

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



MOHAMMAD HAMEED O/A ANA AUTO SALES

AN APPEAL FROM A NOTICE OF PROPOSAL BY THE
REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*,
S.O. 2002, c. 30, Sch. B

TO REVOKE REGISTRATION AS A DEALER AND
SALESPERSON

TRIBUNAL: JANE WEARY, Vice-Chair

APPEARANCES: MOHAMMED HAMEED, representing himself and ANA Auto Sales

ANGELA LA VIOLA, Counsel, representing the Registrar, *Motor
Vehicle and Dealers Act, 2002*

DATE OF

HEARING:

January 21, 2011

Toronto

REASONS FOR DECISION AND ORDER

Background:

This is an appeal to the Licence Appeal Tribunal (the "Tribunal") from a Proposal (the "Proposal") of the Registrar (the "Registrar") pursuant to section 9 of the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, Chapter 30 (the "Act"). The Proposal is to revoke the registration of Mohammad Hameed o/a ANA Auto Sales ("the Applicant") as a salesperson and dealer under the Act. The Proposal is dated April 20, 2010 and sets out the following reasons:

The intention and objective of the Act is to protect the public interest. In doing so, the Act prohibits making false statements in an application for registration and requires that Registrants are financially responsible in the conduct of business and that they carry on business in accordance with the law and with integrity and honesty. MOHAMMAD HAMEED's past conduct and financial instability is inconsistent with the intention and objective of the Act, and therefore warrants disentitlement to registration under the Act.

The Particulars relied upon by the Registrar can be generally summarized as the following:

- (a) non-disclosure by the Applicant of on-going bankruptcy and continued refusal by the Applicant to provide details of such bankruptcy to the Registrar when requested; and
- (b) a failure by the Applicant to reveal material facts as required by the Act on the sale of a vehicle; and
- (c) allegations the Applicant tampered with documentation concerning the above referenced vehicle sale to remove disclosure made on his purchase of the vehicle.

The Applicant appealed the Proposal on the basis that:

- (a) the bankruptcy concerned his personal capacity and was not made in the name of his sole proprietorship. As such the Applicant's position was there was no requirement that such be disclosed, nor was the Registrar entitled to any information concerning the bankruptcy;
- (b) the alleged failure to disclose material information on a bill of sale was simply an oversight by the Applicant which he immediately corrected by telephone to his purchaser with the result that the vehicle's eventual sale to a consumer did include the required disclosure and so no harm was occasioned by the inadvertence;
- (c) there is no reason for the Applicant to have removed the original disclosure as alleged given that he verbally advised the purchaser of the material information immediately after the sale upon realizing he had omitted to include the condition on the paperwork.

A preliminary detail concerned the fact that the Applicants' registrations as dealer/salesperson had terminated pending this Hearing. As a consequence, the Parties agreed that the Proposal was now one to refuse registration under the Act.

EVIDENCE

Mary Jane South is Deputy Registrar of the Ontario Motor Vehicle Industry Council ("OMVIC"), the non-profit organization set up to administer the Act. It was her testimony that the Applicant had been originally registered under the Act subject to specified Terms and Conditions signed in June of 2004. Clauses 21 and 22 of these stipulate the importance of disclosing material facts in writing on any bill of sale completed; clause 14 stipulates that the Applicant will maintain accurate books and records and will not create any document which misleads the nature of any transaction; and clause 31 states that the Applicant recognizes that the Registrar relies "*...on the accuracy and completeness of all documents, statements or information provided by the (Applicant) in support of (its) application for registration.*"¹

¹ Exhibit 1, Tab 2

OMVIC inquiries from Companies Branch of the Ministry last spring revealed that ANA is a sole proprietorship operated by the Applicant who also operates an incorporated entity called ANAR International Incorporated.²

Ms South presented a copy of the Applicant's application for registration renewal of July 29, 2008. It asks for completion of a number of questions, noting: "*For the purposes of this application, the applicant means the sole proprietor, each partner of a partnership or each officer or director of a corporation, or the corporation.*" The Applicant responded "no" to question number 1(c) inquiring: "Has the applicant declared bankruptcy, been involved in bankruptcy proceedings or are there any outstanding judgments or court orders against the applicant?"³

A similar response was provided by the Applicant to the same question in the 2009 application for renewal.⁴

Yet, on OMVIC's running an on-line bankruptcy search of the Applicant in March, 2010, it was discovered the Applicant had declared bankruptcy on August 3, 2007, almost one year prior to completing his 2008 application for registration, which, to date, had only been conditionally discharged.⁵

