

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



DATE: 2016-07-14
FILE: 10008/MVDA
CASE NAME: 10008/MVDA 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

Shaya Shayvard

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Alex McCauley, Member

APPEARANCES:

For the Appellant: self-represented

For the Respondent: John Park, Counsel

Heard in Ottawa: June 13-16, 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”). The Notice of Proposal dated January 13, 2016 proposed to refuse to grant the registration of Shaya Shayvard (the “Appellant”), as a salesperson under the *Motor Vehicle Dealers Act 2002* (the “Act”).

The Registrar alleges that the Appellant Ms. Shayvard’s actions in dealing with clients at the respective dealerships, and knowingly engaging in the sale and dealing of vehicles while not registered, constitute reasonable grounds under section 6(1)(a)(ii) of the Act to believe that the Appellant will not carry on business in accordance with law and with integrity and honesty. The Tribunal finds that the evidence supports the position of the Registrar.

FACTS

The Appellant was registered as a salesperson pursuant to the Act on November 20, 2013. The Appellant worked at Georgina Quality Motors Inc. in Ottawa, from that point until July 31, 2014, when that dealership ceased to operate.

The Appellant was hired by Alec Villeneuve, owner of Georgina Quality Motors and 4V Financial. She was employed at 4V Financial, an associated company owned by Mr. Villeneuve. She was hired in September 2013 and initially worked as an administrative assistant until receiving her sales registration in November 2013. After being registered, she began dealing with clients. Her responsibilities were securing vehicles for clients and arranging financing. She worked there until July 31, 2014, when that dealership ceased to operate. That caused the Appellant’s registration to be terminated by OMVIC on August 27, 2014, in accordance with the Act, but the Appellant maintains that she did not know this.

The Appellant was out of the country from mid-August 2014 until March 2015. In April and May of 2015 the Appellant again worked for Mr. Villeneuve. She maintained she had no idea of her licence status at that time. She admits to being notified in an email from Mary Jane South Registrar for OMVIC, reminding her that her registration was terminated. According to the Appellant, this was in June 2015. She maintained that after that she took no direct role in showing or selling vehicles. She contacted potential clients and brought them to the dealership. She did not show the vehicles other salespersons Russell or Tyler did that. She did go on to say that Russell had a hearing problem and she assisted him directly with clients from time to time.

In May 2015, she accepted an offer of employment from Best Price Automotive Warehouse Ltd (“Best Price Automotive”). She conducted business there until October 2015. During that time she was not registered under the Act.

PB, a consumer, testified that he purchased a 2008 Dodge Calibre from Best Price Automotive, and he identified the Appellant as the salesperson he dealt with. He purchased the vehicle on April 13, 2015. PB identified the bill of sale (B.O.S) (Ex. #5, Book of Documents, Vol. 3). On the B.O.S., PB indicated an area on the right side of the document which indicated a licence fee of \$125.00. He stated he used plates that he already owned from another vehicle.

PB indicated he had many problems with the vehicle. First, the vehicle had previously been involved in an accident (CarProof document: Ex. 5, tab 6, p. 74). He was not advised of this fact until he saw the report after completing his deal. The information never appeared on the B.O.S.

PB stated his vehicle had been purchased for \$4,995 by 4V Financial. He was charged \$6,225, and the finance agreement from Carfinco indicates a price of \$5,726 (Ex. 5, p. 81). The vendor's acceptance part of the B.O.S. was signed by the salesperson Russell. Ms. Shayvard's name does not appear on the document; yet PB's evidence is that she was responsible for the whole transaction. Furthermore, the financial inconsistencies are of concern here and were never clarified or refuted by the Appellant.

In cross-examination, PB does not recall how he came into possession of the CarProof document that indicated the Dodge Caliber had been in a previous accident. He was adamant in stating if he had known the vehicle had been in a previous accident he would not have purchased it. This information never appeared on the B.O.S as required.

Tina Cabot, an Inspector with the Ontario Motor Vehicle Industry Council (OMVIC), testified that she conducted a routine inspection at Georgina Quality Motors on Sept. 25, 2012. She dealt with a Mr. Alec Villeneuve, the owner. There is another Georgina Motors in Toronto, which is affiliated but independently managed. She examined several bills of sale randomly selected. At the time she noted some concerns:

- the dealer was charging a higher than normal processing fee.
- interest rates were not shown on some bills of sale

Jodi Hughes is an OMVIC investigator who attended at Best Price Auto in Ottawa, on October 23, 2015. She had been advised that Shaya Shayvard was selling vehicles there and that she was unregistered. She attended the property in an undercover capacity. She had found a car to purchase on the website – a 2008 red Dodge Caliber, priced to sell at \$5,995. She initially met with a salesperson named Tyler. When she enquired about financing, Tyler directed her to the Appellant, whom she identified at the hearing.

