

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



DATE: 2015-11-19
FILE: 9660/MVDA
CASE NAME: 9660 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

Hadi Mahmoodi

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Alex McCauley, Member

APPEARANCES:

For the Appellant: Self-represented

For the Respondent: Sarah Aouchiche, Counsel

Heard in Toronto: November 3 and 4, 2015

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 June 18, 2015 proposed to refuse to grant the registration of Hadi Mahmoodi (the “Appellant”), as a salesperson under the Act.

FACTS

The Appellant was previously registered as a salesperson and a dealer under the Act. The Appellant’s registrations were revoked by Order of the Tribunal on May 29, 2012, after a lengthy hearing. The Tribunal found that there were multiple instances of dishonesty on the part of the Appellant towards consumers. The Registrar in describing the Appellant referred to him as ungovernable. In addition, at the time, the Appellant provided to the Tribunal doctored car reports which in the view of the Tribunal was a blatant attempt to deceive the Tribunal. Leading up to his revocation in 2012, the Appellant breached a Tribunal Order which at the time prohibited him from acting as a salesperson and dealer.

The Appellant has since re-applied to be registered as a salesperson under the Act. In re-applying for registration, Section 12 of the Act specifies that a dealer or salesperson whose registration is refused, revoked, or refused renewal may re-apply for registration if both of the following conditions are met:

- (a) the time prescribed to reapply has passed since the refusal, revocation or refusal to renew; and
- (b) new or other evidence is available or it is clear that material circumstances have changed.

Section 15 of O. Reg. 333/08 specifies that the prescribed time for reapplying is two years.

The Registrar is refusing registration based on the following:

- The Appellant’s past conduct leading to the revocation by the Tribunal in May 2012 is still relevant. The Registrar alleges that there is a continuing pattern of the behaviour that led to the Appellant’s revocation in 2012.
- The Appellant has failed to re-pay claims owed to the Motor Vehicle Dealers Compensation Fund.

- The Appellant has failed to show that material circumstances have changed since the revocation of his registration in 2012.
- The Appellant has failed to meet the test for registration in section 6 of the Act in that false statements were made in his recent applications for registration to Ontario Motor Vehicle Industry Council (OMVIC) and the Real Estate Council of Ontario (RECO). These are serious issues and, in the mind of the Registrar, are indicative of the lack of governability of the Appellant.

THE LAW

The Act states in part as follows:

Prohibition

4.(1) No person shall,

- (a) act as a motor vehicle dealer unless the person is registered as a motor vehicle dealer under this Act; or
- (b) act as a salesperson unless he or she is registered as a salesperson.

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;
- (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).

Request for information

(1.1) The registrar may request an applicant for registration or renewal of registration to provide to the registrar, in the form and within the time period specified by the registrar,

(a) information specified by the registrar that is relevant to the decision to be made by the registrar as to whether or not to grant the registration or renewal;

(b) verification, by affidavit or otherwise, of any information described in clause (a) that the applicant is providing or has provided to the registrar.

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.

Further application

12. A person whose registration is refused, revoked or refused renewal may reapply for registration only if,

(a) the time prescribed to reapply has passed since the refusal, revocation or refusal to renew; and

(b) new or other evidence is available or it is clear that material circumstances have changed. 2002, c. 30, Sched. B, s. 12.

EVIDENCE

Ms. Shahin Rehmtulla is a registration officer with the RECO, which regulates the real estate industry in Ontario and enforces the *Real Estate and Business Brokers Act, 2002*.

The Appellant, Mr. Mahmoodi, applied to RECO to be registered as a real estate salesperson. The application was dated June 16, 2014, and was received by Ms. Rehmtulla on June 19, 2014. The application is contained in Exhibit 6 tab 2.

Contained within section C of the application is an explicit warning that states in bold: "IT IS AN OFFENCE TO PROVIDE FALSE INFORMATION ON THIS APPLICATION". There is an area for a signature to acknowledge the warning and this was signed and dated June 16, 2014 by the Appellant.

At the bottom of page 1 of the application, within section C, there is a list of seven questions that an applicant must answer indicating a 'yes' or 'no'. In question 2, it asks, "Are you or will you be engaged or employed in any other business, occupation or profession? To this the Appellant answered "No". In response to questions 6, which asked, if the Appellant ever "had a registration and/or licence or professional status of any kind refused, suspended, revoked, or cancelled?" the Appellant answered "Yes". The Appellant attached and signed a statement dated June 17, 2014, which became part of the application, and which was his explanation for the circumstances surrounding his answer to question number 6.

Ms. Rehmtulla became directly involved with this application as a result of the disclosure statement. She immediately referred to the Tribunal decision of May 29, 2012.

