

Licence  
Appeal  
Tribunal

Tribunal  
d'appel en  
matière de permis



MASOUD POURAZIZ

AN APPEAL FROM A NOTICE OF PROPOSAL BY THE  
REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*, S.O.  
2002, c. 30, Sch. B

TO REFUSE REGRISTRATION

TRIBUNAL: DOUGLAS R. WALLACE, Vice-Chair

APPEARANCES: SYMON ZUCKER, Counsel, representing the Applicant

YOVANKA McBEAN, Paralegal, representing the Registrar, *Motor  
Vehicle Dealers Act 2002*

DATE OF  
HEARING: July 20, 2011

Toronto

### REASONS FOR DECISION AND ORDER

This is a hearing 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 July 14, 2010, proposed to refuse the registration of the Applicant as a motor vehicle salesperson under the Act. The reasons for refusal were stated as follows:

The intention and objective of the Act is to protect the public interest. In doing so, the Act prohibits the making of false statements in an application for registration or renewal and requires that Applicants be financially responsible in the conduct of business and that they carry on business in accordance with the law and with integrity and honesty. Masoud Pouraziz's past conduct is inconsistent with the intention and objective of the Act, and therefore warrants disentanglement to registration under the Act.

The Registrar supported his allegations with a series of documents filed collectively as

exhibit 4 (Respondent's Replacement Book of Documents) and the oral testimony of two witnesses.

The first witness was Alan Gibson. Mr. Gibson was a police constable in England and with the Toronto Metro Police Services prior to joining the Ministry of Transportation (the Ministry) as an Enforcement Officer in 2001. He has had considerable experience as a licensed inspector of Motor Vehicle Inspection Stations (MVIS) since joining the Ministry. He outlined licensing requirements relating to the operation of MVIS and described the Applicant's involvement with the Ministry while the Applicant was the licensed operator of a MVIS licence from 2004 to 2009.

During this five-year period the Applicant, operating under the name of B.P. Autobody, provided mechanical and auto body repairs as well as vehicle safety inspections. The only difficulty he had with the law during this period arose when an audit carried out by the Ministry in 2006 revealed that the Applicant failed to comply with the requirement in section 4 (1.2) of Regulation 601 under the Highway Traffic Act to keep a record on his premises of certain measurements taken during his inspection of a number of vehicles. He pleaded guilty to five counts under the Regulation and explained to the presiding judge that he took the measurements and forwarded them to the Ministry as required, but simply failed to keep a copy for his records. On hearing the explanation the judge reduced the number of counts from 21 to five and levied a fine in an undisclosed amount.

Ms. Laura Halbert also testified on behalf of the Registrar. Ms. Halbert has been the Director of Compliance in the Registrar's office since 1994. Her evidence was that the Registrar's proposal to deny the Applicant registration as a salesperson was the result of the conduct set out in the Notice of Proposal and Supplementary Notices. Of particular concern to the Registrar was the fact that the Applicant was convicted on four counts of selling vehicles without a licence in 2000, an offence which he did not disclose on his application for registration as a motor vehicle Dealer in 2001. Further, he subsequently breached a condition placed on this registration in 2003 when he sold a number of vehicles by retail rather than restricting his sales to wholesale as required by his licence. Ms. Halbert also noted that while the Applicant disclosed his 2000 convictions on his present application for registration as a salesperson, he did not disclose his more recent Highway Traffic Act convictions.

Two further matters concerned Ms. Halbert. The first of these was that while operating as a licensed MVIS between 2004 and 2009 the Applicant received 11 warning letters from the Ministry of Transportation indicating that he had not submitted all required information concerning a number of inspections he had carried out. The witness did not know whether the Applicant ever provided the mandatory information to the Ministry. The second concern related to the suitability of the sponsoring dealership named in the application. The sponsoring dealership is located in the same physical premises as the Applicant, is currently subject to an investigation into several matters by the Ontario Motor Vehicle Industry Council (OMVIC), and signed the Applicant's application for registration knowing that the Applicant had convictions under the Highway Traffic Act (HTA) which were not disclosed in his application.

The Applicant filed an affidavit as part of his Notice of Appeal and presented evidence by two witnesses; himself and the owner of his sponsoring dealership. The evidence did not contradict the material facts put forward by the Registrar, but did provide additional facts concerning the surrounding circumstances which he argued showed his application should not be refused.

The owner of the Applicant's sponsoring dealership testified that he has been licensed as a motor vehicle dealer since 1990, selling 8 to 15 vehicles a month. Prior to 2009 he had no complaints, either with consumers or with OMVIC. In 2009 or early 2010 an inspector from OMVIC did an audit of his books and found certain irregularities. A review by a disciplinary committee is now pending. He has known the Applicant since 1995 and considers him a trustworthy friend. He has a part-time salesperson but has time and is willing to supervise the Applicant. With respect to the HTA convictions, he indicated that he was aware of them but did not know the Act had been changed to require their disclosure. Whether the wording was changed or not, he did not consider that it was very clear in requiring disclosure of HTA offences. He did not recollect whether the Applicant had signed the Application before submitting it to him for his signature.

