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**TRIBUNAL D'APPEL EN MATIÈRE DE
PERMIS**

Tribunaux de la sécurité, des appels en matière de
permis et des normes Ontario



Citation: 1602017 Ontario Inc o/a Victory Automobile International and Ben Soji v.
Registrar, Motor Vehicle Dealers Act, 2002, ONLAT MVDA 12271

Date: 2020-03-20

Tribunal File Number:12271/MVDA

Appeal from a Proposal of the Registrar under the *Motor Vehicle Dealers Act, 2002*, to
Revoke the Registration of a Motor Vehicle Dealer and of a Motor Vehicle Salesperson
under the Act.

Between:

1602017 Ontario Inc o/a Victory Automobile International
and Ben Soji

Appellants

and

Registrar, Motor Vehicle Dealers Act, 2002

Respondent

DECISION AND ORDER

Adjudicator: Jennifer Friedland

Appearances:

For the Appellant: Self Represented.

For the Respondent: Vlad Bosis, Counsel

Dates and place of Hearing: Toronto, ON, November 26 and December 10, 2019

REASONS FOR DECISION AND ORDER

OVERVIEW

- [1] The appellants in this case are Mr. Ben Soji, a registered salesperson under the *Motor Vehicle Dealers Act, 2002* (the “Act”), and 1602017 Ontario Inc, operating as Victory Automobile International (“Victory Auto”), a registered motor vehicle dealer under the Act. Mr. Soji is the sole director and owner of Victory Auto.
- [2] Mr. Soji appeals on behalf of himself and his company from a notice of proposal to revoke the registrations of the dealership and of Mr. Soji as a salesperson.
- [3] The primary basis for the registrar’s proposal is Mr. Soji’s ongoing failure to comply with requests to accommodate an inspection of his dealership’s premises, books and records by the Ontario Motor Vehicle Industry Council (OMVIC). Mr. Soji’s avoidance of OMVIC’s requests spans over 10 years. The registrar contends that Mr. Soji’s past conduct affords reasonable grounds to believe that he will not conduct business as a dealership or a salesperson in accordance with the law and with honesty and integrity. The registrar further alleges that Victory Auto breached the conditions of its registration by failing to advise OMVIC of a change of business address within five days of the move.
- [4] Mr. Soji appeals on the basis that he was purportedly out of the country for any inspection scheduled by the registrar, and unaware or unavailable during the unscheduled inspections. He asks for “leniency” and to keep his registrations.

ISSUE

- [5] The issue in this case is whether the registrar should be directed to carry out its proposal to revoke the registrations of Mr. Soji as a salesperson and of Victory Auto as a motor vehicle dealer under the Act.

RESULT

- [6] For the reasons outlined below, the registrar is directed to refrain from carrying out its proposal. The Tribunal is instead substituting its own opinion for that of the registrar and ordering the registrations of Victory Auto and Mr. Soji to be suspended until such time that Mr. Soji makes the books and records of Victory Auto available to OMVIC and OMVIC is satisfied that they are in compliance with the Act.
- [7] The reasons for this order, instead of revocation, flow primarily from the fact that Mr. Soji was not told that failure to provide his books could lead to revocation until just before he missed the very last appointment, for which he claimed to be away.

[8] Although Mr. Soji's testimony strained credulity at times, it remains possible, on the evidence, that his books and records were in compliance with the Act and I wish to provide him the opportunity to show this, if it is in fact the case. In the meantime – and because it is certainly possible that his failure to attend for inspections was because his records were *not* in order – the public will be protected by the suspension of his registrations. There were also procedural issues in this case, as outlined below, which favour affording Mr. Soji all possible benefit of the doubt.

