

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



DARRYL DUFRESNE

APPEAL FROM A PROPOSAL BY THE REGISTRAR, *MOTOR
VEHICLE DEALERS ACT* R.S.O. 1990, c. M.42

TO REFUSE REGISTRATION

TRIBUNAL: CHANTAL PROULX, Vice-Chair

APPEARANCES: DARRYL DUFRESNE, Applicant

SARAH AOUCHICHE, Student-at-Law representing the Registrar,
Motor Vehicle Dealers Act

DATE OF
HEARING: August 9, 2011

Ottawa

REASONS FOR DECISION AND ORDER

BACKGROUND

This hearing arises from a written Notice of Proposal (the "Proposal") dated March 21, 2011, issued by the Registrar under the *Motor Vehicle Dealers Act* (the "Act") to refuse the registration of Darryl Dufresne (the "Applicant") as a motor vehicle salesperson under the Act.

The Registrar proposes to revoke the registration of the Applicant because he has breached paragraph two (2) of his conditions of registration as set out in the Tribunal's Order of April 17, 2008 and he has failed to comply with section 6 of the Act.

THE LAW

Sections 5 and 6 of the Act reads as follows:

Registration prohibited

5.(1) If an applicant for registration or renewal of registration does not meet the prescribed requirements, the registrar shall refuse to grant or renew the registration.

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.

...

- (f) the applicant is in breach of a condition of the registration.

EVIDENCE

The evidence presented to the Tribunal by the Registrar consisted of documentary evidence, as well as the oral testimony of Mary Jane South, the Deputy Registrar. Ms. South explained that OMVIC is responsible for administering the Act, which has a mandate of protecting the public. She indicated that salespersons in the motor vehicle industry are required to obtain certification by taking a course offered by the Automotive Institute. The course deals with the relevant statutes governing the industry as well as the importance of honest disclosure. The correspondence course takes approximately 24 hours to complete and afterwards individuals are required to write and pass an examination at one of the offices of the Ministry of Transportation.

Ms. South reviewed the Applicant's three applications and the Registrar's March 21, 2011 proposal to refuse registration to the Applicant.

First application for registration

OMVIC received the Applicant's first application for registration on September 21, 2007. On or about October 11, 2007, the Applicant was registered as a motor vehicle salesperson. Ms. South explained that in 2007, applicants received a conditional registration for a period of 60 days, during which time the information contained in their application was verified.

On November 27, 2007, the Registrar issued a notice of proposal to refuse registration because the Applicant failed to disclose his November 22, 2000 and January 12, 2004 criminal convictions. Ms. South explained that the application for registration represents the first test of honesty and integrity. Section F of the application asks questions pertaining to the background of individuals. She pointed out the Registrar's concern that the Applicant failed to disclose past offences as required by question nine of the application which 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 circumstance surrounding each (attach additional sheets if necessary).

At the bottom of this question we find the following warning:

Note: Applicants are subject to background and criminal record searches. Submitting a false or incomplete disclosure is an offence under the MVDA and will result in disqualification. Do not assume that convictions are automatically deleted from your record. If you have any questions about the information you must disclose please call OMVIC.

Ms. South explained that the application for registration is also signed by a sponsoring dealer, in this case Mews Chevrolet Ltd., since it is important for the individual to be sponsored and to ensure the dealer has a full understanding of the individual's background. Section G of the application contains the dealer's signature.

The Licence Appeal Tribunal (the "Tribunal") received the Applicant's appeal on December 13, 2007. In a letter dated December 10, 2007, the Applicant explained the circumstances in which he signed the application. He indicated the following:

I was in the sales manager's office completing the offer for employment and starting to complete all the necessary Mews Chevrolet and OMVIC paperwork. This was very stressful. There were salespeople interrupting and coming into her office for her assistance trying to put deals together. Looking back, I should have taken everything home including the OMVIC application and take the time necessary to complete. I didn't acknowledge the importance of the OMVIC application, and because of how busy the sales manager was I handed the pile of paper back to her, we did not review the paperwork, nor did she ask me any questions.

In April 2008, the Applicant and the Registrar signed a settlement which contained terms and conditions for the Applicant's registration as a salesperson. The Consent Order was signed by the Tribunal on April 17, 2008. The second item of the settlement reads as follows:

The Applicant agrees to provide full and complete disclosure on all future applications, correspondence and in all discussions with the Registrar regardless of whether or not disclosure has been made previously to the Registrar.

Second application for registration

OMVIC received a second application for registration from the Applicant on October 4, 2010. Section E of the application asks questions that relate to eligibility. The Applicant answered "No" to question 2 which reads as follows:

Have you ever had a commercial, professional or business registration certificate or licence of any kind refused, suspended, revoked or cancelled, or have you ever been a party to such a proceeding?

Ms. South highlighted that the Applicant's answer to question 2 is somewhat mitigated by the fact that the Applicant answered "Yes" to question 1 of Section B which asked whether he had ever had a registration under the Motor Vehicles Dealers Act refused, revoked, suspended or cancelled.

The Applicant acknowledged in his second application that he had previously been found guilty or convicted of an offence under any law. Although the Applicant did not provide the particulars of the circumstances surrounding the convictions, the Registrar approved his registration since it was the same employer that was sponsoring the Applicant and the Registrar was satisfied that the employer was reasonably well informed.

Salesperson Change Notice

On February 4, 2011, OMVIC received a Notice of Registration Change on behalf of the Applicant. He wanted to transfer his registration from Myers Orleans Chevrolet Buick Inc. to 2nd Chance Auto Sales. As part of the questionnaire, the Applicant responded in the negative to the following question:

"Has the registrant ever had a commercial, professional or business registration certificate or licence of any kind refused, suspended, revoked or cancelled, or have you ever been a party to such a proceeding?"