The Applicant arrived in Canada as a young man in 1992. He received training and certification as an Automotive Service Technician in 2004, and completed a number of courses in Automotive Painting (Level 2) (Centennial College), Auto Certification, Auto Refinishing, and Automotive Damage Appraisal (Centennial College), English is not the Applicant's first language.

The Applicant held a licence as a Motor Vehicle Dealer from 2001 to 2004. In 2003 conditions were placed on this licence as a result of his failure to disclose the conviction for curb side (unlicensed) vehicle sales when he submitted his application for registration in 2001. In 2004 the Registrar revoked his licence on finding that the Applicant had sold a number of vehicles by retail contrary to one of the conditions imposed on his registration

Following the revocation of his licence as a Motor Vehicle Dealer, the Applicant was licensed as an operator of a MVIS from 2004 to 2009. During this time, he pleaded guilty and was convicted on a number of counts under Section 4.1.1 of Regulation 601 of the HTA (failing to keep a record of measurements carried out during a vehicle inspection). The penalty was a fine in an undisclosed amount.

The Applicant admits that he did not disclose the convictions under Regulation 601 of the HTA in the application for registration as a motor vehicle salesperson which is the subject matter of this Hearing. He also admits that he received 11 warning letters from the Ministry of Transportation during the time he operated a licensed MVIS. The letters advised him that certain information relating to the vehicles he inspected had not been received by the Ministry as required by law. He testified that his health made continued operation of a MVIS difficult, if not impossible, and that he wished to continue working as a salesperson in order to support his family. Although he felt that an applicant's obligation to disclose all convictions of any crime could have been made clearer by specific reference to provincial

offences, he frankly admitted that he had been wrong in failing to disclose his HTA convictions and accepted full responsibility for the omissions. His explanation for the first omission was that he forgot about the convictions when filling out the application. His explanation for failing to disclose the convictions under the HTA Regulation seemed to be that he considered the words "convicted of an offence" to refer only to breaches of the law that would result in a criminal record.

## THE LAW

The Act sets out who is entitled to registration and whom may be refused registration in the following words:

### Registration

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,

(i) having regard to the applicant's financial position or the financial position of an interested person in respect of the applicant, the applicant cannot reasonably be expected to be financially responsible in the conduct of business,

(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;

### 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.

### Conditions

(2) Subject to section 9, the registrar may,

(a) approve the registration or renewal of a registration on such conditions as he or she considers appropriate; and

(b) at any time apply to a registration such conditions as he or she considers appropriate.

The Tribunal's jurisdiction to hear this appeal is set out in section 9(5) of the Act as follows:

### Hearing

9 (5) If a hearing is requested, the Tribunal shall hold the hearing and may by order direct the registrar to carry out the registrar's proposal or substitute its opinion for that of the registrar and the Tribunal may attach conditions to its order or to a registration.

## ISSUES

The issue before the Tribunal is whether the Applicant's conduct disqualifies him from registration, either on the grounds that the conduct constitutes "reasonable grounds for belief that he will not carry on the business of a motor vehicle dealer in accordance with the law and with honesty and integrity" or, on the grounds that he has provided a false statement in his applications for licences under the Act. A secondary issue is whether it is appropriate to attach conditions to any order the Tribunal may make or to the registration.

## APPLICATION OF LAW TO FACTS

The Registrar submits that the evidence provides ample grounds to believe that the Applicant will not conduct his business as a motor vehicle salesperson in accordance with the law and with integrity and honesty. These grounds may be summarized as follows:

1. a conviction under the Motor Vehicle Dealers Act, in 2000 on four counts of selling motor vehicles without a licence,
2. the failure to disclose this conviction on his application for registration as a motor vehicle dealer in 2001 and on his application as an operator of a MVIS in 2004.,
3. a breach of a condition imposed on his registration as a motor vehicle dealer in 2003,
4. a conviction in 2007 on five counts of failing to maintain measurements taken during inspections in his files contrary to a Regulation under the Highway Traffic Act,
5. the failure to disclose these charges on his application for registration as a sales person which is the subject matter of this hearing,
6. the receipt of 11 warning letters from the Ministry of Transport

Ms. McBean, also noted her concern that the Applicant's sponsoring motor vehicle dealer was an unsuitable sponsor because he too, had signed the application indicating that the Applicant had no convictions, and because he himself was the subject of a scheduled disciplinary hearing. In the Registrar's opinion this indicates that the Applicant is unlikely to receive the type of supervision he requires to ensure compliance with the Act.

