

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



DATE: 2014-02-04
FILE: 8099/MVDA
CASE NAME: 8099 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, as amended, to Refuse and Revoke Registration

Platinum Auto Gallery Inc., Behzad Rabie (a.k.a. Ben Rabie) and Jamie M. Giroux

Applicants

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Terrance Sweeney, Vice-Chair

APPEARANCES:

**For the Applicants
Platinum Auto Gallery Inc.
and Behzad Rabie:** Justin M. Jakubiak, Counsel

**For the Applicant Jamie
M. Giroux:** Self-represented

For the Respondent: Brian Osler, Counsel

Heard in Toronto: October 16 and 17 and November 25, 2013
and January 13 and 14, 2014

REASONS FOR DECISION AND ORDER

The Applicants appeal to this Tribunal from a decision of the Registrar under the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B (the "Act") dated May 16, 2013, to refuse to register Platinum Auto Gallery Inc ("Platinum") as a motor vehicle dealer and to refuse to register Behzad Rabie ("Mr. Rabie") and to revoke the registration of Jamie Giroux ("Mr. Giroux") as motor vehicle salespersons under the Act.

BACKGROUND

Mr. Rabie is the sole shareholder of Platinum. Platinum was originally registered as a motor vehicle dealer under the Act in or about April 27, 2005 under the name Premium Wheels Inc. The Applicant changed its name to Platinum Auto Gallery Inc. on October 17, 2012.

Platinum failed to renew its registration on time and its registration terminated on or about April 27, 2013.

DECISION

The Registrar has proved his case on a balance of probabilities. Consequently, Platinum and Mr. Rabie will not be registered under the Act and the registration of Mr. Giroux under the Act will be revoked for the reasons which follow.

EVIDENCE FOR THE REGISTRAR

Tim Hines

Mr. Hines is the manager of complaints at the Ontario Motor Vehicle Industry Council ("OMVIC"), the body charged with administering the Act. Complaint handlers, as the name suggests, take calls from consumers and dealers on all matters save registration issues.

OMVIC received a number of complaints from consumers about the Applicants from 2007 to 2011. They were grouped under the following headings.

1. Quality of vehicle issues.
2. Representations made by the Applicants notwithstanding that the vehicles were sold "as is".

3. The Applicants failed to tell consumers about previous accidents suffered by vehicles.
4. The Applicants did not return deposits made to allow potential buyers to test drive cars.

He testified about a telephone discussion he had with Mr. Rabie on June 2, 2008. He told Mr. Rabie that Platinum was in a group that was below the worst 2% of dealers by volume of complaints. Mr. Rabie did not seem to understand the poor condition of some of the vehicles he sold. Mr. Hines stated that Mr. Rabie was “on our radar” from that date.

He had another telephone discussion with Mr. Rabie on December 7, 2009 and again warned him about his poor complaints record and that his complaint handlers were having trouble reaching him.

He mentioned that many of the complaints were about safety. Mr. Rabie responded that he sold high-mileage vehicles. Mr. Hines told Mr. Rabie that, nevertheless, the vehicle must be fit for the purposes for which it was intended.

David Dailly

Mr. Dailly has been at OMVIC for five years. He inspected Platinum in June 2010 because of the number of complaints they had received. He met with Mr. Rabie and his cousin Kam, a salesperson, and discussed a number of issues on disclosure and went over Ontario Regulation 333/08, section 42, with them.

He told Mr. Rabie that most of the complaints related to the condition of the vehicles. Mr. Rabie said that he sold high-mileage cars “as is”. Mr. Dailly left a copy of the Dealer Bulletin on “as is” sales with them.

He also reviewed with them their on-line advertising and asked Mr. Rabie to contact Andrea Korth at OMVIC for further advice. Mr. Rabie said that he would.

Farah Mohammed

Ms. Mohammed is in the Business Standards section at OMVIC concerned with advertising by dealers.

In November 2011, she checked the Platinum website in response to a complaint from a customer. The website did not comply with OMVIC’s standards. She spoke to Mr. Giroux on November 8, 2011 and told him of her concerns. He said he would fix the problems.

