

Licence  
Appeal  
Tribunal

Tribunal  
d'appel en  
matière de permis



HENRY OLIHA

## AMENDED DECISION

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

TO REFUSE REGISTRATION

TRIBUNAL: DONALD BENNINGER, Member

APPEARANCES: HENRY OLIHA, Applicant, representing himself

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

DATE OF  
HEARING:

October 22, 2010

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 (the "Proposal") issued by the Registrar under the *Motor Vehicle Dealers Act, 2002* (the "Registrar" and the "Act" respectively). The Notice of Proposal dated June 17, 2010, proposed to refuse the registration of Henry Oliha (the "Applicant") as a motor vehicle salesperson under the Act.

The Registrar's Proposal is brought pursuant to section 8 of the Act as read with section 5.1 and section 6 of the Act.

The reasons given by the Registrar in his Proposal are 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 Applicants be financially responsible in the conduct of business and that they carry on business in accordance with the law and with integrity and honesty. Henry Oliha's past conduct is inconsistent with the intention and objective of the Act, and therefore warrants disentanglement to registration under the Act.

In support of the Registrar's Proposal the following particulars are stated:

1. On or about June 5, 2009, Henry Oliha (the "Applicant") applied for registration as a motor vehicle salesperson. The Applicant had proposed to work for Joseph Ogbebor o/a Kenjo Ventures.
2. A credit check revealed the Applicant has a number of unpaid and written off debts and a substantial unpaid collection to MBNA MasterCard in excess of \$7,000.00.
3. On the June 5, 2009 individual application, question 9 of section E asks:

"Have you ever been found guilty or convicted of an offence under any law or are any charges pending? (This includes those instances where a conditional or absolute discharge has been ordered). If "yes" list all charges and/or the conviction, and the circumstances surrounding each.

The Applicant answered "Yes" and disclosed the following:

"-Conspiracy to commit an indictable offence S. 465(!) (c) CCC  
-Attached is the court decision-A conditional discharge"

The Applicant attached a copy of his probation order with the application.

4. A criminal search for applicant revealed the following:
 

November 21, 2008 Brampton	Conspiracy to Commit Fraud over \$5,000.00 SEC 465 (1) (A) CC	Conditional Discharge & Probation 12 Mos"
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5. At the time of the June 5, 2009 application, the Applicant was on probation which did not expire until November 21, 2009.
6. On or about April 8, 2010, the Applicant submitted a Salesperson Notice, transferring his application to Phildoff Business Ventures Ltd.
7. On May 5, 2010, at the request of the Registrar, the Applicant submitted a new individual application for registration to work at Phildoff Business Ventures Ltd.
8. On the May 5, 2010 individual application, question 6 of section E asks :

"Have you ever been found guilty or convicted of an offence under any law or are any charges pending? If "yes" provide the circumstances and particulars surrounding each. Make sure to include those cases where a conditional, absolute discharge or pardon has been ordered /granted."

The Applicant said "Yes" and disclosed the following:

"On March 22<sup>nd</sup> 2007, police came to our house with a search warrant based on an arrest they had made on my brother (whom we both live in the same house) at somewhere in Mississauga and charged for fraud a few days prior. On searching the house, they found Identity card that was issued or made on different names with my picture. Based on that, the police charged me with conspiracy to commit fraud and possession of counterfeit mark despite my claim of being innocent. After a long battle in court, I was given a discharge on November 21<sup>st</sup>, 2008 as indicated on the document I had earlier sent to you. Thank you."

9. The Applicant provided the Registrar with written particulars surrounding his charges that were inconsistent with the particulars obtained by the Registrar from the Peel Regional Police.
10. Michael Oliha, the Applicant's co-accused in relation to the November 21, 2008 finding of guilt, was also found guilty of Conspiracy to Commit Fraud over \$5,000 and received a conditional discharge and 12 months probation.
11. Michael Oliha paid the Applicant's processing fee for the June 5, 2009 individual application.
12. On or about June 2, 2008, Michael Oliha was charged with seven (7) counts of buying/selling vehicles without the benefit of registration pursuant to section 3 of the Motor Vehicle Dealers Act. On or about June 23, 2008 Michael Oliha plead guilty to two (2) of the counts, received suspended sentences for two (2) of the counts and the other three (3) counts were withdrawn.
13. Michael Oliha is an interested person as defined under the Act, in relation to the Applicant.
14. Henry Oliha has failed to comply with the Act, in particular, section 6.

