

**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: Shaian Saadatkhani v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2019
ONLAT MVDA 11936

Date: 2019-10-22

File Number: 11936/MVDA

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

Between:

Shaian Saadatkhani

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

Decision and Order

ADJUDICATORS:

Dawn Kershaw, Vice-Chair

Patricia Conway, Member

APPEARANCES:

For the Appellant: Pradeep Chand

For the Respondent: Michael Burokas

Hearing dates: June 6 and July 31, 2019.

Reporter: Shahed Abdul-Dayem

Background

1. The appellant appeals the respondent's Notice of Proposal dated February 19, 2019 to refuse his application for registration as a motor vehicle salesperson under the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B (the "Act").
2. The Notice of Proposal alleges that the past conduct of the appellant affords reasonable grounds for belief that the appellant will not carry on business in accordance with the law and with integrity and honesty, a ground for refusal under s. 6(1)(a)(ii) of the Act. The Registrar relies on the appellant having been charged with possession and possession for the purposes of trafficking, of marijuana. The Notice of Proposal also alleges that the appellant lied in his application for registration regarding this charge and that this also disentitles him to registration under section 6(1)(a)(iii) of the Act.
3. After careful consideration of all of the evidence, the panel finds that the appellant deliberately and knowingly lied on his application for registration. On this ground we find that the appellant is disentitled to registration, and we direct the Registrar to carry out the proposal. We also find that the appellant's past conduct relating to his outstanding charges affords a reasonable basis to believe that he will not carry on business in accordance with the law and with honesty

and integrity. On this ground as well, we would direct the Registrar to carry out the proposal

4. During the hearing, appellant's counsel frequently stated to the panel that he thought its rulings were biased and that the panel seemed to have predetermined the case. Counsel was assured that this was not true, and that simply ruling against his position with respect to some objections did not constitute pre-judgment or unfairness. Several of counsel's objections and the panel's response are set out in the course of this decision. Counsel did not make a motion that the panel of the Tribunal should recuse itself. The panel confirms here that in its deliberations it has carefully considered all of the evidence with an open mind.

Issues in dispute

- a. Did the appellant lie on his application for registration, and if so, does this disentitle him from registration?
- b. Does the past conduct of the appellant provide a reasonable basis for belief that the appellant will not carry on business in accordance with the law and with honesty and integrity?

Evidence on Issue (a): Did the appellant lie on his application for registration? Does this disentitle him from being licenced?

5. The appellant, a young man of 29, was registered as a salesperson under the Act between November 2013 and March 11, 2017. He told the hearing that he worked first at a large downtown dealership in Toronto for 3 or 4 months but "did not do too well" there. He moved to a smaller dealership dealing in used cars called The Auto Show Inc. He was successful there, spending his first year as a salesperson and then working until the end of 2016 as sales manager. There is no record of any complaints against him during his employment with the Auto Show Inc. He testified that he got on very well with the general manager and she gave him responsibility for most matters involving sales.
6. At the beginning of 2017, he left the dealership. His registration under the Act was cancelled on March 11, 2017 as an administrative matter since he was no longer working in the industry. He applied to be re-registered on November 7, 2018.
7. The facts are unclear regarding what he did between early 2017 and September 2018. He told the hearing that he left the Auto Show Inc. and moved to

Brantford to help his father with his taxi business. In his November 7, 2018 application to OMVIC he stated that he left the Auto Show Inc. because the business was on its way to closing and from January 2018 to November 2018, he was taking courses to be a real estate agent.

8. On September 18, 2018, five police officers entered the appellant's apartment at about 7:30 in the morning. They were executing a search warrant for his apartment. As a result of their search, during which they found more than two kilograms of a substance and some trafficking paraphernalia, the police charged the appellant with possession of marijuana and possession of marijuana for the purpose of trafficking. It is this event, and the appellant's failure to tell OMVIC truthfully what happened, that led to the Registrar's proposal to refuse to register him.
9. Shortly after this event, the appellant went to a long-time friend who was working at a used car dealership in Toronto, seeking employment. The friend recommended him to the manager of the dealership. The appellant was offered employment as a sales representative, to start as soon as he was re-registered by OMVIC. He worked at the dealership from October 2018 to February 2019 in a position that did not require registration.
10. In November 2018, the appellant applied for registration as a motor vehicle salesperson under the Act, proposing to continue working at the same dealership as a registered salesperson. The application was received by OMVIC on November 7, 2018.
11. Under section D of the application form, "Eligibility", question 8 asked the appellant if he had ever been found guilty or convicted of an offence under law, or whether there were any charges pending against him. He ticked the "yes" box. If he answered "yes" to question 8, he was to provide the details on a statement signed and dated by him and co-signed by an authorized individual at the dealership where he intended to work.
12. With his application form, the appellant submitted a statement dated November 2, 2018 addressed "to whom it may concern" to explain his pending charges. The statement said that on 17 September 2018 he went to a local marijuana dispensary and purchased 40 grams of dried marijuana for medical purposes. After his purchase he was stopped by two police officers who charged him with possession and trafficking. The statement said that the trafficking charge was laid because he had over 28 grams which (he wrote) is the limit for personal use.

