

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



FELIX OMOREGIE o/a FILAZO INTERNATIONAL AUTO SALES

AN APPEAL OF A DECISION OF THE REGISTRAR, *MOTOR
VEHICLE DEALERS ACT, 2002* S.O. 2002, , c. 30, Sch. B

TO REVOKE REGISTRATION

TRIBUNAL: DONALD BENNINGER, Presiding Member

APPEARANCES: FELIX OMOREGIE, Applicant, self-represented

CHRISTOPHER EZRIN, Counsel, representing the Registrar,
Motor Vehicle Dealers Act, 2002

DATE OF HEARING: September 10, 2010 Toronto

REASONS FOR DECISION AND ORDER

BACKGROUND

This is an appeal to the Licence Appeal Tribunal (the "Tribunal") from a Notice of Proposal (the "Proposal") pursuant to Section 9 of the *Motor Vehicle Dealers Act, 2002* (the "Act"). The proposal dated March 5, 2010 sets out the Registrar's reasons for revoking the registration of Felix Omoregie o/a Filazo International Auto Sales (the "Applicant") as a motor vehicle dealer under the Act as follows:

"The intention and objective of the Act is to protect the public interest. In doing so, the Act prohibits the making of false statements in an application for registration or renewal and requires that Registrants be financially responsible in the conduct of business and that they carry on business in accordance with the law and with integrity and honesty. Felix Omoregie o/a Filazo International Auto Sales's past conduct is inconsistent with the intention and objective of the Act, and therefore warrants disentitlement to registration under the Act."

In the particulars, the Registrar states the following reasons for the proposal:

1. Felix Omoregie o/a Filazo International Auto Sales (the "Dealer") has been registered as a motor vehicle dealer since on or about May 7, 2008.

2. On or about May 6, 2008, the Dealer signed Registrar imposed terms and conditions. Attached hereto as schedule "A" is a copy of the Terms and Conditions.
3. Between February 19, 2009 and August 4, 2009, Felix Omoregie, in his personal capacity had 9 Highway Traffic Act convictions, which included but were not limited to:

MAKE FALSE STATEMENT
OPERATING MOTOR VEHICLE NO INSURANCE
USE OF PLATE NO IN ACCORDANCE WITH ACT
FAIL TO HAVE INSURANCE CARD
FAIL TO SURRENDER PERMIT FOR MOTOR VEHICLE

4. On or about November 18, 2009, the Dealer engaged in conduct that resulted in the following charges:

POSSESSION OF PROPERTY OBTAINED BY CRIME (X4)

5. The charges are industry specific and related to the possession of 4 stolen motor vehicles.
6. The Dealer has failed to comply with the Act, in particular, section 6.

ISSUE

Does the past conduct of Applicant provide reasonable grounds to conclude that he will not carry on business with honesty and integrity and in accordance with the law?

EVIDENCE

The evidence of the Registrar consisted of the book of documents (Exhibits #3) and the oral testimony of Detective Constable Thomas Hockney and Laura Halbert, Director of Compliance with OMVIC.

The evidence of the Applicant consisted of his oral testimony and a copy of his Ministry of Transportation Three Year Driver Record Search.

The following is a summary of the relevant evidence:

The first witness for the Registrar was Detective Constable Thomas Hockney who in his sworn testimony, stated that he has been with the Halton Regional Police Services since January 2008 as a criminal investigator, dealing mostly with property crimes and stolen autos. From 2006 to 2008, he testified, he was a constable with the Halton Police Services and from 2001 to 2006 he was with the Toronto Police Services at 31 Division. The Detective Constable testified that on November 17, 2009 he received a telephone call from Durham Regional Police regarding an ongoing investigation that involved vehicles stolen from driveways. He stated that the police followed a stolen Rav4 to the Applicant's shop but did not enter the premises. They placed another police vehicle to

watch what was happening while they went for a search warrant. When they returned with the search warrant, they located four stolen vehicles: a Rav4, a Honda Civic, a Honda CRV, and another Rav4. When the police entered the trailer used as an office, they found four sets of keys belonging to the stolen vehicles and plaques on the wall belonging to the Applicant and his friend and employee. The Detective Constable also testified that the police found chains and mattresses used for shipping vehicles overseas.

