

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



DATE: 2015-03-20
FILE: 8920/MVDA
CASE NAME: 8920 v. Registrar, *Motor Vehicle Dealers Act, 2002*

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

Paiman Mehrpoor and Paiman Mehrpoor o/a Canadian Premier Auto
Appellants

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*
Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Simon Dann, Member

APPEARANCES:

For the Appellants: Adetayo Akinyemi, Counsel

For the Respondent: Sarah Aouchiche, Counsel

Heard at Toronto: November 27, 2014

REASONS FOR DECISION AND ORDER

A hearing took place before the Licence Appeal Tribunal (the "Tribunal") arising out of a Notice of Proposal issued by the Registrar, *Motor Vehicle Dealers Act 2002* (the "Registrar" and the "Act" respectively.) The Notice of Proposal dated June 9, 2014 proposes to refuse the registration of Paiman Mehrpoor o/a Canadian Premier Auto as a motor vehicle dealer and to refuse registration to Paiman Mehrpoor as a motor vehicle salesperson under the Act. Both will be referred to as the "Appellant" throughout this decision.

The hearing was scheduled to commence on November 17, 2014 but was adjourned to November 27th at the request of the Appellants and with the consent of the Respondent. Evidence was heard and closing arguments were completed on November 27th. Subsequent to the hearing, the Appellants' representative submitted a motion seeking leave to file post hearing submissions. That motion was dealt with, in writing, and by Order dated January 30, 2015, the motion was dismissed.

Preliminary matters

Before the hearing was adjourned on November 17th, both parties advised the tribunal that they would each be calling one witness. On November 27th, at the outset of the hearing, the Appellant's Counsel, Mr. Akinyemi, advised that Mr. Mehrpoor's wife would also be presented as a witness. The Respondent's Counsel, Ms. Aouchiche, objected on the basis that no advance notice had been provided. The Tribunal ruled to allow the witness to give evidence, but would consider the objection in weighing the evidence of the witness.

In her opening statement, Ms. Aouchiche stated the Appellant was registered as a salesperson in the 2010 to 2013 period but made false statements on Ontario Motor Vehicle Industry Council ("OMVIC") applications on 10 occasions. After 2013, the Appellant continued to sell vehicles even though he was not registered as a salesperson. It is the Registrar's position that there were sufficient grounds to have found the Appellant ungovernable and therefore he was refused registration.

The Appellant's Counsel chose not to make an opening statement.

Registrar's Evidence

Mary Jane South was the Deputy Registrar at OMVIC at the material time and held that position since 1997. Her responsibilities include overseeing licensing and consumer complaints. She stated that truthful disclosure is an important test for anticipating the behaviour of an applicant with consumers. Failing to provide details is a significant issue for OMVIC.

The June 9, 2014 proposal to refuse the registration of the Appellant was based on the grounds of repeated non-disclosure and the Appellant's buying and selling of vehicles without registration.

In the Appellant's 2013 application for registration, he answered "yes", to question 5, that he had "been found guilty or convicted of an offence under any law" (Exhibit 3, Tab 25, pg 147). He also replied 'yes' to question 6, indicating that he had disclosed "all pending charges or convictions on a previous application".

The purpose of these questions is to assess the honesty and integrity of an applicant and to learn about their past conduct.

A criminal record check received by OMVIC in April 2013 (Exhibit 3, Tab 22) showed the Appellant had been charged for 'Fail to Comply' and fined for 'Obstruction' on August 27, 2009 and January 21, 2010 respectively. These events, which occurred prior to the first registration application, were not disclosed on the October 2010 application (Exhibit 3, Tab 4).

Ms. South acknowledged that while the criminal record check received by OMVIC in October 2010 showed no criminal convictions or outstanding charges, the intent of questions 5 and 6 is for an applicant to recall events in their own history. If they do not recall these kinds of events, and especially on a repeated basis, it indicates to the Registrar that there may be a lack of honesty and integrity.

Ms. South reviewed a sequence of events from late 2010:

- the Appellant's dismissal by his dealer employer (Exhibit 3, Tab 5);
- the transfer of the Appellant's registration to another dealer on an out-dated form (Exhibit 3, Tab 6);
- the Appellant's new submission on the proper form in which questions 5 and 6 were not answered (Exhibit 3, Tab 7, pg 40).

The Appellant's application for registration was not granted because of the incomplete questions. A subsequent submission by the Appellant again omitted answering the same questions.. When the questions were eventually answered in December 2010, the "No" box was checked off for both (Exhibit 3, Tab 11, pg 55).