At the bottom of the letter was a handwritten note stating, "I am aware of this situation" signed by the general manager of the dealership he was working for.

13. After receiving his application, Ms. Karmjit Sidhu, the person at OMVIC charged with initial review and ensuring the completeness of applications, requested further information regarding the likely disposition of his charges. She received a letter from the appellant's lawyer dated November 22, 2018. The letter stated that the appellant was not the target of a police investigation and that a quick resolution of the charges was expected, with no conviction resulting.
14. OMVIC then asked the police for a synopsis of the charges against the appellant. On November 29, 2018, OMVIC received a General Occurrence: Records Release document. This document described the search of the appellant's apartment pursuant to a search warrant and the finding of a quantity of marijuana in his bedroom totalling 2,412.90 grams.
15. Counsel for the appellant objected to Ms. Sidhu tendering in evidence the various documents she received and kept in the appellant's application file, arguing that she had not personally requested the documents and could not say where they came from. We rejected this submission. The documents speak for themselves and the panel accepts them as evidence of what was in the police files related to the search warrant, what was found during execution of the search warrant, and the charges laid against the appellant as a result.
16. On December 3, 2018, the appellant called Ms. Sidhu for an update on his application. Ms. Sidhu made a note of the conversation as soon as she finished the call. Ms. Sidhu told the hearing that she remembered the call and confirmed that the note was accurate. During that telephone call, Ms. Sidhu told the appellant that the disclosure he had provided regarding his charges was inconsistent with the Police Synopsis OMVIC had received and that OMVIC would be ordering the court documents relating to his charges. The appellant began explaining that the reason the police arrested him outside the dispensary was that police were initially investigating a friend and arrested the appellant as he was associated with that friend. Ms. Sidhu asked him to send whatever additional information he had in writing to her attention and she would add it to his application. He filed nothing further.
17. The Registrar called Ms. Andrea Korth on behalf of the Registrar. She has been business standards manager at OMVIC for 12 years. In this position, she manages the department dealing with industry conduct and breaches of OMVIC's codes of ethics and the standards of the Act.

18. Counsel for the appellant objected to Ms. Korth as a witness before the start of her testimony, stating that her evidence could not possibly be relevant as she had no personal involvement with the appellant. We rejected this submission initially on the basis that her evidence had not yet been heard and therefore we could not determine its relevance. As her evidence progressed, we concluded that her evidence was relevant to assist the Tribunal in understanding why the Registrar believes that honesty in responding to all questions asked in the application form is essential, and why a false statement in the application is a reason to refuse registration. In her words, these answers are “the first test” of any applicant’s honesty and integrity. She stated that if an applicant decides to lie to its proposed regulator where telling the truth might assist the regulator (in choosing a suitable applicant) but disadvantage the applicant (by disclosing some fact that might lead to refusal of his application) then there is a reasonable basis for concern that the applicant will lie to the car-buying consumer where it benefits him.
19. Counsel for the appellant requested that we draw an adverse inference against the Registrar because he was not called to give evidence about the Notice of Proposal. After hearing the parties’ submissions, we declined to draw an adverse inference. It was open to the appellant to have subpoenaed the Registrar if he believed that the Registrar’s evidence was important to his case.
20. In cross-examination, the appellant was asked to agree that the statement he made on his application regarding the circumstances that led to his criminal charges was false. He repeatedly did not answer the question until the panel instructed him to do so. He then agreed that the statement was false. He also admitted that he asked his employer to sign the appellant’s November 2, 2018 note explaining the charges without telling him that the account in the letter was false and without telling his employer the true circumstances that led to his arrest and charges.
21. The appellant submitted four letters from people who know him attesting to his good character, his work ethic and his trustworthiness. The letters are from his (now former) dealership employer, his long-time friend the sales manager at that dealership, his former manager at the Auto Show, and a close personal friend. None was called as a witness. In their own words, three of the four stated that they knew about the charges against the appellant and were shocked by them, as they were completely outside of the appellant’s true character. In cross-examination, the appellant admitted that the authors of the letters did not know that he had lied in his application for registration. Later, he changed his testimony to say that the people at the dealership did know that he lied on his