Andrea Korth

Ms. Korth is the Business Standards coordinator at OMVIC. She sent an email to Mr. Rabie on August 24, 2011 in which she raised concerns about an on-line advertisement for a 2005 BMW XC placed by Platinum. She was concerned about the phrase "bumper to bumper safety is available for flat rate of \$500.00 plus tax" and attached a Bulletin on advertising "as is" and "unfit" vehicles.

Sara Griffin

Ms Griffin is the team leader in the Compliance and Complaints Department of OMVIC. She tried to mediate a dispute between Platinum and Consumer A. In December 2011, Consumer A had placed a \$1,000.00 deposit on a 2002 Lincoln with Platinum. When he went to pick up the car the horn was not working. He had also discovered that there was a lien on the car. He asked for his deposit back but Mr. Rabie refused. Consumer A finally and reluctantly agreed to accept \$500.00 in full settlement of his claim.

Consumer I complained to Ms. Griffin in May 2012 about Mr. Giroux from whom she had bought a used Mercedes. He said, among other things, that the car had not been in an accident and that the sunroof would be fixed.

Consumer I's mechanic checked the car and said that it needed \$11,000.00 in repairs and that it had been in an accident. She asked to have the contract rescinded. Mr. Rabie told her husband that he would not do anything unless she dropped her complaint to OMVIC.

Mr. Rabie did ultimately try to fix the sunroof but this meant that the car was at the repair shop for two months in November and December 2012. She sold the car and lost over \$3,000.00. Platinum never paid her any money.

Crystal Johns

Ms Johns is a complaint handler at OMVIC. She dealt with Mr. Rabie in August 2011. She told him that he had to do a better job at Platinum as they were receiving too many complaints about his dealership.

She went over his duties under Ontario Regulation 333/08 and sent him a copy of section 42 thereof.

She handled a complaint about Platinum in September 2011. A customer had put \$700.00 down on a car but found out that it had more miles on it than represented. The car had also been in an accident.

Mr. Rabie had threatened to call the police when the purchaser asked for her deposit back. Ms. Johns again told Mr. Rabie about the volume of complaints coming in and that he should resolve issues before they get to OMVIC. He did return the deposit.

Ashley Didier

Ms Didier is another complaints handler at OMVIC. She dealt with a complaint by Consumer B who purchased a 2007 Jeep Compass through Mr. Giroux in December 2011. Platinum had advertised the car as “no rust no accidents”. There were safety issues. Ms. Didier was unable to resolve the matter despite communicating with both Mr. Rabie and Mr. Giroux.

Ms. Didier handled a complaint by Consumer D who, in December 2011, bought a 2001 Mercedes from the Applicants. There were safety issues with the car. The owner lives in Hamilton and did not want to come to Toronto for repairs. He agreed with Mr. Rabie that he would get the car fixed in Hamilton and that Platinum would reimburse him for \$250.00 of the \$700.00 cost thereof. Despite numerous requests for the money, Mr. Rabie never paid him and said that he did not owe him anything.

Justin Brown

Mr Brown is currently employed in the Inspection Services Department at OMVIC. In 2011 and 2012, he was a complaints officer at OMVIC and dealt with Mr. Rabie who operated “in blatant disregard for the law”.

In May 2011, he received a complaint from a customer who had purchased a car from Platinum. There were problems with the transmission from the beginning. Messrs. Rabie and Giroux refused to do anything. The customer intends to seek compensation from the Motor Vehicle Dealers Compensation Fund.

Ms. CK came to the OMVIC offices in tears in April 2012. She had bought a 2005 BMW from Mr. Rabie. There were misrepresentations in the advertisement in respect to the tires. Moreover, she later found out that there had been a theft claim for over \$7,000.00 and that the automobile had been in an accident in 2010 and had incurred more than \$14,000.00 in damage. The advertisement for the car said “car proof verified” but when she asked Mr. Rabie for a certificate to that effect, he said that she would have to pay him \$200.00.

