

Licence Tribunal
Appeal Tribunal
Tribunal matière de permis



DATE: 2013-03-21
FILE: 7581/MVDA
CASE NAME: 7581 v. Registrar, *Motor Vehicle Dealers Act 2002*

An Appeal from a Notice of Proposal by the Registrar, *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B – to Refuse Registration

Gregory A. Stevens

Applicant

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Keith Penner, Member

APPEARANCES:

For the Applicants: Self-represented

For the Respondent: Brian Osler, Counsel

Heard in Barrie, Ontario March 05 & 06, 2013

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, *Motor Vehicle Dealers Act 2002* (the "Registrar" and the "Act" respectively.) The Notice of Proposal dated August 01, 2013 proposed to refuse to grant the registration of Gregory A. Stevens (the "Applicant"), as a salesperson under the Act.

1. On or about April 25, 2012, the Applicant applied for registration as a motor vehicle salesperson under the Act.
2. The Applicant's original registration was revoked on October 31, 2006. He has not been registered as a salesperson since that time.
3. In the Notice of Proposal to Revoke Registration dated March 02, 2006, the reason given was that on an application for renewal, dated March 16, 2005, the Applicant had failed to disclose a conviction, pursuant to the Retail Sales Act, of wilful tax evasion.
4. On October 31, 2006 the Applicant withdrew an appeal of the Notice of Proposal to Revoke.
5. A Licence Appeal Tribunal Consent Order released on November 01, 2006, ordered that the proceedings in this matter be concluded and disposed of without a hearing on the basis of the terms set out in an attached "Schedule A". These terms and conditions were accepted by the Registrar and they constituted part of the Licence Appeal Consent Order. Term # 3 of this Order stated: "The Dealer agrees that the {Applicant} will have no interest or involvement, either directly or indirectly, in the operation or ownership of the Dealer".
6. On or about October 04, 2011, the Applicant pleaded guilty to making a false statement in connection with a motor vehicle registration, contrary to s. 9(1) of the *Highway Traffic Act*.
7. The Applicant failed to disclose this conviction in his Individual Application submitted on April 25, 2012.
8. When the Registrar's office requested particulars of any and all convictions, other than speeding tickets, the Applicant again failed to disclose information about his 2011 conviction.
9. In response to the Registrar's request for particulars the Applicant replied, with respect to the Licence Appeal Tribunal Consent Order, "the mandate from the tribunal was for me to give up my licence and to have nothing to do with the business operations of [North Shore Auto Sales]. I complied with all requirements.

THE CASE FOR THE REGISTRAR

Roy Vandermeer

The first witness for the Registrar, Mr. Roy Vandermeer, the Regional Director for Manheim Financial Services Canada (MAFS), provided a detailed account of how automotive dealers acquire used cars at auctions using the financial arrangements with MAFS. When the purchase of a vehicle is made, the dealer uses the MASF line of credit and has 90 days to repay. In the event that the automobile is sold sooner, then the dealer must notify and reimburse MAFS within 48 hours. As a security measure, MASF holds the vehicle registration until payment is made. This process, however, is easily circumvented, since it is relatively easy for the dealer to get a duplicate registration from MTO.

Mr Vandermeer gave extensive evidence concerning his business relationship with North Shore Auto Sales. A number of specific instances were cited and explained whereby this dealer purchased autos at auctions, then sold them shortly thereafter, acquiring duplicate registrations, but failed to either notify or repay MAFS within the 48 hour stipulated time period. This practice continued until North Shore Auto Sales owed MAFS an amount of around \$ 100,000. This debt remains outstanding.

MAFS finally succeeded in having fraud charges laid against the Applicant and Mr. Trevor McCaughey of North Shore Auto Sales. Subsequently, the fraud charges were dismissed but the Applicant and Mr. McCaughey both pleaded guilty to making a false statement in connection with a motor vehicle registration, contrary to s. 9(1) of the *Highway Traffic Act*, and both were fined.

The testimony of Mr. Vandermeer implied that, despite the dismissal of the fraud charges, the Applicant had engaged in shoddy business practices and conduct that resulted in a significant loss of money for MAFS and an abuse of the automobile auctions system.

