

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



TOUFIC RADA ZABIAN

APPEAL FROM A PROPOSAL OF THE REGISTRAR OF
MOTOR VEHICLES UNDER THE *MOTOR VEHICLE
DEALERS ACT, 2002* S.O. 2002, c. 30, Sch. B

TO REFUSE REGISTRATION

TRIBUNAL: D. GREGORY FLUDE, Vice-Chair

APPEARANCES: TOUFIC RADA ZABIAN, Applicant, Self-Represented

CHRISTOPHER EZRIN, Counsel, appearing for the Registrar,
Motor Vehicle Dealers Act, 2002

DATE OF HEARING: March 14, 2011 London

REASONS FOR DECISION AND ORDER

Pursuant to the provisions of s. 9 of the *Motor Vehicle Dealers Act, 2002* S. O. 2002 c. 30 Sched. B (the "Act"), the Applicant appeals the Notice of Proposal to Refuse Registration (the "Proposal") issued by the Registrar on October 7, 2010. The allegations in the Proposal relate to the Applicant's role as the directing mind of three corporations, 1377506 Ontario Inc. o/a Hayats Auto Sales and Leasing ("Hayats 1"), Hayats Auto Sales and Leasing 2 Inc. ("Hayats 2"), both operating from premises located at 1777 Dundas Street East in London, and Hayats Auto Sales of Woodstock Inc. ("Hayats Woodstock") operating from premises located at 771 Dundas Street in Woodstock (collectively referred to as the "Hayats Group").

FACTS

At the outset of the hearing the Tribunal reviewed each of the allegations against the Applicant and he admitted the majority of them. The admitted facts are set out as Particulars in the Proposal, as follows:

PARTICULARS

The reasons for this proposal are:

1. Toufic Rada Zabian ("Toufic") applied for a transfer of registration as a motor vehicle salesperson under the Act on June 17, 2010. He proposes to work for 6317758 Canada Corp. o/a Silver City Auto Sales.
2. 1377506 Ontario Inc. o/a Hayats Auto Sales and Leasing ("Hayats 1") is an Ontario corporation that was registered as a motor vehicle dealer under the Act from on or about May 29, 2000 until on or about May 29, 2010. The registration was subject to terms and conditions. Hayats 1 operated from of 1777 Dundas Street East, London.
3. Hayats Auto Sales and Leasing 2 Inc. ("Hayats 2") is an Ontario corporation that was registered as a motor vehicle dealer under the Act from on or about May 9, 1997 until on or about May 10, 2010. Hayats 2 operated from 1777 Dundas Street East, Unit B in London.
4. Hayats Auto Sales of Woodstock Inc. ("Hayats Woodstock") is an Ontario corporation that was registered as a motor vehicle dealer under the Act from on or about May 28, 2008 until on or about May 28, 2010. The registration was subject to terms and conditions. Hayats Woodstock operated from 771 Dundas Street in Woodstock.
5. The books and records for Hayats 1, Hayats 2 and Hayats of Woodstock were stored at 1777 Dundas Street East in London.
6. At all material times Toufic was the directing mind of 1377506 Ontario Inc. o/a Hayats Auto Sales and Leasing, Hayats Auto Sales and Leasing 2 Inc. and Hayats Auto Sales of Woodstock Inc.

Inspections

7. On or about June 11, 2009, a representative of the Registrar attended 1777 Dundas Street East in London for the purpose of conducting an inspection. The Registrar's representative met with Toufic and Hiyem Zabian.
8. At the time of the June 11, 2009 inspection, not all of the books and records were available for inspection. The Registrar's representative was advised by Toufic that, among other things, the liens on vehicles were being paid immediately as the bank would place a hold on funds until liens are paid out.
9. On or about July 10, 2009, a representative of the Registrar attended 1777 Dundas Street East in London for the purpose of conducting an inspection. This was a follow-up to complete the review of books and records from the June 11, 2009 inspection.
10. At the July 10, 2009 inspection it was discovered that liens were not being paid in full on vehicles traded in by consumers and that the monthly payments were being made in lieu. Toufic advised the Registrar's representative that, among other things, approximately \$80,000.00 in outstanding liens against consumer trade-ins were at issue and that all of the consumers involved had been contacted.
11. On or about August 14, 2009, a representative of the Registrar attended 1777 Dundas Street East in London for the purpose of conducting an inspection. At that time Toufic advised that there were problems with his previous accountant and it resulted in retail sales tax issues and lien issues for all of his dealerships. Toufic supplied the Registrar's representative with copies of lien payouts that he claimed had been 'caught