PRELIMINARY MATTER – Mr. Soji's absence during portions of the hearing

[9] Mr. Soji did not attend the first day of the hearing. He had sought an adjournment on the basis that he was out of the country, however that adjournment request was denied by a different member, the day before the hearing was to commence. Numerous attempts were made by the Tribunal at the start of the hearing by email and telephone to contact the appellant to allow him to participate at the hearing, by teleconference or some other means but without success. On my own motion, I considered granting an adjournment, however, given the Tribunal's previous and very recent Order refusing the adjournment; the objection of the Registrar to an adjournment; and the ability of the appellant to have checked his email and/or to have called in, if not to have sent an agent or appeared in person, I declined to grant an adjournment. I further note that specific steps had been set out in a prior case conference order that the appellant was to take if he anticipated being away for the hearing. He did not take the required steps.

[10] The case therefore proceeded in the absence of the appellant on the first day which completed the registrar's evidence. The matter was then adjourned by Order to allow the appellant a further opportunity to appear by telephone or in person to answer the case against him. On the return date, Mr. Soji managed to attend by telephone, but as shall be further described below, the call disconnected toward the end of his cross-examination and difficulty ensued when trying to reconnect. Ultimately, Mr. Soji was advised by email that if he did not call back in, closing submissions would proceed in his absence, which ended up being the result.

[11] In proceeding as outlined above, I was satisfied that Mr. Soji's right to procedural fairness and natural justice was not violated. Mr. Soji had ample opportunity to participate at his hearing. The *Statutory Powers Procedure Act*, which governs these proceedings, states at s. 7(1) "Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding." The Notice of Hearing sent to the appellant, includes a warning that echoes this provision. In Mr. Soji's case, the

Tribunal went beyond what was required to assist Mr. Soji to attend his own hearing, including by calling, emailing, and allowing the case to go over at the end of the first day to allow the appellant a further opportunity to attend. Moreover, my Order dated November 28, 2019 adjourning the hearing also set out specific steps that Mr. Soji was required to take if he was not going to appear in person on the return date, which included testing his method of communication if he was going to join from overseas. The Order further made clear that it was the appellant's responsibility to ensure that he was reachable and available on the date set for the continuation of the hearing.

THE LAW

- [12] The Act and Ontario Regulation 333/08 (the "Regulation") made under the Act prescribe registration requirements for a motor vehicle dealer and a salesperson.
- [13] Section 6 of the Act sets out a number of factors which may disentitle an applicant or registrant from registration. If the registrar believes that a registrant is no longer entitled to registration under s.6, the registrar may propose to revoke the registrant's registrations pursuant to s.8 of the Act.
- [14] In this case, the basis for the registrant's proposal to revoke the appellants' registrations is as follows:
- Under s. 6(1) (a) (ii) that the past conduct of Mr. Soji affords reasonable grounds for belief that he will not carry on business as a salesperson in accordance with the law and with integrity and honesty;
- Under s. 6 (1) (d) (iii) that as an officer and director of Victory Auto, Mr. Soji's past conduct affords reasonable grounds for belief that Victory Auto will not carry on business as a motor vehicle dealer in accordance with the law and with integrity and honesty
- Under s. 6(1)(f), that Victory Auto is in breach of a condition of its registration.
- [15] The onus is on the registrar to prove, on a balance of probabilities, the facts it relies on in support of its position that the appellants are not entitled to registration.
- [16] With respect to the question of whether the appellant's past conduct affords reasonable grounds to believe that business will not be carried on in accordance with the law and with integrity and honesty, the standard is somewhat less than a balance

of probabilities.¹ I need not be satisfied that it is more likely than not, that the business will not be carried on in accordance with the law and with integrity and honesty. At the same time, “the reasonable grounds for belief” has to be more than “mere suspicion” and will be found to exist “where there is an objective basis for the belief which is based on compelling and credible information”.² Moreover, there must be a nexus between the appellant’s past conduct and ability to conduct business as a motor vehicle dealer or salesperson serving the interests of the public.³

- [17] Following a hearing, the Tribunal has the discretion under s. 9 (5) of the Act to order the registrar to carry out the proposal, or the Tribunal may substitute its opinion for that of the registrar and may attach conditions to its order or to a registration.
- [18] A hearing of a notice of proposal is a hearing *de novo* in which the Tribunal does not owe deference to the registrar’s decision.⁴ As confirmed by the Divisional Court in *Arulappu v. Registrar, Real Estate and Business Brokers Act*,⁵ even if the Tribunal finds that the appellant is not entitled to registration for any of the reasons set out in the entitlement provisions of the statute, it must still consider whether revocation is the appropriate remedy.

