



Citation: Auto Cross Inc. and Mosayeb Tavakolli v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2025 ONLAT MVDA 17173 and 17181

Licence Appeal Tribunal File Number: 17173/MVDA and 17181/MVDA

In the matter of an appeal from a Notice of Proposal to Revoke Registration under section 9 of the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B (the "Act"), and an Immediate Temporary Suspension Orders issued under section 10 of the *Act*.

Between:

Auto Cross Inc. and Mosayeb Tavakolli

Appellants

and

Registrar, *Motor Vehicles Dealers Act, 2002*

Respondent

DECISION and ORDER

VICE-CHAIR:

Colin Osterberg

APPEARANCES:

For the Appellants:

E. Mehrabi, Counsel

For the Respondent:

M. Correia, Counsel

Heard by videoconference: July 3, 2025

OVERVIEW

- [1] On May 26, 2025, the Registrar under the *Act*, (the “Registrar”) issued a Notice of Proposal to Revoke Registration (“NOP”) under s. 9 of the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B (the “*Act*”), and an Immediate Temporary Suspension Order (“ITSO”) under s. 10 of the *Act* to the appellants, Mosayeb Tavakolli (“Tavakolli”) in respect of his registration as motor vehicle salesperson, and to Auto Cross Inc. (“Auto Cross”) with respect to its registration as a motor vehicle dealer.
- [2] The appellants appealed the NOP to the Licence Appeal Tribunal (the “Tribunal”).
- [3] Tavakolli is the sole owner and director of Auto Cross.
- [4] The hearing commenced on June 13, 2025, but at the outset the appellants sought a short adjournment to which the respondent consented
- [5] The Tribunal adjourned the hearing to July 3, 2025, at which point the parties presented evidence and made submissions related to the possible extension of the ITSO. It was confirmed by the parties at the commencement of the hearing that the evidence presented for the purposes of the extension of the ITSO is not automatically evidence for the purposes of the hearing of the NOP appeal and will have to be presented again in its entirety should the hearing of the NOP appeal proceed. Further, since the determinations I must make with respect to the ITSO extension are to be based on an incomplete presentation of the evidence, my factual determinations are not binding on the adjudicator who conducts the NOP appeal.

Extension of the ITSO

- [6] I find that the ITSO should be extended pursuant to section 10(3) of the *Act* until the conclusion of the hearing.
- [7] Under subsection 10(3)(a) of the *Act*, an ITSO expires 15 days after the Tribunal receives a written request for a hearing under section 9 of the *Act* unless the Tribunal extends the time of expiration until the hearing is concluded.
- [8] The Registrar bears the onus to establish that it is in the public interest that the ITSO be extended pending the outcome of the hearing of the appeal of the NOP. To satisfy its onus, the Registrar must establish that the conduct on which it relies

occurred and forms a reasonable basis for the NOP and that the nature of the conduct and the circumstances are such that it is a matter of public interest that the registration remain suspended pending the outcome of the NOP hearing.

- [9] The respondent requests an extension of the ITSO until the hearing is concluded.
- [10] The appellants oppose the extension of the ITSO.
- [11] I heard evidence from Amit Das, a compliance inspector for the Ontario Motor Vehicles Industry Council (“OMVIC”), Sunsook Ko, a customer of the appellants who made a complaint to OMVIC with respect to the appellants, and the appellant, Tavakolli.
- [12] At the hearing, the Registrar raised two issues which it says establish that it is in the public interest that the ITSO remain in effect until the conclusion of the hearing of the appeal:
- a. The Registrar alleges that, having regard to the appellants’ financial position, the appellants cannot reasonable be expected to be financially responsible in the conduct of its business; and
 - b. The Registrar alleges that the appellant did not comply with is obligations with respect to warranty contracts it sold to consumers and obstructed OMVIC’s inspection with respect to those warranty contracts.

