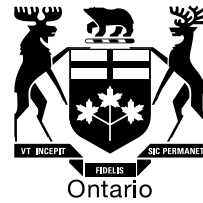


LICENCE APPEAL TRIBUNAL

Safety, Licensing Appeals and Standards Tribunals Ontario



Citation: Pal Auto Sales Inc. and Harpal Badesha v. Registrar, *Motor Vehicle Dealers Act, 2001* 2017 ONLAT-MVDA /10668

Date: 2017-07-14
File Number: 10668/MVDA

Appeal from the Notice of Proposal of the Registrar under the *Motor Vehicle Dealers Act, 2002* to Suspend a Registration

Between:

Pal Auto Sales Inc. and Harpal Badesha

Appellants

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

DECISION AND ORDER

Panel: Avril A. Farlam, Vice-Chair

Appearances:

For the Appellant: Self-represented

For the Respondent: Angela La Viola, Counsel

Heard in Toronto, Ontario: June 19, 2017

REASONS FOR DECISION AND ORDER:

A. OVERVIEW

- [1] The appellants appeal to this Tribunal under s. 9(2) of the *Motor Vehicle Dealers Act, 2002*, S.O. 1990, c. 30, Sched. B (the “Act”), from a Notice of Proposal issued by the Registrar, *Motor Vehicle Dealers Act, 2002* (the “Registrar”) on February 2, 2017. The Registrar proposed to suspend the registration of Pal Auto Sales Inc. as a motor vehicle dealer and the registration of Harpal Badesha, sole officer and director of Pal Auto Sales Inc., as a salesperson under the Act until such time that they have substantially complied with the Order of the Discipline Committee (the “Order”) of the Ontario Motor Vehicle Industry Council (OMVIC).
- [2] Following a hearing at which the appellants were represented by counsel, and for reasons set out in its written decision, OMVIC’s Discipline Committee found that the appellants had breached section 42 of Ontario Regulation 333/08 and sections 7 and 9 of Ontario Regulation 332/08 (the “Code of Ethics”) by failing to disclose the accident history of a vehicle during a sale. The Discipline Committee ordered that the appellants pay a fine and complete certain educational courses. An appeal to OMVIC’s Appeal’s Committee was denied, and the appellants have not applied for judicial review of the Order.
- [3] The appellants refused to comply with the Order. As a result, the Registrar proposed to suspend the appellants’ registration on the ground that their refusal to comply with the Order is past conduct that affords reasonable grounds for belief that they will not carry on business in accordance with law and with integrity and honesty.
- [4] The appellants’ argue in this appeal that they were not afforded a fair hearing by OMVIC’s Discipline Committee and Appeals Committee. The appellants state in their Notice of Appeal to the Tribunal that OMVIC’s committees are “made up of people working with OMVIC...we are not getting the benefit of the doubt and are tired of being denied a proper hearing.”
- [5] I find that the Registrar has demonstrated that the Registrar has reason to believe, having regard to the refusal of the appellants to comply with the Order, that the past conduct of the appellants affords reasonable grounds for belief that the appellants will not carry on business in accordance with law and with integrity and honesty.
- [6] Accordingly, I direct the Registrar to carry out its proposal.

B. ISSUE:

[7] The issue before the Tribunal is whether or not there are sufficient grounds for the Registrar's proposed suspension of the appellants' registration under the Act.

C. EVIDENCE:

[8] The Tribunal heard testimony from the Registrar's witness Andrea Korth and from one of the appellants Harpal Badesha.

[9] Ms. Korth is the Business Standards Manager of OMVIC and deals with the Code of Ethics, its breach, and disciplinary matters. She testified that the appellants were brought to discipline over breaches of the Code of Ethics.

[10] Ms. Korth was present and gave evidence at the hearing before OMVIC's Discipline Committee. She explained that the appellants were represented by counsel and, for reasons set out in its written decision dated November 30, 2015, the three member panel of OMVIC's Discipline Committee found that the appellants had breached section 42 of Ontario Regulation 333/08 and sections 7 and 9 of Ontario Regulation 332/08 (the "Code of Ethics"). The issue before the Discipline Committee was non-compliance with the requirement to disclose a vehicle's accident history during its sale. Ms. Korth stated that dealers are required to disclose the accident history during the sale of a vehicle and that this is consumer protection legislation.

