

Licence Tribunal  
Appeal d'appel en  
Tribunal matière de permis



DATE: 2015-04-24  
FILE: 9116/MVDA  
CASE NAME: 9116 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 Revoke Registration

Ikechukwu Nwaukoni o/a Zion Auto Sales

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

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### REASONS FOR DECISION AND ORDER

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**ADJUDICATOR:** Terrance Sweeney, Vice-Chair

**APPEARANCES:**

**For the Appellant:** Self-represented

**For the Respondent:** Michelle Samaroo, Counsel

Heard in Toronto: February 16, 2015

## REASONS FOR DECISION AND ORDER

### BACKGROUND

The Appellant appeals from a Notice of Proposal (the ‘proposal’) by the Registrar under the *Motor Vehicle Dealers Act, 2002* (the “Act”), dated July 17, 2014, to revoke the registration of the Appellant as a motor vehicle dealer under the Act.

The Registrar, in his proposal, listed a number of facts and allegations in support of his decision. To provide context for the issues before the Tribunal, the facts and allegations set out in the proposal are noted as follows:

1. Ikechukwu Nwaukoni o/a Zion Auto Sales (the “Dealer”) is currently registered as a motor vehicle dealer and was originally registered as a dealer on or about October 1, 2009. He was previously registered as a salesperson on or about September 21, 2006.
2. The Dealer’s registration is subject to terms and conditions.
3. On or about December 7, 2012, the Discipline Committee of the Ontario Motor Vehicle Industry Council (“OMVIC”) issued a Decision against the Dealer for failing to provide the Registrar’s office with access to his books and records in contravention of the Code of Ethics Regulation (O. Reg. 332/08).
4. From approximately January 17, 2013 to March 20, 2013, a Representative of the Registrar’s office made numerous attempts to inspect the Dealer’s books and records, all of which were unsuccessful.
5. On or about May 29, 2013, a Notice of Proposal to Suspend the Dealer’s registration was issued against the Dealer for again failing to provide the Registrar’s office with access to his books and records.
6. The Dealer ultimately provided access to his books and records and the Notice of Proposal to suspend was withdrawn. An inspection of his books and records took place on November 4, 2013.
7. At the November 4, 2013 inspection, a Representative of the Registrar examined records for more than 25 transactions.
8. The findings of this inspection include, but are not limited to, incomplete bills of sale, material fact non-disclosures, failure to properly register vehicles in the Dealer’s name, As-is statements not initialled, no taxes paid for exports, vehicles sold for export but subsequently registered in MTO, multiple bills of sale for the same deal and missing bills of sale.

9. At the November 4, 2013 inspection, the Registrar's representatives requested documents for 22 other deals that were missing at the time of the inspection.
10. Notwithstanding that multiple requests for the documents were made, to date, the Dealer has failed to provide some of the documents.
11. Between approximately November 2013 and February 2014, the Dealer operated from 310 Queen Street East and 14 Stafford Road in Brampton. These locations were not registered addresses for the Dealer contrary to section 4 of the Act and paragraph 21 and 11 of his terms and conditions.
12. The Dealer has failed to comply with the Act and regulations thereunder, in particular, sections 4 and 24 of the Act and sections 30, 39, 40, 42 and 51 of O.Reg. 333/08.
13. The Dealer has breached his terms and conditions, in particular paragraphs 9, 13, 14, 15, 18, 19, 20, 21, 22 and 30.
14. The Dealer has failed to comply with section 11 of the *Highway Traffic Act*.
15. The Dealer has failed to meet the test under section 6 of the Act.

Subsequent to the completion of the evidence and submissions on February 19, 2015, the Appellant requested leave, by Notice of Motion, to file additional documents and retained a paralegal to assist in this regard. The motion was scheduled and was heard on March 30, 2015. Neither the Appellant nor his representative attended and the Tribunal dismissed the motion.

## **DECISION**

The Tribunal has considered the evidence, the law and submissions of Counsel and the Appellant. The Tribunal has concluded that the past conduct of the Appellant affords reasonable grounds for belief that the Appellant will not carry on business in accordance with law and with integrity and honesty. The registration of the Appellant as a motor vehicle dealer will, therefore, be revoked for the reasons which follow.

## **EVIDENCE FOR THE REGISTRAR**

### **Louise Cohn**

Louise Cohn is a senior investigator at OMVIC. This is the designated administrative authority for the Act on behalf of the Province of Ontario. She has worked there since 1997. Her job is to conduct inspections to ensure that motor vehicle dealers comply with the Act and Regulations. She has conducted several such inspections over the

years. She knows the Appellant and his business. His file was handed to her in early 2013. During the first three months of 2013, staff at the Registrar's office had attempted, without success, to arrange a meeting with the Appellant to inspect his records. Finally, the Registrar issued a Notice of Proposal, in May 2013, to suspend the registration of the Appellant. It was only after that that she was able to meet with him.