The following day, Detective Constable Hockney testified, he spoke to the Applicant who explained to him that two men contacted him regarding shipping vehicles overseas and had left two vehicles a week earlier. They told the Applicant that the paperwork would follow within a short time. However, the Applicant said the paperwork never arrived. Detective Constable Hockney testified that he charged the Applicant with four charges of possessing property obtained by crime. He stated that the four stolen vehicles were void of personal property but other police officers had a video of the Applicant's employees removing the personal property, placing it in a suitcase and dumping it in a dumpster west of Toronto. He concluded his testimony by stating that the paperwork and documentation for the four stolen vehicles never arrived.

During cross-examination, Detective Constable Hockney confirmed that he never saw the Applicant driving the stolen vehicles but the police had video of the Applicant's employees driving the vehicles at the Applicant's shop as well as removing and discarding the personal effects from the vehicles. He stated neither he nor other police officers saw the Applicant dumping the suitcase containing the personal effects in the dumpster but they did have video of his employees throwing the suitcase in the dumpster. When asked if he had seen the Applicant's dealer plates on a stolen vehicle, the Detective Constable answered that they were on the Honda CRV.

The second witness for the Registrar was Laura Halbert who affirmed and testified that she has been the Director of Compliance since 1997 and oversees field inspectors with the Ontario Motor Vehicle Industry Council ("OMVIC"). She explained that OMVIC is a not for profit organization, delegated the responsibility of administering the Ontario Motor Vehicle Dealers Act since 1997. She continued to state that OMVIC is responsible for investigations of non-compliance, inspections, complaint handling and the regulation component of the Act. The regulation of the Act includes a review of the terms and conditions of a registrant as well as clarifying expectations regarding garage registry maintenance and the code of ethics.

After the registration of the Applicant in 2008, the witness stated that OMVIC staff reviewed with the Applicant, the information he used to record the vehicles on the dealer premises as well as all the other expectations OMVIC has of Registrants. She testified that the vehicle record log notes whether vehicles are used and who the registered owner of the vehicle is. She added that dealer files contain wholesale bills or other dealer's records and since the Applicant exports vehicles, his files must contain shipping bills and other relevant documentation. This requirement, she explained, is part of the terms and conditions which were explained to the Applicant at the time of

registration. Ms. Halbert went on to state that the Applicant is the sole proprietor of the business and the terms and conditions document, the OMVIC Standards of Business Practice, as well as the certification course are tools he uses in his business. Thus, she stated, the Applicant ought to have known the proper way to maintain files on these vehicles to abide by the law.

Ms. Halbert reviewed the Applicant's Driver Record document (Exhibit #3, Tab 6), provided by the Ministry of Transportation. She testified that the Applicant has had ten Highway Traffic Act ("HTA") charges and convictions in the past seven years. These convictions include failure to have insurance, failure to have insurance cards, failure to surrender permit for motor vehicle, driving or operating a vehicle on a closed road and speeding in a 50 kmh zone. She stated that these charges and convictions demonstrate that he is ungovernable and does not maintain his insurance records very well. Ms. Halbert testified that the four charges of possession of stolen property are industry related and are extremely serious. She stated that the Registrar must protect the public in accordance with the Act and these charges speak to the Applicant's lack of ability to follow the law and to act with honesty and integrity. This is a major concern to the Registrar as it demonstrates that the Applicant acted with willful blindness by allowing stolen vehicles to remain on his property and allowing his friends and employees to remove and dispose of personal property from the stolen vehicles. Clearly, she stated, the Applicant's conduct is not in compliance with the terms and conditions of his registration.