Mr. Rabie finally took the car back but the customer lost money.

Consumer K had purchased a 2002 BMW from Kam, Mr. Rabie’s cousin, who was working at Platinum in 2010. When he went to trade the car in he found out that it had been in a \$28,000.00 accident which had not been disclosed. Mr. Rabie refused to do anything.

Ashley Briggs

Ms Briggs is another complaints handler at OMVIC. She dealt with two complaints about the Applicants in 2012.

A customer had purchased a 2003 Jeep from Platinum. The dealer had failed to disclose a 2007 accident and there were problems with the rear end. Despite Ms. Briggs' efforts, Mr. Rabie and Mr. Giroux would not help the consumer who took his case against Platinum to court.

Consumer J had purchased a 2002 Cadillac Escalade from Mr. Giroux who assured Consumer J that there were no accidents with the car. In fact, the car had been in an accident in 2005 and had suffered \$17,000.00 in damage. Mr. Rabie did nothing because the automobile had been sold "as is".

Consumer B

In December 2011, Platinum listed a 2007 Jeep Compass for sale on the internet. The internet advertisement read:

... runs excellent and looks great with no rust or accidents. ... Clean Carproof at Dealership.

Consumer B has a bad back and wanted a safe car. She dealt with Mr. Giroux who told her "car is safe and will give me a certificate".

She purchased the car on or about December 26, 2011. She soon learned, however, that the vehicle had extensive rusting in the oil pan, engine and transmission and that it was unsafe. She tried to return the vehicle to the dealer but Messrs. Rabie and Giroux refused to refund her money or pay for all of the necessary repairs.

She spent over \$3,000.00 on repairs. Mr. Giroux said they would pay to settle the safety issues but payment was not forthcoming as Mr. Rabie or Mr. Giroux insisted that she take the car to a particular Chrysler dealer. She lost all confidence in the Applicants and is considering suing them.

Consumer K

This case was discussed by Mr. Brown. In late 2011, Consumer K purchased a 2002 BMW from the dealer. He dealt with Kam who said that the vehicle had been in a minor accident. In fact, when he went to trade in the car, he found that it had been in a \$28,000.00 accident in 2003 in Quebec and that the odometer had been tampered with to reduce the actual kilometres travelled.

The Applicants did nothing to assist him and never responded to his complaints. Neither Mr. Jakubiak nor Mr. Giroux cross-examined this witness.

Consumer F

He bought a 2006 Volkswagen Jetta through Mr. Giroux in November 2011. Platinum agreed to fix the engine light but did not. Moreover, the Applicants failed to disclose the vehicle's accident history in writing.

The Applicants did not cross-examine this witness.

Consumer H

He testified that he had to sue the Applicants over a 2003 Jeep Liberty that he purchased from them in February 2012. He got judgment for \$2,518.00 which was paid. This evidence was admitted by the Applicants.

Consumer C

In February 2012, he bought a 2001 Lincoln from the Applicants on a "certified" basis. On subsequent inspection, the Ministry of Transportation found the vehicle to be unsafe. Consumer C then asked the Applicants to take the vehicle back and give him a refund. They only did so after OMVIC intervened. Again, this evidence was admitted by the Applicants.

Consumer I

This case was described by Ms. Griffin in her testimony.

Consumer I bought a 2005 Mercedes R350 in May 2012 from Mr. Giroux for \$13,200.00. Mr. Giroux told her that the engine and transmission had been inspected by Platinum's mechanic and both were in good working order. There was another problem with the sunroof which the Applicants tried to fix. As noted above, this meant that the car was at the Applicants' premises for months.

She also found out that the car had been in an accident and would require about \$11,000.00 to fix. Mr. Rabie refused to take the car back and at one point told her that he would not fix the sunroof unless she withdrew her complaint to OMVIC.

She could not reach an agreement with Mr. Rabie and ended up selling the car for \$9,000.00.

Paul Maiorama

Mr Maiorama is the regional sales manager of Car Proof. In December 2011, the Applicants advertised a 2005 BMW as "carproof verified". He testified that the Applicants had not obtained any such report from his company.