She met with the Appellant and a short negotiation took place, with the Appellant finally telling her, "I could get you into that vehicle for \$265/month". The Appellant gave them a company generic business card and wrote her name on it. Ms. Hughes then left the premises.

The Tribunal heard from consumer CL, who purchased a 2006 Chevrolet Optra from Georgina Quality Motors in January 9, 2014 (Bill of Sale Ex. #8 tab Q). She applied to 4V Financial for financing. Mr. Villeneuve had called to set up an appointment. CL believed she would be financed by 4V Financial, a company operated by Mr. Villeneuve, but in reality, she was financed through Carfinco (Ex. #8, tab Q). Mr. Villeneuve and the Appellant were both together on the deal involving CL. The Appellant signed the Bill of Sale as the salesperson (Ex. #8, tab Q).

Initially, CL didn't want to purchase this vehicle; she wanted a Pontiac. She was advised that this was the only vehicle available and it was picked for her online by the Appellant. CL was surprised to see the Appellant's name on the transaction documents as she thought initially that the Appellant was Mr. Villeneuve's secretary. CL testified she observed the Appellant sign the sale document in her office. She stated that the Appellant and Mr. Villeneuve were together throughout the transaction except for the time Mr. Villeneuve came to her home with the finance documents. The Appellant's name appeared on the finance documents although she was not present when they were presented (Ex. #8, p. 15, tab Q). CL advised she was charged \$125 licencing fee when in fact her old plates were used. (Ex. #8, Bill of Sale).

CL testified she had problems with the vehicle from the beginning. When she first brought the vehicle home, the battery was dead. Mr. Villeneuve told her the GPS may have caused the problem. She had no idea that she had a GPS in the vehicle and initially thought this was good until she found out that the purpose of the device was to shut the vehicle down if she missed a payment. She complained to Mr. Villeneuve and the Appellant about the vehicle, and they kept putting her off. She would attempt to speak with Mr. Villeneuve but the Appellant would obstruct her ability to speak with him. She would not allow phone calls through and she continually advised that Alec was not in.

CL took the vehicle to an independent mechanic who told her the vehicle was finished. He advised her to contact OMVIC, which she did. CL then advised Georgina Motors to come and get the vehicle. Two days later, the vehicle was repossessed.

In cross-examination, CL was adamant that the Appellant and Mr. Villeneuve were equally involved in her transaction.

BD, a consumer, testified that he purchased a 2008 Ford Escape from Best Price Automotive on October 23, 2015. He testified that he dealt with the Appellant throughout and described her involvement as 99%. He testified that although another person, Russell France, signed the bill of sale, he had virtually no involvement in the transaction (Ex. #10, p. 25, Bill of Sale).

BD had begun looking for a vehicle online; he believed the site was, "Canada Auto 411". He admitted to not having good credit at the time. He was contacted by the Appellant, who was representing Best Price Automotive. She initially had tried to interest him in a Dodge Journey. When he went to see it, the vehicle wouldn't start. He gave them \$300

to hold the vehicle. When he returned home, he called and cancelled the Dodge deal and reiterated he was looking for a Ford.

The vehicle he subsequently purchased was found on Auto Trader (Ex. 10, tab 6, p. 28). He purchased that vehicle from Best Price Automotive on October 23, 2015. After purchasing the vehicle and completing the paperwork, he had checked Auto Trader and found the vehicle that he had just purchased listed for \$7,440, but he had paid the dealership \$8,395. He enquired of the Appellant about this \$1,000 discrepancy. He can't recall her immediate answer. She later stated they were putting winter tires on the vehicle for him. He advised her he had never wanted winter tires or any add-ons to the vehicle. He ultimately never even received the winter tires.

In cross-examination, it was suggested that the extra cost may have been to "Safety" the vehicle, as the vehicle was from Quebec where safety standards may be different. BD advised he was not aware of anything like that and was never informed of this if it in fact occurred.

BD positively identified the Appellant at the hearing as the salesperson he had dealt with.

AO, a consumer, testified he initially attended Best Price Automotive to purchase a vehicle. He ultimately ended up leasing a vehicle through Autonum Presto Leasing Inc. This was never his intention. Initially, AO had met with the Appellant and arranged to purchase a 2009 black Dodge Caliber (Ex. #11, p. 4). His salesperson was the Appellant. They arranged to forward the information on the vehicle to AO's insurance company.

