

**LICENCE APPEAL
TRIBUNAL**

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

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

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



Citation: Linton Phillip Scott & Christine Kadian Latoya Scott o/a L.C.S. Auto Traders,
Linton Phillip Scott and Garth Martin v. Registrar, Motor Vehicle Dealers Act, 2002,
2018 ONLAT MVDA 10872

Date: 2018-11-08
File Number: 10872 MVDA

Appeal of Proposals to Refuse and Revoke Licences issued by the Registrar, *Motor
Vehicle Dealers Act, 2002*, pursuant to the provisions of the *Act*.

Between:

Linton Phillip Scott & Christine Kadian Latoya Scott o/a L.C.S. Auto Traders, Linton
Phillip Scott and Garth Martin

Appellants

-and-

Registrar, Motor Vehicle Dealers Act

Respondent

DECISION AND REASONS

ADJUDICATOR:

Dawn Kershaw, Vice-Chair

APPEARANCES:

**For the Appellants,
Linton Phillip Scott &
Christine Kadian
Latoya Scott o/a L.C.S.
Auto Traders**

Linton Phillip Scott, Representative

**For the Appellant,
Linton Phillip Scott:
For the Appellant,
Garth Martin:**

Linton Phillip Scott, Self-represented

Garth Martin, Self-represented

For the Respondent:

Michael Rusek, Counsel

Heard in person:

September 17, 2018

REASONS FOR DECISION AND ORDER

A. OVERVIEW:

- [1] The appellant, Linton Phillip Scott and Christine Kadian Latoya Scott o/a L.C.S. Auto Traders (“LCS”), appeal the respondent’s May 25, 2017 Notice of Proposal to refuse their registration as motor vehicle dealers (“NOP”) pursuant to section 9 of the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sched. B (the “Act”). Mr. Scott is the LCS’s principal, while Ms. Scott has no active role in the LCS and did not participate in the hearing.
- [2] The appellants, Garth Martin (“Mr. Martin”) and Linton Phillip Scott (“Mr. Scott”), each appeal the respondent’s NOP to revoke their registration as salespersons pursuant to section 9 of the Act.
- [3] LCS was registered as a motor vehicle dealer from September 2011 until September 25, 2016 when it applied late for registration renewal, which the Registrar proposes to refuse.
- [4] Mr. Scott’s registration as a salesperson was for the same period of time as the LCS’s registration, but was renewed on or about September 25, 2016. Mr. Scott currently is not permitted to act as a salesperson because LCS was his sponsoring dealer, and it is no longer registered under the Act.
- [5] Mr. Martin was first registered as a motor vehicle salesperson in September 1991. His registration was renewed on June 10, 2016, but he is not currently permitted to act as a salesperson because the LCS was his sponsoring dealer, and it is no longer registered under the Act. The Registrar proposes to revoke Mr. Martin’s registration as a salesperson.
- [6] Because of increased car thefts in a particular region, the police conducted investigations between 2013 and 2014. Mr. Martin was the target of the investigation, and as a result wire taps were authorized for Mr. Scott and Mr. Martin. Mr. Scott’s phone was wiretapped because of his association with Mr. Martin.
- [7] On December 2, 2014 the police heard what they allege was Mr. Scott conspiring to have another person roll back the odometer on a Lexus so it appeared to have fewer kilometres on it. Mr. Scott was charged with one count of conspiracy to commit an indictable offence contrary to s. 465(1)(c) of the Criminal Code.

- [8] During their investigation, they determined that Mr. Martin obtained about 100 fraudulent replacement ownerships for vehicles. He was charged with 522 offences. He pled guilty on June 28, 2016 to public mischief and uttering a forged document. Mr. Martin served a two-year probation period which ended in June 2018.
- [9] The Registrar takes the position that Mr. Scott's registration should be revoked because he will not carry on business in accordance with the law and with integrity and honesty based on the following past conduct:
- a. although the criminal charge was dropped on February 12, 2015, he failed to notify it of the criminal charge; and
 - b. he conspired with another person to roll back a car's odometer.
- [10] The Registrar takes the position that Mr. Martin's registration should be revoked because he will not carry on business in accordance with the law and with integrity and honesty based on the following past conduct:
- a. He failed to notify the Registrar that he was charged with 522 criminal charges and pled guilty on June 28, 2016 to public mischief and uttering a forged document; and
 - b. He obtained fraudulent car ownerships.
- [11] The Registrar also takes the position that LCS is disentitled to registration for two reasons:
- a. It breached two conditions of its registration, namely that it had to operate out of a particular address and it had to have a business sign visible to the public; and
 - b. Mr. Scott's past conduct warrants the refusal of registration.