up' and further advised that the remaining outstanding consumer liens would be paid shortly.

12. On or about March 16, 2010, a representative of the Registrar attended 1777 Dundas Street East in London for the purpose of conducting an inspection. At that time Toufic advised the Registrar's representative that he was in process of selling the property and repair business located at 771 Dundas Street in Woodstock. Toufic advised the Registrar's representative that he intended to continue to sell vehicles from that location despite the sale of the property.

14. Toufic provided the Registrar's representative with documentation confirming that two liens had been satisfied regarding the lien payout issue discovered in July 2009. The Registrar's representative was further advised that at that time there were possibly an additional 5 consumers with outstanding lien issues. Documents obtained on inspection indicated that monthly payments were continuing to be made towards lien balances as opposed to paying out the liens in their entirety.

15. The Registrar's representative left findings, signed by Toufic, which highlighted among other things, requirements to pay out liens against vehicles as well as the obligation for dealers to submit warrant paperwork/payments to third party providers within 7 days of providing the warranty.

16. On or about June 3, 2010, a representative of the Registrar attended 1777 Dundas Street East in London for the purpose of conducting an inspection. At the time of the inspection the Registrar's representative met with Toufic who advised that he had laid off all staff and the dealerships were not conducting business. At that time the Registrar's representative was advised that Toufic was working on "making it right" regarding the consumer liens.

Non-Submittal of Warranties

18. On or about June 8, 2010, Toufic sent correspondence to the Registrar's office outlining a list of warranties that had been supplied to consumers where the warranty premiums had not been paid to the warranty companies.

Consumer Liens

20. On or about March 29, 2010, the Registrar's office sent correspondence to Toufic as a result of recent inspections conducted. The Registrar's office raised concerns regarding the financial position of Toufic's dealerships and indicated that despite the circumstances of these difficulties, the financial risk to consumers as a result of liens not being paid out was an issue of serious concern to the Registrar. The Registrar's office requested proof that all outstanding consumer liens had been paid in full and indicated that monthly payments in lieu was not a satisfactory resolution. The Registrar's correspondence requested a response, including supporting documentation by April 8, 2010.

21. On or about April 9, 2010, Toufic sent a one-page letter via fax to the Registrar's office. In said letter, Toufic advised that he was working on rectifying the lien situation and was making arrangements to obtain an alternate source of funding to clear all of the liens in full as soon as possible.

22. On or about June 3, 2010, the Registrar's office received correspondence from Toufic detailing as at June 1, 2010, 12 consumers who had liens that remained outstanding. Of the 12 consumers there were 10 liens totaling \$92,876.43 no amounts were submitted for two of the consumers.

Motor Vehicle Dealers Compensation Fund (MVDCF Claims)

23. In August 2010, the Registrars office received 8 claims to the MVDCF in relation to Toufic's dealerships. The issues involved outstanding liens and non-submittal of warranty premiums.

24. On September 16, 2010, the MVDCF paid out a claim in the amount of \$5,917.09 which related to a judgment obtained by a consumer against Hayats 2. The judgment related to the failure of Hayats 2 to pay out a lien registered against a trade-in vehicle.

25. The MVDCF is continuing to receive claims in relation to Toufic's dealerships.

Registration Status: Hayats 1, Hayats 2 and Hayats Woodstock

28. On or about May 10, 2010, the registration for Hayats 2 terminated as the dealer did not meet the preconditions for the renewal of its registration.

