

Licence Tribunal  
Appeal d'appel en  
Tribunal matière de permis



DATE: 2016-04-18  
FILE: 9919/MVDA  
CASE NAME: 9919v. Registrar, *Motor Vehicle Dealers Act 2002*

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

Sarkoun Samanou

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

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**REASONS FOR DECISION AND ORDER**

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**ADJUDICATOR:** Alex McCauley, Member

**APPEARANCES:**

**For the Appellants:** Gerald Hodgins, Paralegal

**For the Respondent:** Jane Samler, Counsel

Heard in Hamilton: April 4, 2016

## REASONS FOR DECISION AND ORDER

### BACKGROUND

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 November 9, 2015, (the “NOP”) proposed to refuse to grant the registration of Sarkoun Samanou (the “Appellant”), as a salesperson under the Act.

### FACTS

The Registrar alleges in its NOP that the Appellant’s past conduct and financial position is inconsistent with the intention of the Act and therefore warrants disentanglement to registration under the Act.

On July 16, 2015, the Appellant submitted a new individual application for registration as a motor vehicle salesperson under the Act; at that time, he proposed to work for Sargon Auto Sales Inc. Sargon Auto, which was leasing property from the Appellant, then ceased doing business. At the time of the hearing, the Appellant was being sponsored by Titanium Auto of London, Ontario. The company is owned by Hussein Abdulrazak (Exhibit # 5).

The Registrar maintained that the Appellant has failed to meet the general test for registration under section 6 of the Act. Further, the Registrar maintains that the Appellant has also failed to meet the test in section 12 of the Act, which requires the Appellant to present new or other evidence or a material change in circumstances when he seeks to reapply after his renewal of registration has been refused.

Mary Jane South, who is the Registrar at OMVIC (Ontario Motor Vehicle Industry Council), gave evidence with regard to the allegations noted within the NOP. OMVIC administers the *Motor Vehicle Dealers Act*.

In her evidence, Ms. South referred to Schedule “A” to the NOP, a 2011 decision of the Tribunal regarding the Ministry of Transportation’s notice to refuse to renew the MVIS (motor vehicle inspection station) licence of Sam’s Auto Service and the MVIS mechanic registration of the Appellant. The Tribunal made its decision on December 16, 2011 and directed the Ministry of Transportation to carry out its proposal to refuse to renew the registrations of both Sam’s Auto Service and the Appellant.

Ms. South, in her evidence, made reference to the Tribunal’s strongly worded decision. Particularly disturbing was the fact that the Appellant not only did an inadequate job in issuing safety standards certificates (SSC), but he also failed to take adequate care when vehicles were returned to him to be further repaired. The Tribunal in its decision, on page 7, stated that Mr. Samanou’s failure to complete the safety standards certificates properly over and over again demonstrated disregard for his regulatory

obligations. This raises concerns about whether a proper inspection was ever actually carried out (Ex. #3, Tab 1, Appendix A).

Ms. South also referred to Schedule B attached to this NOP, which was a Notice of Proposal issued on August 23, 2012, to refuse the registrations of Sam's Auto Service as a motor vehicle dealer and the current Appellant as a motor vehicle salesperson under the Act. On January 18, 2013, the Tribunal directed the Registrar to carry out its proposal to refuse both registrations.

The Tribunal in that 2013 decision found that the Appellant failed to provide information on his application about his convictions, about warnings he had received and about his involvement in previous Tribunal proceedings. The Tribunal noted that he was careless in ensuring the information on his application was correct. The Tribunal found that Mr. Samanou, the Appellant, displayed a lack of understanding of the Act and the Regulations, and displayed a cavalier attitude towards his responsibilities under the Act.

Ms. South was of the opinion that there has not been evidence of significant change in circumstance or attitude by the Appellant. She has significant concerns around the past conduct of the Appellant. There have been no assurances from sponsoring employers raising concerns around the Appellant's governability.

There is an outstanding debt to the Canada Revenue Agency (CRA) which has been disclosed by the Appellant. The circumstances around the debt and repayment are vague, and this creates concern around the Appellant's financial responsibility and whether or not his financial matters are in order.

Ms. South took exception to item 3 in the Appellant's notice of appeal, which stated: "...any past statements or claims that may appear as dishonest or lacking integrity are unintentional and created by a lack of understanding or confusion, and were never intended to mislead the council or tribunal" (Ex. #3 Tab 2 page 41). In Ms. South's evidence, she stated that there has never been any confirmed statement by the Appellant that he has had difficulty with language or understanding the application process. She submitted that previous decisions by the various Tribunals never drew a conclusion that this Appellant lacked understanding of the required process.