He returned to the dealership days later and was advised by the Appellant that the 2009 Dodge had been sold and that he should settle for a 2007 Dodge Caliber. He was reluctant but the Appellant explained that the 2007 was a better vehicle. He was further encouraged to make the deal as this vehicle could well also be sold soon. AO took the Appellant at her word and he took possession of the 2007 Dodge Caliber on October 5, 2015.

He took the car out for a drive on the highway and the vehicle shimmied so badly he had to pull over. He took the vehicle back to Best Price, where he was advised the front brakes needed to be replaced. He could not understand how the vehicle could possibly have passed a safety inspection with defective brakes. After this he encountered several problems with the vehicle.

AO had wanted to use the vehicle for his Uber business. In order to do this he had to have the vehicle safety checked and have a form for Uber completed and signed. When he took the vehicle to have it certified, the mechanic refused to do so because of safety defects. AO was advised to take the vehicle back to the dealer.

At Best Price Automotive, AO testified that he saw the Appellant give the safety certificate form to Russell, who was present. Russell took the form, completed it, signed

it and returned it to the Appellant without ever examining the vehicle (Ex. #11, p. 6). The Appellant then passed the certificate to AO and commented that this is routinely done all the time.

It was noted on the lease agreement that the name of the registered salesperson is absent from the document, as well as the required registration number (Ex. 11, o. 16). AO positively identified the Appellant as the salesperson he dealt with. In cross-examination, AO confirmed that he had observed the Appellant place her initials on the lease document (Ex. 11, p. 17).

VK, a consumer, testified that in June 5, 2014 he purchased a 2008 Honda Civic from Georgina Quality Motors Inc. He stated the Appellant was the salesperson he dealt with (Ex. # 7, p. 292 Bill of Sale). His initial assumption was that he was purchasing the vehicle from 4V Financial. He positively identified the Appellant as the salesperson he dealt with.

The company and the Appellant had been recommended to him by a relative. His first encounter with the company and the Appellant was in May 2014 at their office. At that time he explained to the Appellant that the vehicle he was looking for was a Honda Civic and he specified that the vehicle was not to have been involved in any motor vehicle accidents.

The first vehicle he was shown had high mileage. The Appellant found another vehicle for him but it was still in the repair garage. The garage was operated by the dealership and it was located about a 15 minute drive away. The Appellant had relayed this information to VK by telephone. She advised that the vehicle was in the garage because of rust. VK asked of the vehicle had been involved in an accident and the Appellant replied "No". He attended at the garage to see the vehicle and noticed rust on one side.

VK decided to purchase the vehicle, and after completing the finance requirements, he signed the contract on June 3, 2014.

VK was still unable to take possession of his vehicle. It took him three weeks to finally obtain his vehicle. During that time, he contacted the Appellant several times inquiring about his vehicle and when he could take possession. Her reply to him was that it was in the garage getting fixed. She finally told him that they would pay his first month payment, but they never did.

Just prior to picking up the vehicle, VK saw Mr. Villeneuve and inquired about his vehicle. Mr. Villeneuve advised him the car had previously been involved in an accident and was being rebuilt. This was the first time he was made aware that the vehicle had been in an accident.

On June 16, 2014 VK sent an email to the Appellant outlining his dissatisfaction with his purchase and the fact that he had been deceived regarding the fact that the vehicle had been involved in a previous accident (Ex. #7, p. 287 email). He advised that he no longer wanted the vehicle but was told by the Appellant that he had signed the contract

and now owned the vehicle. He was unable to resolve the outstanding issues and ended up possessing the vehicle.

In cross-examination, VK was asked if he recalled a telephone call to him from the Appellant in which she advised him that the vehicle in question had been involved in a previous accident. He replied "Absolutely not".

Tim Hines testified that he is employed by OMVIC as a manager over complaints and inquiries. In that capacity he manages a staff of approximately 10 persons and they take calls from dealers or consumers with complaints.

Mr. Hines expressed his view that the Appellant was trading in motor vehicles while she was not registered because she undertook all of the requirements of a salesperson except she avoided putting her name on the bill of sale. She was directly involved in the sale of three vehicles in 2015 while unregistered: April 13, September 29, and October 23, 2015.

Mr. Hines also stated that the information that the Appellant gave to consumers often was unreliable and deceptive. He said that she was blatantly dishonest and withholding information on the history of vehicle she was selling. It was his opinion that this Appellant was ungovernable.

