



**Citation: Boston and T.A. Boston Auto Sales LTD. v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2024 ONLAT MVDA 16034**

**Licence Appeal Tribunal File Number: 16034/MVDA**

In the matter of an appeal from a Notice of Proposal to Revoke registrations under the *Motor Vehicle Dealers Act, 2002*.

Between:

**Thomas Andrew Boston and T.A. Boston Auto Sales LTD.**

**Appellant**

and

**Registrar, *Motor Vehicle Dealers Act, 2002***

**Respondent**

## **DECISION**

**VICE-CHAIRS:**

**Hande Bilhan  
Colin Osterberg**

**APPEARANCES:**

For the Appellant:

Donald Oraziotti, Counsel

For the Respondent:

Zachary Kowalski, Counsel

**HEARD:**

**October 7, 2024**

## OVERVIEW

- [1] Pursuant to a Notice of Proposal dated June 18, 2024 (“NOP”) the Registrar, *Motor Vehicle Dealers Act, 2002* (the “Registrar”) proposes to revoke the registration of T.A. Boston Auto Sales LTD. (“Boston Auto”) as a motor vehicle dealer and the registration of Thomas Andrew Boston (“Boston”), also known as Andy Boston, as a motor vehicle salesperson under the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 20, Sched. B (the “Act”).
- [2] The Registrar alleges that Boston’s past conduct affords reasonable grounds for belief that he and Boston Auto (collectively, the “appellants”) will not carry on business in accordance with law and with integrity and honesty and are not entitled to registration pursuant to s. 6(1)(a)(ii) and s. 6(1)(d)(iii) of the *Act*.
- [3] The appellants appeal the NOP to the Tribunal.

## PRELIMINARY ISSUES

### Appellants’ Oral Motion to Adjourn

- [4] The Hearing with respect to the appeal was scheduled to commence October 7, 2024. This date was canvassed and agreed to by the parties at a Case Conference which took place August 2, 2024. On October 3, 2024, the appellants’ representative filed a Request for Adjournment form with the Tribunal. Because the Request for Adjournment was filed only two business days before the hearing, the appellants’ representative was advised that he would have to make his request at the commencement of the hearing.
- [5] The reason given in the Request for Adjournment form is that “[T]here is an outstanding decision in the Superior Court on this issue”. In his oral submission at the commencement of the hearing, the appellants’ representative pointed to a Notice of Application which Boston had filed in the Superior Court of Justice on September 19, 2024 asking for a stay of proceedings pursuant to s. 24(1) of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”). In particular, the Notice of Application alleges that the legislation authorizing the Ontario Motor Vehicle Industry Council to issue the NOP which is the subject of this appeal breaches Boston’s *Charter* rights.

- [6] The appellants argue that the present hearing ought to be adjourned until the Application in the Superior Court of Justice is determined. Appellants' representative did not provide any further basis for the adjournment request and presented no authority for the proposition that the Application in the Superior Court of Justice requires an adjournment of the hearing before the Tribunal.
- [7] The Registrar objected to the adjournment request based on the fact that the appellants had sufficient notice of the hearing, that the court proceeding is separate from the Tribunal hearing, and that delaying the hearing will be unfair as he has multiple witnesses lined up who have arranged their schedules accordingly and may not be available if the hearing is postponed to a later date.
- [8] Rule 16.3. sets out factors the Tribunal may consider with respect to an adjournment request, including whether the request is on consent, the specific reasons for being unable to proceed on the scheduled date, the length of notice that the Tribunal has provided to the parties of the event, the length of the requested adjournment and whether it would unduly delay the proceedings, broader institutional and public interests, and, any other factors considered relevant in deciding the request.
- [9] We found that the appellants did not provide any compelling reasons or submit evidence as to why they are unable to proceed with the hearing. We found that the appellants were aware of the dates for the hearing through the Tribunal Case Conference Report and Order ("CCRO") dated August 2, 2024, which provided ample notice to prepare. The appellants also did not provide a length of time for the adjournment other than suggesting until after their *Charter* challenge is heard by the Superior Court.
- [10] The appellants' request for an adjournment was opposed by the respondent. Although this is not in itself determinative, the respondent points out that the Notice of Appeal was filed in June 2024 and the hearing date scheduled on consent on August 2, 2024. The appellants filed their application in the Superior Court on September 19, 2024 but did not file their request for an adjournment with this Tribunal until October 3, 2024, two business days before the hearing. This raises a concern that the request for the adjournment was made in order to delay the proceeding rather than for a good faith reason.
- [11] This concern is increased by the fact that the appellants did not present any reason that an adjournment would be required other than to say that the adjournment should be automatic on the filing of the application in