As a consequence of the Applicant's refusal to provide the Registrar with information and documents concerning the bankruptcy, the Registrar was required to seek such information from the Trustee-in-Bankruptcy directly. These reveal that on August 2, 2007 the Applicant had sworn to a Statement of Affairs document before the Trustee-in-Bankruptcy stating that he had "formerly" operated as ANA Auto Sales and was currently unemployed. This declared position was reinforced by responses to questions 6 and 8 on his sworn Information in which he stated he was unemployed and specified he had operated ANAR International Inc from 2004 to 2007, a corporation with a principle business activity of trucking; and ANA Autos Sales from 2003 to 2006, a sole proprietorship with a principle business activity of auto sales.⁶ The reason provided by the Applicant for his bankruptcy in question 14 was "business failure".⁷ Ms South believed that the obvious conclusion to be drawn by the Trustee from this information was that the Applicant was no longer in the business of auto sales.

The Registrar requested the Applicant attend OMVIC offices in February, 2010 for a regulatory inspection of his books and records. It was during this interview that the Inspector noted that the copy of the Bill of Sale for the Applicant's purchase of a Mazda (VIN No. ****801) from an auction in Toronto appeared to have the printed disclosure of it being a salvage vehicle rubbed off.⁸ The fact that the information had been readily visible was verified on a review of the original Bill of Sale obtained by OMVIC from the

² Exhibit 1, Tab 4

³ Exhibit 1, Tab 6

⁴ Exhibit 1, Tab 5

⁵ Exhibit 1, Tab 7

⁶ Exhibit 2

⁷ *ibid*

⁸ Exhibit 1, Tab 16

seller auction house.⁹ The Applicant's consequent Bill of Sale for this vehicle to a dealer purchaser failed to disclose the accident history.¹⁰

In cross examination Ms South surmised the attempt to remove the disclosure on the purchase from the Auction had occurred when the Applicant realized he had failed, for whatever reason, to make the disclosure on his own later sale of the vehicle and was asked to attend at OMVIC for a review of his records. Despite the fact that his buyer/dealer later did disclose the salvage condition to the eventual consumer buyer, the Registrar's concern was that, given no written disclosure had been provided by the Applicant, his buyer/dealer would have been justified in not providing disclosure to the eventual consumer purchaser – the very risk which the Act and the terms and conditions of the Applicant's own registration are intended to protect against.

Mr. Mohammad Hameed stated he had immigrated to Canada in 2001 with his family after having lived and worked as a vehicle dealer in the USA for 15 years since coming from his original country of Pakistan. By 2004 he had passed the written test required to obtain his licence as a motor vehicle dealer under the Act. He registered as the sole proprietorship in March of 2004 and began operating in June of that year after receiving his OMVIC licence to do so, subject to terms and conditions earlier referenced. Mr. Hameed stated that ANA Auto Sales was always more of a hobby than a significant source of income for him. Generally his annual sales of motor vehicles were less than six (6). His main business activity occurs through a separate and distinct entity, ANAR International Incorporated, which he incorporated in November, 2004. Its primary activity is trucking and it is registered and licensed as such under provincial authority.

His auto sales business has never had any consumer complaints. Most of his clients are the auction houses in the Toronto area, not one of which has criticized his business operations. As a result, the Applicant's position is that he poses no risk to consumers in his registered capacity and has no record of any concerns regarding his professional integrity or honesty.

The concern raised by the Registrar stemming from the Bill of Sale for the Mazda fails to establish any dishonesty. Simple error caused him to neglect to provide the material information as to salvage on his sales documentation to his purchaser. However, that purchaser was called by him immediately following the sale and told of the vehicle condition. The original of the Bill of Sale allegedly tampered with was submitted by the Applicant who claimed it demonstrated simply that the print concerning the disclosure was weaker than other print on the document.¹¹

Mr. Hameed advised that his registered corporation acts as an umbrella entity which encompasses both ANA Auto Sales and ANA Logistics, the latter being the trucking company. He submitted documents titled Master Business Licence issued by the

⁹ Exhibit 1, Tab18

¹⁰ Exhibit 1, Tab 17

¹¹ Exhibit 5

Province referencing ANA Auto Sales¹² and ANA Logistics¹³ as both operating under the legal name of Anar International Incorporated. Since the corporation had not filed for bankruptcy, it was his position his personal bankruptcy is not relevant to his registration. He maintains this position regardless of the wording of the disclosure requirement on the OMVIC application for registration and reiterates that his personal credit issues are of no concern to his motor dealer business which has operated for 6 years without any concern or complaint.

