

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



DATE:	2012-08-31
FILE:	6378/MVDA
CASE NAME:	6378 v. Registrar, <i>Motor Vehicle Dealers Act, 2002</i>

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

Central International Trading Company Inc. o/a Luay Auto Trading
and Luay Sabeeh and Abdul Hilwu

Applicants

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR:	Douglas R. Wallace, Vice-Chair
APPEARANCES:	
For the Applicants, Central International Trading Company Inc. o/a Luay Auto Trading and Luay Sabeeh:	Roberto Ghignone, Counsel
For the Applicant Abdul Hilwu:	Self-represented
For the Respondent:	Angela La Viola, Counsel
Heard in Ottawa:	April 10 and 11, 2012 July 5, 6, and 11, 2012

REASONS FOR DECISION AND ORDER

BACKGROUND

This is a hearing before the Licence Appeal Tribunal (the "Tribunal") arising out of a Notice of Proposal¹ issued by the Registrar, *Motor Vehicle Dealers Act, 2002* (the "Registrar" and the "Act" respectively). The Notice of Proposal dated November 23, 2010, proposed to revoke the registration of the corporate Applicant Central International Trading Company Inc. o/a Luay Auto Trading as a dealer and the registration of the Applicants Luay Sabeeh and Abdul Hilwu as salespersons under the Act. The Notice of Proposal was modified by three Supplementary Notices of Further and Other Particulars: one dated April 21, 2011², one dated July 11, 2011³, and the third dated December 14, 2011⁴.

At the opening of the hearing, Abdul Hilwu (hereafter "the Applicant") appeared with a qualified interpreter but without an independent, qualified legal representative. For reasons given in an Interim Order issued at that time, the Tribunal adjourned the Hearing peremptory to all parties to July 5, 2012 in order to allow the Applicant to retain counsel should he be so advised.

On the commencement of proceedings on July 5, Counsel for the Registrar and Counsel for the Applicant Central International Trading Company Inc. o/a Luay Auto Trading and the Applicant, Luay Sabeeh, advised the Tribunal that a settlement had been reached between their respective clients. The terms of the settlement were approved by the Tribunal and are set out at Schedule "A" to this Order.

The Applicant appeared without counsel but with a qualified interpreter.

Counsel for the Registrar withdrew paragraphs 11 and 12 of the "particulars" in the Notice of Proposal and the documents found at Tabs 18 to 22 of the Respondent's Book of Documents filed as Exhibit 4. The Tribunal then continued to hear evidence as between the Registrar and the Applicant, Mr. Hilwu.

FACTS

The Notice of Proposal to Revoke the Applicant's registration indicates that the Registrar had serious concern about false statements in an application for registration or renewal of registration. The Registrar also expressed concern regarding the Applicant's financial responsibility and his ability to carry on business in accordance with the law and with integrity and honesty. The reasons for the Registrar's concerns are set out in eleven numbered paragraphs in the Notice of Proposal, another eleven paragraphs in the Notice of Further and Other Particulars dated April 21, 2011, and in 4 paragraphs in the December 14, 2011 Notice of Further and Better Particulars.

At the Hearing, the Registrar filed three Books of Documents⁵ on consent and an affidavit of Luay Sabeeh.⁶ Counsel also called 5 witnesses.

Consumer A

Consumer A testified that he purchased a 2002 PT Cruiser from the Applicant on November 26, 2007. At the time of purchase he was told that it was a private sale, the seller was the original owner and that the vehicle had not been involved in any accident. He was provided with the VIN and two pages of a three page "Used Vehicle Information Package" ("UVIP"). Upon attending at the Ministry of Transport to register the transfer of the vehicle ownership, he obtained a copy of the missing second page of the UVIP and learned that there had been at least 6 previous owners of the vehicle, one of which was an insurance company indicating that the vehicle had been written off by an insurer following a major accident. The owner immediately prior to the Applicant was a used car dealership who had purchased the vehicle from the insurance company. The consumer was upset and went public with his complaint prior to settling with the Applicant.