application because OMVIC sent the Notice of Proposal to them. However, it is unclear if the letters were written before or after they heard from OMVIC as no evidence was led on when OMVIC sent them the Notice of Proposal. As they were not called to give evidence and the panel does not know what these people knew when they wrote the letters, the panel gives them little if any weight.

Analysis

22. The appellant admitted that his November 2, 2018 explanation submitted to OMVIC is false. The appellant knew that his explanation of the circumstances that led to the charges was important. He told the panel that he lied because he feared that if he told the truth, he would be denied registration. In his testimony, the appellant stated that he “made a mistake” and that given a second chance he would not make the same mistake. However, he had a second chance, when on December 3, 2018 he called Ms. Sidhu and learned that OMVIC had a police synopsis that was inconsistent with his version of events. Instead of telling the truth at that time, he offered some information that continued his story about the dispensary. Ms. Sidhu offered him the opportunity to send a written explanation to OMVIC. This was another opportunity to report truthfully what had occurred. He chose not to do so.
23. The appellant was untruthful when he failed to tell his employer the circumstances of his arrest before asking him to sign the November 2, 2018 statement submitted to OMVIC. He also did not tell the truth to the people he asked to write letters attesting to his good character. Although he insisted in his evidence that he made a mistake and would act differently if given another chance, the panel finds that he has had many opportunities to act differently but he has not.

THE LAW: does the panel have discretion once it has determined that the appellant lied on his application?

24. Counsel for the Registrar argued that the panel has no discretion but must confirm the Registrar’s proposal to deny registration if it finds that the appellant lied on his application form. The Registrar has referred the panel to the decision of the Divisional Court in *Ontario (Registrar of Alcohol and Gaming) v Hosseini-Rad*, 2004 CanLII 34450. Counsel argues that although that case was dealing with another statute, the *Liquor Licence Act*, R.S.O. 1990, c. L.19, the particular provisions of that statute regarding the effect on lying on an application for a licence are very similar to section 6(1)(a)(iii) of the Act.

25. In *Hosseini-Rad* the Registrar denied the appellant a licence to deliver liquor to a residential dwelling because he did not disclose on his application form that he had criminal convictions. The Board of the Alcohol and Gaming Commission of Ontario (the Board) found that the appellant had lied on his application but looked at other matters and granted his application with conditions. The Registrar appealed this decision to the Divisional Court. The Divisional Court ruled that once the Board had determined that the appellant had made a false statement on his application, it had **no discretion** to do anything other than refuse registration. Counsel argues that we are bound by that decision because of the great similarity between the *Liquor Licence Act* and the *Motor Vehicle Dealers Act, 2002* respecting entitlement to registration unless a false statement was made on the application form.

26. We have examined the statutory provisions carefully and find that although there is a marked similarity between the statutes, there is an important difference in that the *Motor Vehicle Dealers Act 2002* gives the Registrar and the Tribunal a discretion that is **not** given under the *Liquor Licence Act*.

27. Section 10(2) of the *Liquor Licence Act* states:

Subject to subsection (5) [which prohibits granting a licence in certain cases not material here] an applicant for a licence to deliver liquor is **entitled** to the issuance of the licence **unless** the applicant is **disentitled** for any ground under clauses 6(2) (a) to (g).

28. The ground in section 6(2)(e) of the *Liquor Licence Act* is that:

the applicant or an employee or agent of the applicant makes a false statement or provides false information in an application under this Act.

29. Section 6(1)(a)(iii) of the *Motor Vehicle Dealers Act, 2002* states:

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,

...

(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.

