

Licence
Appeal
Tribunal

12th Floor
1 St. Clair Avenue West
Toronto ON M4V 1K6

Tel (416) 314-4260 or
1-800-255-2214
Fax (416) 314-6307
(416) 314-4270
1-800-720-5292

Tribunal
d'appel en
matière de permis

12^e étage
1 ave St Clair O
Toronto ON M4V 1K6

Tél (416) 314-4260 ou
1-800-255-2214
Télééc (416) 314-6307
(416) 314-4270
1-800-720-5292



August 18, 2010

MEMORANDUM

***Re: Syed Hussain o/a M/A Motors v.
Registrar, Motor Vehicle Dealers Act, 2002***

Enclosed herewith please find a copy of the Decision of the Licence Appeal Tribunal with respect to this matter.

DISTRIBUTION LIST:

Syed Hussain, the Applicant
Christopher Ezrin, Counsel for the Respondent



Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



SYED HUSSAIN o/a M/A MOTORS

AN APPEAL OF A DECISION OF THE REGISTRAR, *MOTOR
VEHICLE DEALERS ACT, 2002* S.O. 2002, c. 30

TO REVOKE REGISTRATION

TRIBUNAL: DONALD BENNINGER, Member

APPEARANCES: SYED HUSSAIN, Applicant, self-represented

CHRISTOPHER EZRIN, Counsel representing the Registrar,
Motor Vehicle Dealers Act, 2002

DATE OF
HEARING: July 22, 2010

Toronto

REASONS FOR DECISION AND ORDER

BACKGROUND

This is an appeal to the Licence Appeal Tribunal (the "Tribunal") from a Notice of Proposal (the "Proposal") pursuant to Section 9 of the *Motor Vehicle Dealers Act, 2002* (the "Act"). The proposal dated March 30, 2010, sets out the Registrar's reasons for revoking the registration of Syed Hussain o/a M/A Motors (the "Applicant") as a motor vehicle dealer under the Act as follows:

"The intention and objective of the Act is to protect the public interest. In doing so the Act prohibits the making of false statements in an application for registration or renewal and requires that Applicant be financially responsible in the conduct of business and that they carry on business in accordance with the law and with integrity and honesty. Syed Hussain o/a M/A Motors' past conduct is inconsistent with the intention and objective of the Act, and therefore, warrants disentanglement to registration under the Act.

In the particulars, the Registrar states the following reasons for the proposal:

1. Syed Hussain o/a M/A Motors (the "Dealer") is currently registered as a motor vehicle dealer under the Act and was originally registered on or about November 15, 2007. The registration is subject to terms and conditions attached hereto as Schedule "A" is a copy of the conditions.
2. On or about August 6, 2009, the Dealer purchased a 2008 Honda Civic at a wholesale auction from State Farm Insurance Company for \$6,600.00 excluding fees and taxes. The purchase receipt for the vehicle indicates the "Loss Type" as "collision".

3. On or about October 13, 2009, the Dealer sold the 2008 Honda Civic at a wholesale auction for \$13,000.00 excluding fees and taxes. At the time of sale, the Dealer failed to disclose that the vehicle had substantial damages in excess of \$15,000.00 from a collision.
4. The purchaser only obtained approximately \$100.00 in compensation through arbitration available at the auction. The Dealer refused to provide any additional compensation and refused to reverse the transaction.
5. On or about December 1, 2009, the Registrar's office received a complaint regarding the 2008 Honda Civic sold by the Dealer.
6. The Dealer failed to promptly respond to the Registrar's office regarding a request for particulars and supporting documents regarding the complaint. The Dealer's failure to promptly respond is in direct contravention of OMVIC'S Standard's Business Practice.
7. The Dealer has breached paragraphs 6 and 20 of his terms and conditions by failing to disclose the damage sustained by the 2008 Honda Civic when he sold it at auction and by failing to promptly responding to the Registrar regarding the complaint.
8. The Dealer has failed to comply with the Act, in particular, section 6.

