

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



L J

APPEAL FROM A PROPOSAL OF THE REGISTRAR UNDER THE
MOTOR VEHICLE DEALERS ACT

TO REFUSE REGISTRATION

TRIBUNAL: D B, PRESIDING MEMBER

APPEARANCES: LARRY, Applicant, appeared on his
own behalf

A M R, Counsel, represented the Registrar under the
Motor Vehicle Dealers Act

DATE OF HEARING: October 12, 2006 Toronto

REASONS FOR DECISION AND ORDER

BACKGROUND:

This is a hearing before the Licence Appeal Tribunal (the "Tribunal") arising out of a Notice of Proposal issued by the Registrar under the *Motor Vehicle Dealers Act* (the "Registrar" and the "Act" respectively.) The Notice of Proposal dated May 11, 2006 proposed to refuse the registration of L J (the "Applicant"), as a salesperson under the Act.

In support of his proposal the Registrar furnished the following reasons and particulars.

REASONS

The intention and objective of the Act is to protect the public interest. The requirements of the Act include that Registrants be financially responsible in the conduct of business and that Registrants carry on business in accordance with the law and with integrity and honesty. The Registrant's past conduct is inconsistent with the intention and objective of the Act, and

therefore warrants disentanglement to registration under the Act. Therefore, the Registrar is unwilling to register L J under the *Motor Vehicle Dealers Act*.

PARTICULARS

The reasons for this proposal are:

1. L J a.k.a. Larry (the "Applicant") applied for registration as a motor vehicle salesperson on or about March 27, 2006. He proposes to work for H Chrysler Ltd.
2. The Applicant was previously registered from on about February 15, 1996 until on or about July 29, 1999.
3. On or about March 1, 2001, the Applicant was refused registration pursuant to section 7(3) of the Act.
3. The Applicant has been found guilty of the following:

July 1976;	Possession of a Narcotic
December 1978;	Possession of a Narcotic
April 1980:	Drive While Licence Suspended
September 1982:	Possession of a Prohibited Weapon
November 1982:	Possession of a Prohibited Weapon
June 1983:	Theft Under \$200
August 2000:	Take Motor Vehicle Without Consent
June 2003:	Assault (x2)
5. The Applicant's driver's licence is currently suspended due to unpaid fines.

THE LAW:

The *Motor Vehicle Dealers Act* (the 'Act'), states as follows:

- 5(1) An applicant is entitled to registration by the Registrar except where,
- (a) having regard to the 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;
- 8 A further application for registration may be made upon new or other evidence or where it is clear that material circumstances have changed.

ISSUE:

The issue in this case is whether the Registrar was wrong in his decision to refuse the registration of the Applicant, on the basis of the Applicant's conduct respecting the allegations as set out in the Notice of Proposal to Refuse the Registration from the

Registrar dated May 11, 2006 and as outlined in the Background under particulars above.

EVIDENCE:

The evidence introduced by the Registrar consisted of the testimony from L H. L H was affirmed and testified that she has been employed as the Director of Compliance for OMVIC since 1997. She stated her duties included overseeing inspection claims, investigators and inspectors. She explained that OMVIC is a not for profit organization and has been delegated with authority to administer the *Motor Vehicle Dealers Act*. She stated that the Act is a consumer protection statute. She testified she was familiar with the proposal to refuse registration of the Applicant dated May 11, 2006.

The Witness referred the Tribunal to section 5 of the Act which states that there is an entitlement for registration. However, she continued that if the Registrar does not believe the Applicant will fulfil his obligations under the Act with honesty, integrity and with financial responsibility and in accordance with the law he can refuse the applicant registration. In addition, she referred the Tribunal to section 8 of the Act and explained a further application for registration may be made upon new and other evidence or where it is clear that material circumstances have changed.

She testified that the Registrar's position is that there is no new or other evidence that material circumstances have changed since the Applicant's previous application dated on or about March 1, 2001. She continued stating that the Registrar's position is that of guardian of the public interest and as part of that mandate, there is a criminal background check carried out upon receipt of the application form from the aspiring registrant.

The Witness testified in this case the Applicant's application for registration as a motor vehicle salesperson was received at OMVIC on March 27, 2006 with question #9 being answered "yes" and an explanation document attached but it did not match the Applicant's criminal history as revealed by CPIC.

She testified that when the Registrar requested further particulars regarding the Applicant's criminal history the Applicant provided an explanation of his two assault convictions in 2003 but minimized them as "minor assaults" when in fact the court sentenced him to 4 months incarceration on charge #1 and 4 months concurrent on the second assault charge and a prohibition order for five years.

The Witness testified that the criminal history as well as his completion of his application by the Applicant demonstrates that he is not prepared to conduct himself with honesty, integrity and within the law. She stated that his recent convictions do not show a positive change in evidence or material circumstances but do demonstrate a negative change in his conduct.