In addition, Ms. South referred an NOP on May 1, 2013, which the Ministry issued to refuse to a MVIS licence to the Appellant and Sam's Auto Service. This was based in part on the Appellant's false statements made during his application for registration under the Act. This NOP was never appealed.

Ms. South, in cross-examination, stated she had no adverse information regarding Titanium Auto, but she went on to state she had no idea what is planned for this Appellant at that dealership.

Ms. South stated that the current application filed by the Appellant doesn't have any significant flaws. And she advised that the Appellant's ability in the English language was never a significant matter in either of the previous decisions.

The Appellant, Sarkoun Samanou, has been in Canada since 1991. He is a licensed auto mechanic. While he was a licensed motor vehicle safety inspector, he admitted to four previous provincial offences convictions. His record on page 120 of Exhibit #3 shows seven provincial offences convictions from 2001 to 2010. He stated that he no longer does safety certificates but still works as a mechanic. He advised he has had no complaints about his work as a mechanic.

With regard to allegations about his honesty and integrity, he advised he never intended to mislead anyone, and he has nothing to hide.

In 2011, he took the required course for his motor vehicle sales licence from George Brown College. He had to write the exam twice, failing the first time. He retook the course in 2015 but has not written the exam.

He states he has no relationship with Mr. Abdulrazak at Titanium Auto, he would just be an employee there, and he would have no accounting responsibilities or management. But later, during cross-examination, the Appellant advised that he has known Mr. Abdulrazak from Titanium for seven or eight years. Mr. Abdulrazak previously leased property from Mr. Samanou, leaving in 2010.

The Appellant has a spouse and three children whom he supports, and he needs the extra income to supplement his take-home pay.

In cross-examination, the Appellant states he still works as a licensed mechanic. He has his own business in London and works alone. He stated that his tax arrears are the result of sloppy work by his previous accountant, who was his accountant from 2011 to 2013. The Appellant stated that he never examined his tax forms that closely. He has a new accountant who is allegedly coordinating the repayment to the CRA. This is outlined in a brief letter dated March 22, 2015 (Ex. #5). The letter outlines a repayment plan which, according to the Appellant, originally amounted to \$500 per month but allegedly, on approval from the CRA, was reduced to \$400 a month. The Appellant advised that he has not missed a payment to the CRA for the outstanding debt.

The Appellant was vague on details regarding the debt to the CRA. He could not recall for certain when the debt originated. He could not be sure when the repayment scheme started.

The Appellant stated that Mr. Abdulrazak has some knowledge of the Appellant's past problems, but the Appellant was vague as to how much Mr. Abdulrazak actually knew.

The Registrar insists there has been no valid change of circumstance. The time line between his past revocations and refusals and this application are short. The Registrar is concerned about the CRA debt. The Appellant is not clear on his financial situation. In addition there is no character evidence other than a one-line letter that Titanium Auto is prepared to employ him as a sales person.

The Appellant points to the fact he has not been charged for the past six years. And his application form was accurate, and he did not skirt the issues.

## THE LAW

Regarding the right to registration, the Act states:

### 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;

....

(e) the applicant or an interested person in respect of the applicant is carrying on activities that are, or will be if the applicant is registered, in contravention of this Act or the regulations, other than the code of ethics established under section 43;

(f) the applicant is in breach of a condition of the registration; or

(g) the applicant fails to comply with a request made by the registrar under subsection (1.1).

....

### Further application

12. A person whose registration is refused, revoked or refused renewal may reapply for registration only if,

(a) the time prescribed to reapply has passed since the refusal, revocation or refusal to renew; and

(b) new or other evidence is available or it is clear that material circumstances have changed. 2002, c. 30, Sched. B, s. 12

## ISSUES

The Tribunal must assess first, if the Appellant's past conduct and financial position is inconsistent with the intention and objectives of the Act, which are to protect the public interest.

Dealing with financial matters, the Tribunal was very concerned by the lack of knowledge possessed by the Appellant regarding his debt to the CRA, which he refers to in his notice of appeal as a Harmonized Sales Tax ("HST") matter. In his evidence, he could not recall specifics of the debt or even when the repayment process began. He stated in his evidence to the Tribunal that he has not missed a repayment to the CRA.

This is not very credible when he cannot even recall when his repayments began, and there was no documentation presented from CRA.

There was no evidence tendered from the CRA about this debt, when it was from or what it was for. There was no evidence tendered in regard to the former accountant whose error caused the problem.

The letter from his new accountant at exhibit 5 is vague in the extreme. The letter shows no official indication that this person is actually an accountant. Further, there is no factual information from the accountant about this debt. The first line of the letter simply reads "Following is the information received from Revenue Canada related to the amount your company owes" (*spelling corrected*). This suggests to the Tribunal that this is simply a re-statement of a CRA message. It does not suggest that the accountant has undertaken any work in this regard.