## THE EVIDENCE

The evidence introduced by the Registrar consisted of a Book of Documents, (Exhibit #3) and the oral testimony of Mary Jane South.

The evidence introduced by the Applicant was his own testimony.

### Mary Jane South

The witness for the Registrar was Mary Jane South, who, during her affirmed testimony, stated that she is currently the Deputy Registrar of the Ontario Motor Vehicle Industry Council ("OMVIC"), which position she has held since 1997. Her duties include overseeing the registration of dealers and salespersons under the Act. She explained that OMVIC is a not-for-profit organization and has been delegated with authority to administer the Act. She explained that the Act is a consumer protection statute.

Ms. South reviewed, in detail, the documents contained in Exhibit #3. She testified that she was familiar with the Applicant's application for registration and the Registrar's Proposal. She stated that the application is seen by the Registrar as the first test of honesty and integrity of an aspiring applicant. She stated the Applicant's lack of detail and non-disclosure of all the details regarding the circumstances surrounding his charges were of concern to the Registrar. She testified that the Applicant's version of the circumstances was much different than that of the Peel Regional Police report. She stated that on his first Individual Application for registration as a salesperson dated June 5, 2009, the Applicant did declare he had been charged and convicted, but the details he submitted were not honest and in addition he did not declare his credit debts and the circumstances around his

charge of fraud over \$5,000. She stated she believes the police report, as it was used in court and the Applicant agreed, by his guilty plea, with the facts from the police synopsis. Ms. South testified that on May 4, 2010 the Applicant advised OMVIC that he had found another possible employer because the previous one indicated on his earlier application was no longer registered or in business. She advised the Tribunal it is this individual's application for registration that is the matter of this hearing.

Ms. South testified that the Applicant had successfully completed the compulsory Georgian College Motor Vehicle Salesperson course. She stated during the course the participants are taught the law and the ethics related to the statutes and the importance of disclosure to the Regulator. Thus the Applicant ought to have known to disclose all the information to the Registrar. She stated instead he chose to deliberately withhold critical information from the Registrar.

Ms. South reviewed Exhibit #3 Tab# 10 stating the Applicant's credit rating is extremely poor as he owes approximately \$7,000.00 to numerous establishments and some have been written off as not collectable. She stated some were forged money orders and this conduct is not acting with honesty and integrity. She testified the Applicant had instruments of forgery and this was a well organized fraud organization that had committed extensive frauds.

She stated that another area of concern to the Registrar was on the individual application where the Applicant checked off "yes" to the question "will you be in charge of day to day operation?" She indicated that with the Applicant's previous charges the Registrar would not want the Applicant holding that responsibility. She also testified that the Registrar believes the Applicant by his offences has shown a lack of honesty and integrity and that he will not comply with the law. The failure of the Applicant to honestly and fully disclose the circumstances around his criminal convictions is a concern. Another concern is the Applicant's financial irresponsibility. Ms. South concluded her testimony stating that the Registrar does not believe the Applicant would act with honesty and integrity and in accordance with the law in the automotive business, so the proposal was issued .

### The Applicant

The Applicant was sworn in and testified that he completed and signed the individual application form for registration as a motor vehicle salesperson. He testified that he accepts the fact that the criminal record is his responsibility. He advised the Tribunal he is not a bad person but fell in with the wrong crowd.

The Applicant stated that he needs to be given a second chance because he is a changed person. He stated, if given a chance, he would move out of his brother's house where he rents a room because at the present time he cannot afford to live anywhere else. To rent from his brother is his only financial alternative.