[Ms. McBean referred to the decision of the Divisional Court in *Keramudin Fakhri c.o.b. as Crown Auto Repair and Used Car Sales and Registrar, Motor Vehicle Dealers Act* (Court File No. 132/09) as authority for the proposition that a number of convictions under the HTA, coupled with a failure to disclose these convictions, constitutes sufficient grounds to disentitle an applicant to registration under section 6 (1) (a) (i) of the Act. Ms. McBean also submits that this is not a case for the approval of registration with conditions, as the Applicant has already demonstrated that he cannot be trusted to comply with conditions imposed on his registration.

Counsel for the Applicant, while admitting the conduct described above, submits that the incidents complained of are isolated incidents, occurring over an 11 year period. The offences were not that serious and should be placed in context. The first offence took place when the Applicant was a relative new-comer to the country and may not have fully appreciated the need for a licence or the seriousness of making a number of sales without a licence. He also submits that the offence under the HTA for which he received a number of warnings and a fine, was not one designed to deceive anyone. It was simply a question of failing to keep proper records on file.

Considering the evidence as a whole, the Tribunal finds that the Registrar has failed to prove on the balance of probabilities, that the Applicant's past conduct affords reasonable grounds for belief that the Applicant will not carry on business in the manner prescribed by section 6 (1) (a) (ii) of the Act.

In coming to this conclusion, the Tribunal gives particular weight to the fact that the offences were relatively minor and did not involve moral turpitude or dishonesty. In this respect, the offences fall far short of the 13 convictions for issuing false statements on safety standard certificates which the applicant failed to disclose on his application in the *Keramudin Fakhri* case. .

The Tribunal also gives considerable weight to the fact that the offences took place in one case more than 10 years prior to the present application and in the other case 5 years. During this time, the Applicant appears to have carried on his business in a largely satisfactory manner. The Tribunal gives little weight to the 11 warning letters as it is satisfied that there was no intent on the Applicant's part to deceive the Ministry. The Tribunal similarly gives little weight to the Registrar's concerns regarding the suitability of the sponsoring dealer in light of the fact that there is no evidence to date of any finding by any body that he has committed any offence or breach of any industry-related regulation.

With regard to section 6 (1) (a) (iii) of the Act, the Tribunal finds, as admitted by the Applicant, that the Applicant failed to disclose convictions on his application for registration as a motor vehicle dealer, on his application for a MVIS license, and on his present application for registration as a sales person. These omissions constitute "false statements" within the meaning of the section and cannot be taken lightly. They are particularly serious given the number of times they occurred. The Tribunal is not satisfied, however, that given the lack of intent to deceive on the part of the Applicant and the possibility that the Applicant was not clear that certain minor offences needed to be disclosed, this failure to make full disclose merits refusal of registration. Having considered all the circumstances, the Tribunal is of the opinion that the application for registration should be approved but on certain conditions. These conditions are designed to impress upon the Applicant, the seriousness of his misconduct and reduce the likelihood of any reoccurrence.

**ORDER**

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar not to carry out its Proposal to refuse the registration of the Applicant as a salesperson under the Act, but to register him subject to the following terms and conditions:

1. The registration of the Applicant will be suspended for a period of three calendar months from the date of the release of this decision.
2. The Applicant agrees that if he is charged in the future under any provincial or federal law or regulation, he will immediately notify his sponsoring dealer, in writing, of the charges against him and provide a copy of the notification signed by his sponsoring dealer to the Registrar. The Applicant further agrees to notify the sponsoring dealer and the Registrar in writing within 24 hours of the disposition of any such charges.
3. The Applicant agrees that any failure to comply with these conditions may be the basis for the Registrar to issue a Notice of Proposal to Revoke his licence.
4. The Applicant will take reasonable steps to review his employer's books, records & information pertaining to prior use and condition of any motor vehicle that he sells on behalf of his employer and ensure that the information is disclosed to purchasers in writing on the bill of sale in accordance with the Act and regulations there under.
5. The Applicant will comply with OMVIC's Code of Ethics and Standards of Business Practice as may be amended from time to time.
6. The Applicant agrees not to conduct trades in motor vehicles except on behalf of the dealership to whom he is registered.

LICENCE APPEAL TRIBUNAL



Douglas R Wallace, Vice-Chair

*Released: September 9, 2011*

The hearing was recorded. Transcripts can be made available at your expense. The period to appeal a decision to the Ontario Superior Court of Justice or Divisional Court (<http://www.ontariocourts.on.ca/>) is 30 calendar days from the date of release of the decision. Please arrange to pick up your

Exhibits within 30 days after that period has passed. The Tribunal requires seven days notice prior to releasing Exhibits.

This decision, which is being released to the parties in this proceeding, may also be posted on the Licence Appeal Tribunal's website <http://www.lat.gov.on.ca/> within three weeks time. The decision may also be available on Quicklaw at a later date.