B. RESULT:

- [12] For the reasons that follow, I find that Mr. Scott's and Mr. Martin's past conduct, and Mr. Scott's conduct before me demonstrates reasonable grounds to believe that they and therefore LCS will not carry on business in accordance with law, integrity and honesty.
- [13] I direct the Registrar to carry out the Proposal in respect of all three appellants.

C. ISSUES:

- [14] Pursuant to section 6 of the Act, I must decide whether the respondent has shown that the appellants are not entitled to registration and should have their registrations revoked. To answer that question, I must determine whether:
- a. the appellants' past conduct shows there are reasonable grounds to believe they will not carry on business in accordance with law and with integrity and with honesty?
 - b. in the case of LCS, it is in breach of a condition of its registration or whether Mr. Scott's past conduct as the LCS's principal shows there are reasonable grounds to believe that it will not carry on business in accordance with law and with integrity and honesty?
 - c. there are appropriate conditions that could facilitate a registration?

D. EVIDENCE

Mr. Scott

- [15] Officer Price testified about wiretaps on Mr. Scott's phone, including seven calls on November 2, 2014. That morning, an unidentified male called Mr. Scott. Mr. Scott told him he had a Lexus with 550,000 kilometres on it that he was going to roll back to about 190,000. He asked how much the unidentified male's guy would charge to do it, and was told it would be between \$100 and \$150. Mr. Scott asked the unidentified male to get back to him that day because he needed money.
- [16] The unidentified male called Mr. Scott again shortly after this call to advise that Alex said he could do it that day for \$150. The wiretapped calls then show that Mr. Scott then called Alex and said he had a job for him and would meet him later that day. Mr. Scott testified that this was to reset an airbag module, not to roll back an odometer. Later that day, Mr. Scott called Alex arranged to meet him at a gas station. During the last recorded call, Alex told Mr. Scott to park in front of him at the gas station. Mr. Scott then says it will not open from inside, which is the end of the wiretaps.

- [17] Mr. Scott testified both that he never owned a Lexus at that time, but that if he had got the Lexus, he thought about having the odometer rolled back, but changed his mind and did not have Alex do it. He testified that it was coincidence that the airbag unit reset and an odometer rollback are about the same price. He further testified that the Crown dropped the fraud charge against him, and if he had done something wrong, he would have been convicted. He admitted that if the odometer was rolled back, he would get more money for the car and that “the Africans” would buy it.
- [18] Laura Halbert, director of compliance and the Deputy Registrar testified that honesty and integrity are important because the Act is consumer protection legislation. The respondent wants to ensure that registrants comply with the law, and it can investigate if it is concerned. The respondent wants the public to have faith in registrants. Ms. Halbert testified that because of the large number of registrants, the Act relies heavily on disclosure by registrants to other dealers and to consumers.
- [19] Ms. Halbert further testified that an odometer reading is one of the most important pieces of information for a consumer, and that an inaccurate reading is cause for an immediate rescission of a sales contract. Ms. Halbert referred to an odometer rollback as one of the sins of the industry. She testified that despite Mr. Scott’s conduct not being tied directly to his work as a dealer, it was highly concerning because it was aimed at deceiving someone. In addition, Mr. Scott intended to sell the vehicle at the wholesale auction, which someone can only get access to if they are a dealer.

LCS

- [20] OMVIC enforces and administers the Act on behalf of the provincial government. OMVIC’s role is both as a consumer protection agency as well as to improve professionalism in the business.
- [21] LSC agreed to conditions on its registration that included: (1) agreeing to maintain a sign at its registered premises that is visible to the public and (2) operating exclusively from the location approved by the Registrar; (3) agreeing to apply for the Registrar’s approval, by way of prior written notice of any change in location.