29. On or about May 29, 2010, the registration for Hayats 1 expired and no application was submitted requesting a renewal or reinstatement of the registration.

30. On or about May 29, 2010, the registration for Hayats Woodstock terminated as it failed to submit a renewal application before the expiry date.

A number of the allegations remained in issue as follows:

13. At the time of the March 16, 2010 inspection, Toufic advised the Registrar's representative that he was currently facing trial for approximately \$880,000.00 of outstanding GST with the federal government. Toufic also advised that his dealerships were recently audited by the Ministry of Revenue for retail sales tax and the amount owing was assessed at approximately \$2,000,000.00. Toufic raised concerns about the outstanding tax liability affecting the preconditions of registration on his dealerships' upcoming renewals. Toufic further advised that he was confident that he would not be found liable due to the problems with his previous accountant.

15. The Registrar's representative left findings, signed by Toufic, which highlighted among other things, requirements to pay out liens against vehicles as well as the obligation for dealers to submit warrant paperwork/payments to third party providers within 7 days of providing the warranty.

17. At the time of the June 3, 2010 inspection, Toufic advised the Registrar's representative that, among other things, he was behind approximately one month with Nationwide Auto Warranty. Toufic supplied a list of contracts that had not been paid. The list involved 23 consumers and the value of the warranties was approximately \$10,000.00. Toufic also indicated that he was behind with Coast-to-Coast Warranty Company and that he was in the process of compiling a list but believed he owed approximately \$48,000.00. It was agreed that a list would be supplied to the Registrar's office.

19. As at June 2010, Toufic's dealerships had failed to remit approximately \$10,000.00 in warranty premiums to Nationwide Auto Warranty on behalf of approximately 25 consumers and failed to remit approximately \$70,000.00 in warranty premiums to Coast-to-Coast Warranty Company on behalf of over 50 consumers.

Non-Compliance with the Retail Sales Tax Act.

26. Hayats 1 and Hayats 2 have failed to comply with the requirements of the Retail Sales Tax Act as to the filing of returns, remitting of tax due and paying assessments when due.

27. As a result of failure to comply with the Retail Sales Tax Act, Hayats 1 and Hayats 2 are indebted to the Ministry of Revenue in excess of \$ 2,100,000.00 as of October 7, 2010.

Unauthorized Trading in Motor Vehicles (Advertising)

43. On or about July 20, 2010, a representative of the Registrar cautioned Toufic and advised that if he or his dealerships traded in motor vehicles (including advertising) without the benefit of registration, they would be in violation of the Act.

44. In or around July, August and September 2010, Hayats 1 has continued to trade in motor vehicles by advertising vehicles for sale without the benefit of registration.

45. Toufic, Hayats 1, Hayats 2 and Hayats Woodstock have failed to comply with the Act, in particular, section 6.

In light of the Applicant's admissions, the Registrar's evidence focused on five areas; the failure to discharge liens; the failure to pay warranty premiums; continued advertising in breach of the Act; outstanding provincial and federal sales tax ("RST" and "GST" respectively) and the claims made on the Motor Vehicle Dealers Compensation Fund ("MVDCF"). At all material times the Applicant was working as the directing mind of the Hayats Group and never on his own behalf. As the evidence discusses amounts outstanding, the Tribunal will refer to those debts as being the Applicant's without distinguishing between the corporations. This approach meshes closely with the stance taken by the Applicant in this proceeding that he intends to make payment in full to these creditors, especially the warranty companies because of the faith they reposed in him through difficult times.

Galynne Ethier, an inspector with the Registrar's office, testified concerning a series of inspections she had conducted at the Applicant's business premises. She determined that there were a number of transactions where liens had not been discharged on a number of vehicles the Applicant took as trade-ins. When a consumer purchases a new vehicle and part of the consideration is that the dealer takes the consumer's older vehicle as a trade-in, the dealer must pay off any loans outstanding on the traded-in vehicle and discharge any registered liens. Failure to do so has consequences for both the consumer who traded the vehicle and any subsequent purchaser. The selling consumer remains liable on the loan and may suffer credit rating damage. The purchasing consumer may discover a tow truck seizing the newly purchased vehicle and be without remedy other than discharging the outstanding lien.

