

Licence  
Appeal  
Tribunal

Tribunal  
d'appel en  
matière de permis



IOANNIS (JOHN) FLOROS

APPEAL FROM A PROPOSAL OF THE REGISTRAR UNDER  
THE *MOTOR VEHICLE DEALERS ACT, 2002*, S.O. 2002, c. 30,  
Sch. B

TO REFUSE REGISTRATION

TRIBUNAL: ELIZABETH L. SPROULE, Vice-Chair

APPEARANCES: IOANNIS (JOHN) FLOROS, the Applicant, unrepresented

SARAH AOUCHICHE, Student-at-Law, representing the Registrar,  
*Motor Vehicle Dealers Act, 2002* (the "Registrar")

DATE OF  
HEARING: February 7, 2011

Windsor

## REASONS FOR DECISION AND ORDER

### BACKGROUND

This is an appeal to the Licence Appeal Tribunal (the "Tribunal") from a Notice of Proposal (the "Proposal") pursuant to section 9 of the *Motor Vehicle Dealers Act, 2002* (the "Act"). The Proposal dated July 20, 2010, sets out the Registrar's reason for refusing to register Ioannis (John) Floros (the "Applicant") as a salesperson, as follows:

The intention and objective of the Act is to protect the public interest. In doing so, the Act prohibits the making of false statements in an application for registration or renewal and requires that Applicants be financially responsible in the conduct of business and that they carry on business in accordance with the law and with integrity and honesty. Ioannis (John) Floros's (*sic*) past conduct is inconsistent with the intention and objective of the Act, and therefore warrants disqualification to registration under the Act.

The particulars relied upon are set out in the Proposal and in the Notice of Further and Other Particulars dated December 16, 2010. In summary, the Registrar believes that the Applicant's 2007 plea of guilty to the offence of "Fraud Over", his non-compliance with the Restitution Order related to his fraudulent conduct, his failure to provide particulars of an outstanding judgment when asked, his subsequent failure to resolve

the outstanding judgment despite providing assurances and details of his intentions to do so, and finally, the fact that the Applicant has not completed his probation period, disqualify him from registration.

## **ISSUE**

Is the past conduct of the Applicant inconsistent with the intention and objective of the Act and therefore warrants disentitlement to registration under the Act?

## **EVIDENCE**

The evidence of the Registrar consisted of documentation and the oral testimony of Police Detective Mark Denomee, Robert Ward, the credit manager for Dan Kane Leasing, and Mary Jane South, Deputy Registrar.

The evidence of the Applicant consisted of documentation and his oral testimony.

There were no objections to any of the documents submitted to the Tribunal for consideration by either party. The Proposal was marked as Exhibit #1. The Notice of Further and Other Particulars dated December 16, 2010, was not initially marked as a separate exhibit as the Tribunal was advised by the Registrar's representative that it had been reproduced in the Respondent's Book of Documents - Volume 2, which was marked as Exhibit #4. Through inadvertence it would appear that a copy of the Notice of Further and Other Particulars was not included in that Book of Documents, and therefore, the Notice of Further and Other Particulars filed with the Tribunal was subsequently marked as Exhibit #4a.

The facts of this case are not in dispute. The Applicant engaged in conduct between July 12, 2004 and June 29, 2005, which resulted in his being charged with defrauding his then employer of an amount exceeding \$5000. The Applicant was employed by a furniture store and was found to have been involved in over 80 fraudulent transactions involving consumers and furniture purchases. The Applicant was charged on or about August 12, 2005.

The Applicant had first applied for registration as a salesperson on or about June 27, 2005, prior to the charges noted above. The Registrar issued a proposal to refuse on October 7, 2005, which was not appealed.

The Applicant entered a plea of guilty of the offence of "Fraud Over" on November 21, 2007. He admitted to defrauding his employer of over \$350,000. He was sentenced on or about July 14, 2008, to a conditional sentence of imprisonment for a period of two years less a day, to be followed by three years probation, and a Restitution Order for \$355,284.95 was issued. The Applicant successfully completed the Conditional Sentence on July 12, 2010. The Probation portion of the sentence then commenced

and will be terminated on July 12, 2013. As of the time of these proceedings, the Applicant had repaid approximately \$300.00 of the Restitution Order.