During cross-examination, Ms. Halbert stated that the Applicant had not disclosed his HTA charges and convictions but he had advised OMVIC when his business address was changing. She agreed that the Applicant's licence had been suspended on April 15, 2010 and reinstated in August 2010.

The Applicant testified on his own behalf. At the beginning of the Applicant's testimony, he stated that he was afraid to testify because the information he gives may be used against him during his criminal trial and he wanted to be protected from that. The Tribunal decided to grant him this request and stated that in its Decision and Order, it will include that any evidence given by the Applicant cannot be used against him in any criminal trial or criminal proceedings. The Tribunal referred to The Canada Evidence Act Section 5 (2), the Ontario Evidence Act Section 9(2), the Statutory Powers Procedure Act, Section 14(1), and The Canadian Charter of Rights and Freedoms, Section 13. The Tribunal ruled that the Applicant is deemed to have objected to each question on that basis.

In his sworn testimony, the Applicant stated that he registered as a dealership with OMVIC in 2008. He testified that he has two businesses; one is the dealership that involves buying cars and the other is the operation of shipping goods overseas. The Applicant explained that he had moved on several occasions as the locations were not suitable for his vehicle dealership business to display vehicles, but he still carried on his business during the moves. He testified that he had distributed flyers advertising his business and two men, names unknown, came to see him regarding sending vehicles

overseas. Within a day or so they arrived with two vehicles for him to store until shipping time and advised him that the paperwork would follow. He stated that about a week later, they arrived with two more vehicles and said they did not have the paperwork for the first two vehicles nor did they have paperwork for the other two vehicles. He stated that he was suspicious but did no investigation.

That same evening, the Applicant testified that the police arrived, cut the gate lock open and found the stolen vehicles and left a police business card for him in his office. He then went to the police officer to sort this out and was charged with four counts of possession of stolen property, one for each vehicle. The Applicant explained that the reason for his no insurance convictions was because his insurance on his dealership plates had been cancelled. He stated that he could not afford the premium and the insurance company cancelled his insurance. The Applicant testified that he has since appealed some of these convictions and they are scheduled to be heard in court around October 16, 2010.

In his closing testimony, the Applicant stated that when he goes to court on his four charges of possession of stolen property, he will tell the court that he is 100% innocent. He also stated that he would not ship stolen vehicles. He then went on to say "if they prove I stole the cars, I will say I did not know the cars were stolen."

In cross-examination, the Applicant agreed that he was the sole proprietor of the dealership and responsible for what happens at his place of business. He stated that he completed the Georgian College Certificate course and is familiar with the paperwork that is required before a vehicle can be shipped overseas. He testified that he never knew the two men who brought the stolen vehicles to his premises and had not done business with them before, but he knew they were not car dealers. The Applicant also acknowledged that he did not take any steps to determine who the four vehicles belonged to or report the situation to the police. He provided the Tribunal with another Ministry of Transportation Driver Record that did not include the 2006 conviction for speeding but it did include the remaining charges and convictions that were identical.

LAW

The *Motor Vehicle Dealer Act* states as follows:

5. (1) An applicant is entitled to registration or renewal of registration by the Registrar except where,
 - a) having regard to financial position of the applicant, the applicant cannot reasonably be expected to be financially responsible in the conduct of business; or
 - b) the past conduct 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

- c) the applicant is a corporation and,
- (i) having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its business, or
 - (ii) the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty;
6. (2) Subject to section 7, the Registrar may refuse to renew or may suspend or revoke a registration for any reason that would disentitle the registrant to registration under section 5 if the registrant were an applicant, or where the registrant is in breach of a term or condition of the registration.
8. A further application for registration may be made upon new or other evidence or where it is clear that material circumstances have changed.