Ms. Ethier brought the lien issue to the Applicant's attention. On each occasion the Applicant advised her that he was in the process of selling off land and would discharge outstanding liens from the proceeds of sale. The Applicant has failed to do so and a number of vehicles remain subject to liens.

Ms. Ethier also brought the failure to pay warranty premiums to the attention of the Applicant. Two warranty companies were involved: Nationwide and Coast-to-Coast. The Applicant was indebted to Nationwide in the amount of approximately \$10,000.00 and he was indebted to Coast-to-Coast in the amount of \$70,000.00. The Applicant admitted to owing Coast-to-Coast \$52,500.00 and stated that he had paid Nationwide off completely.

The Tribunal also heard the evidence of Laura Halbert. Ms. Halbert is the Director of Compliance at the office of the Registrar. She also administers the MVDCF. She testified that there are a number of outstanding liens with respect to vehicles. A number of these liens dated back to early 2009 and others arose in 2010. In Ms. Halbert's view, the Applicant has had ample time to discharge these liens and ensure that consumers are protected.

According to Ms. Halbert, at least one of these lien and unpaid warranty issues has made its way to the MVDCF and a payment has been made and a number of other claims are pending. Because none of the corporations involved has declared bankruptcy, consumers must first get a judgment against the selling corporation before making a claim to the fund. She expects a number of new claims to be made in the future.

The witness also reviewed correspondence from the Ontario Ministry of Revenue regarding unpaid RST. According to the Ministry's correspondence, the Applicant owes in excess of \$2,000,000.00 in unpaid RST. The Ministry correspondence requested the Registrar to issue a Notice of Proposal to revoke the Registration of the defaulting corporate entities. The Applicant advised the Registrar that he is being prosecuted for non-payment of \$880,000.00 in unpaid GST.

With respect to unauthorized advertising, Ms. Halbert referred the Tribunal to correspondence with the Applicant wherein he was advised that he should not advertise vehicles for sale following the expiry of the corporate registrations on May 10 and May 29, 2010. She then reviewed a number of internet advertisements identifying one of the Applicant's corporations as a dealer selling cars. She stated that this type of activity was contrary to the Act. She went on to outline an incident when one of her staff members had called a listed number. The phone was answered with the name of the corporation and, when the caller enquired about a specific vehicle, she was advised a salesperson would call her back. There was no evidence that a salesperson ever did call back.

In his testimony before the Tribunal the Applicant outlined a tale of trust and betrayal that is almost epic in its scope. He started in the car sales business in 1997. He was successful. Until the events that give rise to this appeal, he had an unblemished record in the business and a good reputation. He has had an "A" rating with the Better Business Bureau for 10 years and was recently given a plaque for that achievement.

In 2009 he was operating three dealerships and was contemplating opening a fourth. He owned numerous properties and was worth several million dollars. Early on in his business he had hired the services of an accounting firm, 1307997 Ontario Limited o/a First Accounting. He became very close with the principal of that business, establishing an almost filial relationship with him. The older accountant referred to him as son. In and around 2003 his accountant recommended that he hire the accountant's son to handle his books and internal financial management. The Applicant was so impressed with the son's performance that he ultimately promoted him to general manager of the business and left the day to day running to the son while the Applicant focused on expanding the business. He reposed total trust in the accountant and his son. The son had to approve every sale made at each of the Applicant's business locations. In addition to this business relationship, in 2003 the Applicant also made an investment in a scheme put forward by the accountant and his son.

Unfortunately for the Applicant, the accountant and his son were rogues. In early 2009 the Applicant discussed an upcoming RST audit with his accountant. The accountant urged him to declare bankruptcy because his RST liability would be huge. This puzzled the Applicant as he had been paying his RST as required by the regulations. A previous audit in 2003 had resulted in an assessment of approximately \$300,000.00 an amount which the Applicant could manage. He had no worries about the upcoming audit. His accountant insisted that the audit would disclose a tax liability that would require the Applicant to go bankrupt. The result of the audit was an assessment in excess of \$2,000,000.00.

