

**LICENCE APPEAL
TRIBUNAL**

**TRIBUNAL D'APPEL EN MATIÈRE
DE PERMIS**



**Safety, Licensing Appeals and
Standards Tribunals Ontario**

**Tribunaux de la sécurité, des appels en
matière de permis et des normes Ontario**

Citation: Justin Bradley Moore o/a Bluewave Auto Sales v. Registrar, Motor Vehicle Dealers Act, ONLAT12094/MVDA

Date: 2019-10-18
File Number: 12094//MVDA

Appeal from the Notice of Proposal of the Registrar under the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, C. 30, Sched. B. to Refuse Registration

Between:

Justin Bradley Moore o/a Bluewave Auto Sales

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

DECISION AND ORDER

Adjudicator:

Patricia Conway, Member

Appearances:

For the Appellant:

Justin M. Jakubiak, Counsel

For the Respondent:

Bryant Greenbaum, Counsel

Court reporter:

Christopher Delic

Place and Date of Hearing:

Toronto, Ontario, in person
September 5, 2019

REASONS FOR DECISION AND ORDER

Overview:

- [1] The appellant is appealing to the Licence Appeal Tribunal from a Notice of Proposal issued by the Registrar on May 3, 2019 to refuse the appellant's application for registration under the Motor Vehicle Dealers' Act, 2002 (the Act) as a dealer, under the operating name Bluewave Auto Sales.
- [2] The Registrar's proposal to deny registration is based on section 6(1)(a)(ii) of the Act, which provides registration may be refused where there are reasonable grounds to believe, based on the past conduct of the appellant, that if registered as a dealer he would not conduct business in compliance with the law and with honesty and integrity. The Registrar finds its reasonable grounds for belief on the following:
- :
- (i) The appellant was convicted of being in possession of stolen property with a value of over \$5,000 on January 28, 2018.
 - (ii) The appellant originally lied to police regarding the circumstances of his purchasing the stolen property.
 - (iii) Not enough time has passed since that conviction to assure the Registrar that this offence was out of character and that the appellant can be trusted to operate lawfully and with honesty and integrity despite the conviction;
 - (iv) The appellant intends to operate as a dealer/sole proprietor so he will have no oversight or supervision to ensure he operates lawfully and with honesty and integrity.

Issue

- [3] Has the Registrar proven that the past conduct of the appellant establishes reasonable grounds to believe that if registered as a dealer the appellant would not operate lawfully and with honesty and integrity.

Standard of Proof

- [4] The Registrar's onus is to demonstrate that there is a reasonable basis for its belief. This requires less than proof on the balance of probabilities; the Registrar must show an objective belief based on compelling and credible evidence. (*Registrar, Alcohol and Gaming Commission of Ontario v 751809 Ontario Inc o/a Famous Flesh Gordon's*, 2013 ONCA 157). The Tribunal must make findings about the appellant's past conduct on the balance of probabilities and then determine whether these facts afford the Registrar a reasonable basis for its contention.

Result

- [5] For the reasons that follow, I set aside the Proposal of the Registrar and direct the Registrar to issue to the appellant a registration as a dealer under the Act, such registration to be subject to the following conditions:
- (i) The appellant will take and complete a management course;
 - (ii) The appellant will post a Letter of Credit in favour of the Motor Vehicle Dealers' Compensation Fund in the amount of \$10,000, to remain in place for two years from the opening of the appellant's dealership.

