

**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: Hudson's Fine Cars Inc. and Hamid Valizadeh v. Registrar, *Motor Vehicle Dealers Act, 2002* 2019 ONLAT MVDA 12390

Date: 11/08/2019
Tribunal File Number: 12390 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 Revoke Registration and Appeal from an Immediate Suspension Order

Between:

Hudson's Fine Cars Inc. and Hamid Valizadeh

Appellants

and

Registrar, Motor Vehicle Dealers Act, 2002

Respondent

DECISION AND ORDER

ADJUDICATOR: Avril A. Farlam, Vice-Chair

APPEARANCES:

For the Appellant: Hamid Valizadeh, Self-represented and agent for Hudson's Fine Cars Inc.

For the Respondent: Jane Samler, Counsel

Heard by Teleconference: November 4, 2019

REASONS FOR DECISION AND ORDER

OVERVIEW:

- [1] On October 25, 2019, Hudson's Fine Cars Inc. ("dealer") and Hamid Valizadeh ("salesperson"), (collectively "appellants") filed a Notice of Appeal with the Licence Appeal Tribunal ("Tribunal").
- [2] The appellants appeal from the Notice of Proposal to Revoke Registration dated October 11, 2019 ("NOP") issued by the Registrar under the *Motor Vehicle Dealers Act, 2002*, ("Act") to revoke the registration of the dealer as a motor vehicle dealer and the registration of the salesperson as a motor vehicle salesperson under the Act.
- [3] The Registrar also issued an Immediate Temporary Suspension Order dated October 11, 2019 ("Order") which suspended the registration as a matter of public interest against both appellants.
- [4] The Tribunal scheduled a hearing to address the Registrar's NOP and Order challenged by the appellants by filing their Notice of Appeal.
- [5] A teleconference hearing was held on November 4, 2019. The only issue dealt with on the first day of the hearing was whether the immediate suspension order ought to be extended until the completion of the hearing.

ISSUE:

- [6] The issue to be determined is whether it is in the public interest that the appellants' licences remain suspended until the hearing related to the NOP to revoke the licences is completed.

CONCLUSION:

- [7] For the reasons that follow, the immediate suspension order is extended until the hearing is completed. The hearing is adjourned and will resume on a date to be set at the case conference.

LAW AND ANALYSIS:

- [8] Section 9 of the Act gives the Registrar the authority to issue an NOP to revoke the registrations of the appellants as dealer and as salesperson.
- [9] Sections 10(1) and 10(2) of the Act gives the Registrar the authority to order a temporary suspension of the registration of the appellants effective

immediately. If a hearing is requested, under section 10(3)(a) and 10(3)(b) of the Act, the Registrar's suspension order expires 15 days after a written request for a hearing is received by the Tribunal, or the Tribunal may extend the time of expiration until the hearing is completed, if a hearing is commenced within 15 days from when the written request for a hearing was received by the Tribunal.

- [10] The Registrar bears the burden of proving that it is in the public interest that the Registrar's suspension order should not expire but should be extended until the hearing of the appeal is completed.

Is it in the public interest that the appellants' licences remain suspended until the hearing related to the NOP to revoke the licences is completed?

(i) Dealer's licence

- [11] The Registrar's suspension order is to suspend the licence of the dealer and the salesperson. At the hearing, appellant's agent stated that he did not oppose the extension of the suspension order against the dealer, only against himself as salesperson. Based on this admission of the appellant's agent, I find that the suspension order against the dealer should be extended until the completion of the hearing against the dealer.

(ii) Salesperson's licence

- [12] After hearing evidence from both parties, I find that the Registrar has proven that it is in the public interest that the Registrar's suspension order should be extended against the salesperson until the hearing of the appeal is completed.

Submissions of the parties

- [13] The Registrar submits that the immediate suspension Order ought to continue to the completion of the hearing because of the need to protect the public from the salesperson's actions. The Registrar further submits that the salesperson did not pay off liens on vehicles that were traded-in during a sale, and did not provide requested documents to the Registrar upon an inspection.
- [14] Mr. Valizadeh submits that the immediate suspension Order ought not be extended to the conclusion of the hearing. He acknowledged not paying the liens off immediately but indicated that he did not use the funds personally, but used the funds to address the dealer's financial obligations. He also submitted that he gathered all the documents requested by the Registrar and thought that the Registrar would come back to retrieve them. Finally he submitted that he

needs his licence to work and support his family. He does not have another job to make income and there is no risk to the public if he only works as a salesperson.