The Applicant testified he got into a credit and financial troubles after his mother passed away and he was going to school. He stated he was receiving OSAP but it was not enough

so he used credit cards to supplement his income. He stated that he made a mistake while filling out the individual application for registration as a salesperson when he checked off the answer to question # 3 indicating he would be in charge of the dealership. He stated he should have checked the "no" box instead of the "yes" box because he will not be in charge of the dealership. In closing, the Applicant testified that he has worked hard at school and now he hopes to get employment and get out of financial difficulty.

During cross-examination the Applicant stated he is still in financial difficulty and still living at his brother's house but when he gets a job he will move out. He stated if he had not been living at his brother's house he would not have been involved with the charges and the convictions. He stated he was not aware of the fraud occurring until the police arrived and arrested him. He maintained that the fake I.D. cards with his picture on them and the items used to make them were not in his room. He stated he was advised by his lawyer to plead guilty to the conspiracy to commit fraud in court. On questioning about his probation the Applicant stated it ended in November 2009 and he has not been in trouble since. He stated that he needs an opportunity to prove himself.

## THE LAW

The Act states as follows:

- 5.1 If an applicant for registration or renewal of registration does not meet the prescribed requirements, the registrar shall refuse to grant or renew the 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 ground 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 make a false statement or provided 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.

**ISSUE**

The issue in this case is whether or not the past conduct of the Applicant affords reasonable grounds for the belief that the Applicant will not carry on business in accordance with the law and with integrity and honesty.

**FACTS FOUND PROVEN**

The facts found proven by the Tribunal are as follows:

1. The Applicant applied for registration as a motor vehicle salesperson on or about June 5, 2009. He proposed to work for Joseph Ogbemor o/a Kenjo Ventures.
2. A credit check revealed the Applicant has a number of unpaid and written off debts and a substantial unpaid collection to MBNA MasterCard in excess of \$7,000.00.
3. On the Applicant's June 5, 2009 individual application form the Applicant answered question 9 section E indicating he had been found guilty and convicted under the law and disclosed the following:  
"Conspiracy to commit an indictable offence S. 465(1)(c)CCC  
Attached is the court decision-A conditional discharge"

The Applicant attached a copy of his probation order with the application.

4. A criminal history search for the Applicant revealed he was convicted on November 21, 2008 of Conspiracy to Commit Fraud over 5,000.00 and was given a Conditional discharge and 12 months probation.
5. At the time of the June 5, 2009 application, the Applicant was on probation which did not expire until November 21, 2009..
6. On or about April 8, 2010, the Applicant submitted a salesperson Notice, transferring the application to Phildoff Business Ventures Ltd.
7. On or about May 5, 2010, at the request of the Registrar, the Applicant submitted a new individual application for registration to work at Phildoff Business Ventures Ltd.
8. On the Applicant's May 5, 2010 individual application question #6 asks:  
"Have you ever been found guilty or convicted of an offence under any law or are any charges pending? If "yes" provide the circumstances and the particulars surrounding each. Make sure to include those cases where a conditional, absolute discharge or pardon has been ordered / granted"

The Applicant answered "Yes" and disclosed the following:

“On March 22nd 2007, police came to our house with a search warrant based on an arrest they made on my brother (whom we both live in the same house) at somewhere in Mississauga and charged for fraud few days prior. On searching the house, they found identity card that was issued or made on different names with my picture. Based on that, the police charge me on conspiracy to commit fraud and possession of counterfeit mark despite my claim of being innocent. After a long battle in court, I was given a discharge on November 21st, 2008 as indicated on document I had earlier sent to you. Thank you.”

9. The Applicant provided the registrar with written particulars surrounding his charges that were inconsistent with the particulars obtained by the Registrar from Peel Regional Police, in that there were charges for eleven fake identity cards with the Applicant's picture but with different names on them. Also the police report stated the Applicant was in possession of materials and tools to produce fraudulent identity cards..
10. The Applicant lives with the co-accused and is dependent upon him for accommodations and financial assistance.
11. The co-accused has demonstrated conduct that is not acting with honesty and integrity and within the law not only with his conspiracy to commit fraud and the convictions but also his actions leading to the charges and conviction of buying and selling vehicles without the benefit of registration under the Act.
12. The Applicant has failed to comply with the Act.