[11] The Order of the Discipline Committee imposed the following sanctions:

- a. Pal Auto Sales Inc. shall pay a fine of \$14,000, of which \$5,000 is due within 6 months of the date of the Order and the remaining balance due within 15 months of the date of the Order;
- b. Harpal Badesha shall pay a fine of \$5,000, of which \$1,000 is due within 2 months of the date of the Order and the remaining balance due within 10 months of the date of the Order;
- c. Badesha shall successfully complete the OMVIC automotive sales course offered by Georgian College within 6 months of the date of this Order, at his own expense;

- d. Badesha shall successfully complete the automotive language course offered by Georgian College within 6 months of the date of the Order, at his own expense; and
- e. Pal Auto shall ensure that all future salespeople hired by Pal Auto must successfully complete the OMVIC automotive sales course offered by Georgian College.

[12] Ms. Korth confirmed that the appellants appealed the Order to the Appeals Panel and were represented by counsel during the appeal process. The appeal was heard May 6, 2016. In its written decision dated September 29, 2016, the three-person panel dismissed the appeal and affirmed the Order of the Discipline Committee. Ms. Korth stated that the Discipline Committee and the Appeals Committee are made up of members of the industry.

[13] Ms. Korth said that the Registrar expects the Order to be complied with and it has not been. Correspondence has been sent reminding the appellants of the appeal decision and asking that the Order be complied with. By email dated November 28, 2016 the appellants asked for "some time" time to comply with the Order. By letter dated December 7, 2016, OMVIC extended the dates and set a new timeline for compliance with the Order as follows:

- a. Payment of \$1,000 by Harpal Badesha before January 7, 2017;
- b. Payment of \$5,000 by Pal Auto Sales Inc. before March 29, 2017 and confirmation that Harpal Badesha has successfully completed the Automotive Sales Course and the Automotive Language Course at Georgian College;
- c. Payment of \$4,000 by Harpal Badesha before July 29, 2017;
- d. Payment of \$9,000 by Pal Auto Sales Inc. before December 29, 2017.

[14] The Registrar could not lower the fine imposed as requested by the appellants. Ms. Korth stated that the fine is appropriate and is in line with other fines she has seen. She believes the Registrar asked for a higher fine at the hearing.

[15] Ms. Korth testified that the failure to comply with the sanctions in the Order and the fact that the appellants appear to be ignoring the Order speaks to the

governability of the appellants under the Act. She also said that it is difficult for the Registrar to have confidence that the appellants will play by the rules if they are ignoring the Order. It is the Registrar's hope that the courses will be taken and the appellants can move forward. Re-education is the goal here. The new Act came into effect in 2010 and Mr. Badesha took the courses in 2007 so he has not taken the new courses. In the meantime, the appellants continue to be registered under the Act. The appellants will need to apply for renewal in September, 2017.

[16] Harpal Badesha testified that the Discipline Committee did not pay attention to what he said at the hearing and wasted time. In cross examination, he admitted that he attended the Discipline Committee, brought evidence, and was listened to, but the Discipline Committee did not accept his evidence. Mr. Badesha admitted that he was present at the Appeals Committee hearing, heard the submissions his counsel made and was given the decision. He read the decision of the Appeals Committee and understood that the Appeals Committee agreed with the Discipline Committee decision. He got the letter from OMVIC asking him to comply with the Order. He understood that OMVIC said it cannot change the penalties imposed in the Order.

[17] Mr. Badesha said the Discipline Committee closed its eyes in making this decision. He stated that OMVIC was not honest and did not show integrity. The committee members did not make their own decision, but simply adopted what Ms. Korth said at the hearing.

[18] Mr. Badesha testified that OMVIC cannot force him to pay the fines and take the courses. He said there were no complaints from his customers. Mr. Badesha also said that it is not useful for him to take the courses, as he has already taken courses before.

[19] Mr. Badesha testified that he will not pay the fines and will not take the courses as required by the Order.

D: LAW:

[20] The statutory authority for the actions of the Registrar and the jurisdiction of the Tribunal are set out in sections. 6, 8, and 9 of the Act.

[21] Section 8 of the Act provides that the Registrar may suspend a registration if, in the Registrar's opinion, the registrant is not entitled to registration under section 6 of the Act.

[22] Section 6(1)(d)(iii) of the Act provides that a corporation is not entitled to registration if the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty.

[23] Section 6(1)(a)(ii) of the Act provides that an applicant that is not a corporation is entitled to registration except when the past conduct of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with the law and with integrity and honesty.

[24] Section 9(1)(b) provides that before suspending a registration, the Registrar must provide written notice of the proposed suspension. The registrant may request a hearing by the Tribunal pursuant to section 9(2).