FACTS

- [19] The registrar called two witnesses: Erica Morrison, an Inspector for OMVIC who had made various attempts to inspect the appellant’s records from April 2017 until present; and Laura Halbert, the Deputy Registrar under the Act and a director of compliance for OMVIC. In addition to providing an overview of the regulatory scheme, Ms. Halbert testified about inspections conducted by a former inspector for OMVIC, Ms. Jean Cameron, who had since passed away. Ms. Halbert testified with the assistance of Ms. Cameron’s notes which were submitted in evidence, appeared thorough, and contained handwriting identified by Ms. Halbert as having been Ms. Cameron’s. I accept the evidence contained in Ms. Cameron’s notes for the truth of its contents.
- [20] Mr. Soji testified by telephone from outside the country.
- [21] The facts of the case are as follows:

¹ See *2203099 Ontario Ltd. o/a Jax Bar & Grill v. Registrar, Alcohol and Gaming*, 2013 CanLII 51164 (ON LAT) and *Ontario (Alcohol and Gaming Commission) v. 751809 Ontario Inc. (Famous Flesh Gordon’s)*, 2013 ONCA 157 [“751809”].

² *751809, supra*, at para. 18, citing *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para. 114.

³ See *CS v. Registrar, Real Estate and Business Brokers Act, 2002*, 2019 ONSC 1652 (CanLII) at para 32.

⁴ *Zahariev v. Ontario (Registrar of Motor Vehicle Dealers and Salespersons)*, 2005 CanLII 44815 at paras. 7-12 (Div. Ct.).

⁵ 2011 ONSC 797 (CanLII)

History of Registration

- [22] Victory Auto was first registered as a motor vehicle dealer from 2004 until 2006. Mr. Soji was one of three directors at the time.
- [23] Victory Auto was re-registered as a dealer in May 2008. Mr. Soji was then its sole director and remains its sole director.
- [24] Mr. Soji has been the sole registered salesperson for Victory Auto for most of its current registration. The only exception was during one 2 ½ year period from November 3, 2015 until April 26, 2018 when another person was also registered as a salesperson at Victory Auto.

Attempts to inspect the books and records of Victory Auto: 2005-2006

- [25] In 2005 and 2006, inspections were attempted of the books and records at Victory Auto. At the time of the scheduled inspection in 2005, one of the directors of Victory Auto was present but the books and records were not. They were said to be with Mr. Soji off-site somewhere. On a return visit in July 2006, there was no sign for Victory Auto on the premises, nor any sign of Mr. Soji. In August 2006 it was discovered that the dealership had not been at the registered premises for a number of months. OMVIC placed an administrative hold on the dealership and its registration lapsed.

Victory Auto's Re-Registration

- [26] In October 2007, Mr. Soji, acting now as the sole director of Victory Auto, applied to re-register the company as a motor vehicle dealer. His application was approved in May 2008.

The Terms of Registration

- [27] The terms of registration of Victory Auto, whether in 2004 or 2008, included terms relating to the keeping of books and records and the requirement that the registrar "provide free access to books and records of the Registrant to any authorized representative of the Registrar."

Attempts to inspect the registered premises and books and records: 2008 - 2019

- [28] A series of efforts were made to inspect the premises and books and records of Victory Auto following its re-registration. To date, Mr. Soji has never made his books and records available. He has also been absent for every inspection since his re-registration, whether scheduled or unscheduled, except for the first one in 2008.