The Applicant submitted a second application for registration as a salesperson in March of 2010.<sup>1</sup> The Applicant proposed to work for his father. In his application form, the Applicant answered "Yes" to question 3, that there were "unsatisfied judgements (*sic*), court orders or collections currently pending" against him, and question 6, that he had "been found guilty or convicted of an offence". The application form required the Applicant to provide written details to explain his "Yes" answers. He provided a one and a half paged letter, dated March 17, 2010, in which he described how he had been suffering from an addiction to gambling since his graduation from high school and this addiction led to the fraud charges. The details provided related solely to his answer to question 6 and his criminal charges, and no details were provided as to the unsatisfied judgments, court orders or collections.

The Ontario Motor Vehicle Industry Council ("OMVIC") requested that the Applicant provide further particulars. In response, the Applicant sent a letter dated April 7, 2010,<sup>2</sup> explaining that he had returned a leased vehicle after 37 months of a 48 month lease. He did this as he believed it was the right thing to do at the time, given his financial situation. When subsequently asked about a judgment in favour of the lessor, the Applicant indicated that he had not been aware of an outstanding judgment. He acknowledged that he had been aware, through overdue notices, that there were monies owing. He stated in his April 16, 2010, letter to OMVIC that:

i (*sic*) wish desperately to work a (*sic*) out a solution to finalize this matter with the leasing company in the future.

In a further letter to OMVIC dated April 26, 2010,<sup>3</sup> the Applicant reiterated that it had been OMVIC which had brought the judgment to his attention and stated that:

Upon notification, i (*sic*) have implemented an affordable repayment schedule regarding this matter.

He indicated that he planned to contact the leasing company directly to determine the total amount owing, as his "figures" suggested a different amount owing. He then stated in this letter that:

Upon a successful agreement by both parties, I will pay \$1000.00 immediately, and commence with monthly payments to pay it off.

Mr. Ward testified that he first heard from the Applicant on February 2, 2011, after having received a summons for these proceedings. He stated that no monies have been received to date from the Applicant although he had provided the Applicant with an offer to settle on February 3, 2011, which offer was to expire on February 7, 2011.

<sup>1</sup> Exhibit #3, tab 8

<sup>2</sup> Exhibit #3, tab 11

<sup>3</sup> Exhibit #4, tab 14

He confirmed that a monthly invoice had been sent to the Applicant since his default, approximately 56 invoices in total.

At the outset of these proceedings, the Applicant indicated to the Tribunal that he had brought a bank draft with him to deal with the leasing judgment. The Tribunal called a brief recess to allow the Applicant to deal with this issue. Later, during his testimony, the Applicant produced the bank draft. The Applicant testified that he had borrowed the funds necessary to pay off this debt from family, and in his opinion, this was not a responsible act. He advised the Tribunal that he had not actually had the bank draft in hand at the outset of the hearing: it was not available to him until the lunch recess. Mr. Ward had testified and had left the proceedings before that time. At the end of the proceedings, it was not clear to the Tribunal what the Applicant's intentions were with respect to paying the creditor given his statements that he thought paying the debt with borrowed funds was irresponsible. Subsequently, the Tribunal was forwarded confirmation that the payment had in fact been made, which the representative for the Registrar subsequently verified.

In support of his application for registration and this appeal, the Applicant submitted a letter dated November 22, 2010, from his father, the Dealer with whom the Applicant has been employed for approximately six years. In his letter, the Applicant's father states that there have been no issues with the Applicant during his employment, that the Applicant has been successful in recovering from his addiction and that he now trusts the Applicant.

The Applicant also provided letters from his Probation Officer, a Problem Gambling Consultant, an individual with the Problem Gambling Services, an individual from Gamblers Anonymous, and a high school teacher in whose class the Applicant has volunteered on a number of occasions to speak to the negative effects of problem gambling. In summary, the Applicant has been cooperative, compliant and self-motivated in regard to the conditions of his sentence, he has taken and continues to take steps to deal with his addiction and has been successful in this regard. He also has been active in the education and support of others on this issue.

## LAW

The Act states as follows:

- 5.1 If an applicant for registration or renewal of registration does not meet the prescribed requirements, the registrar shall refuse to grant or renew the registration.
6. (1) 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,

- (i) having regard to the applicant's financial position or the financial position of an interested person in respect of the applicant, the applicant cannot reasonably be expected to be financially responsible in the conduct of business,
  - (ii) the past conduct of the applicant or of an interested person in respect of the applicant affords reasonable ground for belief that the applicant will not carry on business in accordance with law and with integrity and honesty, or
  - (iii) the applicant or an employee or agent of the applicant make a false statement or provided a false statement in an application for registration or for renewal of registration;
- (e) the applicant or an interested person in respect of the applicant is carrying on activities that are, or will be if the applicant is registered, in contravention of this Act or the regulations, other than the code of ethics established under section 43.

