

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



SAFAR ALI KHALIFEH/ MVDA

APPEAL FROM A PROPOSAL OF THE REGISTRAR UNDER THE *MOTOR VEHICLE DEALERS ACT, 2002 S.O. 2002, c. 30*

TO REFUSE REGISTRATION

TRIBUNAL: DONALD BENNINGER, Presiding Member

APPEARANCES SAFAR ALI KHALIFEH, representing himself

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

DATE OF HEARING: September 26, 2011

Toronto

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 under the *Motor Vehicle Dealers Act, 2002* (the "Registrar" and the "Act" respectively). The Notice of Proposal dated January 4, 2011, and The Notice Of Further And Other Particulars dated April 8, 2011, proposed to refuse the registration of Safar Ali Khalifeh as a motor vehicle salesperson (the "Applicant"), under the Act.

The Registrar's proposal is brought pursuant to section 9 of the Act as read with section 5. (1)(b) and section 6.(1) of the Act.

The reasons given by the Registrar in his proposal state 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 Registrants be financially responsible in the conduct of business and that they carry on business in accordance with the law and with integrity and honesty. Safar Ali

Khalifeh's past conduct and financial position are inconsistent of the Act, and therefore warrants disentanglement to registration under the Act.

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

1. Safar Ali Khalifeh (the "Applicant") falsified his assets when completing his application for credit and borrowing funds from several financial institutions.
2. The Applicant filed an assignment for bankruptcy with total liabilities amounting to \$367,662.69.
3. The reason for the bankruptcy was overseas investment went bad, Iranian investment in the petroleum and construction failed and the Applicant lost his investment.
4. The Applicant discharge hearing was adjourned and suspended for one year conditional on payment of \$150,000.00 and provide consistent information and documents regarding credit applications and the investments to the court. To date he has not complied with the court order.
5. The Applicant has a gambling addiction and has requested to be placed on the self-exclusion list and release at the slots.

EVIDENCE

The evidence introduced by the Registrar consisted of the Book of Documents Exhibit #3 and Exhibit #4 and oral testimony from Laura Halbert, Director of Compliance.

The evidence introduced by the Applicant consisted of a one page document Exhibit #5 and the oral testimony of the Applicant.

The witness for the Registrar was Laura Halbert who was affirmed and testified that she is the Director of Compliance since 1997 and oversees field inspectors with OMVIC. She explained that OMVIC is a not for profit organization delegated the responsibility of administering the Ontario Motor Vehicle Dealers Act since 1997. She continued stating that OMVIC is responsible for Investigations of non-compliance, inspections, complaint handling, investigations and the regulation component of the Act. She explained that the Act is a consumer protection statute.

Ms. Halbert reviewed, in detail, the documents in Exhibit #3 and Exhibit #4 testifying that the Applicant had been previously registered as a salesperson and as a dealership under the Act and was an officer and director of HPA Auto Sales Ltd., an auto dealership. Ms. Halbert testified she was familiar with the Applicant's application for registration and the Registrar's proposal to refuse registration.

She stated the issues for the Registrar were the un-discharged bankruptcy, the Applicant's gambling, the discrepancies on his applications for credit, his mental health stability and his assets of \$12,000.00. She explained the findings of the Superior Court of Justice expressing grave concerns in 2006 regarding the Applicant's fraud and the condition given by the court for the payment of \$150,000.00 within one year. She stated that to date none of the funds have been re-paid to the creditors as ordered by the court. This she stated shows his unwillingness to be governed as well as his disregard for the law.

Ms Halbert reviewed the Applicant's history with OMVIC outlining his ownership of a dealership, his salesperson experience with other dealerships. In her testimony, Ms Halbert advised the Tribunal the issue in this case is not the Applicant's completion of the application for registration as a salesperson but his lies on his application for credit from financial and communication institutions. In total there were twenty-one institutions from which the Applicant obtained \$367,562.69. This is the same amount as the declared amount of the bankruptcy. To date he has not re-paid them.

In trying to obtain the funds from the banking institutions, the Applicant was required to bring a letter from his employer stating his annual income. The Applicant convinced his employer to state in this letter that his income was more than three times higher than his actual income, which was around \$23,500.00. Ms Halbert stated this cannot be considered as acting with honesty and integrity and in a financially responsible manner.

She further stated that in 2005 the Applicant transferred his portion of the ownership of his home to his wife. The home at this time was estimated to be worth \$313,000.00. She added that when the Applicant completed the applications for credit, he declared this house to be his personal asset when the truth was he had only \$12,000.00 in assets. She contended that this is fraudulent and not acting with honesty and integrity.

Ms Halbert reviewed the documents from the trustee in bankruptcy to numerous financial institutions stating the date of bankruptcy was February 27, 2008 and she questioned whether the transfer of the home was to protect it from creditors. She further testified that the Applicant had completed a Request to be placed on the Self-Exclusion List and Release in 2008 so that he could no longer go to the casino to gamble. She stated he gambled hoping to win but instead lost all his savings. This she suggested is not being financially irresponsible.

