

Licence  
Appeal  
Tribunal

Tribunal  
d'appel en  
matière de permis



DATE: 2017-05-26  
FILE: 9863/MVDA  
CASE NAME: 9863 v. Registrar, *Motor Vehicle Dealers Act, 2002*

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Motion for Stay of an Order of the Tribunal pursuant to the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B

Mirramin Kamali-Mafroujaki o/a Top Quality Auto Sales

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

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### REASONS FOR DECISION AND ORDER

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**ADJUDICATOR:** Patricia McQuaid, Vice-Chair

**APPEARANCES:**

**For the Appellant:** Symon Zucker, Counsel

**For the Respondent:** Michael Rusek, Counsel  
Diana Mojica, Student-at-Law

Heard in Toronto: May 24, 2017

## Reasons for Decision – Motion for Stay

[1] In a decision released on May 5, 2017, this Tribunal ordered the revocation of the Appellant's registration as a motor vehicle dealer. The Registrar's proposal was based on two grounds: the past conduct of the Appellant afforded reasonable grounds for belief that the Appellant will not carry on business in accordance with law, integrity and honesty and that he had provided a false statement on his renewal applications for registration in 2012 and 2013.

[2] The background facts were not in dispute at the hearing - there was an Agreed Statement of Facts. The Tribunal found that the Registrar had proven, on a balance of probabilities, that false statements had been made contrary to the relevant provisions in the Act and this also provided reason to believe that the Appellant will not carry on business in accordance with the law and with integrity and honesty. Therefore, on that basis, the Tribunal directed that the Registrar carry out the proposal to revoke the registration, which the Registrar did by a final notice issued on May 8, 2017. The Appellant, on May 11, 2017, appealed the Tribunal's decision to the Divisional Court. He brings this motion to stay the Tribunal's order pending the Divisional Court appeal.

[3] Section 9(9) of the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B (the "Act") addresses the issue of a stay of the Tribunal's order pending appeal. It states:

(9) Even if a registrant appeals an order of the Tribunal under section 11 of the *Licence Appeal Tribunal Act, 1999*, the order takes effect immediately but the Tribunal may grant a stay until the disposition of the appeal.

[4] Both parties agree that the decision of the Supreme Court of Canada in *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311, 1994 CanLII 117 (SCC) sets out the applicable test for the Tribunal's consideration in deciding whether to grant a stay. This is a three part test: is there a serious issue to be tried; will the failure to grant the stay cause irreparable harm to the Appellant; and does the balance of inconvenience favour the granting of the stay? No single element is determinative. Weakness in one element may be offset by a strong case for a stay in another element. The overriding concern is to make a just decision based on weighing the three elements of the test.

### **Serious issue to be tried**

[5] Despite the wording of the first part of the test, that there is a serious issue to be tried, or in this case to be appealed, the threshold is not high. As the Court in *RJR* stated, on page 337:

Once satisfied that the application is neither vexatious nor frivolous the motions judge should proceed to consider the second and third tests, even if of the opinion that the plaintiff is unlikely to succeed at trial. A prolonged examination of the merits is generally neither necessary nor desirable.

[6] In his Notice of Appeal to Divisional Court, the Appellant sets out nine grounds of appeal. In summarizing these in his submissions, Mr. Zucker stated that Vice-Chair Farlam, in light of her finding that the Appellant has demonstrated honesty and integrity in his 16 years in business, made an error in failing to give reasons for her finding that the Appellant was not credible and for her conclusion that revocation, on the facts of this case, was appropriate. Mr. Zucker also submitted that the Tribunal's jurisprudence, which suggests that false answers on an application alone are not sufficient to warrant revocation, also raises a question regarding the Vice-Chair's conclusions.

[7] Mr. Rusek, in submissions, stated that the Appellant does not have a serious issue to be tried in that knowingly making false statements to the Registrar, both in 2012 and in 2013, clearly support revocation, based on current jurisprudence. As is apparent from the Registrar's written submissions, this matter has had a lengthy history before the Tribunal. At this juncture, it is difficult to conclude that the legal issues are as clear cut as the Registrar suggests, especially given that the Appellant's livelihood is at stake.

[8] It is not the role of the Tribunal to determine the likelihood of success or failure of the appeal; rather, it is sufficient to determine that the grounds do not appear to be frivolous. Given the very low threshold, and the issues raised in submissions by both counsel regarding the interpretation to be given to the current jurisprudence, the Tribunal is satisfied that the Appellant has shown that the appeal is not frivolous or vexatious.