Superior Court. We find the filing of the application in Superior Court does not automatically stay the proceeding before the Tribunal and the appellants presented no sufficient reason why it would and have not presented any authority for the proposition that a stay necessarily follows from the filing of such an application. For completeness, s. 25 of the *Statutory Powers Procedure Act* does not apply in this context.

[12] Further, there is a public interest concern raised by the proposal to revoke the appellants' registrations. Until the appeal is completed, the appellants are entitled to continue conducting business involving the sale of vehicles to consumers. The allegations in the notice of proposal involve dishonesty on the part of the appellants which has allegedly had a negative impact on consumers. It is in the interest of the public, and of the Tribunal, that this appeal be conducted on a timely basis and that delays be reasonably justified before they are allowed to occur. In this case, as noted, the delay requested by the appellants is of indeterminate duration and was made without providing any satisfactory reason.

[13] We therefore denied the appellants' request for an adjournment.

## **PROCEDURAL ISSUES**

[14] At the outset of the hearing the appellants' counsel asked to be excused from the hearing and stated that he has no instructions from the appellants on the matter. He proceeded to exit the hearing without a chance for further discussion. The appellants themselves were not present.

[15] We took submissions from the respondent as to whether he wanted to proceed in the absence of the appellants.

[16] The respondent submitted that the appellants had plenty of time to prepare for the hearing and that they are willfully trying to delay the proceeding in order to continue operating Boston Auto while remaining non-compliant with several parts of the Act. As evidence that they are simply using adjournment as a delay tactic, he submitted that the appellants had attended the Superior Court proceeding and had asked for an adjournment at that event as well. He submitted that considering the purpose of the legislation of consumer protection, it would not be in the public interest to delay the hearing.

[17] Rule 3.7.3 of the Rules states that if a representative of any party does not attend any part of an in-person or electronic hearing, the Tribunal will consider the reasons for non-attendance, if any, and may:

1. proceed with the hearing without that representative; and/or
2. make any order it considers appropriate in the circumstances.

- [18] We agree with the respondent. The CCRO dated August 2, 2024, clearly set out the dates for the hearing and all the required document exchanges. The appellants had ample time to prepare for the hearing. The appellants' counsel did not provide any salient reasons for their non-attendance before counsel abruptly dropped off the Zoom teleconference.
- [19] Rule 3.1.b. of the Rules mandates that the Tribunal ensure efficient, proportional, and timely resolution of the merits of the proceedings before the Tribunal.
- [20] We ordered the hearing to proceed.

## ISSUES

- [21] The issues in dispute are:
- i. Whether the past conduct of Boston affords reasonable grounds for belief that he and Boston Auto will not carry on business in accordance with law and with integrity and honesty according to s. 6(1)(a)(ii) and s. 6(1)(d)(iii) of the *Act*;
  - ii. If the above is answered in the affirmative, whether the public interest can be adequately protected through granting registration with conditions.

## RESULT

- [22] For the reasons which follow, we find that the Registrar has satisfied its burden of proving the past conduct of Boston and Boston Auto affords reasonable grounds for belief that they will not carry on business in accordance with the law and with integrity and honesty.
- [23] We find that Boston and Boston Auto are not entitled to registration pursuant to s. 6(1)(a)(ii) and s. 6(1)(d)(iii) of the *Act* and that the public interest cannot be adequately protected by granting registration with conditions.
- [24] We therefore direct the Registrar to carry out its proposal to revoke the registrations of Boston as a motor vehicle salesperson and Boston Auto as a motor vehicle dealer.