Financial Position

- [13] The evidence at the hearing was that Tavakolli has been registered as a salesperson under the *Act* since July 2000 and that Auto Cross has been registered as a dealer under the *Act* since January 2008. There was no evidence presented that either of the appellants had been the subject of sanction under the *Act* until an inspection conducted by Mr. Das in April 2025 which led to the NOP and ITSO that are the subject of this appeal.
- [14] During the course of Mr. Das’ inspection it was determined that, since August 2024, the appellants’ bank account had a significant negative balance. The account was found to be overdrawn in the following (approximate) amounts:
- a. August 31, 2024 - \$150,000
 - b. September, 30, 2024 - \$145,000

- c. October 31, 2024 - \$147,000
 - d. November 30, 2024 - \$151,000
 - e. January 31, 2024 - \$151,000
 - f. February 28, 2024 - \$145,000
 - g. March 31, 2025 – \$148,000
- [15] Mr. Das, and counsel for the Registrar, assert that a dealership with a bank account consistently in the negative for these substantial amounts constitutes significant risk to consumers who might do business with the appellants in terms of the security of any deposits that might be given for the purchase of vehicles, the concern that the dealership might not be in a position to pay out prior liens on vehicles, and may not comply with other financial obligations to consumers.
- [16] In support of its concerns, the Registrar presented evidence that, in the past 6 months the appellants' bank had returned 96 cheques due to insufficient funds ("NSF"). This is, according to the Registrar, evidence that the appellants' financial position is such that it poses a risk to consumers, and for that matter to suppliers who are dealing with the appellants.
- [17] The appellants presented evidence that the bank account in question was, in effect, a line of credit which the appellants were using in order to finance the business and that it did not represent any indication that the appellants' financial position is of concern. Further, the appellants presented evidence that most, if not all, the NSF cheques submitted by the Registrar were the result of an error by the bank and were not the result financial problems of the appellants.
- [18] In my view, the evidence presented supports the appellants' explanation regarding the negative balance in its bank account. Simply pointing to a negative balance like the one in this bank account is insufficient proof that the appellants are experiencing financial problems. In this case, the evidence is that the appellants were carrying \$350,000 of inventory which is significantly more than the amount it owed the bank. There was no other evidence of indebtedness presented at the hearing and no evidence that the appellants' bank, at which the subject account was located, had any concern about the overdraft.
- [19] It seems clear from the evidence that the overdraft that was of concern to Mr. Das was being treated by both the appellants and their bank, as akin to a line of

credit. In fact, the account in question had an overdraft limit of \$150,000, which supports this position. There was no evidence presented that the bank, or any other creditors, were making demands which were not being met by the appellants, that the amount of the overdraft was increasing over time, or that the appellants' debts exceeded their assets, and the evidence appears to show the opposite to be true.

[20] Mr. Das admitted that the overdraft appeared to be more like a loan than a financial problem.

[21] With respect to the NSF cheques, the appellants presented into evidence a letter from its bank to Auto Cross dated April 4, 2025, which states as follows:

This letter is to advise due to a system error multiple items were returned on client's account within the last 6 months and client was charged N.S.F. fees. BMO has reversed fees charged and account is in good standing.

[22] While there was some evidence that a few of the NSF cheques cited by the Registrar were the result of the appellants exceeding the \$150,000 available overdraft protection, I am not satisfied that this was a significant issue in all the circumstances, including that the bank did not seem to consider it to be a problem and there was no other evidence to suggest that the appellants' financial obligations were not being met. The appellants' evidence was that the payments which were rejected as NSF were immediately paid.

[23] In my view, insufficient evidence was presented to conclude that the appellants' financial position was such that it is in the public interest to extend the ITSO to the conclusion of the hearing. In coming to this conclusion, I note the following evidence at the hearing:

- a. Tavakolli and Auto Cross have been registered without apparent incident since 2000 and 2008 respectively;
- b. there was no evidence that the appellants have been unable to satisfy their financial obligations as they have become due;
- c. the appellants' bank did not appear to be concerned about the state of its account with the appellants;
- d. there was no evidence presented that suggests that the appellants were insolvent;

- e. the evidence presented did not satisfy me that the appellants were experiencing significant financial problems, let alone problems of the nature that would warrant an ITSO in the public interest.