Mary Jane South

The second witness for the Registrar was Mary Jane South, Deputy Registrar at OMVIC. In her evidence, Ms. South stressed that OMVIC relies on the accuracy and completeness of the information provided in the applications. She stated that this is an important test of the honesty and integrity of the applicant. She noted that full disclosure is required and she drew attention to question # 7 in Section E of the Individual Application where the applicant is asked have you ever been found guilty of an offence under any law, or are there any charges pending?

Ms South admitted that on occasion an applicant's previous file could be used to assist the applicant in completing the application, but OMVIC has no way of tracing the offences of all

previous registrants. Thus, she noted that the Registrar was not aware of the Applicant's conviction for filing a false statement. It was abundantly clear to the Applicant that he had an obligation to disclose this offence, but he did not.

Further, if he had not complied fully with the Consent Order of the Licence Appeal Tribunal to remain separate and apart from the operation of North Shore Auto Sales, he was required to disclose that as well. In this regard, in response to a follow up letter from OMVIC, as to what was expected, he replied with respect to the restraints imposed upon him in that Order by saying, "I complied fully with all requirements".

OMVIC considered the Applicant to be fully capable of understanding and responding to all the questions in the application form. When he made inquiries, OMVIC obliged him and on June 01, 2012, sent a letter stating succinctly and clearly that "full disclosure is required". The only exception to this requirement was speeding tickets. The Applicant's response to this further opportunity to disclose was, in OMVIC's view, to be vague and evasive.

Accordingly, since the Applicant failed to fulfill the basic and necessary requirement to disclose all requested information, OMVIC had no choice but to issue a Notice of Proposal to Refuse the Registration. In filing his appeal, the Applicant was afforded one more opportunity to disclose, explain and clarify his record and past industry conduct in order to be considered eligible for registration as a motor vehicle salesperson under the Act.

Closing Submission

In his submission, Counsel for the Registrar referred to three issues that he considered essential to the Tribunal's decision. These were: 1) In reapplying for registration was it clear that material circumstances had changed in accord with S.12(b) of the Act? 2) the past conduct of the Applicant as per S. 6.(1)(a)(ii) of the Act and 3) the obligation of the Applicant in applying for registration to fully disclose any offences under any law.

Respecting the change in circumstances issue, the Registrar argued that the Applicant's claim that this time he was applying to be a salesperson and not a dealer was in error, since he had never been registered as a dealer. What the Applicant needed to demonstrate was that his industry-related conduct had changed from the past. This, he had failed to do.

Regarding the question of past conduct, the Registrar indicated difficulty in accepting the Applicant's assertion that he had no post 2006 involvement with North Shore Auto Sales. The business practices of this dealership did result in significant financial losses by MAFS. Although the fraud charges were dismissed, the Applicant did plead guilty to falsifying documents under the Highway Traffic Act and was fined. The Registrar dismissed the Applicant's view that this matter was "no big deal". It was related to unacceptable industry conduct and was a serious matter of concern, including the fact that the fine had never been paid.

Even more serious, the Registrar alleged that the Applicant had breached the Licence Appeal Consent Order of November 1, 2006 in which, with reference to North Shore Auto Sales, the Applicant was to have “no interest or involvement, either directly or indirectly, in the operation or ownership of the Dealer”. Here, the Registrar referred the Tribunal to the case of *Tri-Star Sales and Leasing v. The Registrar* (Ontario Superior Court of Justice File No: 366/2002 dated 2004/01/28). In this decision at (7), the Court states, “in our view, however, breach of the consent order alone - by anyone - was sufficient to result in the revocation of her registration”.

The third issue for the Registrar was the failure of the Applicant to provide full disclosure in his application in accord with the requirement in S. 6. (1) (a)(iii). Past decisions of the Tribunal have been clear that whether or not the Applicant provided full and correct information is a crucial matter in assessing the honesty of an applicant (see *Aboussali v. the Registrar*, dated April 12, 2011). The Applicant did not disclose his conviction of filing false documents under the Highway Traffic Act, saying that, for him, these charges were “insignificant”.

THE CASE FOR THE APPLICANT

The Applicant told the Tribunal that he wished to return to work in the automotive industry, the only field of endeavour that he knew well. His involvement, he noted, was to be only as a restricted salesperson. He wanted to continue in this work for the next few years until he was ready for retirement.

Referring to the revocation of his licence in 2006, he stated that he had resigned from North Shore Auto Sales at that time. He testified that Mr. Roy Vandermeer had erred in naming him as the Chief Operating Officer of the company and wrongly accused him of fraudulent activity. In the end, those fraud charges, in any event, had been dismissed.