In cross-examination the Applicant advised he was aware that the sole proprietorship and the corporation had registered at separate times and were separate entities and that he understood the distinction between them. He claimed he had not declared bankruptcy in the name of the sole proprietorship; such had been done by the Trustee-in-Bankruptcy. At the time of swearing the Information, the Applicant testified he had stopped working and was therefore unemployed. He acknowledged that his businesses continued to operate and that he had not identified his trucking business, ANA Logistics, to the Trustee-in-Bankruptcy. He re-iterated that the bankruptcy was made in his personal capacity. In response to questions as to why he had not yet been discharged, despite the usual process of a first time bankrupt receiving a discharge within months of his/her bankruptcy, the Applicant advised he believed that others were responsible for his financial losses and, as a result, continued to refuse to make payments as required to discharge the bankruptcy.

The Applicant admitted that his purchase and sale of the Mazda had taken place in 2008, almost one year after declaring bankruptcy.

THE LAW

Section 5, Subsection (1) (a) and (b) of the Act read as follows:

An applicant is entitled to registration or renewal of registration by the Registrar except where,

- (a) having regard to the 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;

The onus is on the Registrar to prove his case on a balance of probabilities.¹⁴ The Tribunal's role is to determine from the evidence whether there exist reasonable grounds to conclude the Proposal of the Registrar should be upheld or not.¹⁵

¹² Exhibit 3

¹³ Exhibit 4

¹⁴ *F.H. v. McDougall* [2008] SCC 53

¹⁵ *Ontario (Motor Vehicle Dealers Act, Registrar) v. Khan* [2007] O.J. No. 1459

DECISION AND ORDER

The evidence, including the Applicant's own submissions, made it clear that he fails to recognize the relevance of his bankruptcy on his on-going fitness for registration as a dealer/salesperson under the Act. It appears he also continues to deny the effect of that bankruptcy on his other business activities.

The Tribunal is also concerned that the Applicant remains adamant that, notwithstanding the clear wording contained in the 2008 and 2009 registration applications requiring disclosure of any personal bankruptcy, he misled the OMVIC Office by falsely declaring there was no bankruptcy. In responding with a "no", he went beyond a mere refusal to disclose; instead his response was false and misleading. So too were the sworn statements he provided to the Trustee-in-bankruptcy averring ANA Autos Sales had not operated since July 2007 and his failure to advise the Trustee of the existence of what, at this Tribunal, he declared was his principle source of income, being ANA Logistics.

The Tribunal concludes from this past conduct that he is, at best, unwilling to be governed by the regulatory authority of OMVIC.

The Tribunal concludes that there was a clear attempt to erase the salvage disclosure information on the Bill of Sale document for his purchase from the auction of the Mazda. A review of the document leads to no other conclusion and the Tribunal rejects the Applicant's assertion that the failure to clearly see the disclosure is the result of some printing weakness. It finds this also demonstrates a disregard for veracity and honesty in business affairs.

Based on the above findings the Tribunal does not hesitate in finding that the Applicant has proven himself to be ungovernable and is quite willing to provide false and misleading information if and when it suits his purpose.

The Tribunal also accepts the notion that, by remaining an undischarged bankrupt and continuing to operate as an officer and director of a corporation and continuing to enter into trades, he not only would appear to be in breach of the *Bankruptcy and Insolvency Act*¹⁶ and the *Business Corporations Act*,¹⁷ but also thereby poses a significant risk to consumers who enter into transactions with him as a consequence of their having no recourse to sue a bankrupt under the legislation. For other reasons he has determined that this situation is preferable to paying off the amounts necessary to achieve a discharge from the Trustee-in-Bankruptcy. As a consequence, the Tribunal finds that the Applicant has purposely placed himself clearly within the ambit of section 5(1)(a) of the Act.

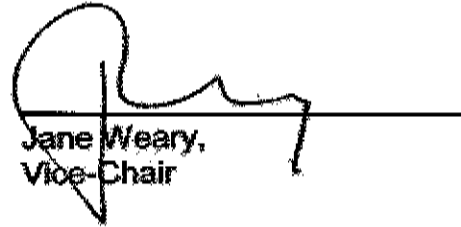
Therefore by virtue of the authority vested in it under section 7(4) of the *Motor Vehicle Dealers Act*, the Licence Appeal Tribunal directs the Registrar to carry out his

¹⁶ R.S.C. 1985, c. B-3 see sections 11.1, 69.3 and 198

¹⁷ R.S.O. 1990, c. B.16 see Section 118

Proposal dated April 20, 2010 originally to Revoke, but now to Refuse the Registration of Mohammad Hameed o/a ANA Auto Sales.

LICENCE APPEAL TRIBUNAL



Jane Weary,
Vice-Chair

Released: February 2, 2011

The hearing was recorded. Transcripts can be made available at your expense. The period to appeal a decision to the Ontario Superior Court of Justice or Divisional Court (<http://www.ontariocourts.on.ca/>) 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 <http://www.lat.gov.on.ca/> within three weeks time. The decision may also be available on Quicklaw at a later date.