## ANALYSIS

The issue before the Tribunal is whether the past conduct of the Applicant is inconsistent with the intention and objective of the Act and therefore warrants disentanglement to registration under the Act. The intention and objective of the Act is to protect the public interest. It requires that an applicant be financially responsible in the conduct of business and to conduct that business in accordance with the law and with integrity and honesty.

In denying the Applicant's registration, the Registrar has stated concern not only about the Applicant's fraud conviction and the limited effort he has made to pay off the Restitution Order, but also his reluctance to provide particulars regarding his debt to the leasing company and his failure to deal with the outstanding judgment relating to that debt. The Registrar is also concerned that any positive steps that have been taken with respect to paying the Restitution Order and leasing debt have been solely motivated by the desire to be registered and during a period when the Applicant is under significant supervision and scrutiny. The concern is of course that this may not be indicative of his conduct when not under supervision. Registration at this point is, therefore, considered by the Registrar to be premature, if appropriate at all.

The Tribunal accepts the Applicant's evidence that he has worked hard to overcome his gambling addiction and has been successful in keeping it under control. His supporters confirm that he is a changed and better man, husband and father.

The Applicant has explained that his fraud conviction was the direct result of an all consuming, judgment impairing addiction, and that the little progress on the repayment of the Restitution Order has been the result of his inability to pay. Unfortunately, these factors do not explain his conduct with respect to his outstanding debt to a car leasing company. This matter has been outstanding up until these proceedings and during a time where the Applicant was not under the influence of his addiction.

The Tribunal has noted a disconnect between what the Applicant has stated to be his intended actions and his actual conduct in regard to his judgment creditor. The Applicant was provided with over 50 notices of the debt over a number of years, although he claims not to have received any documents relating to the legal action that led to the judgment. When advised of the judgment, he indicated in writing to OMVIC, in April of 2010, that he was "desperate" to settle the matter and that he had worked out a repayment schedule. He gave the impression that he was intending to start addressing this issue immediately. This is not what he did. He made no efforts to either contact the creditor or pay anything. It was only on February 2, 2011, days before these proceedings, that he took action. If he was not in a financial position to pay this debt, then that is what he should have said.

The Applicant stated to the Tribunal, more than once in his testimony, that honesty is an absolute: that a person is either honest or not. The Tribunal respectfully suggests that being "honest" includes saying what you mean and meaning what you say. The ability to be forthright, even when it is not to one's benefit, is essential in the industry in which the Applicant wishes to work.

The Applicant's fraud conviction is not a bar to his registration; however, it has obviously brought his ability to be financially responsible and carry on business with honesty and integrity into question. Unfortunately, his persistent lack of response to the demands of a legitimate creditor, until forced to do otherwise, and the apparent disconnect between his statements and actions on this point, has done nothing to promote or restore confidence in his ability to conduct himself in a manner consistent with the Act.

Given the facts, the Tribunal finds that registration of the Applicant would be premature, as insufficient time has lapsed to establish confidence in the Applicant's ability to act in compliance with the intention and objective of the Act. It would be appropriate and in the best interest of the public, that the Applicant be required to at least successfully complete his probationary period before being considered for registration.

Although not raised by the Applicant, the Tribunal did consider whether registration with conditions might be sufficient to ensure the Applicant's future conduct is consistent with the intention and objective of the Act. In this particular case, the Applicant proposes to work for his father, who, the Tribunal has no doubt, is a man of honesty and integrity. This gentleman has already done what many a parent could not do, expose his son's wrongdoing. Although he may be able to do so again, the Tribunal does not believe that the best interest of the public would be served in placing the monitoring responsibility of the Applicant on this gentleman at this time.

**DECISION**

By virtue of the authority vested in it pursuant to the provisions of section 9(5) of the Act, the Tribunal directs the Registrar to carry out the Proposal, dated July 20, 2010, to refuse the registration of the Applicant, as a motor vehicle salesperson.

LICENCE APPEAL TRIBUNAL

  
Elizabeth L. Sproule, Vice-Chair

*RELEASED: March 16, 2011*

The hearing was recorded. Transcripts can be made available at your expense. The period to appeal a decision to the Ontario Superior Court of Justice or Divisional Court (<http://www.ontariocourts.on.ca/>) is 30 calendar days from the date of release of the decision. Please arrange to pick up your Exhibits within 30 days after that period has passed. The Tribunal requires seven days notice prior to releasing Exhibits.

This decision, which is being released to the parties in this proceeding, may also be posted on the Licence Appeal Tribunal's website <http://www.lat.gov.on.ca/> within three weeks time. The decision may also be available on Quicklaw at a later date.