[29] The particulars of the attempted inspections since Victory Auto's re-registration in 2008 are as follows:

June 13, 2008 – Scheduled inspection - Mr. Soji present

[30] In the 11 years of attempts to inspect the premises and books and records of Victory Auto, the only time that Mr. Soji was present for an inspection was at this one. At this inspection, it was noted that there was no sign on the premises for Victory Auto, nor did it appear that Mr. Soji had an office on the premises, which were shared with another dealer. Mr. Soji said he was in the process of moving in. He was cautioned about conducting business outside of the registered business address. The inspector during this period was Ms. Cameron. Her notes indicate that she informed Mr. Soji that she strongly suspected that he did not actually operate out of his registered premises when he was previously registered, and Mr. Soji acknowledged she was correct. He assured her that he would operate in compliance with the requirements in the future.

June 25, 2008 – unscheduled inspection

[31] On a return inspection on June 25, 2008, Ms. Cameron now observed a sign on the lot for Victory Auto, but Mr. Soji still did not have an office and was not present.

[32] He left her a message two days later to say he was planning to put up a trailer on the site. Then he left a second message stating he had instead found a new location.

Feb 12, 2010 - unscheduled inspection – Mr. Soji not present

[33] The next attempt at inspecting the premises and books and records of Victory Auto was on February 12, 2010 at the new address. The premises were observed to be in compliance with the Act, including having an office in a trailer on site. However, Mr. Soji was again not present. This had been an unscheduled, routine inspection. Some time after this inspection, Victory Auto again changed its address.

June 29, 2012 - unscheduled inspection – Mr. Soji not present

[34] In 2012 a routine, unscheduled, inspection was conducted on the new premises. Again, Mr. Soji was not present. A mechanic on site told Ms. Cameron that Mr. Soji had been away for about two weeks. The inspector observed approximately 40 cars on the lot. The mechanic was asked what happens if a buyer expresses an interest in one of those cars while Mr. Soji is away. The mechanic stated that cars are not sold when Mr. Soji is away.

[35] There were no further inspections or attempts at inspections for the next five years, from June 2012 until April 7, 2017. Ms. Halbert explained that this was because OMVIC oversees approximately 8,000 registered dealers in Ontario and almost 30,000 registered sales people but has only 10-12 dedicated inspection resources across the province. Therefore, there are “sometimes gaps,” Ms. Halbert explained.

April 13, 2017 - scheduled inspection – Salesperson present - Mr. Soji not present

[36] Erica Morrison was the next OMVIC inspector to try to inspect Victory Auto’s premises and books and records. Her efforts began in April 2017 with a scheduled inspection set for April 13, 2017. The inspection notice listed the books and records she was seeking to inspect.

[37] Mr. Soji wrote to the inspector the day prior to the inspection to advise that he was out of the country but that his salesperson would be there. He said, “I will communicate with you as soon as I am back in Canada.” On April 13, the inspector attended and spoke to the salesperson. The salesperson advised that the books and records were not there. He said he would contact Mr. Soji and provide an update the following week.

[38] Ms. Morrison did not hear back from the salesperson or Mr. Soji.

June 26, 2017 – unscheduled inspection – Mr. Soji not present

[39] Ms. Morrison next attended the premises on June 26, 2017, this time for an unscheduled inspection. A man who was working in the repair shop told her that Mr. Soji was back in Canada but did not come in often.

October 24, 2017 – scheduled inspection – Mr. Soji not present

[40] In October 2017, Ms. Morrison sent another formal request to review the books and records. She scheduled an inspection for October 24, 2017 and again listed the items she was expecting to review. On the day of the inspection, Mr. Soji was not there. Ms. Morrison left him a telephone message. There was no evidence as to whether the call was returned.

August 28, 2018 – scheduled inspection – Mr. Soji not present

[41] On August 16, 2018, another formal inspection notice was sent to Mr. Soji scheduling an inspection for August 28, 2018, and again listing the items to be reviewed. On the scheduled day, the inspector arrived and found that the dealership

was gone. A man in the repair facility said that the dealer had not been there for about 4-5 months.