## ANALYSIS

### ***Reasonable grounds for belief***

- [25] Pursuant to s. 6(1)(a)(ii) of the *Act*, if the past conduct of Boston affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty, he is not entitled to registration.
- [26] Pursuant to s. 6(1)(d)(iii) of the *Act*, given that Boston is the sole officer and director of Boston Auto, and was so at all material times, if the past conduct of Boston affords reasonable grounds for belief that Boston Auto's business will not be carried on in accordance with the law and with integrity and honesty, Boston Auto is not entitled to registration.
- [27] The Ontario Court of Appeal in *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc. (Famous Flesh Gordon's)*, 2013 ONCA 157 at paras. 18-19, held that the standard of proof with respect to reasonable grounds for belief does not require the Registrar to go so far as to show that the conduct makes it more likely than not that he will not carry on business as required.
- [28] According to the Supreme Court of Canada in *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para.114, the reasonable grounds for belief must be more than mere suspicion and will be found to exist where there is an objective basis for the belief which is based on compelling and credible information.
- [29] Further, there must be a nexus between the person's past conduct and the registrant's ability to conduct business as required, considering the interests of the public: See *CS v. Registrar, Real Estate and Business Brokers Act, 2002*, 2019 ONSC 1652 (Div. Ct.) at para. 32.
- [30] The Registrar presented evidence of the following alleged acts of misconduct which it submits afford reasonable grounds for belief that Boston and Boston Auto will not carry on business as required.

### **Consumer A:**

- [31] The respondent called Brigitte Sharpe, Resolution Support Coordinator for the Registrar, as a witness to describe her experience dealing with Consumer A's complaint with Boston Auto.

- [32] She testified that on or about May 16, 2023, Consumer A purchased a 2013 Nissan Rogue from Boston Auto. On June 2, 2023, Consumer A filed a complaint with the Registrar due to Boston Auto failing to deliver the vehicle.
- [33] On the Bill of Sale, Boston Auto failed to disclose that the vehicle had been declared a total loss as required by s. 42(21) of Ontario Regulation 333/08 (the "Regulation") and the amount of Consumer A's deposit as required by s. 40(2)(1) of the Regulation. We find that this amounts to reasonable grounds for belief that the appellants will not carry on business in accordance with the law and with integrity and honesty. The law requires that the fact that the vehicle had been declared a total loss to be disclosed and the appellants failed to do so. The appellants provided no reasonable explanation for its conduct.
- [34] Additionally, the vehicle was sold to Consumer A with a pre-existing lien. Boston Auto's failure to remove a lien prior to selling the vehicle is contrary to s. 9(3) and s. 9(4) of the Code of Ethics. We find that failing to disclose the lien before selling the vehicle provides reasonable grounds for belief that the appellants will not carry on business in accordance with the law and with integrity and honesty. The law, as well as honesty and integrity, required that this disclosure should have been made and the appellants failed to do so. The appellants provided no reasonable explanation for its conduct.
- [35] At this time, Ms. Sharpe informed Consumer A of the total loss declaration and active lien on the vehicle. Consumer A advised they were never informed of these issues by Boston Auto.
- [36] On June 19, 2023, Ms. Sharpe contacted Boston and informed him of Consumer A's complaint against Boston Auto.
- [37] On or about June 16, 2023, Boston Auto had reimbursed Consumer A for the vehicle and her deposit but failed to return Consumer A's personalized license plates.
- [38] On June 22, 2023, Ms. Sharpe requested that Boston Auto provide documents pertaining to their transaction with Consumer A, pursuant to s. 14(1) of the Act. Boston responded that Boston Auto would not be providing information in response to the Registrar's request as Consumer A had been refunded and the matter was closed.
- [39] On June 23 and June 29, 2023, the Registrar made subsequent requests for Boston Auto's documents. On July 5, 2023, Boston Auto

provided the Registrar with a copy of the wholesale bill of sale and some repair invoices, but not the requested retail bill of sale, the safety check list, and the lien release form.