Paul Edwards

Mr. Edwards has been an inspector with the Ontario Motor Vehicle Industry Council (OMVIC), since his retirement from the Ontario Provincial Police approximately 10 years ago. He identified a number of advertisements that the Applicant had placed in the Auto Trader for the sale of the PT Cruiser in the months prior to its purchase by Consumer A. He also identified a copy of the bill of sale⁷ wherein Chamoun Auto Sales sold the vehicle to the Applicant. This bill of sale clearly indicates that the vehicle was an "Accidented Car" and an insurance write-off.

Luay Sabeeh

Mr. Sabeeh, a party to the Hearing prior to the settlement of issues between himself and the Registrar, and the owner of Central International Trading Company Inc. o/a Luay Auto Trading, was called to confirm the contents of his affidavit and to submit to any cross-examination requested by the Applicant. He confirmed that the Applicant and one other named salesperson, conducted all sales for the dealership between July 2009 and April 2010 as he, himself, was absent due to a work injury and other employment. He also confirmed the purchase of vehicles from Impact Auto Auctions from December 31, 2008 to April 13, 2010 set out in the Applicant's Book of Documents.

Tina Cabot

Ms. Cabot has been employed as an Inspector with OMVIC since 2002. Her duties primarily involve the inspection of books and records maintained by motor vehicle dealerships. She inspected the records of the dealership operated by Luay Sabeeh on April 14, 2010 and found a number of deficiencies relating to sales by the Applicant. Her findings may be summarized as follows:

1. The Applicant sold a 2007 Hyundai Accent in September 2009 indicating that it was sold "As Is" and was "Salvage" but did not show that it had been branded as a result of a serious accident and was considered a total loss and Insurance Write-Off.⁸
2. He sold a 2000 Toyota in December 2009 without disclosing on the Bill of Sale that it had been rebuilt from salvage following a collision⁹.
3. He sold a 2002 GMC Envoy in February 2010 indicating that it was sold "As Is", "Salvage" and "Accident", but not showing that it had been declared a total loss by the insurer, the manufacturer's warranty had been cancelled and the repair estimate was over \$22,000.¹⁰

Mary Jane South

Ms. South started with OMVIC in 1997 and is currently the Deputy Registrar. Her duties include overseeing the Consumer Complaints and Registrations functions. She provided some background concerning the Applicant's past conduct.

The Applicant first appears to have come to OMVIC's attention in November, 2005 when he was charged with 9 counts of selling motor vehicles without being registered as a salesperson or dealer under the Act ("curbsiding"). At the time he was operating as a sole proprietor under the name of A7 Auto.

Shortly after the charges were laid, the Applicant applied for registration as a salesperson. Question 9 on the Application reads:

Have you ever been found guilty or convicted of an offence under any law or are any charges pending? (This includes those instances where a conditional or absolute discharge has been ordered). If yes, list all charges and/or convictions, and the circumstances surrounding each.

The Applicant answered "No" to this question in spite of the nine counts that were pending against him at the time.

Attached to the Applicant's application for registration was a certificate from Georgian College dated January 23, 2006 congratulating the Applicant on completing the OMVIC certification course with a grade of 76%. It was Ms. South's evidence that the course at Georgian College is given entirely in English. It includes instructions on how Bills of Sale are to be completed and what information must be disclosed to purchasers.

The nine counts of curbsiding came before the court on April 8, 2006. Six of the 9 counts were withdrawn. In return, the Applicant pled "guilty" to the remaining 3 counts and was fined \$250.00 on each charge.

The Applicant completed another application for registration on August 2, 2006 and submitted it to OMVIC in October 2006. It too, failed to disclose his convictions several months previously.