Warranties

- [24] Sunsook Ko testified at the hearing that she purchased a vehicle from the appellants in September 2023 and at the same time purchased a 3-year extended warranty for about \$800. The evidence is that, despite Ms. Ko having paid the appellants for the extended warranty, the appellants did not purchase the warranty for Ms. Ko.
- [25] In the fall of 2023, after the purchase, Ms. Ko experienced two mechanical issues and sought assistance from the appellants. The appellants told Ms. Ko that the warranty did not cover the necessary repairs and Ms. Ko paid for the repairs herself.
- [26] In May of 2024, Ms. Ko intended to sell the vehicle and in the course of making inquiries of the appellants and the warranty company as to whether she could transfer the warranty to the new owner or be reimbursed for the unused portion of the warranty, determined that the warranty had never been purchased for her. Ms. Ko asked the appellant about this and was told that the warranty had been purchased. This was not true. Eventually, the appellants admitted that there had been a mistake and that no warranty had been purchased for her, but the appellants refused to return the \$800 she paid for the warranty until told to do so by OMVIC.
- [27] According to the appellant, Tavakolli, when Ms. Ko purchased the vehicle there was already a warranty on it which had been purchased by the previous owner. A mistake was then made and no application was made for a new warranty when Ms. Ko purchased the vehicle. When Ms. Ko asked about the warranty in May 2024, he looked in the vehicle file, saw that there was a warranty, did not examine it to see that it was in Ms. Ko's name (it was not) and sent her the copy of the warranty. By the time Tavakolli realized that a mistake had been made, Ms. Ko had already sold the vehicle and he did not think he had any obligation to return the price of the warranty to Ms. Ko since she was no longer the owner of the vehicle.
- [28] I have concerns with respect to Tavakolli's explanation and for his actions after Ms. Ko raised her concerns and it became clear that no warranty had been

purchased in her name. Ms. Ko asked about her warranty multiple times and Tavakolli assured her that a warranty had been purchased. Even when Ms. Ko advised Mr. Tavakolli that the warranty company was denying that an application had been made, Mr. Tavakolli did not take any steps to contact the warranty company on his own to straighten the matter out but simply told Ms. Ko that she was mistaken and that a warranty had been purchased. This is concerning.

[29] Further, when Tavakolli finally acknowledged that the warranty had not been purchased, he refused to return the money that Ms. Ko had paid the appellants to purchase the warranty. He said that he did not think he had to since the vehicle had already been sold. This is so obviously not a reasonable position to take, that it is difficult to accept its sincerity. The appellants were paid almost \$800 to purchase a warranty and did not do so. The fact that Ms. Ko no longer needed the warranty is not a reason that the appellants should be able to retain the \$800 that she paid to the appellants for that warranty.

[30] The NOP describes several other incidents where warranties are alleged to have been paid for but not purchased.

[31] I find, for the purposes of determining whether the ITSO should be extended, that the Registrar has established that the conduct alleged, that is a warranty was paid for by the customer and that the appellants failed to purchase that warranty but retained the purchase price, took place and that forms a reasonable basis for the NOP. I also find that the nature of the conduct and the circumstances are such that it is a matter of public interest that the registration remain suspended pending the outcome of the NOP hearing. The nature of the conduct involves accepting money from a consumer for a product, failing to provide that product and then trying to retain the consumer's money. That is potentially serious particularly where there are several allegations of the same type of behaviour in the NOP.

Failure to comply with requests for information

[32] The Registrar also submits that the appellants failed to comply with its information requests and that this failure to comply is concerning given the public protection mandate of the regulator and the impact that the failure to comply with inspections has on its ability to perform this function.

[33] At the hearing, the evidence was that the appellants' answered some of the requests made by the Registrar but that some of the requests continued to be

outstanding after a few weeks of requests being made. It was unclear which of the Registrar's requests were ultimately outstanding and it was unclear as to the import of those outstanding requests, although most of them appear to be related to the appellants' financial position.

- [34] The appellant points out that it had produced some documents and on April 30, 2025, it emailed Mr. Das after providing some further documents and that the email stated:

These are the second parts off all the documents you did ask please let me know if you need more, Thanks.

- [35] The evidence is that no further requests were made of the appellants and the next communication was the issuance of the NOP and ITSO.
- [36] While I agree with the Registrar that it is important that the registrant comply with requests from the regulator, in this case it appears that the appellant was making some efforts to respond in a timely way to the Registrar's requests and that the appellants had asked if any requests were still outstanding. This was within a month of the inspection and the Registrar never responded to the appellants' inquiry.
- [37] I find that, while the appellants' failure to fully comply with the Registrar's requests may be evidence that goes to the question of revocation under the NOP, I am not satisfied that in these circumstances the public interest requires that the appellants' registrations remain suspended pending the outcome of the hearing.

Conclusion

- [38] In my view, in all the circumstances, it is in the public interest that the ITSO remain in effect until the conclusion of the NOP appeal.

ORDERS

- [39] The ITSO is extended pursuant to section 10(3) of the *Act* until the conclusion of the hearing.
- [40] The hearing is adjourned and will proceed with a case conference to be scheduled by the Tribunal.

[41] The Tribunal will issue a Notice of Case Conference to the parties to confirm the specific date and time.

[42] I am not seized of this matter.



Colin Osterberg
Vice-Chair

Released: August 5, 2025