ISSUE

Does the past conduct of Applicant provide reasonable grounds to conclude that he will not carry on business with honesty and integrity and in accordance with the law?

EVIDENCE

The evidence of the Registrar consisted of two books of documents (Exhibits #3 and #4) and the oral testimony of Lisa Arrigo, Manager, Arbitration Department, Toronto Auto Auction, Chrystal Johns, OMVIC Complaints Handler and Tim Hines, OMVIC Manager, Complaints Services.

The evidence of the Applicant consisted of his oral testimony as well as two documents, one an invoice for repairs and the other a Medical Doctor's note regarding his present health and medications (Exhibits #5 and #6).

The following is a summary of the relevant evidence.

The first witness for the Registrar was Lisa Arrigo, who was sworn and testified she has been working in the auto auction business since 1999. She stated she has been the Manager of the Arbitration Department for the last three years where she oversees the arbitration matters. She stated she is the Canadian point person for others requiring assistance re policies as she has helped develop arbitration policies for the business.

Ms. Arrigo testified that the dealers at auto auctions are aware of the disclosure policy and such policy is handed out to dealers if there are changes. In the arena there are

large display signs regarding the policy to disclose. This policy clearly states it is the seller's responsibility to disclose any damages that a vehicle has sustained.

Ms. Arrigo explained the vehicle history identification system on the board when a vehicle is up for auction. A green light would indicate a vehicle declared by the seller as no damage or accident history; yellow light would indicate buyer beware as the vehicle has some safety issues or mechanical issues like transmission concerns; a red light would indicate "as is" mechanical issues of more than \$750.00. In this case she stated the Applicant sold the vehicle under the green light when an honest disclosure would have shown yellow or red. A purchaser would not pay as much for the vehicle. She stated that the Honda was sold for \$13,000.00, but with full disclosure a purchaser would pay around \$8,000.00.

She stated there are levels of damage, such as collision write-offs, two adjacent panels replaced and structural/frame damage or damage over \$3,000.00. These must be declared. She continued her testimony by stating that the 2008 Honda Civic required three different declarations by the Applicant but he chose not to declare any. He sold the vehicle as if it was clear of any damages.

Ms. Arrigo testified that a buyer has seven days to get a deal reversed if the vehicle is not as declared by the seller. In this case, she stated, the buyer notified them and applied for arbitration on the ninth day and the Applicant offered the buyer \$100.00 but would not take the Honda back and was of the opinion that the buyer was too late.

Ms. Arrigo testified there was another vehicle, a 2003 Camry that the Applicant sold at the auction but he had not declared it had been branded "salvage" as it was an insurance write-off. She stated insurance write-offs have had to be disclosed by the seller since 1999, and the Applicant would have known this. However, this sale was reversed and the Applicant had to take the vehicle back because he was caught during the arbitration timeframe. This transaction was at the same time period as the 2008 Honda Civic non disclosure incident.

There were no allegations about this vehicle in the Notice of Proposal, and the Tribunal did not take this evidence into account.

The second witness for the Registrar was Chrystal Johns, who was sworn and testified she is a Complaints Handler for OMVIC. She stated she has been in this position for over a year and previously she was a service consultant with a car dealership for nearly 10 years. She reviewed and explained the complaint summary and process (Exhibit #3 Tab#3).

She testified that she tried to resolve the 2008 Honda Civic complaint without success. She testified that she had requested the Applicant's position in this matter in writing. As well, she advised the Applicant that there would soon be training sessions regarding the Act.

Ms. Johns stated when she spoke to the Applicant, he knew the 2008 Honda Civic had been in an accident as he had purchased it damaged and he told her he had to fix it before selling it. She stated it was an out of province sale, so it took longer for the purchaser out west to determine the damages and apply for arbitration and, thus, he was two days outside the time limit by policy for arbitration by the auction centre.

Ms. Johns testified that her research demonstrated that there had been evidence that the 2008 Honda had extensive damage and it had been declared a total loss.

Ms. Johns contacted the Applicant when she became aware of the complaint in early December. On the 18th of December she wrote to him confirming the complaint and requesting his position and supporting documents by December 29, 2009.