Ms. Halbert testified that the Applicant's mental health is a concern to the Registrar as it appears his depression is getting worse so the Doctor had to adjust his medication and add another antidepressant.

She concluded her testimony stating OMVIC recognizes bankruptcy can occur but in this case it is the circumstances that gave rise to it that is of concern. She finds how the Applicant has dealt with the court order from the Justice disturbing. She stated the public need to have confidence that the people who are registered operate within the law.

In her closing statement, she testified the Registrar does not believe the Applicant would conduct himself with financial responsibility and act with honesty and integrity and in accordance with the law in the automotive business and thus the proposal to refuse registration.

The Applicant was sworn and testified that he previously had a licence with OMVIC. He stated he is not happy with his medical condition and his depression is not good. He advised the Tribunal he had not been very successful in business, as he did not have enough experience when he started the dealership with two other partners. However, he continued he was successful as a salesperson and that he spent several years with one dealership. After that he went to another dealership as a salesperson, worked at Coffee Time part-time and bought and sold vehicles on his own. During this time he thought about the investment business and the money he could make.

He testified he spoke to friends and a financial advisor who encouraged him to invest in the petroleum and construction business in Iran. He stated his friends told him to borrow the money from the bank and when his investment did well repay the bank. So he borrowed money and used his line of credit to send money with his relatives to invest in Iran. He would send 15 to 20 thousand dollars at a time with family and friends who were travelling to Iran. They would then invest it for him. In total he testified he sent about \$340,000.00.

He stated the economy went bad and he lost all his investments. Also he stated he received bad advice from his friends and financial advisor and he made a wrong decision. He testified that the bank requested a letter from his employer regarding his salary and he was making over \$23,000 and his wife was making significantly more; so he told his employer to add both salaries and put that amount in the letter to the bank. He stated he did not see that as lying because that was the amount of money coming into the home. The employer provided the letter. Shortly after that, the economy went bad and he lost everything. He subsequently developed health problems.

The Applicant testified that he did not lie on his application for credit because if he and his wife split up he would be entitled to half the proceeds from the house.

The Applicant claimed the Judge at the court did not understand his situation that he had no documents to show his investments or the losses that occurred. He did present the Tribunal with a document showing his losses at \$340,000.00 but this document was a translation of another document written in Persian and lacked the detail necessary to demonstrate the original value invested, the name of the stocks and the corresponding losses.

During cross-examination, Counsel for the Registrar questioned the authenticity of the document and the Applicant responded that it was all he could get.

The Applicant testified that he withdrew about \$30,000.00 from his bank savings, which he lost at the casino over a six month period. He stated he thought he would win and recover some of his losses. But this ended in complete failure and in his bankruptcy. He

stated his wife and friends told him to stay away from the casino and he decided to be placed on the self exclusion list. He concluded his testimony stating he does not want to go on welfare.

During cross-examination, the Applicant stated that he was buying and selling cars on his own. When questioned by the Tribunal what this meant, he described "curb sliding". When asked about offering some redress to his creditors as ordered by the court, he stated financially I cannot do it and his wife is not prepared to re-finance the house.

THE LAW:

The *Motor Vehicle Dealers Act 2002* (the 'Act'), states as follows:

5(1) An applicant is entitled to 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;

ISSUE:

The first issue in this case is whether or not the past conduct of the Applicant would afford reasonable grounds for the belief that the Applicant cannot reasonably be expected to be financially responsible in the conduct of business.

The second issue is whether or not the Applicant would not carry on business in accordance with the law, with honesty and integrity.

FACTS FOUND PROVEN:

The facts found proven by the Tribunal are as follows:

1. The Applicant applied for a transfer of his registration as a motor vehicle salesperson from one dealership to another on or about July 28, 2010. He was originally registered under the Act on or about March 30, 2001.
2. The Applicant was registered as a motor vehicle dealer HPA Auto Sales Ltd. from March 2001 until March 2002.
3. The Applicant was an officer /director of HPA Auto Sales Ltd.

4. The Applicant on his application for transfer of his registration declared he had filed for bankruptcy.
 5. In February 2008, the Applicant filed an assignment for the bankruptcy with total liabilities amounting to \$367,562.69.
 6. The Applicant's reason given to his trustee for the bankruptcy stated his overseas investments went bad. He invested his money in the Iranian stock market in the petroleum and construction industry.
 7. In order for the Applicant to invest in the Iranian stock market he utilized his line of credit and completed numerous applications for credit from numerous financial institutions.
 8. The Applicant while completing these applications in 2008 declared he owned property evaluated at \$225,000.00. However, he had transferred the property to his wife in 2005.
 9. On the Statement of Affairs in Bankruptcy, section C the Applicant declared he had not sold or transferred any property in the five years prior to declaring bankruptcy. This was not true. He should have declared he had.
 10. In 2009 the Applicant began attending a casino hoping to remedy his financial concerns and he gambled away \$30,000.00 from his savings account.
 11. In January 2009 a discharge hearing was held in bankruptcy court. Due to the Applicant's gambling addiction the trustee opposed the discharge. The discharge was not granted.
 12. In January 2011, the bankruptcy court found the Applicant had obtained significant credit "by making material and fraudulent misrepresentations on credit applications" and ordered the Applicant to pay \$150,000.00 to his creditors. To date, he has not made any payments.
 13. In June 2010, the Applicant's doctor diagnosing the Applicant with depression and prescribed anti-depressants and wrote his depression has become quite resistant.
 14. In August 2010, the Applicant requested the casino to place him on the self-exclusion list and release at the slots.
 15. The Applicant in his testimony stated he had been buying and selling vehicles out of his driveway without a licence to do so.
 16. The Applicant has failed to comply with the Act.
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DECISION AND REASONS:

