

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



DATE: 2013-12-23
FILE: 8046/MVDA
CASE NAME: 8046 v. Registrar, *Motor Vehicle Dealers Act 2002*

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

Navid Mazloum

Applicant

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Terrance Sweeney, Vice-Chair

APPEARANCES:

For the Applicant: Alvin Shidlowksi, Counsel

For the Respondent: Michelle Samaroo, Counsel

Heard in Toronto: December 5, 2013

REASONS FOR DECISION AND ORDER

BACKGROUND

This is an appeal to this Tribunal by Mr. Navid Mazloum (the "Applicant") from a Notice of Proposal issued by the Registrar, *Motor Vehicle Dealers Act, 2002* (the "Registrar" and "Act"), respectively, proposing to refuse to register the Applicant as a salesperson under the Act.

DECISION

The Tribunal has considered the law, the facts and the submissions of Counsel and finds that the Registrar has proved his case on a balance of probabilities. The Tribunal therefore orders the Registrar to carry out the Notice of Proposal to refuse to register the Applicant as a salesperson under the Act. The Applicant, accordingly, will not be registered under the Act as a salesperson for the reasons which follow.

FACTS PROVEN

A number of facts are not in dispute. The Tribunal, therefore, rules that the following have been proven.

1. The Applicant came to Canada with his family in 1985. He is a Canadian citizen.
2. In June 2009, the Applicant pled guilty to, and was convicted of, two counts of theft under \$5,000.00 and four counts of fraud under \$5,000.00. He received a suspended sentence and two years probation for each charge. He was ordered to make restitution in the amount of \$27,819.00 and do 100 hours of community service work. He did the community work but has not paid anything towards the restitution order.
3. In September 2012, the Applicant pled guilty to, and was convicted of, acting as an unregistered salesperson under the Act. He was fined \$5,000.00 and placed on probation for one year. He has paid \$500.00 on account of his fine.
4. The Applicant applied for registration under the Act as a salesperson on November 26, 2008. He answered "No" to the question, "Have you ever been found guilty or convicted of an offence under any law or are any charges pending?" In fact, in April 2008, he had been charged with nine counts of either theft or fraud.

5. The Applicant applied again for registration as a salesperson on November 25, 2012. In that application, he neglected to disclose the restitution order against him.

EVIDENCE FOR THE REGISTRAR

Lawrence Edgar

Mr. Edgar is an investigator with the Ontario Motor Vehicle Industry Council ("OMVIC"), the body charged with administering the Act. He previously was an officer with the Ontario Provincial Police and at one time was in its criminal investigation branch.

He received a complaint in November 2011 that an individual was selling cars at Vella's Auto without the benefit of registration.

In early 2012, he attended at Vella's Auto twice and posed as a potential buyer to one "Matin Mazloun" who was the Applicant posing as his brother. He subsequently confronted the Applicant and asked for his photograph. The Applicant said that he left his wallet at home. Mr. Edgar never obtained a photograph.

Mr. Edgar testified that his investigation showed that the Applicant had deceived his employer and had signed a contract with it under the name "Mazloun Auto", a sole proprietorship to which his commissions were paid.

Mr. Edgar said that the Applicant had sold at least 58 cars between August 2011 and January 2012. He did not recommend that Vella's Auto be charged as he did not think that Mr. Pat Vella knew the truth about the Applicant.

Mr. Edgar then testified as to the results of his investigation as set out in paragraph 3 above.

Jeff Thomson

Mr. Thomson is currently an investigator with the Ontario Securities Commission. He knows the Applicant. He was the police officer who called the Applicant in April 2008 and asked him to surrender himself at 52 Division in Toronto. The Applicant did so. Mr. Thomson cautioned him and then formally charged the Applicant with two charges of fraud under \$5,000.00 and seven charges of fraud over \$5,000.00 arising out of his actions as a banking associate at the Canadian Imperial Bank of Commerce ("CIBC") in 2005-2006.

Mr. Thomson said that the Applicant "fully cooperated" with him. He then confirmed the end result of his investigation as described in paragraph 2 above.

Thaya Gengatharan

Ms. Gengatharan is the Registration Manager and Acting Registrar of OMVIC. It is OMVIC's job to administer the Act to protect the public and ensure that dealers and salespersons follow the rules.

She said that it is important that an applicant for a licence properly complete the application and fully disclose all of the details called for in the application. The Registrar must rely on applicants to be honest and forthright from their first contact with OMVIC.

She reviewed the Notice of Proposal of OMVIC, dated April 9, 2013,¹ and the reasons why his application was denied.

The Applicant did not answer question 9 in his application of November 26, 2008 honestly when he failed to disclose the pending charges against him. In a letter dated February 8, 2009,² the Applicant begged her to review his application and denied that he was guilty of any of the charges against him. We now know that he pled guilty to most of them.

In a letter dated January 13, 2009,³ Mr. Houdi of Faraz Auto Sales, his sponsoring dealer at the time, sought to explain this problem away. His letter reads, in part, as follows:

When Mr. Mazloun and I were filling out the OMVIC application we missed to fill in the part where it asks about pending charges

OMVIC cancelled the Applicant's temporary licence in January 2009 and warned him in two letters not to engage in selling cars while unregistered. His application was abandoned in 2010.⁴

Ms. Gengatharan testified in respect of the Applicant's second application in November 2012. He did a better job of disclosure but failed to reveal the outstanding restitution order against him in Section D of the application. In Section C of the application, the Applicant said his reason for leaving Faraz Auto Sales was a "better opportunity".

