

Licence Tribunal  
Appeal d'appel en  
Tribunal matière de permis



DATE: 2012-01-09  
FILE: 7462/MVDA  
CASE NAME: 7462 v. Registrar, *Motor Vehicle Dealers Act 2002*

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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

Ryan W. Parker

Applicant

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

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### REASONS FOR DECISION AND ORDER

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**ADJUDICATOR:** Douglas R. Wallace, Vice-Chair

**APPEARANCES:**

**For the Applicant:** Richard Addelman, Counsel

**For the Respondent:** Brian Osler, Counsel

Heard in Ottawa: December 6 and 7, 2012

## REASONS FOR DECISION AND ORDER

### Background

This hearing arises out of a Notice of Proposal issued by the Registrar, *Motor Vehicle Dealers Act 2002* (the “Registrar” and the “Act” respectively.) dated May 31, 2012. In his Notice of Proposal, the Registrar proposes to refuse the Applicant’s registration as a motor vehicle salesperson under the Act.

### Law

Section 6 (1) (a) (ii) of the Act provides that an Applicant meeting the prescribed requirements, is entitled to registration unless his past conduct “affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty”. Subsection 6 (1) (a) (iii) provides that an applicant who “makes a false statement or provides a false statement” may also be denied registration. The issues before the Tribunal are accordingly two:

1. whether the Applicant’s conduct affords reasonable grounds to believe that the Applicant will not conduct business in the manner mandated by the statute; and
2. whether the Applicant made a false statement in an application for registration

### Agreed Facts

The basic facts are not in dispute. The Applicant was first licensed as a motor vehicle salesperson under the Act in July 2007.

In July 2011 he applied to transfer his registration to a different dealership. Attached to his transfer application was a letter signed by himself and the proposed new dealership. The letter is addressed to the Ontario Motor Vehicle Industry Council (OMVIC) and describes an incident which occurred in April 2010 (the Tim Horton’s incident) in the following words:

I, Ryan Parker, am inquiring to transfer my OMVIC license to a different establishment. I have spoken with John Kenny of 2<sup>nd</sup> Chance Auto Sales in Ottawa On and have come to an agreement to sell automobiles in his establishment. I was convicted of a minor assault charge in January 2011. The incident occurred in April of 2010 in Ottawa Ontario. I entered a Tim Horton’s /Esso gas station on Innes rd. to purchase some coffee for some co-workers and I. After receiving the beverages, I returned to my workplace a few minutes down Innes Rd. A few minutes after that I realized that my coffee was not prepared properly. The Tim Horton’s employee had added only sugar to my coffee, as opposed to milk and sweetener which I had asked for. I was diagnosed with Diabetes 3 years ago, so I am not suppose to consume sugar. I drove back to the Tim Horton’s establishment where I had purchased the beverages, to ask the gentleman to replace my coffee. We got in to an argument about the whole situation. There was foul language exchanged back and forth between both of us. I felt threatened when the employee made a gesture as if he was going to knock the coffee over onto me, so I immediately grabbed the coffee and tossed it towards him, which split on

his stomach area. The coffee was not "hot" any longer, so it did not burn the individual. After the conflict, I exited the store and returned to my workplace, where I was arrested about an hour later. The Police officer let me go on the spot, because he said that the Tim Horton's employee as not injured/burned, and it wasn't a "serious" situation. They were charging me with Assault With A Weapon, and Causing A Disturbance, which I was not convicted of. Later in January 2011, I was convicted of a minor assault charge. I have learned a valuable lesson in this incident.

The Applicant subsequently revealed to the Registrar that he was placed on one year's probation on his conviction. One of the terms of probation was that he keep the peace and be of good behaviour.

It is not clear what happened to this application. It appears however, that a subsequent application was made in January 2012 to transfer the Applicant's dealership to Otto's Subaru, the current registered dealership and that this application was approved by the Registrar with full knowledge of all the circumstances and documentation surrounding the January 2011 incident at Tim Horton's. The following Terms and Conditions were attached.