Aug 31, 2018 – unscheduled inspection – Mr. Soji not present – books and records not available

- [42] On August 31, 2018. Ms. Morrison attended the new premises for an unscheduled inspection. Mr. Soji was not present.

May 10, 2019 – unscheduled inspection – Mr. Soji not present – books and records not available

- [43] Ms. Morrison returned approximately eight months later on May 10, 2019 for another unscheduled inspection. The dealer was again not there, and the door was locked. Ms. Morrison left a handwritten note in the mail box for Victory Auto scheduling an inspection for May 28, 2019.

May 28, 2019 – informally scheduled inspection – Mr. Soji not present

- [44] On May 28, 2019, Ms. Morrison returned for that next inspection and found that the door was again locked. She called the business number, but it was no longer in service. She called the alternate number and left a message asking Mr. Soji to return her call by the end of the day as he had missed another scheduled appointment. In her message to Mr. Soji she noted that the handwritten note she had left the week before was no longer in his mailbox.

June 12, 2019 – scheduled inspection – Mr. Soji not present

- [45] The following day, on May 29, 2019, Ms. Morrison sent a letter by express post to Mr. Soji's home address and his business address. This letter listed the number of occasions that inspections had been attempted since 2017. It referenced the requirement under Section 15 of the Act for a dealer to make books and records available. It scheduled an in-person appointment for Wednesday, June 12, 2019 at the OMVIC head office and listed the documents that Mr. Soji was expected to bring for inspection.

OMVIC's 1st warning about non-compliance

- [46] Of all the correspondence and messages sent to Mr. Soji since his registration in 2008, the first time he was warned of any consequence for failing to make his books and records available was in the letter sent May 29, 2019. The letter stated that "No further delays will be tolerated. Any further attempts to obstruct the inspection will result in further administrative review..."

- [47] The evidence shows, however, that Mr. Soji did not receive either of the letters sent. The Post Office's tracking information, submitted as one of the Registrar's exhibits, shows that the letter sent to Mr. Soji's home address was returned to sender as the recipient was not residing there. The letter sent to the dealership was being held at the post office, with a notice having been left at the dealership.
- [48] On June 3, 2019, Mr. Soji sent a text to Ms. Morrison. In it he referred to having received her phone message left the week before on May 28, 2019 and advised that he was still "in and out of Canada." Regarding the note Ms. Morrison had said she left in his mailbox, he explained that his landlord may have taken the message because of the rain. He said, "I will communicate as soon as I become available" and apologized for the inconvenience. He did not make any reference to the registered letters, which is consistent with my finding that he did not receive those letters.
- [49] On June 9, 2019, the inspector sent an email to Mr. Soji and also forwarded that email to Mr. Soji by text. The email referred to the challenges Ms. Morrison had experienced scheduling a books and records inspection and referred to the registered letter that had been sent to Mr. Soji scheduling the inspection for June 12, 2019 at OMVIC head office. It did not refer to a consequence if he failed to attend on that date.
- [50] On June 10, 2019, Mr. Soji responded by email apologizing again for the inconvenience and explaining that he had "spent more days overseas in the last one year than in Canada." He said that he was attending to "an emergency family problem overseas" and that when he became available, he would "definitely contact" Ms. Morrison.
- [51] Ms. Morrison replied on June 11, 2019, that no further delays would be tolerated and that "the file would be escalated to management for further review."
- [52] Mr. Soji did not appear on June 12, 2019 for the in-person inspection of his books and records.
- [53] There is no evidence before me that Mr. Soji endeavoured to provide his books and records to the registrar at any time after that date.

History of Transactions during period of missed appointments

- [54] The Registrar produced records of transactions for 2017-2019 showing that Victory Auto was trading in motor vehicles in and around the times that Mr. Soji had claimed to be away.

