

Licence Tribunal
Appeal d'appel en
Tribunal matière de permis



DATE: 2013-11-05
FILE: 8224/MVDA
CASE NAME: 8224 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 - to Refuse Registration

Ardalan Razavi-Toussi

Applicant

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Laurie Sanford, Vice-Chair

APPEARANCES:

For the Applicant: Self-represented

For the Respondent: Jane Samler, Counsel

Heard in Toronto: October 23, 2013

REASONS FOR DECISION AND ORDER

This hearing arises from an appeal by Ardalan Razavi-Toussi to the Licence Appeal Tribunal (the "Tribunal") from a Notice of Proposal issued by the Registrar, *Motor Vehicle Dealers Act 2002* (the "Registrar") dated July 3, 2013 which proposes to refuse to register Mr. Razavi-Toussi as a salesperson under the *Motor Vehicle Dealers Act, 2002* (the "Act").

FACTS

Mr. Razavi-Toussi is 50 years old. He owns and operates a restaurant franchise which he acquired in 2005. According to his testimony, Mr. Razavi-Toussi sought and obtained a small business loan to start his business and successfully repaid this loan in November, 2009. He produced a statement from the bank to support this testimony and the Tribunal accepts it.

In the fall of 2008, Mr. Razavi-Toussi sought a second loan to undertake some renovations for his restaurant. He testified that he could not go to the same bank that had extended the first loan as it was still outstanding. Instead, he read a newspaper advertisement for the services of a mortgage broker. He arranged for the broker to obtain a loan for him from a second bank. According to his testimony, he signed a number of documents prepared by the broker but did not read them. He testified that he did not tell the broker how much he needed as a loan; his testimony was that he calculated that he would need about \$50,000 to complete the renovations. He did not ask what the principal amount of the loan was, what interest rate would be charged, what the monthly payments were or how long the term of the loan was. According to his evidence, all he asked was what his arrangement with the broker would be. The broker advised him that the broker would take 10% of the loan extended by the bank.

He visited the bank twice to set up the loan. On his second visit, he was arrested and subsequently charged on two counts of making or using false documents to obtain a \$75,000 loan. He pled guilty to the second count of using forged documents showing his employment with a fictitious company, pay stubs from that company and a forged financial statement from an investment house purporting to show his investment portfolio. He was granted a conditional discharge and served 12 months' probation without incident. At this hearing, Mr. Razavi-Toussi testified that he not only never read the documents before signing them, but that he never saw the documents again after he signed them and they were presented to the bank. He said that he made one mistake in his life – signing the documents without reading them. He resolved to always read "important" documents before signing them.

According to the testimony of Detective Constable Gino Benedetti of the York Regional Police, after the disposition of Mr. Razavi-Toussi's criminal case, he was approached to assist the York Regional Police in prosecuting the mortgage broker who arranged the loan. Mr. Razavi-Toussi was helpful and testified at the trial of the mortgage broker. On April 20, 2010, Mr. Razavi-Toussi made a consumer proposal under the *Bankruptcy*

and Insolvency Act. Mr. Razavi-Toussi at that time owed over \$100,000, mostly in credit card debt. As part of the settlement with his creditors, he agreed to ongoing payments of \$500 a month until 2015. These payments continue to be made.

On November 20, 2012, the Ontario Motor Vehicle Industry Council (“OMVIC”), the administrative body which supports the Registrar, received an application from Mr. Razavi-Toussi to be an automotive salesperson. In that application, Mr. Razavi-Toussi acknowledged both his criminal charge and his consumer proposal but did not supply details of either as is required by the application form. Upon a request by OMVIC, Mr. Razavi-Toussi did provide a brief explanation and his letter of explanation was signed by his prospective employer.

The letter of explanation asserted that Mr. Razavi-Toussi was “found guilty but not criminal charges” and that his consumer proposal came as a result of his business falling into difficulties. The Registrar is concerned that this explanation minimised Mr. Razavi-Toussi’s criminal charge and his consumer proposal. The Registrar is also concerned about the underlying behaviour that led to both the criminal charge and the consumer proposal. On these grounds, the Registrar is proposing to refuse to register Mr. Razavi-Toussi.