On May 13, 2015, Mr. Hines contacted the Appellant in the course of his investigation. This was a telephone conversation that included a discussion about the vehicle purchased by VK. During that discussion the Appellant advised that she was aware it was her duty to put on the bill of sale any information that the vehicle had previously been involved in an accident (Ex. #5, p. 123).

In her testimony, the Appellant attempted to refute the complaints against her. Regarding the complaint by VK and the Honda Civic, she stated when he had first asked her if the vehicle had been in a previous collision she had made inquiries with Mr. Villeneuve. He advised that the vehicle had been in a previous accident but he wasn't sure what the damage was. Sometime later, after she was advised by Mr. Villeneuve that the vehicle in fact was being rebuilt, she then telephoned VK to discuss the matter with him. She maintained that she was always under the impression that VK had been in discussions with Mr. Villeneuve regarding the previous damage to the vehicle he was purchasing. She maintained that she had no authority to make any adjustments to the purchase deal because Mr. Villeneuve was in charge.

In June 2015, when notified that her application for registration had been refused, the Appellant avoided direct contact with potential buyers. She was primarily responsible for bringing in traffic and helping consumers looking for financing. She said that she did not show vehicles; the salespersons Russell and Tyler were responsible for that. She stated that Russell is hard of hearing and that on occasion she would assist him in speaking with clients.

Regards the safety certification on the vehicle purchased by AO for his Uber business, the Appellant denied having any part of that. She maintained that she has no access to safety certification matters. She denied bringing the document to Russell or making the comment “we do hundreds of these.”

During cross-examination about the PB transaction, the Appellant stated she believed she could sell the vehicle to PB because she felt her licence was in the process of being activated. With regard to the transactions of September 29 and October 23, 2015, she was aware that she was not licensed, but she maintained that she did not sell the vehicles. She admitted that she had the paperwork on the bills of sale signed by Russell.

She explained the relationship between 4V Financial & Georgina Quality Motors. Both companies were owned by Mr. Villeneuve and were in the same geographic location. 4V Financial was primarily responsible for the financing aspect of the companies. The Appellant explained the process involved when clients came in for financing and subsequently purchased a vehicle. In virtually all of these transactions, she was the person responsible for initiating and completing the sale.

The Respondent suggested during cross-examination that the reason the Appellant's name did not appear on the bills of sale at Best Price Automotive was because she was attempting to stay under the radar from investigators at OMVIC. She denied this but offered no further explanation.

She continued to deny selling vehicles at Best Price even though three separate consumers identified her as a salesperson involved in the purchase of their vehicle.

The Registrar suggested in argument that the Appellant failed to meet all of the criteria required for registration. She broke the law, and demonstrated lack of integrity and dishonesty. She clearly failed in her duty to disclose information to VK about his vehicle having been involved in an accident. She attempted to pass this responsibility off to someone else.

The Appellant maintains that when most of her problems arose she was new to the auto industry and naïve to say the least. She points out that while at Georgina Quality Motors there are only two complaints filed against her.

ISSUES

Did the Appellant engage in the sale of motor vehicles while employed at Best Price Automotive Warehouse Ltd in 2015?

Did the Appellant's past conduct violate Section 6 (1) (ii) of the the Act?

THE LAW

OMVIC administers the *Motor Vehicle Dealers Act, 2002*, which is the Act that requires dealers and salespersons to be registered in Ontario, and sets out rules for their conduct. The operative part of the Act for this appeal is s. 6(1)(ii):

6.(1) An applicant that meets the prescribed requirements is entitled to registration or renewal of registration by the registrar unless,

...

(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.

The Act defines a “salesperson” as “an individual who is employed by a motor vehicle dealer to trade in motor vehicles on behalf of the motor vehicle dealer.” The Act defines “trade” as including “buying, selling, leasing, advertising or exchanging an interest in a motor vehicle or negotiating or inducing or attempting to induce the buying, selling, leasing or exchanging of an interest in a motor vehicle.”

APPLICATION OF LAW TO FACTS

The Tribunal is satisfied that the Appellant acted as a salesperson within the meaning of the Act, while employed at Best Price Automotive Warehouse Ltd.

An OMVIC investigator, Ms. Hughes, attended at Best Price in an undercover capacity. She engaged the Appellant and arranged a car deal. The Appellant advised Investigator Hughes that she could make it happen. This was a clear case of dealing and trading a motor vehicle. The Appellant did not deny Ms. Hughes’ testimony about what had happened. This was in October of 2015, after the Appellant’s registration had been removed in August 2014.