Her investigation revealed that the Appellant's statement that he had made on the application form explaining why his registration had been revoked was not accurate. In applying to RECO, her view was that the Appellant was clearly deceptive when he outlined the conduct that had led to his revocation in 2012 while a dealer and salesperson registered by OMVIC. He stated the reason for revocation was having 17 complaints, complaints which included dissatisfaction of customers with the condition of used cars and minor mechanical issues. He went on to state that he had cooperated with OMVIC and that they had advised him of the 'non fault of the dealership'. The Appellant's statement was, in her view, to say the least, the skimming of the facts and outright deception. He attempted to give the impression that the matters that led to his revocation in 2012 were relatively minor and to some degree, overblown.

She found the opposite. The Tribunal released a 42 page decision on May 29, 2012, which outlined many issues of misconduct on the part of the Appellant which she would describe as egregious.

There were examples of fraudulent behaviour and forgery. Consumers were sold vehicles that were not roadworthy and were unsafe, putting the consumers and public at risk. Administratively, he broke the law by acting as a salesperson when his registration to do so had been suspended by the Tribunal. Mr. Mahmoodi never disclosed these facts in his application to RECO.

On April 2, 2015, RECO issued a Notice of Proposal (NOP) to Refuse Registration to Mr. Mahmoodi. This was based on the Appellant's past conduct as illustrated in the Tribunal decision of May 2012. This NOP stated that the Appellant's past conduct

affords reasonable belief that the Appellant will not carry on business in accordance with law and with integrity and honesty.

The Appellant responded to the Notice of Proposal to refuse registration issued by RECO, in a letter dated February 11, 2015. In this letter, he attempted to further explain his position as it related to his OMVIC revocation. He attempted to clarify his statement that he had made on the application to RECO. In particular, in the last line of his he states: "He voluntarily left his business one year prior to the OMVIC revocation". He left only after he was revoked. In fact, as stated in the May 2012 decision, he attempted to conduct business while subject to an interim suspension Order from the Tribunal, Exhibit 3, tab 9.

In the opinion of Ms Rehmtulla, the Appellant's answers on the application were a blatant effort to deceive; these were not just mistakes of recollection on the part of the Appellant.

She further stated that it only takes one false statement on an application for registration to have the registration refused. The fact that the Appellant had indicated that he had not reapplied to OMVIC when he had is enough to negate his application.

Jeff Ross is an administrator with the Motor Vehicle Dealers Compensation Fund (the "Fund") He stated that there is a debt to the Fund owed by the Appellant.

The Fund is administered by a Board of nine persons; half of its members are from the general public and half are motor vehicle dealers. The purpose of the Fund is to assist consumers who have suffered an out-of-pocket loss after doing business with a dealer.

Mr. Ross gathers supporting documentation for the Board and assists in ensuring that the documentation is correct.

There had been two claims against the Appellant and his dealership which had been sustained by the Board. The total amount of these claims was \$3500.00.

At-fault dealers are required to repay the Fund as a condition of their registration.

Mr. Ross made many attempts to contact the Appellant to have this debt to the fund satisfied. These are outlined at tab 7 of Exhibit 5.

Mr. Mahmoodi responded in one case that the consumer had signed a release absolving the dealership of any liability. When pressed to supply this documentation, he could not.

In the subsequent years, there has been no attempt on the part of this Appellant to repay the Fund, which is his statutory duty to do. He was aware of his obligation; he wrote in August 2015 asking about his obligations under the Fund. In September 2015,

Mr. Ross set up a payment schedule so that the Appellant could repay the Fund. The Appellant turned this down.

There had been no contact between this Appellant and Mr. Ross from 2012 to 2015.

The Tribunal heard from Mr. Tim Hines who is the OMVIC Manager of Complaint Services. He stated that OMVIC is charged with protecting consumers and in doing so administers the Act.

Mr. Hines referred to the application received on October 9, 2014, from the Appellant. He stated that the decision to refuse the Appellant's request for registration was based on a number of factors including, but not limited to, the decision of the Tribunal in May 2012 to revoke the registrations of the Appellant and his dealership. These are still strong indicators regarding the past conduct of this Appellant. In addition, the Appellant provided a letter (at page 218 of tab 8 of Exhibit 5) which Mr. Hines describes as being full of inaccuracies. As an example, the Appellant had a staggering number of customer complaints against him probably as high as 30%. In addition, he was never cooperative with OMVIC investigators. His dealings with Mr. Ross are but one small example.

Mr. Hines stated in his evidence that the Appellant had already applied for registration with OMVIC when he advised RECO that he would not be working as a car sales industry.

In his opinion, this Appellant is totally ungovernable. He is deceptive and appears to be following the same pattern of behaviour described in the May 2012 decision by the Tribunal.

The Appellant, in his evidence, referred to a number of documents that are a part of Exhibit 7. There are a number of letters of support for him from persons he has met in the course of his attempts to prepare himself for re-entry into the business community.