- [22] Blake Smiley, an investigator for OMVIC, testified that on March 30, 2015, he attended the LCS's registered address of 301 Rexdale Boulevard ("Rexdale"). Mr. Scott testified he had a cubicle at the Rexdale office until 2016, but was only there some of the time because his cars were stored at two other locations on Bayley and Sheppard, and he showed people cars by appointment only. He testified that Mr. Martin was at the Rexdale office more because he lived closer. He testified he always intended to move to the Bayley office but had to wait for a spot to open. He testified it did not occur to him that having cars at two other locations violated the terms of LCS's registration.
- [23] Officer Price testified that during the police investigation, they obtained no evidence that Mr. Scott or Mr. Martin were ever at the Rexdale office, though they did place them at the Bayley and Sheppard offices. Officer Price admitted that their surveillance of Mr. Scott was intermittent.
- [24] Mr. Smiley testified that there was a City Automotive sign at the Rexdale location, but no sign for the LCS. Mr. Smiley spoke to City Automotive's owners, who were also Mr. Scott's landlords, and they showed him an office that they said Mr. Scott used until about 2012, which was now filled with tires. Mr. Smiley later became aware that the LCS applied for a change of address in 2016, more than a year after his investigation.
- [25] Mr. Scott testified that the LCS had a sign up at the Rexdale location until 2016 when he had a rent dispute with his landlords. Mr. Scott also testified that the LCS had a sign in the side window of the Rexdale location. He denied the sign was not visible to the public as required under the terms of his registration.
- [26] Ms. Halbert testified that it is important to know from where the LCS operates because that is where its books and records are; where dissatisfied customers can find the dealer if they need to; and where OMVIC can conduct inspections as necessary.

Mr. Martin

- [27] Officer Price testified that during their investigation, they found that Mr. Martin obtained replacement permits for two cars stolen on back-to-back nights in the Toronto area that were found in a shipping container in Halifax.

- [28] The police began to follow Mr. Martin's transactions that were all made at the same Service Ontario location with the same clerk. The police determined that a Mr. Boateng, a person who the police determined was shipping stolen cars overseas, would text Mr. Martin a vehicle identification number (VIN), which the police began to track. They found that for each VIN sent to Mr. Martin, he obtained a replacement permit for a vehicle similar to each of the stolen vehicles using a used vehicle information package ("UVIP"), which someone else obtained from Service Ontario. The replacement permits were then used to make the stolen cars look "clean", which means they appeared to have valid ownership papers. Without these, they could not be shipped. The VIN's on the stolen vehicles were altered to make them look like vehicles that were not stolen. Officer Price testified that Mr. Martin obtained just under 200 replacement permits for Mr. Boateng and was paid about \$100 each. Surveillance revealed that Mr. Martin met Mr. Boateng many times.
- [29] The police during their investigation also found an abandoned vehicle with dealer plates from the LCS on it. On the wiretaps, they heard Mr. Martin advise he was coming to get his dealer plates back, but he later reported them stolen, which they were not.
- [30] Ms. Halbert testified that although Mr. Martin's actions did not occur in the course of his employment as a car salesperson, his actions were recent and industry-specific and happened when he was a registrant. Ms. Halbert testified that it was not enough that Mr. Martin appears to have been of good behaviour during his probationary period because someone was overseeing his conduct. Ms. Halbert testified that she thinks the imposition of conditions on Mr. Martin would be too onerous a responsibility for a dealership, and that OMVIC cannot watch over him every minute of the day and would only be able to find out about his actions through periodic inspections.
- [31] Mr. Martin testified that he has a Ministry of Transportation ("MTO") business on the side through which he helps people who want to transfer or sell a car because they are not familiar with the paperwork. He charges a small fee to help people transfer vehicles or apply for lost ownerships. He testified he mostly does not meet the "end user". He testified he has had the same telephone number for 20 years and when he sells someone a car, he advises them that he can help with MTO things as well.
- [32] Mr. Martin denied ever being near a stolen car in Canada, and stated that the ownerships for which he applied were not for stolen vehicles. He testified he pays for all the transactions on his American Express card because he gets points.