### **Irreparable Harm**

[9] The second part of the test concerns the irreparable harm that may be caused to the Appellant. Irreparable harm, in this context, means harm to the Appellant's interests that could not be remedied should he be successful on appeal. Both the Appellant and his wife, P.R., testified about the family's financial situation. They have three children, ages 18, 14 and 1. Ms. P.R. has worked as a dental assistant, but has not been working since the birth of their third child. As a dental assistant, she earned about \$2,000 per month; however, the cost of child care is such that it does not make sense financially to return to work at this time. The Appellant stated that he earns approximately \$50,000 per year, based on selling 15-25 cars a month. They have monthly mortgage payments of \$2,000 and his lease on the commercial property is \$200 plus taxes per month. He could liquidate his business furniture and equipment for an estimated \$2,000. They have approximately \$10,000 in savings.

[10] The Appellant testified that he is 48 years old. He graduated from high school and thereafter took a one year college course in computer repair, in 1998 or 1999. He never worked in that field; he has been selling cars since 2001. He sells cars as a wholesaler, buying and selling cars to about 15 different dealers. The Appellant testified that he has a reputation as an honest dealer - one who gives a good price on vehicles and fully discloses any issues. But, he stated, it is a very competitive business - there are thousands of dealers. If he is not able to work for a lengthy period of time, 2-3 months or longer, the dealers he works with will find a different wholesaler. The Appellant also testified that he has some health issues - diabetes and high blood pressure - for which he takes medication and has recently had kidney stone surgery.

[11] As Mr. Rusek noted in his submissions, it is somewhat speculative to determine whether the Appellant might find other employment even though he seems to have skills in sales. However, he also submitted that the possible financial difficulties that the Appellant may experience in the period pending an appeal (on average 9-12 months) does not necessarily equate to irreparable harm as per the *RJR* test.

[12] The Tribunal agrees in that in every case of a revocation of a business registration, with months out of the business pending an appeal, it could be argued that this in and of itself results in irreparable harm. Yet, the loss of income that flows from the loss of registration is, as a matter of course, a likely outcome in all such cases. The potential impact from the Appellant's absence from the industry for a finite period (assuming a successful appeal) is somewhat speculative. However, the Tribunal does accept that the financial consequences through the period pending an appeal, to the Appellant and his family, are not insignificant. Their savings would likely not sustain them through that period. Though the Tribunal concludes that the evidence is weaker in support of this element of the test, this is not determinative of the result.

### **Balance of Convenience**

[13] The third part of the test is whether the balance of convenience and public interest considerations favour the granting of a stay. The Act is consumer protection legislation and the Registrar does have a duty to ensure the public (which includes other dealers) is protected from registrants who act contrary to the public interest. While this is true, the Tribunal gives weight to Vice-Chair Farlam's finding that the Appellant's conduct (and here specifically the sexual assault which led to the criminal conviction), is unlikely to recur. One issue then, seems to be trustworthiness in his transactions with other dealers given his false statements to the Registrar. Yet the evidence, which was not contradicted by counsel in cross-examination, was that he is trusted among dealers as being one who is fair and forthright, despite his problems with the regulator.

[14] The other concern stated by Mr. Rusek is the loss of public trust and confidence in the Registrar (and the legal process) should the Appellant be allowed to continue in business pending the appeal, suggesting that the public would in some way be offended by a stay. There is no evidence before the Tribunal to suggest that public confidence in the integrity of the Registrar's regulatory process will be diminished by a stay on these facts. Furthermore, Mr. Zucker has undertaken to pursue the appeal with diligence; transcripts of the hearing have been ordered and the Appellant is aware that he must move expeditiously with the appeal. Mr. Zucker is prepared to have conditions attached should a stay be granted which require that he give timely updates to the Registrar and the Tribunal regarding the progress of the appeal.

[15] Given the facts before it, the Tribunal concludes that it is unlikely that the protection of the public requires the Appellant to be excluded from his business as a motor vehicle dealer while awaiting the outcome of his appeal to Divisional Court. The Tribunal does note the submission made by Mr. Zucker, that should the Appellant not be granted a stay, the ability to pursue that appeal may be prejudiced due to financial constraints.

## **ORDER**

[16] In considering the three elements of the test in their totality, the Tribunal finds that they argue strongly for the granting of a stay pending appeal. The deficiency found in the second part of the test is offset by the strong case for a stay in the other two elements. The Tribunal therefore concludes that the overall justice of the matter weighs in favour of granting the stay.

[17] The stay is granted for a period of six months from the date of release of this decision. During that time, the Appellant will perfect the appeal and take all necessary steps to ensure a hearing before the Divisional Court is scheduled at the earliest possible time. At the end of six months, the stay may be extended until the Divisional Court releases its decision, either on the consent of the parties or on motion by the Appellant. On such a motion, the Registrar may raise any unreasonable delay in prosecuting the appeal as grounds for denying an extension.

LICENCE APPEAL TRIBUNAL



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Patricia McQuaid, Vice-Chair