An application for renewal of the Applicant's registration in February, 2007 similarly failed to disclose his prior convictions and was only granted on Terms and Conditions, including the following:

2. The Registrant agrees to provide full and complete disclosure on all future applications and discussions with the Registrar regardless of whether or not disclosure has been made previously to the Registrar. The Registrant agrees to disclose all charges regarding the April 2006 curbing convictions and that he will pay any and all outstanding fines.
6. The Registrant agrees not to be the final signatory on any sales or lease contracts on behalf of the dealer.¹¹

Notwithstanding Condition 2, applications submitted by the Applicant in March 2009 and February 2011 also failed to disclose the Applicant's convictions in April 2006. The last-noted application was completed by someone on the Applicant's behalf but contained a certificate by Luay Sabeeh indicating that he "personally and fully discussed the responses to each question on the completed application with the applicant".

Notwithstanding Condition 6, the Applicant appears, from a Salesperson Cancellation Notice filed with OMVIC in October 2011, to have been the final signatory on Bills of Sale at Central International Trading Company while the owner of the dealership was absent on account of a back injury.¹²

In conclusion, Ms. Southy indicated that the Registrar's proposal to revoke the registration of the Applicant was the result of false representations made to Consumer A, false statements in his applications for registration and a failure to comply with the Terms and Conditions he agreed to when granted registration in 2007.

Applicant's Evidence

The Applicant testified on his own behalf through an interpreter and submitted a total of 8 documents as evidence. Five of the 8 documents¹³ were from consumers who purchased vehicles from him, and three were from former employers.¹⁴

With respect to the sale of the PT Cruiser to Consumer A, the Applicant indicated that he believed OMVIC had no jurisdiction over private sales. He was also of the belief that that matter should not be brought before the Tribunal at this time as he had returned the purchase price to Consumer A shortly after the sale and considered the matter closed.

Having regard to the convictions in 2006 for selling vehicles while not being registered under the Act, and the failure to note these convictions on his applications, the Applicant advised that he was told by an OMVIC representative just to plead guilty and pay his fine. He was not convinced that he was guilty, but he had sold eighteen or nineteen cars and was only being charged for three, so after being told by the judge that this was not a criminal trial but was just like a ticket, he decided it would be best to plead guilty. He never believed it was necessary to declare these infractions on his applications for registration.

He failed the Georgian College the first time, but passed the second time around.

Although the Applicant did not question Ms. Cabot's evidence concerning the lack of information on three Bills of Sale, he testified that he considered the words "Salvage" and "As is" met the requirements of the Act.

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;

Regarding the Registrar's right to revoke a registration, the Act provides that:

8 (1) Subject to section 9, the registrar may refuse to register an applicant or may suspend or revoke a registration for refuse to renew a registration if, in his or her opinion, the applicant or registrant is not entitled to registration under section 6.

ISSUES

As the Applicant's financial position was not raised by the Registrar, the Tribunal's task is limited to determining two questions:

1. Whether the past conduct of the Applicant affords reasonable grounds to believe that the Applicant will not carry on business in accordance with the law and with integrity and honesty
2. Whether the Applicant made a false statement in an application for registration.

ANALYSIS

Past decisions of the Courts and this Tribunal have made it clear that in reviewing the conduct of the Applicant, the Tribunal should take into account all of an Applicant's past conduct notwithstanding that that conduct may have been the subject of a past complaint or proposal.¹⁵ Presumably, this includes both laudable and less than laudable conduct. Unfortunately, in this case, the Tribunal has heard considerable evidence regarding conduct which would suggest an inability or unwillingness on the Applicant's part to deal honestly and openly with others and very little to suggest what might be characterized as "good conduct".

On the negative side, the Tribunal heard the evidence of Consumer A which indicates a deliberate intent by the Applicant to deceive a prospective automobile purchaser both as to the condition of the vehicle (mint condition) and its history (one owner) - two factors of utmost importance to purchasers of used vehicles. Although this incident took place some time ago, it is not to be overlooked either on account of the passage of time or the fact that the Applicant reached a settlement with the Consumer once the Consumer went public with his complaint. The Tribunal does not accept the Applicant's suggestion that all was made right by the settlement arrived at with the Consumer after the Consumer had brought the incident to the attention of OMVIC. The intent and purpose of the Act is to protect the public from unscrupulous dealers. This purpose will be achieved by seeing that such salespersons are excluded from the industry, not by allowing them to remain in the industry as long as they reimburse purchasers once their deception is detected. The Tribunal dismisses the Applicant's submission that OMVIC is precluded from relying on this incident as the transaction was a private sale. This vehicle was purchased by the Applicant shortly prior to the sale and was sold by him while he was a registered salesperson employed by the dealership from which he purchased the vehicle. There is no evidence that he used the vehicle for his personal purposes nor intended to do so.