The onus falls upon the Registrar to prove his case on a balance of probabilities. The Tribunal is required to make an independent assessment as to whether or not the criteria for depriving the Applicant of the registration have been proven.

In considering the past conduct of the Applicant the Tribunal owes no deference to the deliberations of the Registrar. It must arrive at its own conclusion in an unfettered manner. As stated by the Divisional Court in *First Place Fine Cars Inc. and Dominic Cerullo v Ontario (Motor Vehicle Dealers Act)* (2007) O.J. 1043, "it is clear that the Registrar believes there are such grounds otherwise there would be no proposal. The question to be decided, in light of all the evidence, is does the Tribunal find there are reasonable grounds for this belief."

By withholding or falsifying information motor vehicle salespersons are in a position to take advantage of a vulnerable consumer and the public must have confidence that the salesperson will not put his own personal interests ahead of his responsibility to conduct business with honesty and integrity.

The Applicant, when completing his applications for credit and /or funds from numerous financial institutions, knew he had transferred his portion of the family home to his wife yet he declared it as a personal asset valued at \$225,000.00. The honest value of his assets were approximately \$12,000.00. During his testimony, the Applicant stated if he and his wife divorced, he thought he would get half the value of the home so that was why he placed the home as his asset.

The Applicant testified he borrowed the funds for the financial institutions to invest in the Iranian stock market, specifically petroleum and construction. He stated he sent funds with relatives and friends who were travelling to Iran to invest as he wished. There was no formal evidence presented to the Tribunal to demonstrate who had taken the money to Iran, what it was invested in or any paper transactions. The Applicant presented a translation of a document to the Tribunal that stated his loss was \$367,662.69. However its authenticity was at best questionable, as it did not demonstrate any of the dates, amounts or stocks purchased or how the stock had declined to zero. The Applicant advised the Tribunal he did not have any paper trail or evidence to provide to the bankruptcy court and he does not believe he can obtain any.

The Tribunal finds it incomprehensible that anyone would invest the stated amount of money in any stocks in any country without proof of the investment and financial records as to how the stock is performing.

The Tribunal also finds that there is more than sufficient clear and convincing evidence that the Applicant did not establish the appropriate safeguards to demonstrate that he acted in a financially responsible manner. In addition, the manner in which the Applicant deceived

the financial institutions to provide him with the financial resources to invest the stated amount is not acting with honesty and integrity and within the law. The Applicant advised the Tribunal that as a result of his losses in the stock market, he thought he could recover some of the money by gambling at the casino. In an attempt to do so, he withdrew \$30,000.00 of his savings and over a six month period lost it all. Then his wife and friends advised him he had an addiction to gambling and persuaded him to place himself on the self-exclusion list, which means he is not permitted in any casino in Ontario.

Although the Applicant's admission of being a gambling addict is commendable, his withdrawal of all his savings and gambling and losing that amount of money in a six month period cannot be considered by the Tribunal as acting in a financially responsible manner. The Applicant in his testimony and in answer to a question by the Tribunal stated he had been buying and selling vehicles at his driveway. Even though he previously held a dealership licence and a salesperson licence, he did not seem to be aware that he was not acting within the law and this conduct was illegal. It is the Tribunal's view that he ought to have known.

The MVDA is a public protection statute. In view of the Applicant's financial irresponsibility, lack of honesty and integrity and his conduct of not acting in accordance with the law, to permit the Applicant to be registered as a motor vehicle salesperson as a member of the motor vehicle industry would send the wrong message to the industry and to the public.

On the basis of the facts as found and the application of the law to those facts, the Tribunal finds that the past conduct of the Applicant, taken as a whole, does provide reasonable grounds to believe that the Applicant would not carry on business as a salesperson with financial responsibility, honesty, integrity and in accordance with the law.

DECISION:

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 proposal dated January 4, 2011 to refuse the registration of Safar Ali Khalifeh as a motor vehicle salesperson under the Act.

LICENCE APPEAL TRIBUNAL


Donald Benninger, Member

Released: October 12, 2011

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, will also be posted on the Licence Appeal Tribunal's website <http://www.lat.gov.on.ca/> in approximately two weeks time. The decision will also be available on Quicklaw at a later date.