#### November 4, 2013 Meeting

Ms. Cohn attended at the premises of the Appellant at 310 Queen Street East, Brampton. The Appellant showed up late. His records were in boxes, on the floor and on the desk. The sign was on the ground. The door to the premises was locked. She asked the Appellant for his payroll records. He said that he did not have a payroll. He let others use his registered identification number.

She noticed that in a lot of cases all three copies of the bill of sale were at the office which indicated that the Appellant was not giving a copy of the bill of sale to the purchaser as required.

The Appellant said that most of his sales were to customers in Nigeria. He would wait until the sale was completed there before he filled out the bill of sale.

She took the Appellant's records away with her to audit them.

#### December 2, 2013 Meeting

Ms. Cohn attended at 14 Stafford Street, Brampton. Neither this address nor the Queen Street East address was registered with OMVIC. She told the Appellant that he was required to notify OMVIC within five days of a change in address. Ms. Cohn said that he still had not filed with OMVIC. There appeared to be no electricity or heat in the trailer at this location. The Appellant said he would run an extension cord into the trailer.

She handed him a letter, dated December 2, 2013, asking about 22 deals missing from his records. This letter also asked for 5 transactions for 2013 where he paid for cars from his bank account and deposited the money he received from the sales in his bank account. Ms. Cohn testified that as of the date of the hearing he had not fully complied with this request.

#### February 2, 2014 Meeting

Ms. Cohn reattended at 14 Stafford Street.. She reminded the Appellant again to file his change of address with OMVIC. There still was no sign at the premises. Ms. Cohn told him that even though he was selling motor vehicles to Nigerians, he still needed to have a bill of sale to reflect that. She showed him the file where he had bought motor

vehicles from Manheim Auto Auction. There was no excuse as to why he did not have a bill of sale between him and the Nigerian purchasers of these cars as they were purchased by him from Manheim Auto Auctions in April 2013.

Ms. Cohn, during her testimony, described the Appellant's recordkeeping as "a disaster" and "horrible". She produced the records for a number of transactions (Exhibit 6, Tabs 5-29) and went through some of them.

The Tribunal will describe two of them which are typical of the group of documents filed.

#### The "R" Deal (Exhibit 5, Tab 11)

In this bill of sale, there was no address for the purchaser, R, no date of delivery, the salesperson's signature was missing, the balance due was blank and the sale was registered to one "O", not R.

#### JA Deal (Exhibit 6, Tab 21)

This was a sale of a 2002 Honda in 2012 to JA. There was no address for the purchaser on the bill of sale and nothing in the sale price column. Moreover, the vehicle was sold to a Mr. S. The bill of sale shows an odometer reading of 234,211 kilometres yet, the odometer reading on the bill of sale from Manheim Auto Auction to the Appellant shows an odometer reading of 312,010 kilometres.

### **Tim Hines**

Tim Hines is the manager of the complaints handling department at OMVIC. He has been employed there since 2001. His job is to oversee the complaint handlers.

He stressed the importance of accurate recordkeeping by motor vehicle dealers. The most fundamental duty of a motor vehicle dealer is to complete a bill of sale accurately. The Act is a public protection statute and a buyer is entitled to full and accurate disclosure. The Appellant's records, however, were "atrocious".

It was galling that they could not get a meeting with the Appellant until after the Notice of Proposal was issued in May 2013. When OMVIC finally got the records, they were incomplete and raised more questions than answers.

Mr. Hines said that the Appellant had breached conditions 9, 13, 14, 15, 18, 19, 20, 22 and 30 attached to his licence.

He confirmed that OMVIC only had one business address for the Appellant and that the Appellant never registered the other addresses from which he operated.

He referred to the Discipline Committee decision of December 7, 2012. The Appellant did not pay the fine within the 90-day period. He finally took the certification course nine months late.

Mr. Hines referred to Volume III (Exhibit 7). This consists of documentation for 25 transactions by the Appellant in 2013. These documents were delivered by the Appellant to OMVIC's office in August, 2014 in an obvious attempt to rehabilitate his case. They are different than those collected by his staff. There is no reason to think that any of the information in the documents was given to the purchasers.

Mr. Hines also reported that the Appellant had breached a Tribunal Order of November 6, 2014, after a pre-hearing, in which he was required to provide Counsel for the Registrar with documents by December 15, 2014. He failed to do so.

Mr. Hines also said that the Appellant has failed "miserably", is incapable and ungovernable. He has been given every opportunity to comply with the law but is unwilling to do so.

