Mewett was aware that the Applicant had associates connected with the Hell's Angels but is unaware of any continued contact.

In cross-examination, Mr. Mewett agreed that it is in the best interest of parolees to be on their best behaviour during their parole if they wish to avoid returning to custody.

The Applicant testified briefly on his own behalf. He swore that the version of events leading up to his conviction which was set out in his letter of December 1, 2010 accompanying his Application was true. He said nothing about what money if any he paid to gain a share in the imported cocaine but did say that it was not him, but his partner who was to sell his share of the cocaine when it arrived.

ISSUES

The sole issues before the Tribunal are whether the Applicant is disqualified from registration by

- a) misstatements in his application or
- b) his conviction in November 2009 for trafficking cocaine

THE LAW

The applicable provisions of the Act regarding registration state in part as follows:

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;

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.

The powers of the Tribunal holding a hearing are set out in section 9 (5) of the Act as follows:

9. (5) If a hearing is requested, the Tribunal shall hold the hearing and may by order direct the registrar to carry out the registrar's proposal or substitute its opinion for that of the registrar and the Tribunal may attach conditions to its order or to a registration.

APPLICATION OF LAW TO FACTS

In the case of *Toronto (City) v. Canadian Union of Public Employees (C.U.P.E.), Local 79*, [2003] 3 S.C.R. 77, a labour arbitrator reinstated a recreational instructor to employment with the City of Toronto on the basis of oral evidence that the employee had not committed a sexual assault for which he had been convicted. On appeal, the Divisional Court found that the labour arbitrator was precluded by the doctrine of issue estoppel or abuse of process from relitigating the findings of fact forming the basis of the criminal court's conviction. The Supreme Court of Canada, after an extensive review of the authorities relating to *res judicata* and abuse of process, agreed and dismissed the appeal.

The Applicant pleaded guilty and was convicted by Justice Minden in November, 2009 with the offence that he

Between April 1st, 2007 and September 11th, 2007, at the City of Oshawa, the City of Mississauga, the City of Toronto and elsewhere in the Province of Ontario unlawfully did conspire and agree, together with Jake Low-Keen and a person or persons unknown, to commit the indictable offence of trafficking a controlled substance, to wit, cocaine, contrary to Section 5(1) of the *Controlled Drugs and Substances Act* and did thereby commit an offence contrary to Section 465 (1) (c) of the *Criminal Code*, colloquially known as conspiracy to traffic cocaine.

Justice Minden, in accepting the Applicant's guilty plea ensured that the Applicant fully understood what he was doing:

THE COURT: Mr. Martin, in just a moment, I understand that you will be pleading not guilty to the offence charged, but guilty to a different offence, conspiracy to traffic in cocaine that arise from the same circumstances, pursuant to the provisions of the *Criminal code*. Am I correct?

RAYMOND MARTIN: That's correct, Your Honour.

THE COURT: All right. I have to satisfy myself about a number of things. The Criminal Code requires me to do so. First of all, I need to be satisfied you are doing this freely and voluntarily with no undue or inappropriate pressure from any outside source. Am I correct?

RAYMOND MARTIN: That's correct, Your Honour.

THE COURT: You have had the benefit of counsel's advice throughout these proceedings?

RAYMOND MARTIN: Yes, Your Honour

.....

THE COURT: Have you seen the Summary of Facts that the Crown proposes to read out?

RAYMOND MARTIN: Yes, Your Honour

THE COURT: And do you agree with them?

RAYMOND MARTIN: Yes I do, Your Honour.

The Summary of Facts referred to by Justice Minden included a statement that "Raymond Martin and others entered into an arrangement whereby Raymond Martin would be provided with one to two kilograms of cocaine for the purpose of trafficking it".

The Tribunal is bound by the *Toronto v. CUPE* case to accept the finding of Justice Minden that all facts necessary to support a conviction on the offence of conspiracy to traffic exist. These facts include knowledge on the part of the Applicant of the importation scheme, an agreement with others to carry out that scheme and a sharing in the proceeds of the crime. These facts are diametrically opposed to the Applicant's statement at the Hearing and in his December 1, 2010 letter that he only found out that an illegal act was to take place after the plan had been formed by others and that he was not going to traffic the cocaine once it was received. The Tribunal finds the version of the facts set out in the Applicant's letter of December 1 and his oral testimony to be false and misleading. The Applicant is accordingly disqualified for registration pursuant to section 6 (1) (a) (iii) of the Act.

The Tribunal accepts the Registrar's submission that the other information provided on the December 1 letter relating to being unemployed, when in fact the Applicant was incarcerated fell short of being a full disclosure of the type one would expect of a salesperson carrying on his business with integrity.

Finally, with respect to the conviction itself, the Tribunal finds that the crime was a serious one as indicated by the length of the prison term imposed. In the Tribunal's opinion it constitutes reasonable grounds for a belief that the Applicant will not, if registered, carry on business in accordance with the law. In this regard, the Tribunal is particularly troubled by the Applicant's apparent unwillingness even today to accept full responsibility for his actions which led to two convictions for a serious criminal offence. Cases in which registration will be granted while an applicant is on parole for a serious offence are the exception. In spite of Mr. Mewett's well expressed belief that the Applicant is of high character, the Tribunal is not satisfied that this is a case where the normal practice of not allowing registration until sufficient time has elapsed for an applicant to prove himself to be of good character should be abandoned. In the circumstance existing here, the Tribunal finds that this conviction provides ample reason to believe that the Applicant will not, if registered, carry on business in accordance with the law and with integrity and honesty.

Although the Applicant indicated that he would agree to any conditions that might be imposed on his registration, and Mr. Mewett indicated a willingness to supervise compliance with any conditions this Tribunal might impose, the Tribunal does not consider conditions appropriate in this case. In the Tribunal's view there is no practical way anyone could provide the type of supervision necessary to ensure that the Applicant would make full and honest disclosure to all prospective purchasers.

ORDER

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar carry out the Proposal.

LICENCE APPEAL TRIBUNAL



Douglas R Wallace, Vice-Chair

Released: March 6, 2012