30. Further, s. 10(3)(a) of the *Liquor Licence Act* puts a qualification on the Registrar's authority to approve an application for a licence to deliver liquor. The Registrar may "approve the application if the applicant is not disentitled under subsection (2)" (emphasis added). There is no comparable provision in the *Motor Vehicle Dealers Act, 2002* limiting the Registrar's discretion to approve an application. Rather, s. 8(1) of the *Motor Vehicle Dealers Act, 2002* states that the registrar "may refuse to register an applicant ... if, in his or her opinion, the applicant or registrant is not entitled to registration under section 6" (emphasis added).
31. The important distinction between the two sets of provisions is that under the *Liquor Licence Act*, the finding that an applicant has made a false statement **disentitles** the applicant to the issuance of a licence. The statutory disqualification eliminates any discretion on the part of the Registrar or the Tribunal. By contrast, the finding that an applicant made a false statement on his application under the *Motor Vehicle Dealers Act, 2002*, **does not** disqualify the applicant to registration. Rather, the finding results in the applicant's loss of his **automatic entitlement** to registration. The Registrar must then inquire into all of the circumstances and determine whether the applicant should or should not be registered. This same discretion resides in the Tribunal in determining whether or not to direct the Registrar to carry out the Registrar's proposal to refuse to registration on the basis of the false statement made by the appellant on his application.
32. The Panel has therefore considered how it should exercise this discretion and for reasons set out below has determined to direct the Registrar to carry out the proposal to refuse registration to the appellant on this ground.
33. The applicant believed that the lie was important. He believed that if he told the truth regarding the circumstances of his charges, his application for registration would be denied. The lie appears to have been carefully thought out to permit the applicant to disclose his charges, knowing that OMVIC would become aware of them through the police check required, yet to put the charges in a favourable light by saying he bought only 40 grams of marijuana and the marijuana was for medicinal purposes.
34. The panel has accepted Ms. Korth's evidence that the application form is the first test of an applicant's honesty. An applicant must be honest, for the public relies on a licensed salesperson to disclose the truth, good, bad or ugly, about the history of a vehicle. This is especially true with an applicant who will be dealing in used cars, as is the case here, for there is a driving history that the

salesperson must disclose that will have an effect on a potential purchaser's interest and the price they are prepared to pay. The applicant not only lied to the Registrar on the application form; he continued to lie to the Registrar when he spoke with Ms. Sidhu. He also lied to his prospective employer, to his prospective manager and to his former employer. In giving evidence at the hearing, the appellant sought to avoid answering questions that might harm his case. We conclude that the appellant is not someone who should be trusted to put the public's interest in full disclosure before his own interest in selling a car. Having deliberately lied on his application in all the circumstances of this case, the panel finds that he should not be registered. Therefore, we direct the Registrar to carry out its proposal.

Evidence on Issue b: Does the past conduct of the appellant offer reasonable grounds to believe that the appellant would not conduct business in accordance with the law and with honesty and integrity?

35. The Registrar called Detective Constable Paul Canning to tell the hearing about the search warrant and its execution. He has been with the police force since 2006 and has been a detective constable for 3 years. He has been with the Guns and Gangs task force for 2 years. During his career he has executed an estimated 400 search warrants related to drugs. He was one of a number of officers tasked with executing search warrants in connection with a drug trafficking enterprise involving a weapon or weapons. One of the search warrants was for the appellant's home. His assignment was to take photographs of what was found there. He testified that a small quantity of marijuana was found in plain view in the main area of the apartment. A larger quantity was found in the appellant's bedroom closet. Also found were baggies and a debtors' list stating names of persons and how much each owed. He testified that this paraphernalia and the quantity of marijuana found are typical of a trafficking business. He stated that he knew that the product found was marijuana from his long experience. He knows how it looks and how it smells.
36. In cross-examination, Detective Constable Canning was asked if he had ever been charged under the *Police Services Act*. He testified that he was informed in April 2019 that he is under investigation for deceit. It is alleged that he was deceitful in a conversation with a Crown regarding a search warrant executed in June 2018. He told the hearing that he has retained counsel and was interviewed in April 2019 and has heard nothing further since then.
37. On the basis of this information, counsel for the appellant urged the panel to find that Detective Constable Canning's evidence in this case should be given

no weight. He submitted that the investigation of his conduct was a serious matter and as a result Constable Canning had no credibility. The panel declined to accept this submission. We noted that there has been no charge laid, let alone any finding of guilt. In our view, Constable Canning's truthful response to counsel's question demonstrates that he tells the truth even where it is against his own interest. We accept his evidence as summarized above. We also accept his evidence that he has a solid basis in experience to identify

38. Mr. Saadatkhani testified on his own behalf and called no other witnesses. He offered no explanation for the events surrounding the execution of the search warrant and the resultant charges. He was frequently unresponsive to direct questions he was asked, and repeatedly stated that he made a mistake, would do it differently if he had it do over again, and deserves a second chance.