Consumer J

Ms. Briggs described this case in her testimony. Consumer J purchased a 2002 Cadillac Escalade through Mr. Giroux in July 2012.

Almost as soon as she pulled out of Platinum's premises, the engine died. She called Mr. Giroux who said "get estimates". She did. The estimate was \$3,000.00 but the warranty sold to her by Mr. Giroux only covered \$600.00. Mr. Rabie suggested that she take it to his mechanic as it would be a lot cheaper. Mr. Giroux had assured Consumer J that the car had not been in an accident. But she checked and found out that it had been involved in a \$17,000.00 accident in March 2005.

At one point, Mr. Rabie offered her \$700.00 but ultimately paid nothing.

Consumer D

He lives in Hamilton. He bought a 2001 Mercedes through Mr. Rabie in December 2011. The wholesale bill of sale for the car when purchased by Platinum in October 2011 showed that it had been in an accident and had repairs of \$4,800.00. Mr Rabie did not tell Consumer D about the accident. Moreover, Mr. Rabie agreed to pay \$250.00 towards the cost of further repairs. Mr. Rabie "played games with him" and never paid the money.

Mary Jane South

Ms South is the Deputy Registrar of OMVIC. She is familiar with the files of the Applicants. There are 8,000 motor vehicle dealers in Ontario. Platinum is one of the two or three worst.

She is concerned about the very high volume of complaints and that some of the vehicles sold were unsafe. Platinum has consistently failed to meet its legal obligations and improve its business practices notwithstanding numerous attempts to help it by her staff.

She said "it is tough to see how it could be any worse". She told the Tribunal that "she wants the Applicants out of business".

When asked by Mr. Giroux as to where he fitted in, she said that OMVIC does not keep statistics on individuals.

Consumer L

He purchased a 2004 Subaru Forester in May 2013 through Mr. Giroux. He paid \$1,000.00 for a Lubrico warranty. He had problems with the seal and gasket. He telephoned Lubrico who said it was good idea to get an extended warranty. He spoke to Mr. Giroux who agreed. He paid Platinum \$1,409.11 for the extended warranty.

When he checked with Lubrico in October 2013, he discovered that the money had not been remitted to Lubrico by Platinum.

Peter Kukkonen

Mr. Kukkonen is the National Sales Manager for Lubrico Warranty Inc. He confirmed that the money was not remitted to Lubrico by Platinum.

He told Mr. Jakubiak on cross-examination that \$1,805.00 was owing.

Consumer A

He appeared to testify but Counsel for Platinum agreed that his evidence, summarized in Exhibit 1, Tab 1, paras. 34-38, inclusive, was admitted.

He was the individual who paid a \$1,000.00 deposit to test drive a Lincoln but when he told Mr. Rabie that he did not want it, Mr. Rabie refused to refund him his money. He ultimately accepted \$500.00 from Mr. Rabie rather than going to court to sue for it.

EVIDENCE FOR THE APPLICANTS

Behzad Rabie

Mr. Rabie is 40 years of age. He came to Canada in 1994 from Iran.

He started in the motor vehicle business in 2005. His business plan was to buy luxury automobiles with high mileage and sell them at a small profit.

He explained that Platinum is a high volume business with sales of up to 60 cars a month. His cousin Kam started with him. He was a good salesman but, unfortunately, there were too many customer complaints so he had to fire him in 2011.

He hired Mr. Giroux in 2011 partly because of his experience in selling new cars and the fact that he had good training.

When the complaints reached a high level in 2012, he and Mr. Giroux sat down in August or September 2012 to develop a new business practice. This involved changing Platinum's name and its location.

He testified in respect of the consumer complaints as follows.

Consumer J – he failed to disclose the accident history on the bill of sale for the Cadillac Escalade, because he was extremely busy at the time. He admitted that he was at fault.

Consumer L – this was one of the last deals done before Platinum lost its licence. He had some serious health issues and had to seek a doctor's help. He acknowledged that he owes Consumer L the money and will pay him as soon as he "gets on his feet".