The Applicant noted that since the revocation of his licence in 2006, he never bought or sold a car or worked for North Shore Auto Sales. It was Trevor McCaughey who was empowered by June Stevens, the dealer’s principle, to be responsible for the operation of the dealership. He concluded, “I was not involved”.

Regarding the obligation for full disclosure on the application for registration, the Applicant argued that it was quite sufficient for him to say “my records are on your file” in response to questions 2 and 5, because he had been so advised when he called the OMVIC office asking for guidance in completing the form. As for question 7, asking for full disclosure, he thought that his conviction for filing false documents under the Highway Traffic Act was a trivial matter falling into the same category as speeding tickets. He declared that he never had any intention of deceiving the Registrar and if he had been given the clear and unequivocal instructions, which he had asked for, he certainly would have been forthright and given any and all information requested.

Specifically, with reference to the OMVIC follow-up letter of June 1, 2012, he noted that they were “playing games with me”. The letter properly should have asked directly about his conviction for filing false documents and he would have provided all the details. He said that he found that the application form for registration was not “lay-person friendly” so that misunderstandings could easily occur, as happened in his case.

As to the charge of filing false documents under the Highway Traffic Act, the Applicant argued that this was a much over-played issue. It began with the misinformation given by Roy Vandermeer that led to charges of fraud. He said that no false statements had ever been made by him to MTO and that actually there was no real violation. Thus, this was nothing but a very minor offence to which he had pleaded guilty only as a quick and easy way to bring an end to the fraud charge proceedings so that he could get on with his life.

In closing, the Applicant expressed regret for any misunderstandings related to his application. He noted that the MAFS issue was no small matter and that the losses incurred were significant but that in no way were these events related to any business activities of his with North Shore Auto Sales.

THE LAW

Regarding the right to registration, the Act states:

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 grounds 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 makes a false statement or provides a false statement in an application for registration or for renewal of registration;

(b), (c) REPEALED: 2004, c. 19, s. 16 (5).

(d) the applicant is a corporation and,

(i) having regard to its financial position or the financial position of an interested person in respect of the corporation, the applicant cannot reasonably be expected to be financially responsible in the conduct of its business,

(ii) having regard to the financial position of its officers or directors or an interested person in respect of its officers or directors, the applicant cannot reasonably be expected to be financially responsible in the conduct of its business,

(iii) the past conduct of its officers or directors or of an interested person in respect of its officers or directors or of an interested person in respect of the corporation affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty, or

(iv) an officer or director of the corporation makes a false statement or provides 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;

(f) the applicant is in breach of a condition of the registration; or

(g) the applicant fails to comply with a request made by the registrar under subsection (1.1).

Request for information

(1.1) The registrar may request an applicant for registration or renewal of registration to provide to the registrar, in the form and within the time period specified by the registrar,

(a) information specified by the registrar that is relevant to the decision to be made by the registrar as to whether or not to grant the registration or renewal;

(b) verification, by affidavit or otherwise, of any information described in clause (a) that the applicant is providing or has provided to the registrar.

Refusal to register, etc.

8. (1) Subject to section 9, the registrar may refuse to register an applicant or may suspend or revoke a registration or refuse to renew a registration if, in his or her opinion, the applicant or registrant is not entitled to registration under section 6.

Conditions

(2) Subject to section 9, the registrar may,

(a) approve the registration or renewal of a registration on such conditions as he or she considers appropriate; and

(b) at any time apply to a registration such conditions as he or she considers appropriate.

Notice re: refusal, suspension, etc.

9. (1) The registrar shall notify an applicant or registrant in writing if he or she proposes to,

(a) refuse under subsection 8 (1) to grant or renew a registration;

(b) suspend or revoke a registration; or

(c) apply conditions to a registration or renewal to which the applicant or registrant has not consented.

Content of notice

(2) The notice of proposal shall set out the reasons for the proposed action and shall state that the applicant or registrant is entitled to a hearing by the Tribunal if the applicant or registrant mails or delivers, within 15 days after service of the notice, a written request for a hearing to the registrar and to the Tribunal.

Further application

12. A person whose registration is refused, revoked or refused renewal may reapply for registration only if,

- a) the time prescribed to reapply has passed since the refusal, revocation or refusal to renew; and
- b) new or other evidence is available or it is clear that material circumstances have changed. 2002, c.30, Sched. B, s.12.