In and around May 2009 it came to the Applicant's attention that the business had not paid out liens on traded-in cars. He found that, rather than paying off the liens, the business was providing consumers with cheques to make their monthly loan payments. He immediately fired the general manager. On cleaning out the office, he discovered a stack of bills of sale where the liens on the trade-in vehicles had not been paid. He admitted that currently there is about \$120,000.00 outstanding on unpaid liens.

As soon as he fired the general manger, the general manager and his accountant father began a campaign of slandering the Applicant with his suppliers. In particular, they called the motor vehicle auction house where the Applicant had a \$600,000.00 line of credit and told it that the Applicant was about to go bankrupt because of an huge unpaid tax liability. The auction house immediately cancelled the line of credit and repossessed all of its vehicles. The Applicant, having three locations on the go, immediately found himself with sufficient vehicles to support only one location. Throughout 2009 and into early 2010 he continued to pay the loan payments for consumers whose trade-ins were subject to liens. He also hired a forensic accountant and began to piece together the fraud that had been perpetrated against him.

The rogue accountant was responsible for preparing RST returns and submitting them to the Ministry of Revenue. It became a practice for the accountant to call the Applicant's office late in the afternoon when the return was due. He would advise the Applicant's sister, who was handling office functions of the amount outstanding. He

would also advise her that it would be too late for her to get a cheque to him for payment. He stated that he would send a cheque over from his own account so the Applicant would not incur penalties and that the Applicant's sister could deliver a cheque payable to the accounting firm the next morning. The accountant would then forward a false return and a cheque to the Ministry for a much lesser tax liability and pocket the difference between what he paid the Ministry and what the Applicant paid him. With an audit looming, the accountant tried to force the Applicant into bankruptcy so the facts would not come out.

As part of the forensic audit, the Applicant has discovered numerous boxes of documents with the accountant that would seem to indicate that he does not owe any money for GST. While at this point in time the charges are still proceeding, he was expecting the receipt of a report that would effectively terminate the issue. Of note is the fact that the two main crown witnesses in that case are the accountant and his son, the former general manager.

The Ministry of Revenue conducted an investigation. As a result of that investigation charges are pending against First Accounting for breaches of the RST reporting requirements. A second result seems to be that the outstanding tax liability of the Applicant's corporations has been reduced to \$400,000.00 and charges are pending against Hayats 1 for failure to report. No charges have been laid against the Applicant personally for failure to remit RST. The Applicant testified that the Ministry investigator was satisfied that he had not falsified returns, all returns having been signed by the accountant.

Through early 2010 the Applicant continued his business from one location. He also entered into a number of transactions to sell his land to pay off his liabilities. He maintained the loan payments to consumers to cover the outstanding liens. On most occasions the land sales either fell through or did not generate sufficient funds to make the required payments. Given his indebtedness to the Crown, his corporations did not meet the prescribed requirements for renewal under the Act so their registrations automatically expired in May 2010. At the time of the expiry he had several deals where sales had been completed but ownership transfers had not occurred until after the expiry date. Since he was no longer a registered dealer, he could not transfer vehicles at the Ministry of Transportation, so financing on these transactions fell through and liens were not discharged. The Applicant called the Registrar's office and asked for an extension of his registration to permit these transactions to go through but was refused. There are currently 12 vehicles with liens for a total of \$120,000.00.

Since May 2010 the Applicant has had no source of income. He remained in his office until the electricity was turned off and applied his time to helping consumers if he could. He has been living on savings initially set aside for his children. Those savings are now depleted. He seeks registration as a salesperson under the Act to reestablish himself financially, to pay off the corporate debts and regain his reputation. To this end he has refused to take the corporations into bankruptcy. To do so would be to lose control of his efforts to gain recompense from the accountant and his son.