[55] As there was a second salesperson registered to Victory Auto until April 26, 2018, I will only consider the transactions after that date.

[56] Thus, for example, in and around the August 28, 2018 inspection, for which notice was sent Aug 16, 2018, Mr. Soji was trading in vehicles. There are transactions for a range of dates in and around that time, including the day before the scheduled inspection. Similarly, there were transactions in and around May and June 2019 when further attempts at inspections were made⁶.

Mr. Soji's explanation

[57] Mr. Soji contends that he was either out of the country at the time of a scheduled inspection or not aware of the inspection, if it was unscheduled.

[58] On a break during his testimony, Mr. Soji emailed the tribunal a copy of his Nigerian passport which showed when he had arrived and left that country. In instances where his passport did not support his being in Nigeria at the time of a scheduled inspection, he had an explanation.

[59] For example, he was cross-examined on his whereabouts for the August 28, 2018 scheduled inspection given that his Nigerian passport showed that he was not in Nigeria until November 2018 that year. He claimed that he was in the U.S. that August, *en route* to Nigeria.

[60] He was cross-examined on why he was not present for the May 2019 inspections as his Nigerian passport did not support him being away at those times either. He again claimed to be away, this time in the U.S. for a funeral. This is different than what he stated in his notice of appeal, which simply says that he was not aware of that inspection.

[61] Mr. Soji further explained that he returned to Canada around the first week of June but believes he left again around June 8th or 10th. He explained that this was why he could not attend with his books and records on June 12, 2019. When questioned as to where he went on that occasion, he stated he went to Buffalo, this time on vacation with his wife. Again, all of this travel was purported to be on his Canadian passport which was not produced.

⁶ The precise dates of the sales cannot be determined as a new owner has 6 days under the Act to register a change of ownership with the Ministry of Transportation.

- [62] He explained that the reason he could not produce his Canadian passport is that he did not know he would not be back in Canada for the hearing. He testified that he had left Canada on October 5, 2019 and expected to be in Nigeria for only 2 weeks. He explained that he is involved in some legal matters in Nigeria and was unable to return to prepare for the hearing.
- [63] Mr. Soji was then questioned as to why he would say, in his email to Ms. Morrison on June 10, 2019, that he had been “attending to an emergency family problem overseas” but was now saying he was in the U.S., for a funeral. He defended that excuse by saying it was still true because he had been overseas in early May 2019.
- [64] He was then cross-examined on some of the transactions that occurred in an around the times he was purporting to have been away, however, the telephone disconnected in the middle of this cross-examination and before any explanation was provided. The CMO emailed Mr. Soji to try to get him back on the line and Mr. Soji replied that he had run out of minutes and was going to call back in, which he did. However, the new connection was not clear and that call also ended. Follow up attempts at connecting with Mr. Soji also failed and thus the appellant’s case closed mid-cross-examination and I heard closing submissions from the respondent only.
- [65] I am left with the possibility that Mr. Soji purposely got off the line because he could not explain how he could be conducting transactions during periods he was now claiming to be away. Either he was not away during the periods he was being asked to produce his books and records or he was conducting business from outside his premises and outside of the country. Either way, he was acting contrary to the legislation.

Alleged failure to notify change of address

- [66] In addition to the registrar’s claims against Mr. Soji and his dealership for avoiding OMVIC’s various attempts at an inspection, it was also alleged that Victory Auto failed to comply with the requirement under the Act to advise OMVIC within five days of a move. This was with respect to the last of Victory Auto’s moves, for which OMVIC received a notice of change of business address on August 22, 2018.
- [67] The registrar contends that Mr. Soji actually moved the dealership some months earlier and relies on a number of facts in support of this allegation, including a lease signed approximately five months earlier, and the dates on Mr. Soji’s change forms which were signed June 7, 2019 and stated that the move would be happening mid-June of that year. As well, in cross examination, Mr. Soji first testified that he moved “around June” and then changed this answer to August when he was being cross-examined on this issue. An earlier move is also consistent with the information

provided to Inspector Morrison when she showed up at the old address for the August 28, 2018 inspection and was told that Victory Auto had not been there for a number of months.