## **EVIDENCE FOR THE APPELLANT**

### **Ikechukwu Nwaukoni**

Mr. Nwaukoni came to Canada in 2002. He worked as a motor vehicle salesman for a couple of years before he got his motor vehicle dealer licence in 2009, subject to terms and conditions.

He explained that all of his books, at one time, were with his accountant who is based in Nigeria. He had difficulty contacting him which accounts for the delay in making his records available to the Registrar.

He deals in used cars and sells 300 to 400 a year. Many of the cars are shipped to Nigeria "as is" or broken down into parts and shipped that way. He waits until after the cars are sold before preparing a bill of sale.

He produced documents attesting to his health (Exhibit 8). In a letter dated January 15, 2015, a Dr. Mehta indicated that the Appellant suffers from stage 4 chronic kidney disease and diabetes.

On cross-examination, he had no answer as to why the bills of lading show only full cars and not dismantled ones. When asked as to why he did not comply with Ms. Cohn's requests, he said again that his books and records were with his accountant in Nigeria.

## THE LAW

Subsection 4(2) and paragraph 6(1)(a)(ii) of the Act read as follows:

4(2) A motor vehicle dealer shall not,

- (a) carry on business in a name other than the name in which the motor vehicle dealer is registered; or
- (b) invite the public to deal in a place other than the place that is authorized in the registration of the motor vehicle dealer.

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,
  - (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.

Ontario Regulation 332/08 contains the code of ethics for motor vehicle dealers. Subsections 4(1) and (2), 7(1) and 9(1) and (2) read as follows.

4(1) A registrant shall be clear and truthful in describing the features, benefits and prices connected with the motor vehicles in which the registrant trades and in explaining the products, services, programs and prices connected with those vehicles.

(2) A registrant shall ensure that all representations, including advertising, made by or on behalf of the registrant in connection with trading in motor vehicles, are legal, decent, ethical and truthful.

7(1) A registrant shall ensure that all documents used by the registrant in the course of a trade in a motor vehicle are current and comply with the law.

9(1) In carrying on business, a registrant shall not engage in any act or omission that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming of a registrant.

(2) In carrying on a business, a registrant shall act with honesty, integrity and fairness.

## ANALYSIS

The Registrar led a strong case in support of his Notice of Proposal. The Appellant did not provide a credible defence. In fact, he did not seriously dispute any of the allegations against him.

The Appellant has shown himself to be unable to do the simplest thing in terms of compliance with the Act and its regulations. For example, he failed to register his various business addresses with the Registrar despite repeatedly being told to do so. He thus breached section 4(2) of the Act and conditions 21 and 22 attached to his

licence. Similarly, he failed to obtain a sign, despite being warned. This breached condition 20 of his licence.

The Appellant treated his obligations under the Act, Regulations and his licence as optional. The Tribunal agrees with Mr. Hines that the Appellant is ungovernable. The Tribunal accepts the testimony of Ms. Cohn and Mr. Hines that his recordkeeping is “horrible” and “atrocious”. He breached condition 30 of his licence in that regard.

The Appellant did not respond fully to Ms. Cohn’s request for information about the 22 cars or the 5 transactions in 2013 in respect of his bank account. He did not comply with the 2012 Order of the Discipline Committee in a timely manner and he failed to comply with the Tribunal’s Order of November 6, 2014 Order requiring him to provide certain documentation. He appeared not to have any English comprehension issues that might have contributed to his noncompliance with licence requirements or OMVIC requests for information. He allowed others to use his registration identification number. He deceived Mr. S in the JA deal by failing to accurately state the odometer reading in the bill of sale to him: the bill of sale from Manheim Auto Auctions recorded a significantly higher number.

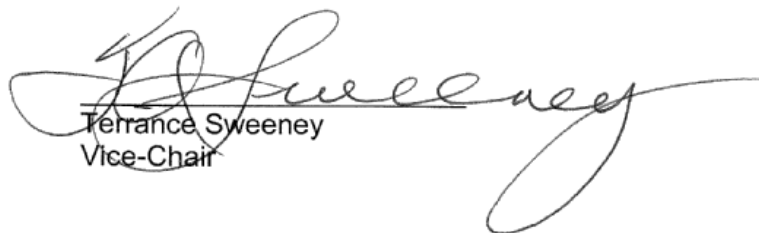
Each of these acts breaches the Code of Ethics in one way or another.

The foregoing evidence is sufficient for this Tribunal to conclude that the past conduct of the Appellant affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty.

## **ORDER**

The Tribunal orders the Registrar to carry out his proposal and revoke the motor vehicle dealer licence of the Appellant.

LICENCE APPEAL TRIBUNAL

  
Terrance Sweeney  
Vice-Chair

*Released: April 24, 2015*