One problem with the lack of income is the continued corporate presence on the Internet. The Applicant owes the webmaster of these sites several thousand dollars. Having run out of money, he cannot afford to pay the bill and the webmaster has refused to do anything on the sites without payment. The Applicant testified that he has not sold any vehicles since the corporate registrations expired. With respect to the phone call from an employee of the Registrar's office, he stated that the webmaster has been forwarding his calls to other dealers. The numbers on the sites are no longer in service.

The Applicant is currently suing the accountant for approximately \$1.7 million dollars. The accountant's son has declared bankruptcy. It is the Applicant's estimate that the son defrauded him of \$1.5 million. It came out in the bankruptcy that the Applicant's 2003 investment was diverted to purchase the son's house while the Applicant was told the investment had failed. Due to the bankruptcy, however, there are no assets to seize if an action against the son were to be successful.

THE LAW

The Registrar relies on the provisions of s. 6(1)(a)(i) and (ii) of the Act which state:

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,

The right to appeal to this Tribunal is set out in s. 9 and the powers of the Tribunal on an appeal or set out as follows in s. 9 (5):

(5) If a hearing is requested, the Tribunal shall hold the hearing and may by order direct the registrar to carry out the registrar's proposal or substitute its opinion for that of the registrar and the Tribunal may attach conditions to its order or to a registration.

It is now well settled law that the Tribunal owes no deference to the Registrar in approaching its decision. It is the function of the Registrar to investigate and to put the facts before the Tribunal. It is then up to the Tribunal to make a decision unfettered by the Registrar's decision.

In a recent decision before the Divisional Court, *Lapcevich v. Registrar, Real Estate & Business Brokers Act 2010* ONSC 1145, the court identified that, before the Tribunal can consider any remedy other than refusal of the Registrar's Proposal, it must first

make a finding that an applicant falls within one of the exceptions set out in s. 6. While *Lapceovich* dealt with an appeal under a different act, the wording is identical to the wording in the Act and the statutory scheme is aimed at the same goal, protection of consumers. The court's analysis is applicable to the current proceedings.

ANALYSIS

At the outset of this analysis, let it be noted that based on the Applicant's own evidence, having regard to his financial position, he cannot reasonably be expected to be financially responsible in the conduct of business. He is functionally, if not actually, bankrupt. All of his property is currently subject to power of sale proceedings and it is far from clear if these sales will leave sufficient excess funds to discharge the corporate tax, warranty and lien liabilities. While the Tribunal recognizes that the liabilities are those of the Hayats Group and no action has been brought against the Applicant personally, he was the directing mind of the corporations and must bear the responsibility for their demise.

The greater difficulty comes when considering whether there are reasonable grounds for belief that the Applicant will not carry on business in accordance with law and with integrity and honesty. To a large extent the analysis depends on the credibility of the Applicant.

Overall the Tribunal found the Applicant to be a credible witness. He approached his evidence in an almost eager manner because it was clear that he wanted the opportunity to tell his side of the story for the first time. In a number of cases he did place blame for specific incidents on other individuals but overall he accepted his responsibility and evinced a clear intention to do his best to put things right. While there was not a perfect documentary record, what documents were produced did support his evidence of wrongdoing on the part of his accountant and his general manager.

As the directing mind of three corporate entities, the Applicant was guilty of lax supervision. In a perfect world, rogues would bear traits that would make them and their schemes obvious, but this is not a perfect world. Rogues exist and succeed because of their plausibility. They know how to work people and deflect inspection. In the end the Tribunal is satisfied that the Applicant was the victim of a well executed and long lasting fraud scheme and has no stain on his personal honesty and integrity.

Nor can the Tribunal find in the history of the Applicant's business grounds for belief that he will not carry on business in accordance with the law. The fact that there are still websites showing the Applicant's corporations as motor vehicle dealers does cause the Tribunal some concern but the Tribunal is satisfied that the contact phone numbers are not active and that, where a link from the sites is made it links to another registered dealer.