Evidence

- [6] The appellant is a 29-year-old man who for the last 4 years has been working full-time for a business called Al's Lube Service in Smithville Ontario which is owned by Alain Leblanc and his wife. Mr. Leblanc has a job elsewhere, so the appellant operates the business: hiring and firing, taking care of the premises, quoting jobs, ordering parts, dealing with customers. The repair and maintenance work for customers is done by the appellant and one other employee whom he hired. Mrs. LeBlanc is present during operating hours, working in the office. She prepares the bills, signs off on payments and receipts, and does the bookkeeping. Before this, the appellant worked as a tow truck driver. His principal interest is in repairing and refurbishing vehicles. He currently has about 5 vehicles on which he is working.
- [7] The appellant has decided to expand his interest in cars to becoming a registered dealer in used cars and trucks. He has arranged to rent premises behind Al's Lube, and to continue to help out Mr. and Mrs. Leblanc, at least during the early stages of his dealership. He will be limited by City bylaw to having a maximum of 4 or 5 vehicles on the lot at any time and hopes to sell up to 20 vehicles a year.
- [8] In September 2017, the appellant's younger brother established a landscaping business with a friend. The appellant, who has some funds resulting from the settlement of a claim for personal injury arising out of a motor vehicle accident of which he was the victim, wanted to help his brother. He found a used dump trailer with a hydraulic lift on Kijiji. He emailed the seller and arranged to meet him and view the trailer. After seeing it at the seller's house, he bought it for \$3,000. He was given an ownership document and brought the trailer back to his house where he parked it in his driveway. He installed a new battery to test the hydraulic lift. The following day, police came to his home and told him that a trailer had been reported stolen. They believed it was this trailer, because the owner's GPS had recently reactivated and indicated the stolen vehicle's location. The appellant showed the police his ownership document but when they remained unconvinced, he voluntarily assisted police to locate the vehicle's VIN number. This established that the trailer the appellant purchased was indeed the stolen vehicle.

- [9] The appellant was taken by police to the local police station. He made a statement regarding when and where he had met the seller and purchased the vehicle. The statement was false, as police determined by observing surveillance videos at the place he indicated he met the seller. The appellant stated at the hearing that he lied to police because he was afraid for his safety if he gave police the seller's address. The seller knew his name and where he lived. He feared that if he told police where to find the seller, the seller might come after him and break into his house. The following day he was summoned again to the police station. He met two different officers, one of whom he knew well as a customer of Al's Lube Service. The officers told him they knew his story was false. He cooperated fully from this point, told police the truth and a few days later took police to the seller's address.
- [10] He told the hearing that he pled guilty to possession of stolen property with a value over \$5,000 on his lawyer's advice in January 2018. The transcript of the plea hearing was submitted in evidence. It establishes the plea resulted from the appellant having told police on his second visit to the police station that he did not do his due diligence and he probably should have known that the deal was too good. The appellant was given a conditional discharge and 12 months probation. He was required to, and did, make a charitable donation after which his probation was non-reporting, i.e. he had no obligation to report to a probation officer. He made the donation immediately after he was sentenced. Since January 2018 to the present, therefore, he has been unsupervised. There have been no issues with his conduct for two years since the offence was committed.
- [11] The appellant called two witnesses to testify on his behalf. The first, Alain Leblanc, his employer at Al's Lube Service, described the appellant's responsibilities in terms that corresponded to the appellant's evidence. He said that he is aware of the conviction, but it has no effect on his opinion of the appellant as an honest person and an excellent employee. He believes him to be completely trustworthy and is happy to rent him premises for his dealership.
- [12] The appellant's second witness was Omar Amad, a friend who works at an autobody repair shop in Hamilton. Mr. Amad is also a registered salesperson under the Act. Mr. Amad stated that he is aware of the appellant's conviction, but he nonetheless trusts the appellant as a completely honest person and a hard worker on the basis of both their business interactions and their personal relationship. He stated that he would offer the appellant any assistance he might need in setting up and running a dealership.

Ms. Halbert, OMVIC deputy director

- [13] Ms. Halbert stated that the Registrar has proposed to refuse registration because the appellant has a recent serious conviction. He was either duped or took

advantage of a deal he knew was too good to be true. Either situation if repeated could lead to the appellant's harming the public. She is also concerned because the appellant has no track record in the industry and is intending to work alone. He will be the sole employee of the enterprise. She stated that the industry already suffers from reputational harm; to give the public more confidence in the industry the Registrar wants to enhance dealer professionalism. In the appellant's case, the Registrar wants to be sure that he is "worthy" to be a dealer. She conceded that the Registrar would not be as concerned about the appellant's application if he were applying to be a salesperson under an experienced dealer who could supervise him. She stated that the Registrar has considered the appellant's work experience, but that it is not very helpful since the work was not in a regulated industry. Ms. Halbert said that the Registrar has not considered the character reference letters provided by the appellant in arriving at its proposal but agreed that if the authors of the letters stated they were aware of the appellant's conviction when they wrote the letters, this would be in the appellant's favour. She stated that in the Registrar's view, the application is not timely; more time must elapse between the offence and the appellant's application so that the Registrar can judge whether the offence was an aberration, inconsistent with the appellant's character. She felt that the appellant should apply to be registered as a salesperson. After a period of time, he could apply to be registered as a dealer.