The Tribunal also heard and accepts the evidence of Ms. Cabot that the Applicant acted on a number of occasions as the final authority on the sale of motor vehicles while employed as a salesperson for Central International Trading Company Inc. o/a Luay Auto Trading. This is in clear violation of clause 6 of the Terms and Conditions he agreed to on March 9, 2007 as a condition of having his registration renewed. Failing to comply with one's undertaking constitutes a clear lack of integrity in the Tribunal's opinion.

On the positive side, the Tribunal has read and taken into consideration the 5 documents signed by purchasers of vehicles from the Applicant. Some of these documents indicate that the Applicant made what the purchasers considered full disclosure to them at the time of sale. The Tribunal trusts this is the case, but unfortunately, in the absence of witnesses to testify to this effect it is impossible for the Tribunal to gauge the purchasers' knowledge of the disclosure requirements or the conditions under which they provided these documents to the Applicant. The Tribunal accordingly gives these documents little weight in assessing the Applicant's character.

The Tribunal similarly gives little weight to the three letters from former employers filed as exhibits. Although stating that the Applicant was a hard worker and had good relations with customers, little can be gleaned from these documents concerning the Applicant's honesty, integrity or willingness to comply with the law.

Weighing all the evidence of the Applicant's conduct which was put forward by the Registrar and the Applicant, the Tribunal finds that the evidence provides reasonable grounds to believe the Applicant will not conduct the business of a salesperson in accordance with the law and with integrity and honesty.

The evidence with regard to the second issue is unequivocal. The Applicant was convicted on three counts of selling vehicles without being registered as a salesperson contrary to the Act. The convictions constitute decisions of a court of competent jurisdiction which are binding on this Tribunal regardless of what may or may not have been in the Applicant's mind when deciding to enter pleas of guilty to these charges. The pending charges should have been disclosed on the first application for registration or renewal of registration following the laying of the charges and the convictions should have been disclosed on each subsequent application. A failure to disclose these pending charges on the first application following the laying of the charges constitutes a false statement whether the Applicant knew that they had to be disclosed or not.¹⁶ What is of particular concern, is that this practice of non-disclosure continued over a long period of time and even after the Applicant signed an agreement with the Registrar in March 2007 to make full and complete disclosure on all future applications regarding the April 2006 curbing convictions. If the Applicant had any question whatsoever concerning this requirement, he was directed by an accompanying facsimile transmission from OMVIC to raise questions or concerns with representatives of the Council.¹⁷ The Tribunal finds that the Applicant's failure to make proper disclosure in these circumstances not only vitiates his entitlement to registration under section 6 (iii) of the Act, it constitutes *additional* grounds to believe that the Applicant will not carry one business in accordance with law and with integrity and honesty.

The Tribunal has considered and rejects the theory that that Applicant's lack of familiarity with the English language contributed in some way to his failure to disclose his pending charges and convictions on his applications. First there is evidence that the Applicant had no difficulty with the English language when dealing with Ms. Cabot at the time of her inspection of Luay Auto Trading's books or with Consumer A. Secondly, any lack of familiarity with the English language did not preclude the Applicant from obtaining a grade of 76% on the Georgian College exam. Regardless of the role that difficulty with the English language may have had in the failure of the Applicant to make full disclosure on his applications, the Tribunal finds, following the *Unity-A-Automotive* case¹⁸ cited by the counsel for the Registrar, that the obligation to make full disclosure does not depend on the subjective knowledge of the applicant.