Consumer I – the Mercedes with the sunroof problem – he tried to fix the problem. He ordered the part from Germany but they sent the wrong one. This accounted for the long delay when Consumer I could not use the car. He has tried to settle this one with Consumer I but has been unable to do so.

Consumer D – he contacted this customer and asked him to bring the car in for repair. The customer refused and insisted simply that he send him a cheque.

On cross examination,, Counsel suggested that he made Consumer A fight to get his deposit back and forced him to settle for half. Mr. Rabie replied that he settled the matter and received a full release. Regarding Consumer B – 2006 Jeep Compass. Mr. Rabie advertised it as "rust free". He acknowledged that he should not have done that. He said, however, that all used cars have some rust on them. As for Consumer D – He said that he failed to disclose the accident history on this one. He promised, among other things, to hire a compliance officer and work closely with OMVIC to ensure compliance with the Act and Regulations, if Platinum were to be granted a licence.

Jamie Giroux

Mr Giroux was first registered in 2009. After some experience in new car sales, he joined Platinum in 2011.

He corroborated Mr. Rabie's testimony about their meeting in August or September 2012 after which they changed Platinum's name and location.

He testified in respect of consumer complaints as follows.

Consumer A – he explained that they told him that the lien would be cleared once the sale was through.

Consumer F – he agreed that he did not disclose the accident history on the car.

Consumer H – he said that he had done nothing except to try and help this customer.

In cross-examination, Counsel suggested that the real reason why they changed Platinum's name and location was to hide from the complaints about Platinum from dissatisfied customers. To his credit, Mr. Giroux said that was "50%" why they changed Platinum's name and location.

THE LAW

The Act provides as follows:

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,

...

(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

...

(d) the applicant is a corporation and,

...

(iii) the past conduct of its officers or directors or of an interested person in respect of its officers or directors or of an interested person in respect of the corporation affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty, ...

...

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.

(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.

Section 42 of Ontario Regulation 333/08 requires motor vehicle dealers to give additional information in contracts for the sale of a motor vehicle. The following subsections are relevant in this case.

42. For the purposes of section 30 (1) of the Act, the information mentioned in paragraph 22 of subsection 39 (2) and paragraph 11 of subsection 41 (1) of this Regulation is the following:

3. If the motor vehicle is a used motor vehicle, the total distance that it has been driven if the registered motor vehicle dealer can determine the distance.

4. If the motor vehicle is a used motor vehicle and the registered motor vehicle dealer cannot determine the total distance that the vehicle has been driven but can determine the distance that the vehicle has been driven as of some past date, a statement of that distance and date, together with a statement that the total distance that the vehicle has been driven is believed to be higher than that distance.

5. If the motor vehicle is a used motor vehicle and the registered motor vehicle dealer can determine neither the total distance that the vehicle has been driven, nor the distance that the vehicle has been driven as of some past date, a statement that the total distance that the vehicle has been driven is unknown and may be substantially higher than the reading shown on the odometer.

19. If the total costs of repairs to fix the damage caused to the motor vehicle by an incident exceed \$3,000, a statement to that effect and if the registered motor vehicle dealer knew the total costs, a statement of the total costs.

The sale of motor vehicles is also governed by section 15 of the *Sale of Goods Act*, R.S.O. 1990, c. S.1, which reads:

15. Subject to this Act and any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:

1. Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description that it is in the course of the seller's business to supply (whether the seller is the manufacturer or not), there is an implied condition that the goods will be reasonably fit for such purpose, but in the case of a contract for the sale of a specified article under its patent or other trade name there is no implied condition as to its fitness for any particular purpose.

2. Where goods are bought by description from a seller who deals in goods of that description (whether the seller is the manufacturer or not), there is an implied condition that the goods will be of merchantable quality, but if the buyer has examined the goods, there is no implied condition as regards defects that such examination ought to have revealed.

3. An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

4. An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

ANALYSIS

The Registrar called 22 witnesses and filed 6 thick volumes of documents. The Applicants called no independent witnesses and filed no documents.