39. The Registrar submits that on all the evidence, we should conclude that the Registrar has a reasonable basis for believing that the appellant would not conduct business in accordance with the law and with honesty and integrity.

THE LAW: What is the legal test

40. The legal test applicable to this ground is not "on the balance of probabilities" but "on a reasonable basis for belief". This is a lower test than "balance of probabilities" and requires "objective belief based on compelling and credible evidence": *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc. (Famous Flesh Gordon's)*, 2013 ONCA 157]. There are two steps to this test: first, the facts regarding the appellant's past conduct are determined on the balance of probabilities; second, these facts are examined to decide whether they provide a reasonable basis for belief that the appellant will not, if licenced, conduct business lawfully and with honesty and integrity.

Analysis

41. The panel has no difficulty concluding that the substance found in the appellant's apartment was more likely than not marijuana. Constable Canning has had a long history of dealing with drug cases. He testified, and the panel accepts, that he is able to identify marijuana by its appearance and smell, and his evidence was uncontroverted. Counsel for the appellant argued that expert testimony is required before the panel can decide on this issue. We do not accept this submission. While this may be required where the legal test to be applied is "beyond a reasonable doubt", that is not the legal test we must apply.

42. Constable Canning stated that some of the paraphernalia commonly found when the drug is being trafficked was found in the appellant's apartment, including baggies and a debtors' list. The volume of marijuana and the presence of the paraphernalia indicate that someone was trafficking. However, the Panel must determine if it was the appellant who was intending to traffic. We have no evidence regarding who owned the marijuana, how it came to be in the appellant's apartment, nor what its purpose was. These questions will presumably be answered if the criminal case is ever tried. But the onus on the Registrar is to satisfy the Tribunal that the appellant's purpose was more likely than not to traffic, i.e. to resell the marijuana, if the Tribunal is to make a finding that the appellant's past conduct includes possession of marijuana for the purpose of trafficking.
43. The substance which we have found was marijuana was found in the appellant's apartment. The appellant was alone in the apartment. A large quantity of the substance was found in his bedroom. Trafficking paraphernalia and evidence of drug use were found in open view in the living room. Absent any explanation from the appellant, the panel finds that the Registrar has proven that the appellant intended to resell the marijuana.
44. We have taken into consideration that at the time of the offence, possession of marijuana was on its way to being made legal. However, possession for the purpose of trafficking has remained an offence and continues to be prosecuted. The appellant's involvement in an illegal business appears to have been more than incidental. He appears to have had customers who owed him money. The quantity of marijuana found also suggests that he had many customers, or that he was acting as a wholesaler, selling to other dealers. The appellant's possession of marijuana for the purposes of trafficking is, at a minimum, an example of intending to conduct business in contravention of legal prohibitions. This makes it less likely that he will conduct business in accordance with the law when he is acting as a registered salesperson of motor vehicles.
45. In looking at past conduct, the Tribunal must not limit its inquiry to this single incident. It must consider all of the appellant's past conduct as set out in the evidence. Of his life before he worked as a registered motor vehicle salesperson, we know very little. We know that he was a registered salesperson at a used car dealership for two years and by his account, did well and was trusted by his employer. This is certainly a mitigating factor. We have no reliable evidence regarding what he did after he left the dealership, as he gave

one account of that period at the hearing and another in his application for registration. The criminal charges are more recent evidence of his conduct. His false statements to the Registrar on his application form and his failure to provide true and complete information to his former employers and to his other character references also are more recent evidence of conduct that raises concern regarding the appellant's honesty and integrity in dealing with the public and his employers in the future. Bearing in mind the overall consumer protection purpose of the Act, we find that the Registrar has proven its case under section 6 (1)(a) (iii) of the Act. The past conduct of the appellant provides reasonable grounds for belief that the appellant, if registered as a salesperson, would not carry on business in accordance with the law and with honesty and integrity.

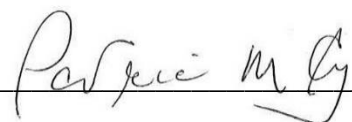
DECISION

46. For the reasons we have set out, the panel directs the Registrar to carry out its proposal to refuse to register the appellant as a salesperson under the Act.

LICENCE APPEAL TRIBUNAL



Dawn Kershaw, Vice Chair



Patricia Conway, Member

Released: October 22, 2019