- [40] When Ms. Sharpe requested an update on the delivery of Consumer A's plates, Boston Auto advised the plates had been sent via regular mail.
- [41] On August 2, 2023, the Registrar ran an updated Carfax search on the vehicle, which showed that the vehicle still held an active lien registered to another individual. The Registrar contacted Boston Auto again about the non-disclosure issues, the active lien and requested an update on Consumer A's plates.
- [42] Ms. Sharpe testified that to date, Boston Auto has failed to return Consumer A's personalized plates and has provided no further updates on the requested documents. She was told by Boston that as the consumer has been reimbursed, this resolves the complaint and the Registrar's role in the issue. She submits that this is not the case, and the Registrar has an ongoing responsibility that dealers are operating in an honest manner and in compliance with the Act and their Code of Conduct.
- [43] Ms. Sharpe further testified that the vehicle may have been sold to a different consumer with the lien still in place as it appears registered in someone else's name and when she ran new Carfax report in August it confirmed the lien. She is concerned about ongoing consumer harm.
- [44] We find that the evidence clearly establishes that Boston and Boston Auto failed to comply with the Registrar's request and acted contrary to s.14(3) of the Act. We further find that Boston and Boston Auto's ongoing conduct is not consistent with their obligation to carry on business in accordance with law *and* with integrity and honesty according to s. 6(1)(a)(ii) and s. 6(1)(d)(iii) of the *Act*.
- [45] We find that the appellants' failure to disclose that the vehicle had been rendered a total loss, their failure to disclose that the vehicle was subject to a lien, and their repeated failure to comply with the Registrar's request for documents provide reasonable grounds for belief that the appellants will not carry on business in accordance with the law and with integrity and honesty and that the appellants are disentitled to registration.



**Consumer B:**

- [46] The respondent called Brendan Fernandes, Resolution Support Specialist for the Registrar, as a witness to describe his experience dealing with Consumer B's complaint with Boston Auto.
- [47] On or about May 3, 2023, Consumer B agreed to purchase a 2011 Ford F-350 Super Duty from Boston Auto and provided a \$5,000 deposit.
- [48] After significant delay, on or about June 26, 2023, Boston Auto delivered the vehicle to Consumer B. Consumer B returned the vehicle to Boston Auto a few days later because, despite being safety certified, the vehicle had multiple mechanical issues.
- [49] On July 12, 2023, Consumer B filed a complaint with the Registrar. Consumer B also advised that Boston Auto still possessed the vehicle and had not responded to his requests for a refund, and eventually blocked Consumer B's phone number.
- [50] Consumer B did not have the bill of sale, or any other documents related to the vehicle as he left them in the glove compartment of the vehicle at the time he dropped it back off at Boston Auto for repairs. At that point he had still been trying to resolve his concerns directly with Boston.
- [51] Mr. Fernandes testified that he contacted Boston on September 6, 2023, and informed him of Consumer B's complaint against Boston Auto. Boston advised Mr. Fernandes that Consumer B's vehicle was seized due to non-payment of lease payments.
- [52] Mr. Fernandes testified that Consumer B was under the impression that he had paid a down payment to purchase the vehicle. He couldn't remember what the documentation said, and didn't have access to them as explained above, but at a minimum he had been verbally misled into thinking that he had purchased the vehicle and not leased it. He had also never been apprised of a seizure for non-payment.
- [53] Mr. Fernandes requested Boston Auto provide documents confirming the seizure and the lease agreement. Mr. Fernandes followed up on the requests at least on three occasions. On November 16, 2023, Mr. Fernandes made a final request that Boston Auto provide the documents by November 20, 2023.