The Applicants did not seriously dispute the allegations against them. Indeed, they explicitly admitted many of the allegations, or implicitly agreed with them, by not cross-examining some of the witnesses called by the Registrar. The evidence against the Applicants is overwhelming. The Tribunal could have chosen any number of facts adverse to the Applicants as the basis for its decision. In the end it cites and relies on the following facts, which have been proved on a balance of probabilities.

1. The record is rife with evidence that, from 2008 until May 2013, officials of OMVIC tried to work with Mr. Rabie to improve his business practices. They also continually warned him about the high volume of complaints against him and Platinum. Mr. Rabie did nothing to address those problems save firing his cousin Kam. The Tribunal rejects his suggestion that somehow changing the name and location of Platinum would improve the rate of consumer complaints.
2. Mr. Rabie bullied customers and used delaying tactics to avoid paying what he owed them so that some gave up and others accepted less than they were owed.. Consider, for example, Consumer A, who effectively had to pay \$500.00 for the privilege of test driving a used vehicle. As well, Mr. Rabie stonewalled Consumers B, D, I and J until they gave up trying to get satisfaction from him.
3. Mr. Giroux lied to Consumer J when he told her that the 2002 Cadillac Escalade had not been in an accident. Mr. Rabie failed to tell Consumer D that his 2001 Mercedes had been in an accident.
4. Mr. Giroux and Mr. Rabie breached section 42 of Ontario Regulation 333/08 on at least four occasions when they failed to set out on the bill of sale that each of the motor vehicles in question had been in an accident.
5. Mr. Giroux and Mr. Rabie often sent cars out on the road when they were not fit to be there and, thus, breached section 15 of the *Sale of Goods Act*. Consider, for example, that in July 2012, Mr. Giroux sold the 2002 Cadillac Escalade to Consumer J. and the vehicle barely made it out of Platinum's lot before the engine died.
6. Mr. Rabie fraudulently pocketed over \$2,000.00 from Consumer L which should have been remitted to Lubrico.
7. Mr. Rabie was responsible for the advertisement in 2011 for the 2005 BMW as "carproof verified". No such Car Proof report was ever obtained.

The Registrar has a duty to protect the public. Messrs. Rabie and Giroux have caused some of Platinum's consumers to suffer emotional distress and financial loss. The Tribunal has conducted its own inquiry through this hearing and does not defer to the Registrar. Nevertheless, when the Deputy Registrar says that Platinum is one of the worst of two or three in the province and that she "wants the Applicants out of

business”, her view carries considerable weight. This is especially so when it is amply supported by the evidence.

The Tribunal finds that the past conduct of Messrs. Rabie and Giroux provides reasonable grounds to believe that they will not carry on business in accordance with law and with integrity and honesty.

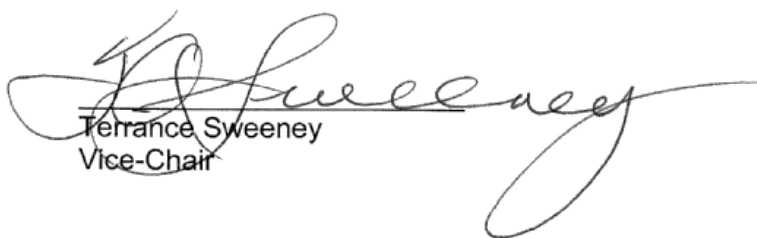
Counsel for Mr. Rabie and Platinum argued that they and Mr. Giroux should be licensed subject to terms. Counsel for the Registrar rejected this suggestion and the Tribunal agrees.

The Tribunal has found that the Applicants lack the integrity and honesty required by the Act. It would be antithetical to such a finding to then license them subject to terms.

ORDER

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar to carry out the Proposal to refuse to register Platinum and Mr. Rabie under the Act and to revoke the registration of Mr. Giroux as a salesperson under the Act.

LICENCE APPEAL TRIBUNAL



Terrance Sweeney
Vice-Chair

Released: February 4, 2014