- [33] Mr. Martin testified that a gentleman (determined by police later to be Mr. Boateng) called and wanted his services. He was referred by another customer. He advised Mr. Martin that he exported cars, and asked him to get a replacement permit. Mr. Martin testified it is standard practice to apply for a replacement to speed up the process if someone takes too long to provide a permit, such as at an auction, or when a person buys a car and cannot find his or her ownership. Once a replacement has been obtained and the car has been transferred using that replacement, then the old permit becomes useless.
- [34] Mr. Martin testified he agreed to assist Mr. Boateng, and in his submission the permits were not for stolen cars, though he admitted he never sees the cars. Mr. Martin testified the gentleman gave him VINs and Mr. Martin went and got the replacement permits. Mr. Martin testified he did not know what Mr. Boateng did with the replacement permits.
- [35] Mr. Martin testified the man came to him many times and Mr. Martin did not hide what he was doing, and he put his name and driver's licence information on each application for a replacement permit. He testified he has applied for replacement permits for 20 years, but made a mistake on one form by not signing his name, which is how the police got him. Mr. Martin testified he was not involved in exporting cars and only applied for the ownerships. He testified that the police failed to connect the criminal element to him, which is why all the charges but two were withdrawn.
- [36] Mr. Martin admitted he obtained about 200 ownerships for the gentleman, namely Mr. Boateng, and that Mr. Boateng texted his requests to him, which he testified was because he lived on the other side of town. When Mr. Martin was asked whether he ever asked Mr. Boateng why he was doing this, he stated that Mr. Boateng told him he was exporting cars. He also stated he had done this in the past for another foreign market that dried up. Mr. Martin testified he was not concerned about why Mr. Boateng was doing this, nor whether he was licenced to buy or sell vehicles. As long as he received between \$80 and \$100 for each transaction, he provided the service. Mr. Martin testified this was not related to his car business, but was just his personal business. He saw no cause to ask Mr. Boateng why he was asking for so many replacement permits because he had been doing this for many years and never had any criminal involvement.
- [37] Mr. Martin testified he never met Mr. Boateng at his office because it was on the other side of town, but instead he met him in a mutually convenient place.

- [38] Mr. Martin admitted he signed the ownerships and he was guilty of the public mischief charge that resulted from reporting the licence plates stolen. He testified he is a helpful person and the person who used his licence plate did not give him full disclosure. When he found out that the person used the plate to drive one of the stolen vehicles, Mr. Martin got scared and reported the plate stolen.
- [39] Mr. Martin testified he did his community service and continues to volunteer there. He paid his debt to society. He testified he wants to move forward and put his life back together and be a positive person like he was before.

E. APPELLANTS' PAST CONDUCT

- [40] Section 6(1)(a)(ii) of the Act provides that an individual appellant is entitled to registration unless the appellant's past conduct provides reasonable grounds to believe he will not carry on business in accordance with law, integrity and honesty.
- [41] Similarly, Section 6(1)(d)(iii) of the Act provides that a corporate appellant under the Act is entitled to registration unless the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with the law, with integrity and with honesty.
- [42] The Registrar has the burden to prove that the appellants are not entitled to registration. The standard of proof is "reasonable grounds for belief" which is a lower standard of proof than a balance of probabilities.
- [43] The Court of Appeal in the decision *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc. (Famous Flesh Gordon's)*, 2013 ONCA 157, ruled that there must be reasonable grounds for belief that the person will, in future, carry on activity in a way that is contrary to the public interest such that they will not act in accordance with the law, with honesty and with integrity. The Court of Appeal emphasized that any and all past or present conduct can and should be considered. Furthermore, the court said in *Nagy v. Registrar, Real Estate Business Brokers Act*, 2012 ONSC 325 (Div. Ct.) at paras. 58-61 that there should be a nexus between the appellant's overall conduct and the business.
- [44] I turn first to Mr. Scott's overall conduct and whether the respondent has established that he is not entitled to registration.

Mr. Scott

- [45] Mr. Scott's testimony was not credible. He asked me to believe that even though he called Alex to ask him to roll back an odometer for him in the morning, by the afternoon he changed his mind, but still went to see him that day to have him reset an airbag module for him, which coincidentally cost the same as having an odometer rolled back. Mr. Scott relied heavily on the fact that the police did not follow up on the wiretap information and actually find the Lexus or observe him having Alex roll the odometer back. However, it strains credulity that despite planning to have this done and attending the same day with the person who was going to do it, that Mr. Scott did not then do it.
- [46] My finding is also supported by Mr. Scott's contradictory evidence that he did not have a Lexus, yet he says on the wiretap that the Lexus is at his house and he is going to roll it back and send it to the auction because he knows the Africans will buy it. His testimony that he never had a Lexus at that time despite saying it was at his house is not credible.
- [47] The respondent took the position that Mr. Scott expressed no remorse about his intent to deceive a customer, and that it was not satisfied in light of the seeming ease with which he talked about rolling back the odometer that he would not do this again in the future. The respondent stated it was more concerned about his behaviour after his testimony than it was before.
- [48] Mr. Scott was not just a salesperson, but also the principal of the LCS. I find that Mr. Scott's conduct, including his intention to roll back the odometer, his lack of remorse about it, and his continued lack of credibility, render him ineligible for registration under the Act because these actions are indicative of a person who will not act in accordance with law, honesty and integrity.
- [49] I find that the respondent should carry out the proposal to revoke Mr. Scott's registration as a car salesperson