[25] Section 9(5) provides that the Tribunal shall hold the hearing and following the hearing, may direct the Registrar to carry out the proposal or substitute its opinion for that of the Registrar and the Tribunal may attached conditions to its order.

E: ANALYSIS:

[26] I must determine whether or not there are sufficient grounds for the Registrar's proposed suspension of the appellants' registration under the Act.

[27] The Registrar relies on the ground in s. 6(1)(d)(iii) with respect to the corporate appellant Pal Auto Sales Inc. and the ground in s. 6(1)(a)(ii) with respect to the appellant Harpal Badesha. The question under both sections is whether the past conduct of Harpal Badesha, namely his refusal to comply with the Order of the Discipline Committee, affords reasonable grounds for belief that the appellants' business will not be carried on in accordance with the law and with integrity and honesty.

[28] That the Discipline Committee found breaches of section 42 of Ontario Regulation 333/08 and sections 7 and 9 of the Code of Ethics and sanctions were imposed on the appellants in the Order is not in dispute. The Registrar's evidence, given by Ms. Korth, was that the sanctions are in line with other sanctions and that the Registrar has given the appellants extensions of time and ample opportunity to comply with the Order. The appellants did not significantly challenge the Registrar's evidence.

[29] The evidence is clear that the appellants have refused and continue to refuse to comply with the sanctions in the Order.

[30] The proposed suspension is temporary and will be lifted by the Registrar once the appellants decide to cooperate with the Order.

[31] There was no evidence before me from the appellants that these sanctions are unduly onerous. Instead, the appellants' evidence was that there is no usefulness in the courses and no grounds for imposition of either the financial or the educational requirements in the Order because he did nothing wrong and the hearings before OMVIC's committees were not fair.

[32] The appropriate response to an allegation that OMVIC committee process was flawed or unfair is a judicial review of the committee proceedings. To date the appellants have not undertaken judicial review and there is no outstanding legal challenge to the Order.

[33] The hearing before the Discipline Committee was over a period of some five days and resulted in a 55-page written decision. The hearing before the Appeals Committee took place May 6, 2016 and resulted in an 8-page decision dated September 29, 2016. The appellants were represented by counsel at both OMVIC's Discipline Committee and the Appeals Committee and had the benefit of legal advice and representation in both proceedings. The evidence of the Registrar was that both committees were composed of the appellants' industry peers.

[34] The Tribunal is a creature of statute and not a court with broad jurisdiction to review the composition and conduct of the committees or to review their processes. This is not the forum to challenge the decisions of the Discipline Committee and the Appeals Committee.

[35] The Tribunal's mandate, pursuant to s. 9(5) of the Act is to hold a hearing to consider the Registrar's Notice of Proposal and following the hearing, to direct the Registrar to carry out the proposal or substitute its opinion for that of the Registrar and may attach conditions to its order. In the absence of any outstanding legal challenge to the Order itself, the Tribunal must accept the Order on its face as valid and enforceable.

[36] The past conduct of the appellants has been to refuse to comply with the Order. There was no evidence before me that appellants agreed to or accepted the extended dates offered by OMVIC in its letter dated December 7, 2016 and the appellants have not complied with any of the extended dates which have now

passed. The refusal to comply with the Order continued at the hearing before the Tribunal. This was clear from the evidence of the Harpal Badesha.

[37] The real question is whether the Registrar has reason to believe, having regard to the refusal of the appellants to comply with the Order, that the past conduct of the appellants affords reasonable grounds for belief that the appellants will not carry on business in accordance with law and with integrity and honesty. Given that the appellants are legally required to comply with the Order, have refused to do so, and continue to express an intention not to comply with the Order, I find that there are reasonable grounds to believe that the appellants will refuse to be governed by the law applicable to the industry.

[38] I accept the Registrar's submission that the Registrar has demonstrated on a balance of probabilities that the Registrar has reason to believe, having regard to the refusal of the appellants to comply with the Order, that the past conduct of the Harpal Badesha affords reasonable grounds for belief that the appellants will not carry on business in accordance with law and with integrity and honesty.

ORDER:

[39] For the reasons set out above, pursuant to section 9(5) of the Act, I direct the Registrar to carry out its proposal to suspend the registration of the appellant Pal Auto Sales Inc. as a motor vehicle dealer and the registration of the appellant Harpal Badesha as a salesperson under the Act until such time that they have made all payments and completed all course requirements set out in the Order of OMVIC's Discipline Committee dated November 30, 2015.

LICENCE APPEAL TRIBUNAL



Avril A. Farlam, Vice-Chair