In conclusion, the Tribunal finds on the totality of all the evidence, that there are reasonable grounds to believe the Applicant will not carry on business in accordance with the law, and with honesty and integrity. The Tribunal also finds that the Applicant

made repeated false statements in a number of applications for registration or the renewal of his registration for which there are no mitigating circumstances. Either finding in itself would be sufficient to vitiate the Applicant's entitlement to a renewal of his registration.

ORDER

By virtue of the authority vested in it pursuant to the provisions of section 7 of the Act, the Tribunal directs the Registrar to carry out the Proposal dated November 23, 2010, to revoke the registration Abdul Hilwu. The Tribunal further directs that the Registrar's Proposal respecting the Applicants Central International Trading Company Inc. o/a Luay Auto Trading and Luay Sabeeh be withdrawn and that these Applicants be registered on the terms and conditions set out in Schedule "A", attached.

LICENCE APPEAL TRIBUNAL



Douglas R Wallace, Vice-Chair

Released: August 31, 2012

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- ¹ Ex 1
 - ² Ex. 7
 - ³ Ex 8
 - ⁴ Ex 9
 - ⁵ Exs 4,5 and 6
 - ⁶ Ex 10
 - ⁷ Ex 4, Tab 16, p.85
 - ⁸ Ex 4, Tab 35
 - ⁹ Ex 4, Tab.38
 - ¹⁰ Ex 4, Tab 41
 - ¹¹ Ex 4, Tab 11
 - ¹² Ex 6, Tab.4
 - ¹³ Exs 14, 15, 16, 17 and 18
 - ¹⁴ Exs 19, 20 and 21
 - ¹⁵ See for example, Ontario (Registrar of Real Estate and Business Brokers) v. Faccenda (Ont. Div. Ct.) [1994] O.J. No. 954 at para.3
 - ¹⁶ Ontario (Motor Vehicle Dealers Act, Registrar) v. Unity -A-Automotive Inc.[2009] O.J. No. 5198 (Div.Ct.)
 - ¹⁷ Ex 4, Tab 11
 - ¹⁸ Ontario (Motor Vehicle Dealers Act, Registrar) v. Unlty-A-Automotive Inc. [2009] O.J. No. 5198

Schedule "A"

TO: Licence Appeal Tribunal
20 Dundas Street West, 5th Floor
Toronto, ON M5G 2C2

FROM: The Registrar
Motor Vehicle Dealers Act, 2002
Ontario Motor Vehicle Industry Council
789 Don Mills Road, Suite 800
Toronto, ON M3C 1T5

AND FROM: CENTRAL INTERNATIONAL TRADING COMPANY INC.
o/a LUAY AUTO TRADING
1496 Triole Drive East, Unit 1
Ottawa, ON K1B 3S6

AND FROM: LUAY SABEEH
3465 Rue Huchison, Unit 104
Montreal, QC H2X 2G3

Pursuant to subsection 6(2) of the *Motor Vehicle Dealers Act, 2002*, (the "MVDA"), the parties to the proceeding, LUAY SABEEH and LUAY AUTO TRADING (collectively referred to as the "Dealer"); and the Registrar, *Motor Vehicle Dealers Act, 2002*, (the "Registrar"), in accordance with section 4.1 of the *Statutory Powers Procedure Act*, do hereby waive the requirements of a hearing and consent to an Order of the Licence Appeal Tribunal ("the Tribunal") based upon the following Terms and Conditions:

1. The parties to the proceedings consent to resolving the Proposal to Revoke the respective registrations pursuant to the herein agreed upon Terms and Conditions.
2. The Dealer will ensure that all personnel, agents, assignees or anyone acting on behalf of the Dealer are informed concerning the Terms and Conditions contained in this document to the extent necessary to ensure compliance with these Terms and Conditions.
3. The Dealer will not allow ABDUL ALI HILWU to participate in the operation of the dealership, either directly or indirectly without the prior written consent of the Registrar; and this includes, but is not limited to any retention of ABDUL ALI HILWU in his capacity of repairing or re-conditioning or body-work on any vehicles.
4. The Dealer undertakes to ensure that he will be the person-in-charge of the dealership and will ensure compliance with the *MVDA* and all regulations thereunder.
5. The Dealer shall maintain books and records, which accurately record the nature of transactions involving the purchase, sale or lease of a motor vehicle. The Dealer shall not be involved in the creation of books and records, which are misleading as to the nature of a transaction involving the purchase, sale or lease of a motor vehicle.
6. The Dealer agrees to maintain a sign at the Dealer's registered premises that is visible to the public and permanently affixed.