Analysis

- [15] After considering the evidence and submissions of both parties, I conclude that the Order to immediately suspend the licence of the appellant salesperson should be extended until the hearing is completed, and a decision is released. The Act is consumer protection legislation which is designed to protect the public interest. Therefore, I must consider the protection of the public's interest over the salesperson's private interests.
- [16] Mr. Valizadeh admitted that he is not only a salesperson at the dealership but also was the person in charge of decisions at the dealership as the sole officer and director of the Hudson's Fine Cars Inc. He preferred the dealership's need for cash over the obligation to immediately pay the liens off with the funds provided to him by the consumers and admitted doing so knowing the obligation to pay off the liens immediately. That he did not take any money personally for his pocket is not relevant. He diverted the funds from the required payment of the liens to the dealership because business was bad and it needed cash. This is an unacceptable decision made by Mr. Valizadeh personally to prefer the interests of his dealership business over his duties to the consumers and exposed the consumers to significant, unnecessary and unacceptable financial risk.
- [17] Although the allegations made in the Order and NOP are still subject to proof at the hearing of the appeal, the evidence provided at the first day of this hearing has provided enough for me to conclude that Mr. Valizadeh failed to pay off several liens in a timely manner because he decided to divert the cash to his business for its needs. He did this knowing the obligation to pay off the liens. He admitted the conduct alleged against the dealer but did not think this would affect his personal licence. The non-production of records to the Regulator appears at this preliminary stage to further demonstrate the salesperson's disregard for obligations under the Act which also concerns me. The conduct of Mr. Valizadeh as sole officer and director of the dealer and his disregard for its legal obligations including the diversion of cash for dealership purposes and apparent unavailability of records requested by the Registrar indicates to me that the conduct of Mr. Valizadeh as salesperson cannot be relied on at this point in time. The fact that his private interest of needing to work to support his

family does not outweigh the protection of the public that I am required to consider.

- [18] The public ought to have confidence that the motor vehicle industry is reliable, respected and trusted. The law is in place to protect consumers from having to deal with conduct that exposes the public to risk including financial risk. At this time, taking into consideration the intention and purpose of this consumer protection Act, I find that the risk to the public is great if the salesperson were to have his licence pending completion of the hearing.
- [19] On this first day of the hearing ample evidence was provided that the salesperson failed to comply with the legislation in that the salesperson did not pay off liens on cars that were traded-in on sales, and did not provide the Registrar with the documents requested during an inspection.
- [20] Laura Halbert, Deputy Registrar under the Act testified that she signed the Order because of significant problems with the appellants' conduct. She indicated that the problems related to consumer complaints and information arising from an inspection that liens had not been paid off on vehicles traded in and certain records not being made available to the Registrar even after the inspection took place. This conduct is highly concerning to the Registrar because liens have not been paid off on vehicles traded in by consumers in three instances and there may also possibly be other liens on vehicles not being paid off that the Registrar is not yet aware of. The documents not provided to date by the appellants are listed on Schedule A to the NOP. Ms. Halbert testified that liens must be paid off by the dealer out of funds provided by the consumers and their financial institutions to the dealer. This was not done in three instances until seven, five and three months after the dealer got paid which is unacceptable. The risk to the consumer is that there were two car payments for two vehicles per month which consumers cannot afford and that no satisfactory explanation was made by the appellants. The Registrar is aware of three instances in which liens were not paid off immediately. This demonstrates a pattern of conduct which constitutes significant risk to the public, shows the appellants are not financially responsible and may be a sign of the dealer's need for funds and a willingness to put that need ahead of consumers' needs. The dealership is small and the salesperson Hamid Valizadeh is the sole officer and director of the dealership corporation Hudson's Fine Cars Inc. The salesperson directed the dealership and his recent, continued past conduct is of serious concern to the Registrar because it exposes the public to extremely serious risk.