- [54] Boston Auto rejected the Registrar's request for documents. Additionally, Boston told Mr. Fernandes that the vehicle was taken back by the leasing company and that Consumer B had lied about his down payment, that he only deposited \$3,300 and never made any required lease payments. Mr. Fernandes testifies that Boston did not provide any evidence to back up these claims.
- [55] On November 27, 2023, the Registrar informed Boston Auto that due to its failure to provide requested documents as required by s.14(3) of the *Act*, the complaint file would be escalated for further review.
- [56] We find that the appellants' failure to provide to the Registrar requested documents as is required by s. 14(3) of the *Act*, provides reasonable grounds for belief that the appellants will not carry on business in accordance with the law and with integrity and honesty. The appellants had an obligation under the law to comply with the Registrar's demands and provided no reasonable explanation for failing to do so.

#### **Boston Auto and Boston are not entitled to registration**

- [57] We have determined that the actions of Boston Auto and Boston with respect to their dealings with Consumer A and B provide reasonable grounds for belief that they will not carry on business in accordance with the law and with integrity and honesty, and therefore they are not entitled to registration according to s. 6(1)(a)(ii) and s. 6(1)(d)(iii).

#### **Registration with conditions is not appropriate in this case**

- [58] The Registrar and the Tribunal have the statutory discretion to consider each of the appellant's circumstances and determine whether the public interest requires outright refusal of registration or whether the public interest can be adequately protected through granting registration with conditions.
- [59] In our view, the conduct of Boston Auto and Boston in their dealings with Consumer A and B affords reasonable grounds for belief that they will not act in accordance with the law, integrity, and honesty.
- [60] Boston has consistently failed to recognize the authority of the Registrar as a regulator. He failed to bring himself into compliance with the requirements of the *Act* and the Code of Conduct, both in how he deals with consumers and how he deals with the Registrar.
- [61] In our view, registration along with the imposition of conditions would not be sufficient in the circumstances. The appellants have demonstrated that

they cannot be relied on to comply with the *Act* and that they are likely to simply decide themselves which conditions to comply with and which ones need not be complied with. The appellants have made no submissions with respect to conditions which might result in their future compliance with the *Act* and have suggested no evidence to support a conclusion that conditions would be appropriate in this case.

[62] Further, the conduct upon which we find that there are reasonable grounds for belief that Boston Auto and Boston will not carry on business in accordance with the law, integrity and honesty arises largely out of their failure to comply with their obligations under the *Act*. The requirement that defects be disclosed to consumers and that vehicles being sold be lien-free are important requirements under the *Act* and play a central part in the protection of consumers. Similarly, the requirement to disclose relevant documents to the Registrar is an essential element that allows the Registrar to determine whether there was non-compliance with the *Act*. The failure of Boston Auto and Boston to comply with these basic obligations under the *Act* makes it unlikely that conditions imposed by this Tribunal would be honored.

[63] We find that the appellants have presented no evidence for the Tribunal to conclude that registration with conditions would be appropriate or would adequately protect the public. They had the opportunity to provide evidence and arguments in advance of the hearing and they also had the opportunity to present their evidence at the hearing. They chose to do neither.

## **Conclusion**

[64] We conclude that the Registrar has satisfied its burden of proving that the past conduct of Boston affords reasonable grounds for belief that he will not carry on business as a motor vehicle salesperson in accordance with law and with integrity and honesty.

[65] We find that the Registrar has satisfied its burden of proving that the past conduct of Boston affords reasonable grounds for belief that Boston Auto will not carry on business as a motor vehicle dealer in accordance with law and with integrity and honesty.

[66] We find that Boston Auto and Boston are not entitled to registration under the *Act* as a motor vehicle salesperson or a motor vehicle dealer respectively.

[67] We conclude that the appropriate remedy is revocation of registration and not registration with conditions.

**ORDER**

[68] Pursuant to s. 9(5) of the *Act*, the Tribunal directs the Registrar to carry out its proposal to revoke the registration of Boston as a motor vehicle salesperson and of Boston Auto as a motor vehicle dealer.

**LICENCE APPEAL TRIBUNAL**



**Hande Bilhan**  
Vice-Chair



**Colin Osterberg**  
Vice-Chair

***Released: November 19, 2024***