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7. The Dealer will ensure that all contracts for trades will comply with section 42 of the Ontario Regulation 333/08. The Dealer agrees that it is under a positive obligation to disclose, **in writing on the bill of sale**, all material facts about the vehicles it sells or leases to its customers, whether or not the Dealer agrees with the disclosure and whether or not the vehicle has been branded through the Ministry of Transportation. Material facts include, but are not limited to, disclosure of salvage, previous salvage, accidented and repaired, frame damage, theft recovery, unibody damage, previous taxi cab, previous police car, previous daily rental and insurance write-off. The Dealer further agrees to disclose any other fact that, if disclosed, could reasonably be expected to influence the decision of a reasonable purchaser or lessee decision to purchase or lease. In the case of damaged vehicles, the Dealer further agrees to disclose as much detail as possible with respect to the nature and severity of the damage. The Dealer further agrees to make reasonable efforts to research the history of all the Dealer's vehicles prior to sale to ensure all material facts are disclosed.

8. The Dealer will ensure that all contracts for trades will comply with sections 40 to 44 of Ontario Regulation 333/08 as applicable.

9. The Dealer shall comply with all federal, provincial and municipal tax obligations. Without limiting the generality of the foregoing, the Dealer will ensure all required filings are current and submitted with required payments. All taxes collected are deemed to be trust funds and shall not be used for any other purpose other than remittances to the federal, provincial and municipal government.

10. The Dealer agrees to maintain a bank account in accordance with section 59 of Ontario Regulation 333/08 and to ensure that any and all financial transactions are properly processed through the bank account.

11. The Dealer further agrees to notify the Registrar of the account information, including the name and address of the financial institution, the account number and the signing officers on the account and to ensure that all financial transactions of the Dealer are processed through these accounts.

12. The Dealer acknowledges and undertakes to immediately enroll in; and **attend in person**, the Ontario Motor Vehicle Industry Council Certification Course. The Dealer acknowledges and undertakes to be responsible for all fees in relation to enrolment; and provide proof of successful completion within 120 days.

13. The Dealer understands that the Registrar is relying on the accuracy and completeness of all documents, statements or information provided by them in support of the applications for registration. The Dealer shall confirm that all documents, information or statements provided to the Registrar are true to the best of the Dealer's knowledge and belief and that the Dealer has given full answers to all questions and requests made by the Registrar in connection with the applications. The Dealer acknowledges that this includes the AFFIDAVIT OF LUAY SABEEH, sworn and commissioned on July, 5, 2012.

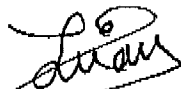
14. The Dealer acknowledges that the Registrar may take further administrative action in the form of a proposal to revoke their registrations, arising from any matters that have occurred or may occur related to honesty, integrity, financial position and/or compliance with these Terms and Conditions.

15. The Dealer hereby acknowledges that legal advice has been obtained or the Dealer has had

the opportunity to obtain independent legal advice with respect to consent to the Terms and Conditions set out in this document.

16. The Dealer hereby consents to an Order of the Licence Appeal Tribunal, including the Terms and Conditions as set out herein.

Signed in the City of Ottawa this 05 day of July 2012.

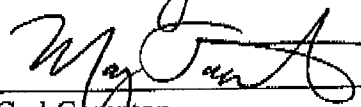


Luay Sabeeh (signature)

CENTRAL INTERNATIONAL TRADING COMPANY INC.
o/a LUAY AUTO TRADING

These terms and conditions are accepted by the Registrar, *Motor Vehicle Dealers Act, 2002.*

Date: July 5, 2012



Carl Compton
Registrar