[21] I find that the salesperson's response admitting to the non-payment of liens is sufficient in determining that the immediate suspension Order ought to be extended. The fact that the salesperson did not think it would affect his licence is troubling because it is a smaller dealer and the salesperson is the sole officer and director of the dealership. Moreover, Mr. Valizadeh admitted he received funds from the consumers financial institutions to pay off the liens but he needed the money for other payments. He said he knows that liens must be paid off right away but that the dealer was short of funds and wanted to make monthly payments on the liens. Mr. Valizadeh admitted that he called the consumers involved and they agreed verbally that he could make monthly payments and pay off the liens later. The money the dealer got from the consumers financial institutions was taken because business was bad, in 2019 the dealership had a cash flow problem and needed money. He did not take any money out of the dealership for his own pocket. Mr. Valizadeh was out of the country in July and August, 2019 because of a family illness. When he came back he was busy and forgot to pay the liens off. Mr. Valizadeh admitted it was his responsibility to check the records but he didn't and this is his fault. He admitted that the lien for the Mercedes still had not been paid off at the time of the Registrar's inspection. He doesn't know how he missed this one. Mr. Valizadeh admitted that he was the person in charge of decisions at the dealership and that he is the sole officer and director of the Hudson's Fine Cars Inc. He said that he needs to keep his salesperson licence because he needs to work to support his family.

[22] With respect to the records requested by the Registrar, Mr. Valizadeh said all records were ready for the inspector as requested but the inspector never came back to the dealership to see the records. He thought the inspector was coming back. As salesperson Mr. Valizadeh has an obligation to provide records when requested by the Registrar and he made no effort to give the documents to the Registrar or to follow-up with the Registrar when the inspector did not come back.

[23] Mr. Valizadeh has admitted what the Registrar has alleged in the Order and NOP. He acknowledged that he made mistakes and is guilty of taking vehicles in trade and not paying off the liens on them. He admitted he knew he had to pay off the liens immediately but discussed an alternative with the consumers. Even though he knew what he was required to do, Mr. Valizadeh took advantage of his position in trying to get them to agree and the consumers were at his mercy because he had their money and their trade in vehicles. This put the consumers at risk that he may not be able to pay off the liens. On one of the consumer transactions, Mr. Valizadeh admitted he wasn't even making

payments on the liens and that lien is still outstanding. The consumers complained to the Registrar.

[24] The public needs to have confidence in the Act and the ability of the Registrar to regulate the motor vehicle sales industry. The evidence of Mr. Valizadeh leaves me with no confidence in his ability to complete his responsibilities as a salesperson under the Act which include proper handling of paperwork and attending to liens. As a salesperson and sole officer and director of a small dealership, Mr. Valizadeh did trades directly. As a salesperson he would still be able to expose the public to risk and risk of recurrence is very high. Economic difficulties are not relevant to a consideration of extension of the Order.

CASE MANAGEMENT:

[25] The case management process agreed upon and ordered is as follows:

[26] The parties agree to attend a case conference on November 15, 2019 at 9:30 a.m. by teleconference. Notice of the case conference will be sent to the parties confirming the teleconference details. The case conference will be conducted by another member of the Tribunal.

[27] The hearing will resume on a date to be set following the case conference.

[28] I asked for and received submissions from both parties regarding whether I am seized of the hearing and should continue as the adjudicator at the resumption of the hearing. Registrar's counsel submitted that I am seized and should preside at the resumption of the hearing. The appellants agent asked that I continue as the adjudicator at the resumption of the hearing. I agree with the submissions of both parties and find that I am seized of this hearing, having heard a substantial amount of evidence from two witnesses.

[29] The hearing will resume before me, on a date that I am available. The intent is to complete the hearing and release a decision in an expeditious manner given the Order made below.

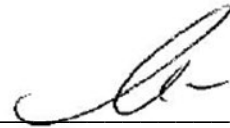
ORDER:

[30] Further to the hearing held November 4, 2019, I order the following:

- a. Under s. 10(3)(b) of the Act, the expiration of the Order to immediately suspend the licences of the appellants is extended until the hearing is completed, and a decision is released.

- b. The parties will attend a case conference to be held by teleconference on **November 15, 2019 at 9:30 a.m.**
- c. The hearing of this appeal is adjourned and will resume on a date to be set following the case conference, before me.
- d. Nothing in this Order affects any requirement under the Act.
- e. The Safety, Licencing Appeals & Standards Tribunal Ontario Common Rules of Practice & Procedure, October 2, 2017 apply to this appeal except where varied by Order.

LICENCE APPEAL TRIBUNAL



Avril A. Farlam, Vice-Chair

Date of issue: November 08, 2019