1. The Registrant agrees, if he is criminally charged in the future, he will immediately notify his sponsoring dealer, in writing, of the charges against him/her and provide a copy of the notification signed by his sponsoring dealer to the Registrar.
2. The Registrant agrees to provide full and complete disclosure on all future applications and discussions with the Registrar, regardless of whether or not disclosure has been made previously to the Registrar.
3. The Registrant confirms that the particulars and circumstances of his convictions are substantially as disclosed to the Registrar and further acknowledges that the Registrar is relying upon the accuracy of the disclosure provided in entering into these Terms and Conditions.
4. The Registrant agrees to surrender his registration if he is found guilty of a criminal offence or an industry-specific offence.
5. The Registrant agrees not to be a partner, shareholder, officer, director or controlling mind of a dealer.
6. The Registrant agrees not to be the final signatory on any sales or lease contracts on behalf of the dealer.
7. The Registrant agrees not to transfer his registration as a salesperson under the Act to another Registrant without having first obtained prior written consent of the Registrar.
8. The Registrant understands that the Registrar is relying on the accuracy and completeness of all documents, statements or information provided by the Registrant in support of the Registrant's application for registration. The Registrant confirms that all documents, information or statements provided to the Registrar are true to the best of the Registrant's knowledge and belief and that the Registrant has given full answers to all questions and requests made by the Registrar in connection with the Registrant's application.
9. The Registrant acknowledges that the Registrar may take further administrative action, including a proposal to revoke its registration, arising from any matters that have occurred, or may occur, related to honesty and integrity or financial position.
10. The registrant acknowledges that it has obtained or has had the opportunity to obtain independent legal advice with respect to its consent to the Terms and Conditions set out herein.

The Applicant applied for renewal of his registration on March 26, 2012. This application was accompanied by a letter from the Applicant which described an incident which had

occurred on January 16, 2012. The Applicant described this incident in the following words:

I was involved in an incident that occurred the night of Sunday, January 15<sup>th</sup>, 2012. I went to hang out at my girlfriends place. When I got to her apartment, and as I entered the lobby, I was jumped from behind, which caused me to fall and smash my head on the floor. I was surprised and disoriented, and wrestled my way on top of the assailant and hit him a few times. I left the building to cool off. I was shaken up from the whole incident, and did not stay to offer him assistance, which I feel extremely bad about and highly regret. I then went up to my girlfriend's apartment, where I was arrested. There were Paramedics called to aid both of us. I was then held in Police custody till Tuesday morning. I was conditionally released, and have further court appearances. I have been charged with Assault causing Bodily Harm, Possession of Marijuana, and Breach of Probation. Should you have any further questions, please feel free to contact me.

It is this application that the Registrar proposes to refuse.

## **Evidence**

The Applicant testified on his own behalf. He is 26 years old and has been employed in the automobile industry for five and a half years. He is still employed by the same dealership as he was at the time of the January, 2012 incident but not as a salesperson. He wishes to return as a salesperson and the dealership has indicated its full support for him to do so.

With regard to the Tim Horton's incident in 2011, the Applicant stated that he was convicted on simple assault after a plea of guilty and placed on one year's probation. The conviction taught him a lesson and he now tries to avoid situations which might cause him to lose his temper over small matters.

With regard to the January 2012 incident, the Applicant stated that the incident occurred when he went to his girlfriend's apartment lobby with a male acquaintance he had known for a number of years. As he was talking to his girlfriend in the lobby his friend suddenly and without warning, rushed in from behind, grabbed him, and lifted him off his feet. When he lost his balance he fell forward hitting his head on the floor. He realized someone had him on the floor and was on top of him. A brief scuffle ensued in which he managed to get on top and hit his male friend a number of times on his body and head. Paramedics were called and took his friend to the hospital with two black eyes, a cut lip requiring stitches, and some bruising. When the police arrested him at his girlfriend's following the incident he had a small quantity of marijuana in his jacket pocket.

As a result of this incident the Applicant was charged with three offences: assault causing bodily harm, possession of marijuana and failing to comply with a clause in his probation order requiring him to keep the peace and be of good behaviour. The charges are still pending.

A computer flash memory stick containing a video of the January 15<sup>th</sup>, 2012 incident was filed as an exhibit on consent of both parties. Constable Marc Denis of the Ottawa Police Services was also called to give evidence on behalf of the Registrar concerning this

incident. He identified photographs of the Applicant and his assailant in this incident. He also introduced photographs, taken after the assailant's release from hospital. These photographs showed a cut to the right side of the assailant's upper lip, a black eye and considerable bruising. The Constable testified that the assailant had been drinking before the incident and that he couldn't remember much about the altercation, either as a result of the drinking or the blows he received from the Applicant. The constable characterized the incident as "horseplay".

A number of employees of Otto's Subaru testified or sent letters in support of the Applicant's appeal.