[68] I accept that the above factors indicate that Mr. Soji moved in June 2018 and was therefore late in providing his change of address form.

ANALYSIS

[69] The motor vehicle industry is a regulated industry in Ontario. Its purpose is to protect the public. A dealership is obliged under the Act to produce its books and records upon request. One of the reasons why such a requirement exists is to make sure that proper disclosures have been made to the consumer, that warranties are properly provided, and that safety certificates and repair invoices are on file, among other requirements aimed at protecting the public. Indeed, each formal request for an inspection sent to Mr. Soji over the years begins with the phrase, "In order to ensure that you are in compliance with the Motor Vehicle Dealers Act ..."

[70] Given Mr. Soji's decades long opportunities to show that he was in compliance with the Act, it is clearly open for me to infer that he has been avoiding inspection because his books and records are not in fact in compliance with the Act.

[71] At the same time, however, it is also clear that the only time Mr. Soji received a warning that there might be a consequence if he did not attend for an inspection was the day before the last scheduled formal inspection, which he missed, and that led to these proceedings. As described above, although the registered letter that Inspector Morrison sent to the dealership and Mr. Soji's home two weeks earlier, and which set up this formal meeting at OMVIC headquarters for June 12, 2019, had warned that "no further delays would be tolerated" and "any further attempts to obstruct the inspection will result in further administrative review," I find, on the registrar's own evidence, that Mr. Soji did not receive either of those letters. Combined with there having been no previous warnings of any consequence for non-attendance at an inspection, and in fact a 5-year silence where OMVIC did not follow up at all with the registrant, it is reasonable to conclude that Mr. Soji did not know that this time he really had to produce his books and records or risk having his registration revoked.

[72] In that regard, it might behoove the registrar, in the future, to include warnings much earlier on in the process. I note that the form letters used by OMVIC to schedule inspections are silent about any consequence for failing to attend or reschedule an inspection.

- [73] Nonetheless, it is evident that Mr. Soji has been less than forthright with the Inspector and the Tribunal in the excuses he gave for being unavailable. In cross-examination, he seemed so eager to bolster his claim to have been out of the country at the time of an inspection that he gave what appeared to be far-fetched testimony about his absences. Then, as he was cross-examined on the particulars of those claims, his story became inconsistent, as described above. Moreover, he was clearly conducting transactions in and around the periods he was claiming to be away, which suggests that he was either misleading the Inspector and this Tribunal about being away during those periods or he was in fact away, and thus afoul of the law because he was conducting transactions from outside the dealership. Neither scenario assists Mr. Soji in these proceedings.
- [74] It is the above lack of credibility that compels me to find, on a balance of probabilities, that Mr. Soji's past conduct affords reasonable grounds to believe that he will not conduct business as a salesperson or as the sole director of the dealership, with honesty, integrity and in accordance with the law. This means that neither the dealership, nor Mr. Soji, as salesperson, is presumptively entitled to registration under the Act and provides the basis for the registrar to issue its proposal to revoke.
- [75] With respect to Mr. Soji's failure to have notified OMVIC of the dealership's change in address within 5 days after the event, this constitutes a breach of the section 24(1) of the Act and clause 16 of its conditions of registration and also entitles the registrar to revoke a registration.

Whether the Registrar's proposal should be carried out.