He introduced a number of financial statements prepared by his accountant that indicate his current financial situation. It should be noted that none of the statements were subject to audit nor did anybody from the accounting firm give evidence.

The Appellant has taken courses to prepare for the real estate industry as well as other business courses. He has provided transcripts from the educational institutions. The transcripts show satisfactory effort on the part of the Appellant.

Various individuals that have been in contact with the Appellant since 2012 have provided written character references. Some of these are real estate executives that have mentored the Appellant. Some, if not all, indicate some knowledge of his past as it relates to his problems with his previous registration.

It is difficult to ascertain just how much information these individuals actually had been given by Mr. Mahmoodi. None of the authors of these letters actually came and gave

evidence in support of the Appellant and therefore were not available for cross-examination. Under the circumstances, the Tribunal gives little weight to these letters of support. Further, the Appellant stated that he had a sponsoring dealer willing to take him on if he was registered. However, this person did not attend the hearing.

The Appellant stated that he had only recently become aware of his obligation to the Fund. It was his evidence that he had lost track of this obligation, he would take responsibility to reimburse the Fund. He stated the problem that he has is that his finances at the time are limited.

In cross-examination, the Appellant admitted that he had made a false statement to RECO in his application and also he had made a false statement in his application to OMVIC. The Appellant admitted to reading all applications carefully and to noting any of the warnings about false information contained therein. The Appellant stated that he was aware that he owed money to the Fund, but that he had mistakenly marked "No" to question 2 in the application for registration (tab 8 of Exhibit 5). He stated he would have been a fool to attempt to deceive the organization that had all of his records. Answering "No" was simply a mistake.

In cross-examination, regarding the Fund, the Appellant stated he was aware of the reason for the Fund. He admitted that at one time he had attempted to receive assistance through the Fund even though he wasn't a consumer. At the time he applied, he had refused to acknowledge a complaint made against him resulting in a payment from the Fund (Exhibit 5, Tab 7).

Regarding his finances, the Appellant stated that he had not worked from 2012 to 2014. In cross-examination, he admitted this was inaccurate and that he had actually been working outside of the country as a business manager with a mining company. He meant, in his answer, that he had not been working in Canada.

In cross-examination, the Appellant admitted that in his statements to the regulators he had played down the severity of many of the issues and complaints that had been made against him and his dealership. There were safety issues in issue in 2012 and many questionable transactions where consumers were deceived.

APPLICATION OF LAW TO FACTS

The Appellant has waited the prescribed time to reapply for registration with OMVIC. That statutory requirement set out in s.12 of the Act has been met. However, based on the evidence before the Tribunal, it is not at all clear that material circumstances have changed since 2012. This second aspect of the statutory test in s. 12 is the issue to be determined by the Tribunal.

In its May 2012 decision, the Tribunal found the Appellant to be totally lacking in credibility and found that there was a clear attempt to mislead the Tribunal during the course of the hearing. Ms Rehmtulla's evidence suggests, if not a blatant attempt to

deceive, an attempt to diminish the significance of the Tribunal's findings against him in the earlier decision. The application form is a crucial tool for the regulator by which it assesses an applicant's suitability for registration. The lessons learned from the May 2012 decision seem to have been marginal.

Further, the Appellant's recognition of his obligation to the Fund has been lacking. He has not been responsive to Mr. Ross's attempts to have him make payment. It is only now, as he seeks registration, that he appears to have acknowledged the responsibility.

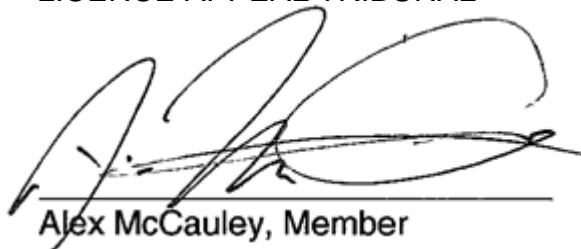
While the Appellant has provided letters of support from several individuals, none of these persons attended the hearing. In the context of the issues to be determined and the history that the Appellant has had with OMVIC, the Tribunal can put little weight on these character references. Their oral testimony may have assisted Mr. Mahmoodi in his quest for reinstatement. There is insufficient evidence before the Tribunal to show that the Appellant now fully understands his statutory obligations in a regulated industry, a change which it is incumbent that he demonstrate. Mere assertions by the Appellant that he now knows better do not suffice.

The Appellant has failed to satisfy the Tribunal that there has been a material change in circumstances to support registration at this time and finds, based on the evidence before it, that there are reasonable grounds for the Registrar's continued belief that the Appellant will not conduct his business in accordance with the 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 carry out the Proposal.

LICENCE APPEAL TRIBUNAL



Alex McCauley, Member

Released: November 19, 2015