In 2012, OMVIC received an application for a dealer registration which listed the Appellant as a partner in the proposed dealership business. While the application form only required the signature of one authorized person, the form questions 5 and 6 were answered "No".

The Appellant's individual application, received by OMVIC at the same time, had the "No" box checked off for question 8, which asked for the same information as on the previous forms, being questions 5 and 6.

Following the cancellation of the Appellant's registration with his employer at the time,

which occurred shortly after the dealer registration application, the Appellant submitted another application for registration as a salesperson.

In the short form application used at that time (November 2012), the Appellant again answered "No" to questions 5 and 6.

In January 2013, the Appellant submitted a change of dealer (employer) notice and answered "No" to question 5 and left question 6 blank.

Shortly afterwards, OMVIC received a salesperson cancellation notice, from the dealership, advising that the Appellant had been let go by the dealer employer due to "...differences regarding sales operations...".

In March 2013, OMVIC received a dealer application form in which the Appellant replied "No" to questions 5 and 6. The individual application which accompanied the dealer application showed the Appellant had checked off "No" to question 8 (Ibid), which again asked for the same information as questions 5 & 6.

When OMVIC wrote the Appellant to request additional information, the next phone conversation between OMVIC and the Appellant revealed the Appellant had "a couple of convictions on his criminal record check report (Exhibit 3, Tab 20). The Appellant then submitted a written explanation for the charges of 'Fail to Comply with Recognizance' and 'Obstruction', which were disposed of by way of fines and 6 months probation for the latter charge. The statement included replies to questions about various vehicles the Appellant owned, how he acquired them, had the funding for them, and he provided copies of bills of sale or ownership.

For OMVIC, the reply revealed the repeated non-disclosures. In reviewing the Appellant's "totality of conduct", the explanation that he "ticked off the wrong box" was not found credible.

The number of vehicles registered to the Appellant without being plated and the short duration in which a number were in the Appellant's possession, was considered "not particularly common".

Ms. South suggested that if the Appellant was indeed engaged in vehicle sales without registration then, OMVIC would be concerned for consumers who would not be eligible for compensation if there were any claim issues.

Ms. South said that OMVIC also looked at the Appellant's driving record and the list of suspensions related to unpaid fines as an indicator of the Appellant's "ungovernability".

It was acknowledged that there is no known record of any consumer complaints against the Appellant.

In cross-examination, Ms South reiterated that the issue was the repeated non-disclosures. Ms. South stated that even the traffic convictions should be disclosed because the text in question 5 clearly refers to "charges under any law".

Regarding the number of vehicles which the Appellant stated he acquired for the purpose of resale and whether they were actually acquired for the purpose of resale, Ms. South replied that it is the trading, not whether there is a profit, which is at issue.

Appellant's Evidence

Paiman Mehrpoor stated that as a registered salesperson he clearly understands his obligations to be honest and to disclose all information he knows in response to licensing questions. In April 2013, he sent OMVIC a written explanation of the charges he had been asked about.

In that reply, he stated he had been charged for a traffic offence and paid a fine. He did not see that as a criminal matter and it had not appeared on his criminal record check. It was not in his mind when he completed the OMVIC application form because he did not define himself as having a criminal record.

Regarding the trading of vehicles, Mr. Mehrpoor said that he and his wife had loaned his partner money and that he did not purchase the vehicles, but received them from his partner as repayment for the debt owed to him.

Mr. Mehrpoor said he gave vehicles away as gifts and still owns the Pontiac Pursuit. Another vehicle (BMW) was purchased by a friend, who still owns that vehicle. He explained that he only helped his friend, with the BMW purchase. The selling dealer had made an error in first registering the vehicle in his (Mehrpoor's) name because his friend was still waiting for financing approval.

The Appellant has never had a consumer complaint made against him and the reason he applied for a dealership registration was because he wanted to go on his own in order to "do something more".

Mr. Mehrpoor has no other occupation. He and his wife, who is a student, live with her parents. He also takes care of the family home, the property, and the animals kept there.

In cross-examination, Mr. Mehrpoor acknowledged he has submitted 8 or 9 applications and that he had checked off "no" in reply to question 5 on the March 2013 business application, and "no" to question 8 on the individual application. He said he was not sure what the statement "under any law" meant and he agreed he had not contacted OMVIC for help. When asked about the convictions, he said he was "shocked" to discover the record results shown on the Declaration of Criminal Record.