ISSUES

The issues in this case are:

1. Does the failure of the Applicant to fully disclose all past offences disqualify him under the Act from being registered as a salesperson?
2. Does the past conduct of the Applicant afford reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty?

APPLICATION OF THE LAW TO THE FACTS

The onus lies with the Registrar to prove on a balance of probabilities that the Applicant's request for re-registration as an automobile salesperson under the Act should be refused.

The Tribunal observed that the Applicant, in representing himself, was astute, articulate and capable. His explanation about confusion, uncertainty and misunderstanding regarding questions on the application form did not seem credible. The Applicant knew or ought to have known what was required of him in rendering the appropriate answers to clear questions. Rather than doing so, he chose to equivocate. This has not worked in his favour.

In assessing the Applicant's past conduct, the Tribunal was not reassured by the explanations offered as to all that occurred in the operation of North Shore Auto Sales during the post 2006 period. It is not necessary for the Tribunal to trace in detail and carefully analyze all of the past events involving North Shore Auto Sales and its dealings with the auctions and the various lenders that allow these facilities to function effectively. It is sufficient to say that this dealer's business practices were questionable and that as a result several lenders lost significant amounts of money.

The Applicant was insistent that he had no part in this reprehensible behaviour within the industry. Yet, as a consequence of the dealings of North Shore Auto Sales, the Applicant's licence as a salesperson was revoked. The Applicant appealed the revocation, later withdrawn, resulting in a Consent Order of the Licence Appeal Tribunal, dated November 1, 2006, that forbade the Applicant from being involved in any way with either the operation or ownership of North Shore Auto Sales.

In his application for re-registration the Applicant stated in a letter to OMVIC that he had

complied with all the requirements of the Tribunal's Order. In his evidence at the hearing, the Applicant reiterated that, respecting North Shore Auto Sales, "I was not involved".

The question of whether or not the Applicant had any business relationship with North Shore Auto Sales, post 2006, is central to this decision. The Registrar filed, as an exhibit, the evidence of Trevor McCaughey in the proceedings of the Ontario Court of Justice in *Her Majesty the Queen v. Gregory Stevens* (the Applicant). This evidence was rendered on July 20, 2011 before the Honourable Justice C.R. Crawford at Collingwood, Ontario.

Working through the transcript, Counsel for the Registrar drew attention to 25 instances where Mr. McCaughey either stated or implied or suggested that the Applicant was active in the operation of North Shore Auto Sales. The Applicant, for his part, reminded the Tribunal that Mr. McCaughey's evidence was not always reliable and even Justice Crawford judged his evidence, in part, to be lacking in "specific recollection" In assessing the evidence of Mr, McCaughey the Tribunal had to keep this caution in mind.

It is not necessary for the Tribunal to examine each and every of the 25 cited instances where there may be some indication of the Applicant's involvement with North Shore Auto Sales. It is enough for the Tribunal to go to one straight forward question posed to the witness by the Applicant's own lawyer. This evidence is found on p.40 of the transcript.

Q. And so you were aware that after Mr. Steven's bankruptcy in 2006 he was not permitted to have any involvement in North Shore Auto Sales?

A. Yes.

Q. And so from that point you were ostensibly the supervisor/superior at North Shore Auto Sales?

A. I would disagree with that.

Q. Well, what were you then?

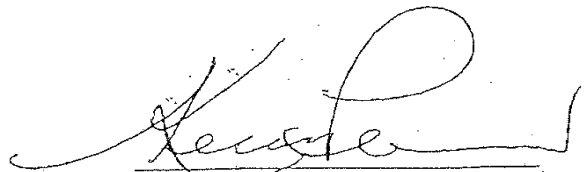
A. Well, Greg and I had numerous arguments about his involvement and his insistence on staying involved. He never – he never left.

The Tribunal concludes, based on the evidence submitted by the Registrar, that the Applicant continued to be involved with North Shore Auto Sales after the Tribunal's Consent Order was issued, prohibiting such involvement. This constitutes a breach of the Order and in keeping with the Tri-Star Sales decision deems such a breach to be sufficient in itself to have the Registrar refuse to grant registration of the Applicant.

ORDER

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar to carry out the Proposal to Refuse Registration to the Applicant.

LICENCE APPEAL TRIBUNAL



Keith Penner, Member

Released: March 21, 2013