She received some of the requested information and documents on January 3 and 4, 2010. The Applicant's position regarding the complaint she received on January 6, 2010. She did acknowledge this was during the holiday season and some of the days were not business days, however, the Applicant was slow in responding.

Ms. Johns testified she tried to get the Applicant to reverse the sale but he would not. When she contacted the buyer he wanted more than the \$100.00 and wanted the seller to take the 2008 Honda back or pay him several thousand dollars to repair it correctly. The Applicant's response was that the buyer was too late and he did not know the condition of the vehicle now.

The third witness for the Registrar was Tim Hines, who testified he was the Manager, Complaint Services and is the compensation fund manager with OMVIC. He stated OMVIC is a not for profit agency established in 1997 to administer the *Motor Vehicle Dealers Act*. Prior to this position, Mr. Hines was a complaint handler and an inspector.

Mr. Hines explained the branding categories of vehicles to the Tribunal. A "none" brand means the vehicle had no damage nor was there structural damage. "Irreparable" means the vehicle will never be back on the road. "Salvage" means repairable. "Rebuilt" means the same as none but does not mean the vehicle was not in an accident, also means no structural damage.

Mr. Hines testified that after Ms. Johns could not resolve this matter, he attempted to do so without success. He stated the Applicant was aware of the requirement to disclose when he reviewed the terms and conditions of his registration. Also, the Applicant was given a copy of standards and guidelines regarding dealer conduct. This would have been reviewed at the initial inspection while the inspector was there.

Mr. Hines testified that when he contacted the buyer about the 2008 Honda, the buyer wanted a full refund. He contacted the Applicant and was told by the Applicant he was not willing to take the vehicle back. He stated that the Applicant's failure to disclose allowed a vehicle into the market place when it should not be there.

Mr. Hines concluded his testimony stating that the Applicant, despite the help of OMVIC, has failed to understand the rules regarding disclosure.

The Applicant testified on his own behalf. In his sworn testimony he stated he has not been that successful in the automotive business. He testified that he has made mistakes and he has trouble surviving properly. He continued stating he never made the mistakes intentionally, but at the present time he is financially in bad shape and only sells one or two vehicles a month.

The Applicant testified that he is presently under doctors' care, taking medication for depression and he needs to rest for 90 days. Also, his health is bad because of too much stress. He stated he never had physical health problems before but has since this matter began.

He testified he is a 45-year old married man with three children, one girl and two boys and wants to provide them with a good living.

The Applicant testified that if he made a mistake, he apologizes for it. He stated he would take the vehicle back, but would need eight months to arrange the funds. He stated the reason he could not negotiate with the buyer for up to \$6,000.00 was because he had no money and no way to arrange for it. This is why he told Mr. Hines he could not go any higher during the negotiations with the buyer.

The Applicant testified that he was not aware of the arbitration rule, but he thought if a vehicle was in an accident and the damage was less than \$4,000.00 you could sell it on a green light and you did not need to make declarations. He thinks someone at the auction told him but he did not know who. He stated he now understands this was wrong. He stated he checked the vehicle's brand on the Carfax system and found it to be clean. However, he stated he did know the vehicle was damaged because he repaired it.

On cross-examination the Applicant stated he did not disagree with the evidence presented by the Registrar to the Tribunal, but he believes it was a misunderstanding. He stated he does understand the English language fairly well and uses it for his business, but he is still learning as it is not his first language. He stated he was aware that item #20 of his terms and conditions agreement with the Registrar says he must disclose information on the vehicle history. When asked if he knew the damage was greater than \$4,000.00 the Applicant answered "yes" but he thought the insurance companies made the damage values higher than reality.

On further questioning during cross-examination he admitted he was told about the disclosure rules by an inspector in 2007, by teachers during the Georgian College course and again in 2008 by another OMVIC employee.

With regard to the request for information for OMVIC regarding the complaint, the Applicant did not offer any reason for the delays.