LCS

- [50] Mr. Scott's evidence with respect to the LCS's place of business also was not credible. I prefer Mr. Smiley's evidence about the lack of signage to Mr. Scott's evidence because Mr. Smiley attended the premises in his capacity as an inspector and specifically was looking for a sign. Mr. Smiley's evidence also matches up with the information he received from Mr. Scott's former landlords who said Mr. Scott operated out of the Rexdale location only until about 2012, and in fact they showed him his former office, which was now full of tires and obviously not being used as Mr. Scott's office. Despite Mr. Scott's evidence that he paid rent for the Rexdale location until 2016, he provided no proof.
- [51] In addition, though I put less weight on the intermittent police surveillance, the police did not see either Mr. Scott or Mr. Martin at the Rexdale location during their 56-day investigation. Mr. Scott also admitted that LCS has two other locations where it stores cars and where he and Mr. Martin show them to prospective customers. He also admitted he did not turn his mind to the fact that LCS was not complying with the terms of its registration. I agree with the respondent that there was no indication in Mr. Scott's testimony that LCS will suddenly begin to comply with the requirements of his registration.
- [52] I find that the respondent should carry out the proposal to revoke LCS's registration as a motor vehicle dealer.

Mr. Martin

- [53] With respect to Mr. Martin, he admitted that over several months, he obtained about 200 replacement permits in his name for one person to whom he never posed any questions about why he required so many, nor why so many people could not find their permits. The evidence from Officer Price that Mr. Martin went not only to the same Service Ontario location, but to the same clerk each time also raises questions. I find that it was not a coincidence that Mr. Martin went to the same clerk each time he obtained a permit.
- [54] I am satisfied on a balance of probabilities that Mr. Martin knew, given the number of renewals he did for one person over the course of a few months and the fact that he went to the same clerk each time to get them, that he was obtaining permits that were going to be used for an illegal purpose.
- [55] In addition, I accept the respondent's submission that Mr. Martin cannot re-litigate his convictions that include a conviction for uttering a forged document in relation to a licence renewal, and in any event Mr. Martin pled guilty to them.

- [56] I do not accept Mr. Martin's attempt to mitigate his actions by testifying that they were not done in the course of his work as a car salesperson. Not only did he testify that he obtained MTO clients through his car sales, but he also testified that obtaining replacement permits was a normal part of his work as a car salesperson.
- [57] For all these reasons, I find that Mr. Martin's past conduct renders him ineligible for registration under the Act because there are reasonable grounds to believe that his actions are indicative of a person who will not act in accordance with law, honesty and integrity.
- [58] Mr. Martin testified that he completed his community service and continues to volunteer, which is laudable. However, I agree with the respondent's submission that up until very recently, Mr. Martin has been subject to a probation order, and there is no convincing evidence of subsequent positive conduct sufficient to overcome my finding. It is noteworthy that Mr. Martin still does not fully accept that he committed fraud in light of his testimony that he got caught only because he did not sign one of the applications for a new permit.
- [59] I find that the respondent should carry out the proposal to revoke Mr. Martin's registration as a car salesperson.

F. ARE THERE APPROPRIATE CONDITIONS THAT COULD FACILITATE A REGISTRATION?

- [60] The respondent did not propose any conditions on which the respondents' registration could be maintained, nor did the appellants propose any.

G. ORDER:

[61] The Tribunal directs the Registrar to carry out the proposal to:

- a. refuse the registration of the appellant, Linton Phillip Scott & Christine Kadian Latoya Scott o/a L.C.S. Auto Traders as a car dealer;
- b. revoke the registration of Mr. Scott as a car salesperson; and
- c. revoke the registration of Mr. Martin as a car salesperson.

LICENCE APPEAL TRIBUNAL



Dawn J. Kershaw

Released: November 8, 2018