## ANALYSIS

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 the criteria for depriving the Applicant of registration has been proven, showing no deference to the Proposal of the Registrar.

Whether or not the Applicant provided correct information to the Registrar is a crucial matter in assessing the honesty of an applicant, as this information is clearly intended to be relied upon by the Registrar. If any information is intentionally concealed, or if false information is given, the Registrar has good reason to have serious concerns that the Applicant will withhold information or provide false information in the future in his dealings with the Registrar or with others and thus, perhaps, with members of the public. A motor vehicle salesperson deals with members of the public who are purchasing or selling products of substantial value, and who depend upon the salesperson not to misrepresent the value or quality of the vehicles. 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.

In this case, the Applicant put his own interests first by not providing the Registrar with the honest version of his criminal conduct. Instead he minimized his involvement by withholding details of the circumstances around his charges and convictions and blamed his brother for the police action which led to his charges. The Applicant's guilty plea in court means that he concurred with the information contained in the police report. The Tribunal accepts the police reports as fact.

In order for an applicant to be registered as a motor vehicle salesperson under the Act, it is reasonable to expect an applicant to act with financial responsibility. In this case, the Applicant has numerous unpaid and written off debts and a substantial unpaid collection to MBNA MasterCard in excess of \$7,000. The Applicant testified these debts were due to him going to school, but the Tribunal is convinced an alternative such as part-time employment would have been a better choice rather than over-extending his credit cards. The Tribunal commends the Applicant for attempting to improve his education but finds the Applicant's conduct as not acting with financial responsibility.

In summary the Tribunal finds that there is sufficient, clear and convincing evidence of the Applicant's deliberate intent to in the omission or in the provision of inaccurate information regarding his recent charges and the circumstances leading to the charges in his individual application. The Applicant's charges and convictions do not convince the Tribunal that the Applicant's future conduct would be in accordance with the law or that he would be acting with honesty and integrity when dealing with the public as a motor vehicle salesperson.

The misuse of the credit cards and the significant amount of unpaid or written-off debts lead the Tribunal to believe that the Applicant will act in business with financial irresponsibility.

The Applicant is presently living with the co-accused. The criminal conduct of the co-accused not only regarding the conspiracy to commit fraud but also his charges of buying and selling vehicles without registration are of concern to the Tribunal. The Tribunal finds the co-accused a person of interest under the Act.

With regard to the co-accused, the Tribunal finds that he is in part responsible for the Applicant's conduct of not living in accordance with the law. The co-accused has been charged and convicted of fraud over \$5,000. In addition he has been charged under the Act with buying and selling vehicles without registration. The Tribunal understood the reason for the Applicant living with his co-accused to cut costs, but this has not been a healthy environment from a legal perspective for the Applicant. The Tribunal finds the conduct of the co-accused to be unacceptable and finds that it demonstrates that he would not assist the Applicant in carrying on business in accordance with the law and with integrity and honesty.

The Act is a public protection statute. The Applicant's lack of honesty and integrity and his conduct of not acting in accordance with the law, as well as his financial irresponsibility clearly demonstrate an applicant not deserving of registration. To permit the Applicant to



be registered as a motor vehicle salesperson and as a member of the motor vehicle industry would send the wrong message to the industry and to the public.

The Applicant's past conduct and his non-disclosure to the Registrar of the details of his criminal history and the circumstances around them demonstrate he did not act with honesty and integrity and within the law during the application for registration process

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 honesty, integrity and in accordance with the law. The appeal is dismissed.

## DECISION

Therefore, by virtue of the authority vested in it under section 9(5) of the Act, the Tribunal directs the Registrar to carry out his Proposal dated June 17, 2010, to refuse the registration of the Applicant as a motor vehicle salesperson under the Act.

LICENCE APPEAL TRIBUNAL

  
Donald Benninger, Member

*RELEASED: November 3, 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 (<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> in approximately three weeks.