Robert Brazil is currently the sales manager for Otto's Subaru. He testified that he has known the Applicant since 2009 when they were both employed as salespersons with another dealership. He considers the Applicant a natural salesperson and has never heard or seen a negative comment concerning the Applicant's performance. It is his recollection that the Applicant came into work as soon as he was released from custody following his arrest and provided his employer with the full details of the incident giving rise to his arrest. He was pleased that Sonia Koller, the Dealer Principal, made the decision to keep the Applicant on in a non-sales capacity until such time as his licence was restored. Although he thought that the Applicant was an excellent employee before the incident, in Mr. Brazil's opinion, the Applicant has demonstrated a more serious attitude toward his employment since the January, 2012 incident with less "goofing around", increased punctuality, and greater attention to his appearance.

The Controller of Otto's Subaru, the head of Human Resources and the Dealer Principal of Otto's Subaru all wrote letters testifying to the Applicant's good character. The Tribunal gives these testimonials considerable weight as they are written by those most knowledgeable with the operation of a successful dealership and most familiar with the Applicant's conduct in the dealership, both before and after the January 2012 incident.

The Controller writes:

Ryan Parker has worked for Westboro Auto Imports Ltd. for the past year. His responsibilities require that he be well mannered, task-oriented, time efficient, while respecting the confidentiality of both customer and company. Ryan achieves these requirements while maintaining enthusiasm and a polite demeanour.

Ryan is highly respected by his co-workers for his willingness to help any of his peers to ensure success of the company and his fellow sales teammates. He has been instrumental in maintaining a positive environment for those around him, through his patience and well mannered temperament in the workplace.

We hope Ryan can regain his salesperson certification through the Ontario Motor Vehicles Industry Council, and look forward to his return to the sales team in the capacity of Salesperson.

Sonia Koller, Dealer Principal, writes:

Ryan has been employed with the Otto's organization since September 2011. During this time I have come to know Ryan as a very intelligent and hard-working young individual. He has always had the utmost respect for his fellow co-workers, his managers and most importantly, our clients. Ryan has always proven himself to be pleasant to have around, very approachable and a team player. His professionalism and positive personality has resulted in only successful client and employee relations. He has always conducted himself in a very professional, transparent and honest manner.

Our company prides itself on employing the highest calibre people in the industry and only accepts people that have a positive and professional disposition.

I strongly believe that if Ryan is granted his license he will seize the opportunity to rebuild what will no doubt be a successful and rewarding career. Indeed, myself and the Otto's team look forward to welcoming him back on the sales floor.

### **Analysis**

The Registrar's position is that the Applicant should be refused registration by virtue of the following:

1. The Applicant's conviction on January 20, 2011,
2. The Applicant's conduct on the night of January 15, 2012, which resulted in the following charges:
  - (a) Assault causing bodily harm
  - (b) Unlawful possession of Schedule II substance (Marijuana) and
  - (c) Breach of Probation (Keep the Peace)
3. The Applicant's provision of incomplete and misleading information concerning the January 2012 incident in the March 26, 2012 application and
4. The Applicant's breach of clause 3 of the terms and conditions placed on his registration.

#### **THE APPLICANT'S CONVICTION ON JANUARY 20, 2011**

The conduct that gave rise to the Applicant's conviction in January 2011 took place in April 2010. While ill-advised, it involved no bodily harm to the victim, moral turpitude or dishonesty. The Tribunal accepts the Applicant's evidence that he learned from the incident that he must try to avoid situations that might tempt him to lose his temper in the future. The incident is in no way related to the conduct of the business of a motor vehicle salesperson and, in the Tribunal's view, does not constitute valid grounds to believe that the Applicant will fail to conduct his business in the manner mandated by the Act if his licence were to be renewed.

#### **THE APPLICANT'S CONDUCT ON THE NIGHT OF JANUARY 15, 2012**

The Applicant readily admitted as much as he could recall concerning the events of January 15, 2012. There is no doubt from his description that the events of that night ended in a physical altercation which, had the Applicant been the aggressor as suggested

by the Registrar, might well constitute sufficient grounds to disentitle him from registration. But was the Applicant the aggressor here? The Tribunal has carefully reviewed all the evidence and is satisfied that he was not. It is clear from the video that he was facing with his back to his friend when tackled from behind and lifted off his feet causing him to fall forward and hit his forehead on the floor. Although it is uncertain what gave rise to the Applicant's violent reaction, the evidence is that the friends were getting along well prior to arriving at the apartment and the altercation only lasted 35 to 40 seconds. Given the lack of hostility and the briefness of the altercation, the Tribunal finds that it is more likely than not that the response to his friend's attack was a "flight or fight" response triggered by the sudden and unexpected attack from behind and exacerbated in all likelihood by the blow to the Applicant's head. If this is the case, his response is not only understandable; it may well be justifiable. Whether the Applicant's violent reaction was the result of the flight or fight response or horseplay that got out of control, the violence exhibited by the Applicant does not in the Tribunal's view constitute reasonable grounds to believe the Applicant will fail to carry on business in the manner required by the Act.

