

CITATION: Platinum Auto Gallery Inc. v. Registrar, Motor Vehicle Dealers Act, 2002 2015
ONSC 1299
DIVISIONAL COURT FILE NO.: 113/14
DATE: 20150226

ONTARIO

SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

SACHS, NORDHEIMER AND CORBETT JJ.

BETWEEN:)
)
PLATINUM AUTO GALLERY INC.,) *Justin M. Jakubiak*, for the Applicants
BEHZAD RABIE, a.k.a. BEN RABIE and) (Appellants)
JAMIE M. GIROUX)
)
Applicants)
(Appellants))
- and -)
)
REGISTRAR, MOTOR VEHICLE) *Brian D. Osler* and *Michael T. Rusek*, for
DEALERS ACT, 2002) the Respondent (Respondent in Appeal)
)
Respondent)
(Respondent in Appeal))
)
) **HEARD at Toronto: February 26, 2015**

NORDHEIMER J. (ORALLY)

[1] There are three appellants who appeal to this court from the decision of Terrence Sweeney, Vice-Chair of the Ontario Licence Appeal Tribunal, that dismissed an appeal from a Notice of Proposal made by the Registrar, Motor Vehicle Dealers Act, 2002. That proposal would have refused the appellants, Platinum Auto and Rabie, registration under the Act and would have revoked the registration of the appellant Giroux.

[2] The core issue in this appeal is the assertion by the appellants that they were denied procedural fairness through the manner in which the Vice-Chair conducted the hearing of the appeal.

[3] Given that the issue is one of procedural fairness, no standard of review issue arises. Either procedural fairness was accorded to the appellants or it was not and, if it was not, then the decision reached generally cannot stand.

[4] In fairness, the respondent concedes that the manner in which the Vice-Chair conducted the hearing did not accord procedural fairness to the appellant Giroux, who was unrepresented at the hearing. In particular, not only did the Vice-Chair not provide even a minimal level of assistance to Mr. Giroux to ensure that he could effectively participate in the hearing, he expressly did not allow Mr. Giroux to cross-examine some of the witnesses that the Registrar called. The decision insofar as it relates to Mr. Giroux cannot therefore stand.

[5] The issue regarding the other two appellants, Platinum Auto and Rabie, is qualitatively different, however. They had counsel at the hearing. They were fully aware of their rights in terms of their participation in the hearing. The process undertaken in the conduct of the hearing by the Vice-Chair was, in some instances, quite perfunctory. In other instances, it greatly emphasized expediency over due process. However, insofar as the manner in which the Vice-Chair conducted the hearing truncated or limited the degree of participation of the parties, it appears to have done so equally to both sides. That is, the Vice-Chair's approach was not solely visited on the appellants. The respondent equally had to contend with the ramifications of the approach taken by the Vice-Chair.

[6] In addition to the fact that the appellants, Platinum Auto and Rabie, were represented is the equally salient fact that no objection was taken by them to the manner in which the Vice-Chair conducted the hearing. While the failure to object would not excuse an overriding flaw in procedural fairness, these appellants are unable to point to any such flaw. They were not denied the right to cross-examine witnesses, for example. Rather, their complaint seems to come down to the fact that they were “rushed” in their role at the hearing. That complaint does not rise to the level of procedural unfairness needed to warrant this court’s intervention. That is especially so in a case where the evidence arrayed against the appellants was characterized as “overwhelming”.


[7] That said, we do not mean to countenance the fashion in which the Vice-Chair chose to conduct this hearing. While an adjudicator has a legitimate interest in conducting any hearing in an efficient manner, efficiency cannot be used as an excuse to override basic procedural rights and basic procedural fairness.

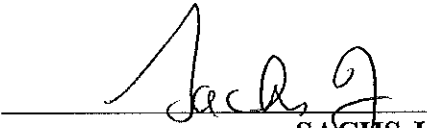
[8] In this case, however, while that was the result with respect to Mr. Giroux, as the respondent fairly concedes, the result for the appellants Platinum Auto and Rabie did not rise to that level. That difference, for example, distinguishes this case from the situation in *165575 Ontario Inc. v. Hamilton (City)* (2008), 92 O.R. (3d) 374 (C.A.).

[9] The core argument of the appellant is that if the hearing is procedurally unfair for one party, it must be procedurally unfair for the others. That is not necessarily the case. The appellants would have to point to some impact on their position arising from the unfairness for the other party. That has not been shown. That is especially so since these appellants had a full

opportunity to elicit whatever evidence they wished from Mr. Giroux when he gave evidence before the hearing.

[10] The appeal is therefore allowed only with respect to the appellant Giroux. It is dismissed with respect to the appellants Platinum Auto and Rabie. The matter as it relates to appellant Giroux is remitted back to the Ontario Licence Appeal Tribunal for a rehearing before a different member of that Tribunal.


NORDHEIMER J.


SACHS J.


D. L. CORBETT J.

Date of Reasons for Judgment: February 26, 2015

Date of Release: FEB 27 2015

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RABIE, a.k.a. BEN RABIE and JAMIE M.
GIROUX

Applicants
(Appellants)

– and –

REGISTRAR, MOTOR VEHICLE DEALERS
ACT, 2002

Respondent
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ORAL REASONS FOR JUDGMENT

NORDHEIMER J.

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