When questioned about operating as an unregistered salesperson and the Mazda protégé, Mr. Mehrpoor stated that he only owned the vehicle for about 4 months and then gifted it to his mother's cousin. He had, however, no documentation to prove this.

Zara Khan is Mr. Mehrpoor's wife. She stated she has known him since 2006 and claims he is an honest person and has that reputation among his friends. She is now back in school with her husband's support. Her father is not working and Mr. Mehrpoor is trying to help everyone in the family. When asked about her husband's passion for vehicles, the witness said he usually has around 5 vehicles and is always talking about the next one to have.

The Registrar's Submissions

Ms. Aouchiche began her submissions with reference to the fact that the Motor Vehicle Dealer Act is a consumer protection statute for the public interest and therefore calls for a higher level of scrutiny.

Ms. Aouchiche reviewed the reasons for the refusal to register and asked the Tribunal to consider the repeated false statements on the Appellant's applications and that the Appellant was selling vehicles without registration.

She submitted that whether the Appellant replied "no" deliberately or not, the Tribunal should consider the actual conduct which in itself provides reasonable grounds for belief that the Appellant will not act with honesty and integrity.

Considering the dates of the Appellant's convictions, the evidence is more consistent with a finding that the Appellant was more aware of the meaning and intent of the questions on the application forms. The excuse that there may have been unfamiliarity or understanding of the questions should not be taken as an excuse for misleading the Registrar.

Ms. Aouchiche stated the Appellant had ample opportunity to disclose the convictions but failed to honestly complete the respective application forms on 10 occasions. Counsel submitted case law in support of the Registrar's position which was reviewed and considered by the Tribunal in making its decision.

Ms. Aouchiche submitted that this matter is viewed as an extreme case of non-disclosure and the Registrar's proposal to refuse the Appellant registration as a salesperson and dealer should be confirmed.

In the alternative, if conditions are to be considered, then the Appellant should be limited to registration as a salesperson only, with a franchised dealer, and have no role in management or as an officer of any dealer.

The Appellant's Submissions

Mr. Akinyemi submitted that the onus is on the Registrar to show the Appellant failed to disclose convictions and also sold vehicles without being a registered salesperson.

When the Appellant received the first police report which showed a criminal record, he disclosed that immediately. Mr. Akinyemi argued that failing to disclose would have to be based on a finding of a deliberate intention and this was not the case.

Mr. Akinyemi argued the Registrar had the onus to prove there were vehicle sales and the Registrar could have called individuals to provide their testimony but did not.

How the Appellant came into the possession of the vehicles alleged to have been sold is important because the Appellant did not go out to buy in order to sell, or act as a salesperson or dealer, but rather gifted the vehicles.

Mr. Akinyemi reminded the Tribunal that it owed no deference to the Registrar and if it decides to consider conditions for registration, appropriate conditions can be found in *SM Auto Rental Ltd et al v. Registrar, MVDA, 2002*, 2014 CanLII 53681.

He also referred to *Nguyen v. Registrar, MVDA, 2002* 2013CanLII 69341 in which the applicant was refused registration for the same reasons as the Appellant. However, it should be noted that the applicant in this case continuously provided misleading information, which is not the case with Mr. Mehrpoor.

THE LAW

The applicable provisions of the Act regarding registration state in part as follows:

Registration

6. (1) An applicant that meets the prescribed requirements is entitled to registration or renewal of registration by the registrar unless,
 - (a) ...
 - (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, ...

Refusal to register, etc.

8. (1) Subject to section 9, the registrar may refuse to register an applicant or may suspend or revoke a registration or refuse to renew a registration if, in his or her opinion, the applicant or registrant is not entitled to registration under section 6.

ANALYSIS AND REASONS

In an appeal such as this, the Tribunal must weigh the evidence heard and make findings of fact based on the balance of probabilities. The Tribunal must then review those facts to determine if they provide reasonable grounds for belief that the Appellant will not act with honesty, integrity and in accordance with the law.

The Registrar's proposal to refuse to register the Appellant is based on the following: (1) the Appellant repeatedly did not disclose past convictions, and (2) that he sold vehicles without registration as a salesperson.

The non-disclosure issue:

There is no dispute of the Registrar's evidence that on his first application in October 2010, the Appellant improperly answered "no" to question 6 which asked if he had ever been found guilty or convicted of an offence under any law or if there were any charges pending against him.

The evidence presented is that the Appellant was actually convicted on August 27, 2009 and January 21, 2010, respectively. The related court documents, filed, reference the Appellant's convictions under the Criminal Code of Canada.