- [14] An OPP officer, Detective Horton, testified as part of the Registrar's case. He is the officer who charged the appellant and took his statement the day after the original two officers appeared at the appellant's home. Detective Horton testified that the appellant's statement to him was essentially the same as the one that he gave the two original officers, except that the appellant changed his evidence with respect to where he went to inspect and buy the vehicle. He stated that the appellant was cooperative and assisted him to locate the seller of the stolen vehicle.

Analysis

- [15] The Act is consumer protection legislation. Registration is a process whereby the Registrar ensures that someone who poses a danger to the vehicle-purchasing public of, for example, misrepresenting the history or value of a vehicle, thereby lying to or attempting to cheat them, is refused registration. The Act is also intended to ensure that a registrant cooperates with its regulator.
- [16] In determining whether the Registrar has proved its case, the Tribunal must consider all the past conduct of the appellant. When looking at the conviction, the Tribunal may not relitigate the issue of the appellant's guilt. However, the Tribunal can look at the circumstances surrounding the offence to give context to the appellant's actions. In addition, the Tribunal should look at the offence in the context of all of his conduct.

- [17] I agree with the Registrar that this was a serious offence. The appellant was foolish; he should have known better. He has some experience buying used vehicles; he knows the importance of due diligence, and he admitted that he failed to do it, which led to his guilty plea. The gravity of his offence is mitigated by his cooperation with police the second time he went to the police station, by his leading police to the seller's house, and by his guilty plea, which saved the justice system time and expense. He took full responsibility for his action and expressed remorse for his offence. Otherwise, his life has been blameless. Indeed, in my view it has been more than blameless. He stated in evidence that he wants to make someone else's life better and his past history supports this. He was trying to help his brother in his landscaping business when he started to search for a trailer. He has helped his employers run their business and intends to continue to help them. His character witnesses speak highly of his work ethic and his trustworthiness. In my view, these commendable traits indicate that as a registrant, he would want to help his customers find a suitable vehicle at an appropriate price. He would not put his desire for profit ahead of his customer's need for transparency and honesty in their interactions.
- [18] Counsel for the Registrar asked the Tribunal to find that the appellant lied in stating that he was afraid for his safety and that is why he lied originally to police about where he bought the trailer. I reject this submission, for two reasons: first, I found the appellant's account credible. He explained that he was afraid that if he led the first two officers to the seller's house, they would not protect him. He believed this because they bullied and hectored him, projecting that he was a criminal and thus undeserving of protection. He was genuinely worried that the seller, who knew his name and where he lived, might come after him, break into his house, and hurt him. The second set of officers at the police station the following day were laid back, and he knew one of them. He told them he was afraid, and felt reassured by them, so told them the truth and took them to the seller's house in an unmarked vehicle.
- [19] In addition, the appellant provided a very detailed written statement to the Registrar in his application. In that statement, he admitted lying to police and explained he lied because he was afraid: the same narrative he told at the hearing. I note that the Registrar's proposal to refuse registration is made on the issue of the appellant's having committed a serious criminal offence and having initially lied to police. The Registrar did not allege in its proposal that there was anything false in the written statement the appellant made in his application. Having accepted the appellant's written statement as truthful, counsel's submission at this point that the appellant was lying in the hearing is inconsistent with its earlier position and I find that it is not persuasive.
- [20] While the appellant has not worked in a licensed industry, he has worked steadily since leaving school, with the exception of a period of time he used to help his mother renovate her house for sale, and another period of time when he was

renovating his own house. He has some considerable expertise in repairing and rebuilding vehicles. He has to a substantial extent run the Leblancs' business for four years. He explained that the business does a variety of repairs, not just lubrication. Some of the repairs are relatively expensive and require estimating costs, identifying and ordering parts. He told the hearing that he learns from the internet, learns from mistakes, learns by reading up on what he needs to know. He also has friends such as Mr. Oman, who will offer him assistance if he needs it.