LAW

The *Motor Vehicle Dealer Act* states as follows:

5. (1) An applicant is entitled to registration or renewal of registration by the Registrar except where,

- a) having regard to financial position of the applicant, the applicant cannot reasonably be expected to be financially responsible in the conduct of business; or
- b) the past conduct 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
- c) the applicant is a corporation and,
 - (i) having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its business, or
 - (ii) the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty;

6. (2) Subject to section 7, the Registrar may refuse to renew or may suspend or revoke a registration for any reason that would disentitle the registrant to registration under section 5 if the registrant were an applicant, or where the registrant is in breach of a term or condition of the registration.

8. A further application for registration may be made upon new or other evidence or where it is clear that material circumstances have changed.

ANALYSIS

The issue before the Tribunal is whether the past conduct of the Applicant provides reasonable grounds to conclude that he will not carry on business in accordance with the law, and with honesty and integrity.

The Tribunal did not find the delay in providing information to the Registrar when requested of major concern due to the holiday season and business days being limited. However, the concern of non disclosure of vehicle history to fellow dealers at an auction does cause the Tribunal great concern. This places vehicles, which may not be road worthy, in the market place for unsuspecting public to purchase.

The Applicant testified he was told by someone, but he did not know who, at the auction that if the vehicle damage was under \$4,000.00 he could sell the vehicle under the green light. He presented no supporting evidence in this matter.

There was an agreement during the testimony that the Applicant had been advised during his college course as well as by OMVIC employees that he must disclose the

vehicle history honestly. Also, he was aware that the seller has the responsibility to disclose the vehicle accident history. The Applicant stated his mistakes were not intentional, but the Tribunal finds that difficult to believe. He has had opportunities to learn and know the rules of the automotive business both from OMVIC staff and college staff. The Tribunal finds that in this case there was more than sufficient evidence of deliberate intent to deceive on the part of the Applicant when he sold the vehicle under the green light when he knew it was insurance write-offs. In addition, the Tribunal believes that, due to the difficult financial times the Applicant was experiencing, the Applicant chose to sell his vehicles under the green light designation in order to increase the sale value to help remedy his financial burdens.

The Applicant was presented with several options to make the deal right with the buyer and he chose not to do so. The Applicant did not choose to follow the recommendation of OMVIC staff and take the vehicle back. This would make one question his governability, however, during the Applicant's testimony he stated he could not raise the necessary funds to have the deal reversed.

The MVDA is a public protection statute and to permit the Applicant to continue as a licenced dealer as a member of the motor vehicle industry would send the wrong message to the industry and to the public in view of the Applicant's lack of honesty and integrity when selling vehicles. His conduct is not considered, by the Tribunal, as acting with honesty and integrity and in accordance with the law.

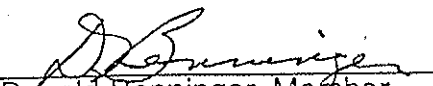
Although the Tribunal is sympathetic toward the Applicant's health issues, they are no excuse for his conduct and have no bearing on the case before the Tribunal.

In conclusion, after considering all the evidence and the reasons outlined above, the Tribunal finds that the Applicant's past conduct does provide reasonable grounds to conclude that he will not carry on business with honesty, integrity and in accordance with the law.

DECISION

By virtue of the authority vested in it and pursuant to the provisions of section 7(4) of the Act, the Tribunal directs the Registrar to carry out the Proposal dated March 30, 2010, to refuse the registration of Syed Hussain o/a M/A Motors as a motor vehicle dealer.

LICENCE APPEAL TRIBUNAL


Donald Benninger, Member

RELEASED: August 18, 2010

The hearing was recorded. Transcripts can be made available at your expense. The period to appeal a decision to the Superior Court of Justice or Divisional Court is 30 calendar days from the date of release of the decision. Please arrange to pick up your Exhibits within 30 days after that period has passed. The Tribunal requires seven days notice prior to releasing Exhibits.

This decision, which is being released to the parties in this proceeding, may also be posted on the Licence Appeal Tribunal's website www.lat.gov.on.ca in two weeks time. The decision may also be available on Quicklaw at a later date.