Mr. Razavi-Toussi appealed the Registrar’s proposal to the Tribunal. In his Notice of Appeal he stated, “The Applicant has since reviewed the documentation that he signed, and acknowledges that false information is contained therein. Had he reviewed the documentation in advance and thereby realized that false information was contained therein, he would not have signed the documentation.” Mr. Razavi-Toussi acknowledged that this explanation differed from his testimony at the hearing when he said he had never again seen the documents that were presented to the bank. He explained that he had asked one of his customers, a lawyer, to prepare his Notice of Appeal and that he had not read it prior to signing and submitting it. Mr. Razavi-Toussi gave evidence himself but called no witnesses on his behalf.

DECISION

Mr. Razavi-Toussi’s explanation of the events leading up to his criminal charge is not credible. At that time, he was a mature businessman who had at least 3 years’ experience owning and running a business and who had previously negotiated a small business loan. Yet he asks the Tribunal to believe that he never told the mortgage broker how much money he needed or what the basic terms of the loan would be including: the principal of the loan, the interest rate, the monthly payments and the term. His testimony is also that he signed a set of documents without reading any of them. It is simply unbelievable that an experienced businessman would conduct his affairs in this way. What is more plausible is the Registrar’s suggestion that Mr. Razavi-Toussi was wilfully blind to what was being done on his behalf.

Mr. Razavi-Toussi testified that he had learned a painful lesson and was resolved never again to sign “important” documents without reading them. Yet, when faced with a

contradiction between what his Notice of Appeal asserted as fact and his testimony at the hearing, he alleged that the Notice of Appeal had been prepared on his behalf and that he signed it without reading it. Either Mr. Razavi-Toussi has not learned from his earlier experience or the defence that someone else was acting on his behalf and he did not review their work is a standard response of his when he is challenged. Either way, this is conduct of grave concern in the auto industry which depends critically on signed contracts for the purchase and sale of automobiles.

Mr. Razavi-Toussi's lack of candour during his testimony also raises concerns about his ability to conduct his business with honesty and integrity as required by Section 6 of the Act. Mr. Razavi-Toussi was not truthful about the events leading up to his criminal charge when he was testifying under affirmation at the hearing. As the Registrar has noted, an automotive salesperson is required to make full disclosure of all material information about the automobile he proposes to sell. Based on his conduct prior to the hearing and his testimony during it, the Tribunal does not have confidence that Mr. Razavi-Toussi would disclose information that was against his interest.

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;

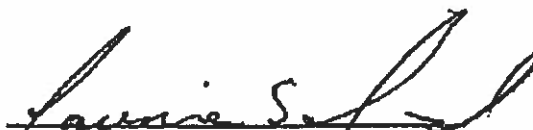
Mr. Razavi-Toussi's past conduct, including his conduct during the hearing, affords reasonable grounds for the belief that he will not carry on business in accordance with law and with honesty and integrity.

The Registrar also expressed concerns about Mr. Razavi-Toussi's ability to be financially responsible in the conduct of his business. The Tribunal does not find that Mr. Razavi-Toussi's financial conduct is of sufficient concern to disentitle him to registration on the grounds of financial irresponsibility. The Tribunal takes note of the fact that Mr. Razavi-Toussi repaid his original small business loan and is apparently current in his payments under his consumer proposal. The Tribunal also finds that Mr. Razavi-Toussi's minimal explanation of his financial and criminal difficulties during his application is not sufficient, on its own, to disentitle Mr. Razavi-Toussi to registration. The Tribunal notes that Mr. Razavi-Toussi did disclose both his criminal charge and his consumer proposal.

ORDER

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar carry out his Proposal to refuse to register Mr. Razavi-Toussi as an automotive salesperson.

LICENCE APPEAL TRIBUNAL


Laurie Sanford, Vice-Chair

Released: November 5, 2013