

Licence  
Appeal  
Tribunal

Tribunal  
d'appel en  
matière de permis



DATE: 2014-11-25  
FILE: 8987/MVDA  
CASE NAME: 8987 v. Registrar, *Motor Vehicle Dealers Act, 2002*

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

Robert Vernon

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

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### REASONS FOR DECISION AND ORDER

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**ADJUDICATOR:** D. Gregory Flude, Vice-Chair

**APPEARANCES:**

**For the Appellant:** Self-represented

**For the Respondent:** Michelle Samaroo, Counsel

Heard in Niagara Falls: October 30, 2014

## Reasons for Decision and Order

[1] The Appellant appeals the decision of the Registrar under the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B (the “Act”) to refuse his registration as a motor vehicle salesperson. The Notice of Proposal was issued on July 17, 2014.

[2] The Registrar relies on section 6 (1) (a) (ii) and (iii) of the Act which read:

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,  
...
  - (ii) the past conduct of the applicant or of an interested person in respect of the applicant affords reasonable grounds 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 makes a false statement or provides a false statement in an application for registration or for renewal of registration;

It is the Registrar’s position that both of the subsections apply to the Appellant.

[3] This matter raises two issues. The first concerns the fact that the Appellant entered a guilty plea to an indictable offence in the United States in 2011. The second addresses the responses he gave to the office of the Registrar, the Ontario Motor Vehicle Industry Council (“OMVIC”), when asked to provide details of his actions. The Registrar alleges that the disclosure provided by the Appellant is totally misleading such that it represents a false statement.

[4] The evidence of the Appellant’s background came from his testimony and from the testimony of three character witnesses. It discloses that prior to 2006, the Appellant successfully operated two car dealerships in Buffalo, New York. His dealerships were permitted to issue emissions test certificates and to issue licence plates and stickers. According to the Appellant, he was approached by an employee of the New York Department of Motor Vehicles (“DMV”) and asked to pay bribes. He refused. The employee then made his professional life miserable, culminating in an incident on Christmas Eve 2006. On that day, the Appellant was involved in a fire bombing of the DMV office where the employee worked.

[5] In his plea agreement, which runs for 14 pages, the Appellant admitted that he had hired an arsonist and offered him \$1,000 to set fire to the particular room in the DMV building occupied by the employee. He admitted to driving past the building with the potential arsonist and pointing out exactly where he wanted the fire. He told the arsonist that he wanted the fire set at a time when no-one was present to avoid personal injuries. The arsonist then hired a third party and offered him the \$1,000.

The third party then broke the office window and threw a Molotov cocktail through the window. On the basis of the plea and the admissions made during sentencing, he was convicted of the offence of “Maliciously Attempting to Damage and Destroy by Means of Fire, a Building Used in an Activity Affecting Interstate or Foreign Commerce.” He was sentenced to 60 months in prison with three years of supervised release. Were the Appellant not to reside in the United States, his release was to be unsupervised. With the permission of the U.S. Court, the Appellant moved to Canada following his release. It was also a term of his sentence that he make restitution in the amount of approximately \$250,000. The Appellant originally answered “No” to a question regarding outstanding judgments, court orders, etc. but corrected the answer before being questioned about it or being prompted to do so by OMVIC. The Registrar raised this issue as part of the false statement made by the Appellant but did not pursue it at the hearing with any great vigour.

[6] In May 2014, the Appellant applied to OMVIC to become registered as a motor vehicle salesperson. When asked about his conviction in the application form, he had answered that he had been convicted and gave the details of the charge. OMVIC requested further details, and it is these details that are in issue with respect to providing a false statement.

[7] The Appellant argued that OMVIC would never have known of his U.S. criminal record if he had not made full disclosure. He feels that he is being persecuted because of his honesty. This argument was disputed by the Registrar because his name had been flagged in OMVIC’s computer system as a result of the actions of the Deputy Registrar, Mary Jane South. Ms. South testified that she had been attending an industry conference in Buffalo when one of the presenters spoke about a dealer who had fire-bombed a DMV building and had moved to Ontario on his release from prison. Ms. South spoke with the presenter after the conference and was given Mr. Vernon’s name. On her return to her office, she flagged the name to review the Appellant’s file if he applied for registration in Ontario.

[8] On receipt of the Appellant’s application for registration, OMVIC requested further details. It is the response to that request that is in issue with respect to making false statements. The story told by the Appellant is markedly different from the facts he admitted as part of his plea deal. They take up two paragraphs of the second page of his explanatory letter dated June 2, 2014, and change the Appellant from instigator to victim (Exhibit 3, Tab 6):

Please find the attached letter from Attorney David Rodriguez. Due to the appeal it has been recommended that I do not go into all the details, however it briefly mentions the years of harassment I suffered at the hands of some local officials. After enduring that targeted abuse I finally and foolishly lost my temper. While in that state of mind, I off-handedly (and regrettably) mentioned my situation to 2 clients of mine. These clients were, as it turned out, associated with a number of “local hoodlums”. On Christmas Eve in 2006 these hoodlums, who were unknown to me, attempted to set fire to an office building in the hopes that they’d be rewarded for “Helping” my situation. This of course couldn’t be further from the truth. In reality they’d planned to extort money from me.

Those men were charged and brought to justice, however they received lenient sentences to bear witness against me as they had extensive criminal histories. Almost 5 years later and after already having moved back to Australia to be with my family, I was formerly [sic] charged in conspiring with others in the "Attempted Destruction of a Building Used in Interstate Commerce". You should know that the move to Australia 5 years earlier was made with the full knowledge of my attorneys and that of the local District Attorney who had since retired.