A breach of a Probation Order may in certain circumstances indicate that an applicant is likely to ignore other laws in the conduct of his business. This is not the case here, however, where the Applicant's conduct was not deliberate but the result of a response to forces not of his making and beyond his control.

The Applicant was charged with unlawful possession of a Schedule II Substance (marijuana) when taken into custody following the physical altercation. Although many in this country view the occasional use of marijuana as being no more harmful than having a drink after work, the fact is that possession of marijuana continues to be a criminal offence. This being said, the Tribunal finds the occasional use of marijuana outside the work environment is not a reasonable ground on which to base a belief that the Applicant will not carry on his business of selling motor vehicles in accordance with the law, or with honesty and integrity.

#### THE APPLICANT'S PROVISION OF INCOMPLETE AND MISLEADING INFORMATION IN HIS MARCH 26, 2012 APPLICATION

On his March 2012 Application, the Applicant indicated that he had been convicted of an offence and provided an explanation in the attached letter which is set out in full above. The Registrar submitted that this letter was "incomplete and misleading" in that it characterized the Applicant's attacker as "an assailant" rather than a friend, and failed to state how often or how hard he hit his assailant.

The Applicant's position was that the missing details were provided in a letter from Counsel for the Applicant on April 12, 2012, within a reasonable time. Further, the missing information simply constituted elaboration on the information already provided in the Applicant's letter.

The Tribunal notes that section 6 (1) (a) (iii) does not disentitle an applicant from registration for providing "incomplete and misleading information" but rather for providing a

false statement. Although the information provided by the Applicant in the letter accompanying the application may not have been as complete as the Registrar would have liked, in the Tribunal's view it was not so lacking in details as to be misleading and certainly was not shown to be false in any respect.

#### THE APPLICANT'S BREACH OF CLAUSE 3 OF THE TERMS AND CONDITIONS UNDER WHICH HIS REGISTRATION WAS GRANTED

At the Hearing the Registrar indicated that it was not clause 3, but rather clause 1 of the Terms and Conditions of the Applicant's registration that were breached by the Applicant. This clause requires the Applicant to immediately notify his sponsoring dealer of the charges against him and provide a copy of the notification signed by his dealer to the Registrar. The Applicant's evidence was that he did notify his dealer of the charges he was facing immediately upon his release from custody and drafted the notification to be given to the Registrar with the help of the Sales Manager. He assumed the dealership would look after whatever else was required by the Act. In point of fact, the dealer did forward the notification signed by the Applicant and the dealership on to the Registrar but not until late March.

In the circumstances, the Tribunal finds that the Applicant complied fully with the spirit and intent of this condition and that the failure to see that the notification was promptly passed on to the Registrar does not reflect on his fitness to be a motor vehicle salesperson

#### ELAPSE OF TIME TO ESTABLISH GOOD BEHAVIOUR

The Registrar referred the Tribunal to a line of cases wherein the Tribunal refused to order the Registrar to issue or renew a registration following the commission of a crime until a sufficient time had elapsed during which an applicant could demonstrate his ability to carry on business according to the norms laid down by the Act. The Tribunal notes that the cases cited deal with applications made while the applicant was on probation or very shortly following the expiration of a period of incarceration or parole. This is not the case here.

The Tribunal accepts the unanimous view of the Applicant's dealership's team members that the Applicant has been and continues to be a valued, honest, well mannered and professional member of the team as sufficient evidence that the Applicant can and will in all probability continue to conduct his business in accordance with the legislated requirements.

## Decision

Based on all the evidence adduced at the Hearing, the Tribunal finds that the Applicant's conduct does not provide reasonable grounds to believe he will not conduct his business in the manner mandated by the Act.

## ORDER

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs that the Registrar not carry out the Proposal but that the registration shall be subject to the following conditions:

1. The Applicant shall advise the Registrar and his sponsoring dealer in writing, within five business days, of the outcome of the three charges presently pending against him as a result of the incident which occurred on or about January 16, 2012. and
2. That the Applicant shall advise the Registrar and his sponsoring dealer in writing, within five business days, of any future charges under Schedule II of the Controlled Drugs and Substances Act.

LICENCE APPEAL TRIBUNAL

A handwritten signature in black ink, appearing to read 'Douglas R Wallace', written over a horizontal line.

Douglas R Wallace, Vice-Chair

*Released: January 9, 2013*