In the same application, the Applicant responded in the negative to question 5 of section F.

"Has the registrant ever been found guilty or convicted of an offence under any law, or are there any charges pending? [Make sure to include those charges where a conditional or absolute discharge has been ordered.]

Ms. South indicated that the Registrar was concerned that the Applicant did not disclose his criminal convictions, especially since he was being sponsored by a new employer. It was also highlighted that the Applicant's answer breached the terms and conditions of his registration pursuant to the Tribunal's April 17, 2008 Consent Order.

The Applicant testified that he had no intention to lie or cheat on his application. He explained that he was going through a stressful period when he completed the application. The Applicant noted that his offences were in the past and he was confused about his obligation to disclose his convictions. The Applicant explained that he applied for a pardon and he was in the process of receiving it when he applied for registration as a salesperson. The Applicant indicated that he received a pardon; however, he does not remember when. The Applicant stated that he now has a copy of the pardon; however, he has not provided a copy to the Registrar and he did not bring a copy to the hearing.

FACTS FOUND PROVEN

The Tribunal finds that the following facts have been proven:

1. The Applicant was charged and convicted of criminal offences on November 22, 2000 and January 12, 2004.

2. The Applicant failed to disclose, in his September 21, 2007 and February 4, 2011 applications to OMVIC, that he had been found guilty or convicted of an offence under the law.
3. The Applicant was registered as a motor vehicle salesperson under the Act, in accordance with the terms and conditions of the Tribunal's April 17, 2008 Consent Order.
4. The Applicant breached a term and condition of the Tribunal's April 17, 2008 Consent Order by failing to provide full and complete disclosure to the Registrar of OMVIC.

ANALYSIS

The representative for the Registrar requested that the Tribunal direct the Registrar to carry out its proposal dated March 21, 2011 and refuse registration to the Applicant as a motor vehicle salesperson under the Act. The representative argued that the Applicant's past conduct affords reasonable ground to believe that he will not carry on business in accordance with law and with integrity and honesty. She submitted that the Applicant made false statements or provided misleading information on three separate applications, contrary to the requirements for registration. Further, she argued that the Applicant breached a condition of the Tribunal's April 17, 2008 Consent Order.

The Applicant wants to sell motor vehicles and therefore asked that his registration as a salesperson be approved. The Applicant acknowledged that he made mistakes when he completed the various applications; however, he explained that he was under the impression that once he received a pardon, he did not have to mention the convictions.

Tribunal's decision

The powers of the Tribunal are defined in section 9 of the Act which reads as follows:

Hearing

9. (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.

The legislation is intended to protect the unsuspecting public and promote the integrity and honesty of salespersons registered in the industry. While the Act provides a general right to registration when applicants meet the prescribed requirements, it also stipulates that the Registrar may refuse registration in certain circumstances enumerated in section 6 of the Act. The Tribunal must consider the intent of the legislation when applying the law to the facts.

The undisputed evidence in this matter is that the Applicant falsely answered questions on three separate applications to OMVIC and he breached a condition of the Tribunal's April 17, 2008 Consent Order.

While the Tribunal accepts that the Applicant may have misunderstood the question pertaining to his prior criminal history when he completed his first application in 2007,

this explanation fails with regards to subsequent applications. When he applied in October 2010, he knew or should have known that he was required to provide full and complete disclosure on any and all communications with OMVIC. At this point he had the experience of appealing the Registrar's first Notice of Proposal to the Tribunal. He had also received his registration as a salesperson with the understanding that he had to adhere to the terms and conditions of the Consent Order. The lack of disclosure leads the Tribunal to believe that he was either being deceitful or he was not taking the legislative requirements seriously. Either way, the Tribunal finds that the Applicant's lack of disclosure is problematic in light of the requirements for registration under section 6 of the Act.

The Tribunal finds that it would not be appropriate in these particular circumstances to provide the Applicant with another chance to comply with the requirements of the Act. In his December 10, 2007 letter to the Tribunal, the Applicant indicated that in hindsight, he should have taken the time to read the application and ensure he completed it properly. Despite being given a second chance, the Applicant appears to have failed to learn from his mistakes.

The Tribunal views the deliberate failure to disclose information with some severity. In this case the Applicant failed to disclose his past convictions to 2nd Chance Auto Sales. The Tribunal is mindful that the Act has been modified and it now specifically stipulates that an applicant is entitled to a registration or a renewal unless the applicant makes a false statement in an application for registration or for renewal of registration. Section G of the salesperson change notice application specifically stipulates that providing false, incomplete or misleading information, or the omission of information may result in the refusal, suspension or revocation of registration. The Applicant provided false information in his application which he signed on January 27, 2011.

Providing accurate and complete information to the Registrar is a crucial matter in assessing the honesty of an applicant since the Registrar relies on this information to determine eligibility for registration. It is reasonable for the Registrar to have serious concerns about an applicant's future dealings with the public if he fails to provide accurate information on his application.

The Tribunal finds that the Applicant is ineligible for registration because his past conduct gives reasonable grounds to believe he will not carry on business in accordance with law and with integrity and honesty. Furthermore, the Applicant has provided false statements in his salesperson change notice application of January 27, 2011.

DECISION

The Tribunal, pursuant to the authority vested in it by subsection 9(5) of the Act, directs the Registrar to carry out the proposal dated March 21, 2011 to refuse the registration of the Applicant as a motor vehicle salesperson under the Act.

LICENCE APPEAL TRIBUNAL



Chantal Proulx, Vice Chair

RELEASED: August 22, 2011

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