[9] The Appellant's testimony and the June 2, 2014 letter explained further that the Appellant moved back to Australia well in advance of the indictment being brought against him. He moved there in 2007. The Grand Jury indictment was dated July 2008 (Exhibit 3, Tab 15) and he was arrested in Australia in January 2010. It was on his arrest that he first became aware of the charges against him. He asserted his innocence while in pre-trial detention for approximately two years. Finally, he entered into a plea agreement in the belief that he could apply to serve his sentence in Australia. The U.S. Attorney undertook not to oppose his application (Exhibit 3, Tab 16). It turned out that despite the fact that he was an Australian citizen, as a U.S. citizen he was not eligible for a transfer.

[10] The balance of the letter describes the plea deal. The Appellant states that he had initially turned down the plea deal, but after two years in pre-trial custody he accepted it. A material term of the deal was that the U.S. Attorney would not oppose his transfer to Australia to serve his sentence there. When he applied for a transfer after he arrived at the federal prison, he was advised that he was ineligible due to the fact that he was a U.S. citizen. He considered the transfer agreement to have been a crucial element in his acceptance of the plea agreement and feels he was misled by the U.S. Government attorneys on the case. He filed a motion to have the plea set aside. The motion was dismissed on September 11, 2013. An appeal from that decision was dismissed in June 2014.

[11] Looking at the Appellant's disclosure to the Registrar, it is clear that he made no attempt to hide his conviction. He did attempt to minimize it at a time when he had an appeal pending. The facts set out in his letter do more than attempt to minimize; they attempt to exculpate. This Tribunal cannot consider any attempt by the Appellant to argue that he did not commit the offence of which he was convicted or that he was lacking the requisite criminal intent. The only issue before the Tribunal in this regard is whether the June 2, 2014 letter, read in the context of the whole application process, is an attempt to mislead the Registrar.

[12] The Registrar argues that the Appellant failed to make full disclosure of the court documentary record of the U.S. criminal proceedings. He argues that this failure was deliberate and done in the belief that privacy legislation would prevent the Registrar from obtaining the documents (Exhibit 3, Tab 10, page 108). The Appellant argues that he responded to OMVIC's requests for further "details" promptly and fully. At no point was he asked to provide U.S. court documents. He was aware that they were available online, and indeed, OMVIC accessed them online. Having disclosed the conviction, there was no point in attempting a "cover up" because there was easy access to relevant documents.

[13] A review of the correspondence indicates that the Appellant was never asked for court documents by OMVIC (Exhibit 3, Tab 10). He was asked, through his sponsoring dealer, for “details.” His June letter is his response and it is certainly crammed with “details.” If, as the Registrar alleges, it was the Appellant’s belief that his records were difficult for OMVIC to access because of privacy concerns, it would be a simple matter for OMVIC to require the Appellant to obtain and disclose his records. It never took this step. After reviewing the evidence, the Tribunal cannot conclude that the Appellant’s minimization of his behaviour is a deliberate attempt to mislead the Registrar or hide his past. Taken as a whole, rather than selecting specific paragraphs that seek to minimize his behaviour, the Appellant made full disclosure of his conviction and the plea deal he entered into.

[14] There remains the fact that the Appellant is a convicted felon. Three witnesses testified on behalf of the Appellant. Each has known him for many years. One of the witnesses currently houses the Appellant while he gets back on his feet. Another, his sponsoring dealer, employs him as a service advisor in his dealership where he has access to personal information on customers; gave him money for necessities while he was in prison; picked him up from prison on his release; and has given him complete access to his home. The third is a police officer in the Greater Buffalo area and dealt with the Appellant in the car business in Buffalo. All spoke of the Appellant’s integrity and honesty over all of the years in which they have had dealings with him. They are aware of his conviction although one of the witnesses was unaware that the Appellant had pleaded guilty to paying \$1,000 to have the fire set. They all three consider the conviction to be an aberration in an otherwise spotless life.


[15] It is trite to say that the purpose of the Act is to protect the public. The term public is often confused with the term consumers. The concept is wider than that and includes all persons who may have dealings with a registrant. It includes the regulatory authority. As a result, the Tribunal accepts that the Appellant’s criminal act was industry-specific since it targeted the New York DMV. What the statute asks the Tribunal to do is to examine the Appellant’s past behaviour to determine if, going forward, he will not carry on business in accordance with law and with integrity and honesty. The Tribunal notes that the offence in question was committed in 2006. It notes that, while the Appellant would be on supervised release from prison, were he still resident in the U.S., he was permitted to leave the jurisdiction by the U.S. Court and, by the terms of his sentence, is not under supervision. The Tribunal is satisfied that there is little chance of recidivism on the part of the Appellant.

[16] The Tribunal is also satisfied that the Appellant's past behaviour is such that no concerns are raised about the honesty and integrity of his dealings with consumers. All of the evidence strongly supports the proposition that he has dealt honestly with the buying public throughout his career. Having found that he did not mislead OMVIC about his criminal conviction, the Tribunal can find no grounds to determine that he will be less than forthcoming with the Registrar in the future.

He will, of course, be required to provide details of his conviction and outstanding debt at each renewal, but, if requested, he can fulfil all of his obligations by making disclosure and forwarding the plea agreement.

## **ORDER**

[17] Having reviewed the evidence and considered the submissions of the parties, pursuant to the authority granted to it by section 9(5) of the Act, the Tribunal orders the Registrar to not carry out the proposal dated July 17, 2014.

LICENCE APPEAL TRIBUNAL  
  
D. Gregory Flude, Vice Chair

*Released: November 25, 2014*