Ms. Gengatharan testified that she was concerned about the pattern of conduct of the Applicant from 2008 to 2012, which disentitled him to registration. She emphasized that the criminal convictions for defrauding the CIBC are a breach of trust which is relevant to her task of deciding whether or not to register the Applicant. Moreover, the conviction for selling cars without the benefit of registration is industry specific.

¹ Exhibit 1

² Exhibit 6

³ Exhibit 3, Tab 6, para. 1

⁴ Exhibit 3, Tab 11

EVIDENCE FOR THE APPLICANT

Navid Mazloum

He expressed remorse for his actions and accepted full responsibility for them. He explained that the "pending charges" problem related to Mr. Houdi's failure to complete the application and his own mistake in not checking with his lawyer about it. He was particularly sorry that he misled Mr. Pat Vella about his identity. He loved working with Mr. Vella and would like to go back with him.

He did reach out to Mr. Vella and apologized for his behavior. He keeps in regular touch with Mr. Vella.

He has been reduced to low level low paying jobs and he uses whatever money he makes to assist his family with whom he lives.

He referred to a letter, dated November 28, 2013, from the Royal Bank of Canada ("RBC")⁵ which has agreed to lend him \$35,000.00:

... conditional on you providing RBC with a letter of employment from Vella's Auto Sales and confirming annual salary of not less than \$55,000.00 a year..

He will use this money to pay the restitution he owes and the balance of his fine.

He is prepared to accept any conditions this Tribunal might impose on a licence if it were to grant it to him.

On cross-examination, he agreed that the application is the first test of honesty and that the Registrar has to rely on this information. He also agreed that in selling 58 cars for Vella's Auto, he misled his customers and his employer 58 times.

Pat Vella

He is the general manager of Vella's General Auto Repair o/a Vella's Auto Sales and Leasing. He is 33 years old and "was born into the business". Both his parents who founded the business are still working in it. Vella's Auto specializes in selling luxury used cars at two locations.

He was angry with the Applicant when he found out that he had deceived him. However, after initially refusing to see the Applicant, they had a long discussion. Mr. Vella is satisfied that the Applicant is genuinely sorry for his actions and is prepared to help him by employing him if he receives a licence. Mr. Vella promised to review every

⁵ Exhibit 5

deal that the Applicant might do and also to withhold from the Applicant's monthly pay an amount sufficient to repay the RBC bank loan.

He said that the Applicant is a good salesman. There were no complaints from his customers.

ANALYSIS

Subparagraph 6(1)(a)(ii) of the Act provides that an applicant may be disentitled to registration if:

... 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...

The Applicant's English is good. It, therefore, beggars belief that he did not understand the question in his 2008 application about "pending charges".

Mr. Houdi of Faraz Auto Sales, who wrote the letter to OMVIC⁶, might have assisted the Tribunal. He was not, however, called to testify. The Tribunal, therefore, attaches no weight to his letter.

The Tribunal concludes, on a balance of probabilities, that the Applicant lied in his 2008 application. He compounded his lie in his letter of February 2009 to Ms. Gengatharan⁷ in which he said "I am not guilty of these charges", when he knew very well that he was. He also lied when he was confronted by Mr. Edgar at Vella's Auto in January 2012. Instead of acknowledging that he was an impostor he sought to deflect Mr. Edgar's demand for a photograph by saying that he left his wallet at home.

The Applicant had a good job at CIBC in 2005 and 2006. Instead of applying himself to his duties, he defrauded the bank and stole from its customers. This was a serious breach of trust. He then proceeded blatantly to breach the Act by selling cars at Vella's Auto for five months in 2011 while impersonating his brother. He now says he is very sorry for his actions. He did not, however, reveal the truth until apprehended by Mr. Edgar. This is an industry specific conviction.

Counsel for the Applicant ably argued that the public would be protected if this Tribunal were to award a licence to the Applicant conditional upon him paying off the restitution order and the fine. The licence would also, apparently, only be valid while he worked at Vella's Auto under Mr. Vella's strict supervision.

This Tribunal is dismayed by the Applicant's pattern of past conduct and is not inclined to grant him a licence. Moreover, the application is premature. The Applicant's

⁶ Exhibit 3, Tab 6

⁷ Exhibit 6

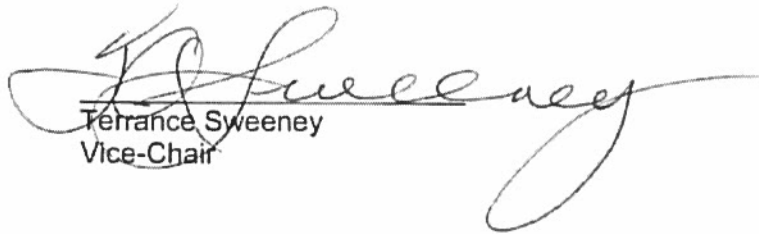
probation only ended in September of this year. A much longer period of exemplary behaviour is required, on these facts, before the Tribunal could conclude that this Applicant meets the standards required for registration under the Act.

Section 12 of the Act sets out the conditions for re-application where there has been a refusal to register. In this instance, the Applicant is still a young man. If he were to reform his behaviour over a period of two years, it may be that he could successfully reapply for a salesperson's licence.

ORDER

The Tribunal orders the Registrar to refuse to register the Applicant as a salesperson under the Act.

LICENCE APPEAL TRIBUNAL



Terrance Sweeney
Vice-Chair

Released: December 23, 2013