ANALYSIS

The issue before the Tribunal is whether the past conduct of the Applicant provides reasonable grounds to conclude that he will not carry on business in accordance with the law and with honesty and integrity. In this case, the Tribunal needs to consider two concerns. First, do the recent criminal charges of possession of property obtained by crime afford reasonable grounds for the belief that the Applicant will not carry on business in accordance with the law and with honesty and integrity? Second, do the Applicant's HTA charges and convictions and his non-disclosure of the same afford reasonable grounds for the belief that the Applicant will not carry on business in accordance with the law and with integrity and honesty? In considering the past conduct of the Applicant, the Tribunal owes no deference to the deliberations of the Registrar. It must arrive at its own conclusion in an unfettered manner. As stated by Divisional Court in *First Place Fine Cars Inc. and Dominic Cerullo v. Ontario (Motor Vehicle Dealers Act)* (2007) O.J.1043, it is clear that the Registrar believes there are such grounds, otherwise there would be no proposal. The question to be decided is in light of all the evidence, does the Tribunal find there are reasonable grounds for this belief.

The Applicant testified that he distributed a flyer advertising his business for storage of vehicles and shipping vehicles overseas. When the two men came to inquire about the cost and container availability, the Applicant did not exercise due diligence by getting their names, addresses or telephone numbers. He stated that he did not know them and had not done business with them before. When the two men brought him the two vehicles to store until shipping time, an experienced, educated business man like the Applicant ought to have required the proper documentation before accepting the vehicles. Even if he thought the customers would return with the proper documentation, he should have known after 6 days, the timeframe to register ownership by law, that something was wrong and he should have contacted the police regarding this unusual situation. If he had done so, the outcome would not have been the four charges

presently before the courts. The Applicant agreed he did not take any steps to determine who the vehicles belonged to.

The Tribunal believes this to be willful blindness on the part of the Applicant. He was aware his friends and employees were preparing the vehicles for shipping and took no action to supervise them or inquire about the contents of these vehicles. The Applicant is the sole proprietor and responsible for everything that occurs at his place of business. By the Applicant turning a blind eye to these happenings, he is deemed by the Tribunal to condone this conduct. Therefore, he is not acting within the terms and conditions agreed to when he established the business. The Applicant's decision to not take any steps to determine who the vehicles belonged to is considered by the Tribunal as a failure to act with honesty and integrity. Although the Applicant testified that he is innocent of the charges, the Tribunal found evidence to the contrary. The vehicles were on his premises and remained there with his permission. Likewise, it was his decision to do nothing to find the rightful owners. This is not responsible and law abiding conduct.

The four charges of possession of stolen property are very serious, are industry related and cannot be tolerated in the motor vehicle industry. This conduct undermines the credibility of the industry. The HTA charges and convictions are numerous, and occur over a lengthy period of time. Many of them are industry related.

The Applicant testified that it was his non-payment of the insurance premiums that resulted in his convictions for:

- Operating/Misuse of a Motor Vehicle with no insurance;
- The use of a dealer plate; and
- The failure to surrender the permit

There is no reasonable excuse and no evidence presented that the possession and insurance related offences are not industry related. The conviction for making a false statement cannot be viewed as acting with honesty and integrity. The speeding conviction is of less concern.

The conduct leading to all of these charges and convictions does not demonstrate the standards required by the Act. The Act is a public protection statute and to permit the Applicant to continue as a licenced dealer and as a member of the motor vehicle industry would send the wrong message to the industry and to the public in view of the Applicant's lack of honesty and integrity and his failure to act in accordance with the law.

In conclusion, after considering all the evidence and for the reasons outlined above, the Tribunal finds that the Applicant's past conduct does provide reasonable grounds to conclude that he will not carry on business with honesty, integrity and in accordance with the law.

DECISION

By virtue of the authority vested in it pursuant to the provisions of section 7(4) of the Act, the Tribunal directs the Registrar to carry out the Proposal dated March 5, 2010, to revoke the registration of the Applicant as a motor vehicle dealer under the Act.

LICENCE APPEAL TRIBUNAL


Donald Benninger, Member

RELEASED: October 1, 2010

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> in approximately three weeks. The decision may also be available on Quicklaw at a later date.