It would have been very simple to bring forth documentation to corroborate his evidence from either the accountant or CRA, but he chose not to. The Tribunal does not find the Appellant's evidence in this regard credible, and there has not been any reasonable attempt to be more detailed about this relevant matter.

Further, the Appellant appeared to have handed over control of his finances to third parties without any checks or balances, and this does not indicate financial responsibility. Financial responsibility is integral as a motor vehicle salesperson, dealing in transactions involving thousands of dollars.

The Tribunal decisions of 2011 and 2012 regarding this Appellant indicate a lax attitude which appeared evident during his evidence. He dismissed his previous problems as more of a misunderstanding than intended faults. The Tribunal in both of the previous decisions, attached as appendices to this NOP, was unequivocal as to the allegations, and was clear that the cause was not confusion on the part of the Appellant.

The passage of time was addressed in the 2011 decision – at page 7, the Tribunal stated: "The fact that there was a gap of a few years where there have been no convictions involving Mr. Samanou does not, in the Tribunal's opinion, diminish the concerns and the lack of confidence in Mr. Samanou's competence and willingness to comply with the Act and its regulations that the more recent events have given rise to."

It is the Appellant's position that time lapse is a factor in his favour, and the fact that he has not been charged in six years was cited by the Appellant as a change in circumstance. Time in and of itself is not the only criteria. It is important to note that the Appellant has not been in a regulated industry since he was last charged, so it is difficult to assess how he would have performed if he was in a regulated industry.

There was little or no character evidence presented at the hearing by either of the principals that the Appellant was going to work for, Sargon Auto Sales or his most recent sponsor, Titanium Auto. The letter from Titanium was one line, and no one from that company attended the hearing or submitted a comprehensive outline of what the Appellant's duties were to be. This in and of itself is disturbing. This Appellant ought to

know how important this hearing is to his intention to be registered, yet there is no character evidence. In the Tribunal's opinion, this is just a further example of the lax attitude this Appellant brings to the process.

In view of the evidence, the Tribunal is of the strong opinion that this Appellant has not demonstrated that he has a firm grasp of his financial situation. The debt to CRA is troubling, and especially if it is an HST matter. While the Tribunal does not know the nature of this debt, the Tribunal notes that HST involves monies collected by a retailer or service provider and held in trust for the government; it violates that trust if this money is not transferred to the government.

The credibility of the Appellant is questionable. His evidence around his CRA debt is suspect. The accountant reports have no evidentiary value as presented, and the unprofessional and sparse nature of the evidence presented by the Appellant regarding this CRA debt leaves the Tribunal to wonder if accountants were ever properly involved in this process.

In his evidence, the Appellant stated he had no relationship with Mr. Abdulrazak, other than as a prospective employer, but later in his evidence he admits that Mr. Abdulrazak had previously leased property from the Appellant. This further stretches the Appellant's credibility.

In the view of the Tribunal, the Appellant has failed the test in section 6(1) of the Act. He does not have manageable control over his financial situation. Furthermore, based on his evidence and lack of credibility, coupled by lack of evidence from the sponsoring dealer and a detailed account of his future duties, the Tribunal finds there is reasonable grounds for belief that this Appellant will not carry on business in accordance with law and with integrity and honesty.

Dealing with section 12(b) of the Act, regarding a change in material circumstances, the Tribunal finds there is insufficient evidence of change to justify a reapplication after the Registrar's previous refusal. The Appellant states in his notice of appeal found at page 41 of Ex. #3, "that substantial material change has occurred since 2013". He suggests that part of that change is that now he is "financially responsible," and that the monies owed to the CRA are not his fault. Based on the evidence, the Tribunal cannot make that conclusion.

Further, he contends that statements that appeared to be dishonest or lacking integrity in the past were not intended, and they resulted from lack of understanding or some confusion. Those views of the Appellant were not supported in evidence.

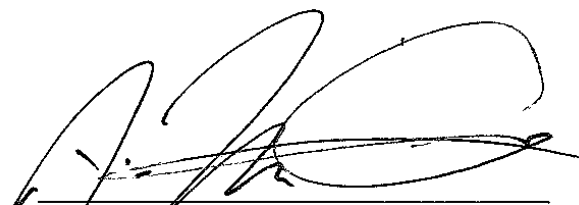
The Appellant has not met the requirement of section 12 of the MVDA.

If this Appellant wishes to apply for a registration in the future, he must be prepared to demonstrate in more detail why he qualifies under the legislation, and provide more supporting evidence that material circumstances have indeed changed.

**ORDER**

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar carry out the Proposal.

LICENCE APPEAL TRIBUNAL



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Alex McCauley, Member

*Released: April 18, 2016*