- [76] My analysis does not end with my conclusion that the registrar has reasonable grounds to believe that Mr. Soji would not carry on business either as a dealer or a salesperson under the Act with honesty, integrity and in accordance with the law or that he breached the conditions of his registration. I must still turn my mind to the question of whether revocation is the appropriate result in the circumstances of this case. In this regard I have the authority under s. 9 (5) of the Act to substitute my own opinion for that of the registrar and may attach conditions to my order or to a registration.
- [77] This is where I find that a more appropriate remedy would be an immediate suspension of Mr. Soji's registrations until such time as he produces the requested books and records to the registrar's satisfaction.
- [78] I reach this result based on the late warning to Mr. Soji that there might be any consequence to his continuing to miss the scheduled inspections; and based on my

view that if his books and records are in fact in order, then he ought not to lose his registrations. Moreover, there is certainly evidence that Mr. Soji has been in and out of the country, which is not against the Act. With respect to Mr. Soji's lack of candour, while I do not believe he was away as much as he has claimed, this does not mean that his books and records were not in order. With this Order, he will have the opportunity to prove it.

- [79] As well, I have determined that this result allows all possible benefit of the doubt to go to Mr. Soji, which I have decided is appropriate given my earlier determination that the proceedings would start and continue without him. Although I have determined there was no breach of procedural fairness in conducting the hearing this way, it is still the case that that Mr. Soji was absent through more than half of the proceedings and did not hear the registrar's case against him, nor have any opportunity to cross-examine the registrar's witnesses. He also did not have the documents in front of him, nor did he have his Canadian passport with him which may have helped him to be more precise with his dates. Moreover, when he did appear on the second date, his call was cut off during his cross cross-examination. As outlined above, it is possible that this was done on purpose. It is also possible that the line died, his phone ran out of minutes, or some other plausible explanation based on Mr. Soji being overseas. The irony is not lost on the Tribunal, that this has been his excuse all along. Nonetheless, in keeping with my decision to afford Mr. Soji the benefit of the doubt, it is now in his hands to actually prove his compliance.
- [80] Finally, I am substituting this result because it will protect the public as much as a revocation, insofar as Mr. Soji will neither be able to operate his dealership or act as a salesperson under the Act until such time as he proves he has been doing so in compliance with the Act.

ORDER

- [81] The registrar is ordered to refrain from carrying out its proposal to revoke the registrations of 1602017 Ontario Inc, as a registered motor vehicle dealer under the Act and of Ben Soji as a registered salesperson under the Act.
- [82] The registrations of 1602017 Ontario Inc. as a registered motor vehicle dealer under the Act and of Ben Soji as a registered salesperson under the Act are hereby suspended, effective immediately and for an indefinite period or until:
- a. Mr. Soji produces the records of Victory Auto from January 1, 2017 until the date of this order as described below; **and**

- b. The registrar is satisfied that that the records of Victory Auto are in compliance with the Act.

[83] The records to be produced are:⁷

- a. All purchase and corresponding sale/lease contracts (wholesale and retail),
- b. Safety certificates and repair invoices where applicable,
- c. Warranty documents and proof of warranty premium remittances where applicable,
- d. Garage register,
- e. Banking records (floor plan, bank statements and cancelled/returned cheques)
- f. Payroll records,
- g. OMVIC transaction fee remittance details,
- h. Examples of recent online and/or print advertisements (for recently sold vehicles, if applicable);
- i. Dealership's most recent HST notice of assessment and remittance receipts; and
- j. any further records that OMVIC may reasonably request to determine compliance with the Act

[84] For greater certainty, the onus is on the appellant to schedule a mutually agreeable time for the registrar to review the records, at a location to be determined by the registrar.

[85] If either party wishes to make submissions as to further or other conditions to the suspension of Mr. Soji and Victory Auto's registrations, they shall provide the submissions to the Tribunal and to the other party in writing **on or before March 31, 2020**.

⁷ Items a-i are the items requested in Inspector Morrison's registered letter to Mr. Soji dated May 29, 2019.

[86] Notwithstanding the above opportunity to make submissions on further or other conditions, the suspensions of Mr. Soji and Victory Auto's registrations under the Act take effect immediately.

LICENCE APPEAL TRIBUNAL

Released: March 20, 2020



Jennifer Friedland,
Adjudicator