- [21] The evidence of Ms. Halbert appears to suggest that there is a different, higher test for being a dealer than for being a salesperson. This is not the case; the requirements to be met under the Act are the same whether the appellant applies to be a dealer or a salesperson. I acknowledge that the duties and responsibilities of a dealer under the Act are more numerous and onerous than those of a salesperson, but here the appellant proposes a very small dealership with himself as the sole salesperson, so the obligations of oversight and ensuring compliance with the Act by employees would not be present. Ms. Halbert's statement that the Registrar is seeking to improve its reputation with consumers and to promote professionalism within the industry is understandable and laudable. However, those objectives do not justify the Registrar in setting a higher standard of honesty, integrity and compliance with the law for registration as a dealer than as a salesperson, if this is what she was suggesting.
- [22] Counsel for the Registrar argued that not enough time has elapsed between the offence and today to satisfy the Registrar that the appellant's offence was an "outlier", that is, conduct inconsistent with the appellant's character, and not likely to be repeated. Counsel referred me to cases before this Tribunal discussing the issue. The cases also discuss other points: the length of the applicant's good conduct while registered before the offence; the steps taken toward rehabilitation after the offence. None of these cases is particularly apposite, and both counsel agreed that each case rests on its own facts. To the extent the Registrar asks that the Tribunal should set a specific period of time that must have elapsed after the offence before the appellant is entitled to registration, I find that sufficient time, two years, has elapsed since the offence. Counsel submitted that I should not consider the time the appellant spent on probation, as this was not unsupervised time because he knew that if he breached probation his conditional sentence might have been reconsidered. This knowledge, the Registrar submits, provided an extra incentive to the appellant to behave lawfully. That may be true, but in fact, the appellant was unsupervised during his time on probation and during that period he continued to work and at the same time developed his plans to open a dealership. I see no reason to exclude the appellant's time on probation in calculating how long it has been since the offence. Having considered the totality of the evidence, I am convinced that the appellant's behaviour in committing the offence was an aberration, inconsistent with his behaviour before and after and highly unlikely to be repeated. I have set out throughout this decision how I arrive at this conclusion: He has 29 years of a blameless life save for this mistake. He has worked hard throughout his adulthood; he is highly regarded by the people he

works for and works with; he took responsibility for his mistake and expressed his remorse. His plans are modest and he has the means to fund them. He conducted himself throughout the hearing with a candour, openness and geniality that are in stark contrast to his single mistake.

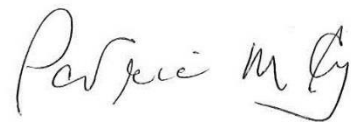
[23] I find that the Registrar has not established that it has reasonable grounds, based on credible and compelling evidence for believing that the appellant will not carry on business in accordance with the law and with honesty and integrity. I find that on all of the evidence the appellant is entitled to registration.

[24] The Registrar requested that if the appellant is to be registered as a dealer, this be made conditional on his completing a management course, and on his posting a Letter of Credit with the Motor Vehicle Compensation Fund of an amount of \$30,000, for two years. Appellant's counsel agreed with the first condition, but with respect to the second requested that the Letter of Credit be in the amount of \$10,000 bearing in mind the small size of the appellant's proposed operation. Based on the appellant's agreement, I will impose those two conditions.

Order

[25] For the reasons set out above, I direct the Registrar not to carry out its proposal. I also order that the appellant's registration be subject to two conditions: first, that the appellant shall take and complete a management course and second, that he posts a Letter of Credit in the amount of \$10,000 in favour of the Motor Vehicle Compensation Fund to remain in place for two years from the date of commencement of the dealership's operations.

LICENCE APPEAL TRIBUNAL



Patricia Conway, Member

Released: October 18, 2019