Evidence that the Appellant answered "no" to the same kind of questions on additional forms/applications through to the March-April 2013 period was presented by the Registrar and was not disputed. However, the Appellant attempted to explain the questions were answered incorrectly due to misunderstanding - it was not deliberate or intentional.

The Appellant testified he believed he had been charged with a traffic offence and paid the resulting fine. He did not see that as a criminal matter. He also said he had not been sure of what "under any law" meant and was "shocked" when he saw the Declaration of Criminal Record results.

The Tribunal contrasts the Appellant's testimony with the explanation he submitted in his April 5, 2013 letter to OMVIC.. The letter's content leaves no doubt in the Tribunal's mind that the Appellant understood, in each instance, the 2009 and 2010 convictions which came out of the 2008 "domestic charge" he referenced to explain the background of the 'Fail to Comply Recognizance' charge. It further leaves no doubt in the Tribunal's mind that he also understood what the OMVIC application form questions meant.

While the Tribunal can readily understand that the Appellant may have had some fear about how telling the truth about his past actions and his convictions, and whether it could prevent him from moving on in his chosen career, that does not excuse the failure to disclose.

In summary, and in full consideration of the evidence, the Tribunal finds that on a balance of probabilities, the Appellant repeatedly failed to disclose his past convictions as required in the various application forms completed between 2010 and 2013.

The selling of motor vehicles without registration issue:

The Tribunal found the Registrar's evidence regarding the allegation the Appellant was selling motor vehicles without registration to be 'wanting'.

The suggestion that the Appellant had a number of vehicles registered to his name and several only for a short duration which was "not particularly common", was contrasted with the Appellant's testimony that he "gifted" some vehicles and another one was only for the purpose of helping a friend to buy a vehicle before the friend had his financing approved.

Further, the records of the 4 vehicles referenced by the Registrar lists information on the last owner of three of the four vehicles (one of which is still owned by the Appellant) but the Registrar called no witness to support the allegation the Appellant traded in vehicles without the benefit of registration.

The Tribunal accepts the Appellant's evidence that he received vehicles as part of a loan repayment from a former partner. The Tribunal found no convincing or persuasive evidence on which it can conclude, on a balance of probabilities that the Appellant "traded in motor vehicles without the benefit of registration".

The Tribunal found as credible the Appellant's assertion that he gave vehicles away and helped a friend, as well as his wife's testimony that her husband "always has around 5 vehicles" and is fixated on vehicles.

In conclusion, the Tribunal finds the Appellant failed to provide full and complete disclosure on his applications. However, the facts as found by the Tribunal do not support the conclusion that the past conduct of the Appellant affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty.

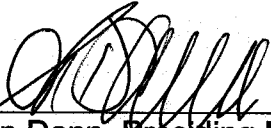
Therefore, the next question for the Tribunal is whether the Appellant should have registration as a salesperson and dealer or, if registered as one or both, whether registration on terms warranted. Given its findings, and in particular the nondisclosure issues, the Tribunal has considered the parties' submissions on this issue, and possible conditions on registration, and accepts the Registrar's submission that if the Appellant is to be registered, that registration should be as an individual salesperson only and that conditions on such registration are appropriate. These conditions are responsive to the Registrar's concern regarding the requirement for continuing full and complete disclosure and highlight for the Appellant that requirement as he pursues work as a motor vehicle salesperson with the opportunity to create a positive record with the regulator.

ORDER

Therefore, pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs that the Registrar not carry out its Notice of Proposal to Refuse Registration, but to grant registration to the Appellant as a motor vehicle salesperson only, and orders that the following conditions attach to the registration:

1. The Appellant is to ensure that all information, verbally or in writing, which he provides to the Registrar, or a representative of the Registrar, is accurate in all details. Further, the Appellant is to ensure he provides full and complete disclosure on all future applications for registration or renewal as a motor vehicle salesperson and in all of his discussions with the Registrar, regardless of whether disclosure has been previously provided to the Registrar.
2. For a minimum period of two years, the Appellant shall be employed only by a franchised dealer and not hold an officer or owner/shareholder role.
3. The Appellant is to advise the Registrar and his sponsoring dealer in writing, within five business days, of any future findings of guilt, convictions or pending charges under any federal or provincial legislation.
4. The Appellant shall not transfer his registration as a salesperson under the *Motor Vehicle Dealers Act, 2002*, to another dealer without prior consent from the Registrar.

LICENCE APPEAL TRIBUNAL



Simon Dann, Presiding Member

Released: March 20, 2015