The Applicant argues that he is seeking registration as a sales person only until such time that he gets his financial house in order. He is prepared to accept terms on his registration. In the case of *Arulappu v. Registrar, Real Estate and Business Brokers Act*, 2011 ONSC 797, the Divisional Court made it clear that it would be reversible error for this Tribunal not to put its mind to the imposition of terms on the Applicant.

The Registrar's position is that this is not a case for terms. He argues that the failure to pay RST is, and has always been considered by this Tribunal to be, a serious breach of trust and grounds for denial of registration. In support of this position the Registrar relies on the case of *Santec Enterprises Inc. (Re)* [2006] O.L.A.T.D No. 450. In *Santec*, the owner of the corporation made numerous promises to purchase cars from auction on behalf of consumers. He took consumers to the auction and had them identify the car they wished to purchase. The consumer would then pay for the vehicle on the promise by the dealer that he would purchase the vehicle for them. In most cases the consumer got neither car nor refund. In addition, the dealer owed RST but took absolutely no steps to enter into negotiations to make payment. It is clear that the dealer considered money as something he received and would in no circumstances pay back.

The current facts are markedly different. In this case the Applicant's money was stolen. Since that time he has expended great efforts to determine the exact extent of his liabilities, to minimize them and to repay them. The Tribunal notes that as a salesperson the Applicant will not have responsibility for the management of a dealership. The Tribunal's concerns about his financial conduct can best be dealt with by provisions that ensure that he is not responsible for dealing with money for a period of time to let him reestablish himself and his reputation. Accordingly, this is a case for registration on terms. Neither side submitted clear terms so it is left to the Tribunal to determine what those terms should be.

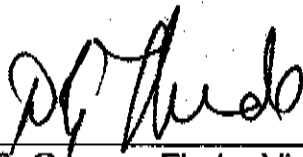
DECISION

Pursuant to the authority vested in it by the provisions of s. 9(5) of the Act, the Tribunal orders the Registrar not to carry out his proposal to deny the Applicant registration. The Registrar shall register the Applicant on the following terms:

1. For a period of two years from the date of this order, the Applicant shall not apply for registration as anything other than a motor vehicle salesperson under the Act.
2. For a period of two years from the date of this decision the Applicant shall not act in a managerial capacity with a motor vehicle dealer nor shall he handle or be responsible for the handling of cash or consumer deposits without supervision but a properly registered manager of his employing dealership.

3. The Applicant will take all reasonable steps to make payment to the webmaster of the 13 Internet sites currently showing members of the Hayats Group as motor vehicle dealers and to have the advertisements removed.
4. The Applicant shall enter into an undertaking with the Registrar that the net proceeds after legal fees and expenses from any litigation against his former accountant shall be applied first to discharge the liabilities of the Hayats Group, including the payment of any and all outstanding RST, GST, MVDCF liabilities, lien and warranty liabilities.
5. At six monthly intervals commencing September 1, 2011, the Applicant shall provide the Registrar with an update of the status of the litigation against his former accountant and shall forthwith advise the Registrar of any judgment, settlement or other final determination of the litigation.
6. Nothing in these terms shall prevent the Registrar from opposing an application by the Applicant, or by an interested person in respect of the Applicant for any registration other than as a motor vehicle salesperson on such grounds as the Registrar may see fit.
7. These terms may be amended by mutual consent of the Applicant and the Registrar at any future renewal of the Applicant's registration.

LICENCE APPEAL TRIBUNAL


D. Gregory Flude, Vice-Chair

RELEASED: March 21, 2011

The hearing was recorded. Transcripts can be made available at your expense. The period to appeal a decision to the Ontario Superior Court of Justice or Divisional Court (<http://www.ontariocourts.on.ca/>) is 30 calendar days from the date of release of the decision. Please arrange to pick up your Exhibits within 30 days after that period has passed. The Tribunal requires seven days notice prior to releasing Exhibits.

This decision, which is being released to the parties in this proceeding, may also be posted on the Licence Appeal Tribunal's website <http://www.lat.gov.on.ca/> within three weeks time. The decision may also be available on Quicklaw at a later date.