In the deals that took place April 13, September 29 and October 23, 2015, consumers PB and AO identified the Appellant as having been the person they bought their vehicle from. The Tribunal finds these consumer witnesses to be credible – their evidence was provided in a straightforward manner, and it was consistent and plausible. There was little dispute over the testimony of the consumer witnesses that the Appellant was their main point of contact, and that she discussed various options with them about which vehicles were available or were better suited for them, and so forth.

The Tribunal agrees with the Registrar when they allege that the Appellant did not put her name on the sales documents on those transactions because she knew she was not registered and that this would be a flag for OMVIC investigators. Furthermore, even the Appellant’s own attempt to minimize her actions still showed that she was trying to “bring in traffic” and seek out consumers. The Tribunal finds that these actions would meet the definition of “trading” pursuant to the Act. In any event, the Appellant took it further by taking clients through the deals up to the final signing – her actions were not that of a passive paper shuffler doing behind the scenes administrative work.

In addition to violating the Act by acting as a salesperson and trading in motor vehicles when she had no registration to do so, there is also evidence to support a finding that the Appellant was deceptive and dishonest in her dealings with the consumers. For example, the Appellant's deal with PB was fraught with inconsistencies. PB did not present as being very sophisticated in carrying out this type of deal, and it appears that the Appellant took advantage of him. There was no indication on PB's bill of sale that the vehicle he purchased had been in an accident, and he was adamant that he had not been made aware of the fact of the accident prior to closing the deal.

In both CL and PB's transactions, the fee for licensing the vehicle included \$125 for new plates but they had used their old licence plates. The Appellant provided no justification for this mistake in either of these two cases. The Tribunal is satisfied that this was an unjustified overcharge. Also, in PB's deal, there were pricing inconsistencies between prices used by CARFINCO and those quoted on the bill of sale, as they never matched up. These inconsistencies were noted in the inspection by OMVIC Inspector Cabot. The financial numbers do not add up and are definitely not slanted in favor of the consumer. The Appellant offered no evidence or explanation to refute these inconsistencies, which were of direct benefit to the Appellant and her company.

In the Appellant's dealings with VK and the Honda Civic in 2014, while she was employed at Georgina, there was more evidence of another attempt to hide the fact that the vehicle had previously been in an accident. The Appellant's own testimony was that she was aware from Mr. Villeneuve at an early stage that the vehicle had been involved in a previous accident but he wasn't sure what the damage was. Yet she did not disclose this to VK even though he had stated from the outset that he did not want a vehicle which had been involved in a previous accident.

In her evidence, she stated that when she became aware of the extent of the damage from Mr. Villeneuve, she called VK and to explain the matter. VK vehemently denies this conversation ever took place and the Tribunal believes him. The Tribunal does not accept the Appellant's excuse that she was under the impression that VK had been in discussions with Mr. Villeneuve regarding the previous damage. When VK had expressed his clear requirement that the vehicle not be involved in a previous accident, it is not believable that the Appellant would rely on some presumption that VK was talking to another person about it, or that the Appellant decided to not mention the accident just because she wasn't sure yet what the extent of the damage was. The Appellant had many opportunities to mention the fact of this prior accident to VK, but she failed to do so.

In regards to the deal with AO, the Tribunal is satisfied that AO was speaking truthfully when he stated that the Appellant and Russell were both involved in obtaining a safety certificate for him that was completed without any of the necessary inspection or repairs AO was a credible witness. The undisputed evidence is that he was sold a defective vehicle that he could not use for his Uber business, and he naturally took steps to get this problem taken care of, first by the mechanic, and then by the dealership. It is not plausible that the Appellant was so involved in this transaction but then became

completely uninvolved in AO's later attempts to fix this huge problem, without any explanation as to why she dropped out of the scene at that stage.

The Act is consumer protection legislation, and one of its purposes is to protect members of the public from dishonest and unscrupulous dealers and salespersons.


All transactions addressed during the hearing involved consumers or OMVIC investigators who identified some form of inappropriate behaviour on the part of this Appellant. The evidence is clear that she acted as a salesperson and sold or traded motor vehicles without being registered, and she engaged in a number of dishonest sales practices. She was dishonest with VK about his car having been in a prior accident, and she was involved in obtaining a safety certificate without the proper inspection or repairs having been done. These incidents provide more than enough reasonable grounds to believe that she will not carry on business in accordance with law and with integrity and honesty. In addition, the Tribunal also heard complaints from other consumers that consistently supported concerns about dishonest or deceptive sales practices.

Based on these findings of fact about the Appellant's past conduct, the Tribunal has reasonable grounds for belief that this Appellant will not carry on business in accordance with law and with integrity and honesty.

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



Alex McCauley, Member

Released: July 14, 2016