The Witness testified that the Applicant had several unpaid fines for driving related offences on the date the Registrar proposed to refuse his registration and these were viewed as not acting in a financially responsible manner as required by the *Motor Vehicle Dealers Act*. She testified that given his lack of disclosure of his serious and recent convictions as well as his minimization of the same offences and his non-payment of Court ordered fines lead the Registrar to believe the Applicant would not act with honesty, integrity and within the law and with financial responsibility when dealing with the public, as a Motor Vehicle Salesperson.

The Witness concluded by testifying the Applicant does not meet the requirements of section 8 of the Act as his application was not made upon new or other evidence or where it is clear that material circumstances have changed since his previous application for registration was refused in 2001. This decision was not appealed. She stated his convictions in 2003 are of a more serious nature than those indicated in 2001, thus the Registrar does not believe the Applicant should be registered as a Motor Vehicle Salesperson.

The Applicant was sworn and gave the following testimony. He testified he had not hidden any of his criminal history from his employers and they supported him in his application to be a licensed motor vehicle salesperson.

The Witness testified he had many family issues in 2001 that required his attention. He stated he was of the opinion he had approval to use the company telephone to deal with this. However, shortly after he completed his conversation with a family member he was terminated by the dealership.

The Witness testified that when he was charged with one of his motor vehicle related offences it was a nasty night and he took the motor vehicle to avoid the elements but was caught by the police.

He stated that his assault charges may appear serious but there were no physical issues. He continued by stating he had no money to obtain the services of a lawyer, but he went to court anyway. The Applicant testified he does not associate with these people any more. The Witness testified that he tried to act with honesty and integrity while employed because he has had opportunities to take people for their money but he has not and he works on behalf of the customer.

The Applicant stated he attempted to obtain a taxi driver's licence but was denied as his assault charges were too recent.

He testified that all his fines that resulted in his driver's licence being suspended have

been paid. He continued stating this occurred after the proposal to refuse his registration was issued.

Under cross- examination the Applicant concurred the criminal history as presented by the Registrar was accurate. He stated his drivers licence abstract was also an accurate reflection of his history.

FACTS FOUND PROVEN:

The facts found proven by the Tribunal are as follows:

1. L J a.k.a. Larry ("the Applicant") applied for registration as a motor vehicle salesperson on or about March 27, 2006. He proposed to work for H Chrysler Ltd.
2. The Applicant was previously registered from on or about February 15, 1996 until on or about July 29, 1999.
3. On or about March 1, 2001, the Applicant was refused registration pursuant to section 7(3) of the Act and this refusal was not appealed.
4. The Applicant was found guilty of offences from 1976 to 2003. These offences ranged from possession of narcotics to possession of a prohibited weapon, to more recently assault (x2).
5. The Applicant's driver's licence was suspended due to unpaid court ordered fines at the time the Registrar issued the proposal letter.
6. The Applicant after receiving the Proposal to Refuse Registration did pay his court ordered fines.
7. The new and other evidence or material circumstances had not changed in a positive direction supportive to the Applicant's registration, but they did affect his application in a negative manner as the convictions since the first application are for offences of a more serious nature.
8. The sentence the Applicant received from the Courts reflected the serious nature of the offences.
9. The Applicant did not receive his taxi driver's licence as his assault charges were too recent.

APPLICATION OF LAW TO FACTS:

The onus of proof rests on the Registrar to satisfy the Tribunal that he has reasonable grounds to believe that the registration of the Applicant ought to be refused based upon the past conduct of the Applicant and which conduct affords reasonable grounds of belief that the Applicant will in the future not carry on business in compliance with section 5 of the Act: *In Brenner v Ontario (Registrar of Motor Vehicle Dealers and Salesmen) 1983 O.J. No. 1017 Southey J. stated:*

The Tribunal should only have refused to direct the Registrar to carry out his proposal if it is thought the Registrar was in error concluding that the past conduct of the Applicant afforded reasonable grounds for belief that he would not carry on business in accordance with the law and integrity and honesty.

When referring to the matter back for rehearing to the Tribunal *Southey J* stated:

The proper question at the rehearing remains, however. Whether the past conduct of the Applicant affords reasonable grounds for belief that he will not carry on business in accordance with the law and integrity and honesty. Unless the Tribunal can find that it does not, the Tribunal should not order the Registrar to refrain from carrying out his proposal.

In the decision in the matter of Registrar, *Motor Vehicle Dealer Act v Shine Car Sales and Omar Hassan Rahim, of the Divisional Court* stated that *Brenner* “remains the proper test” but it does not establish a rule that the Registrar must be shown to be wrong. The *Shine* decision went on to state that “the Tribunal approaches the matter uninhibited in any way and owes no deference to the Registrar’s decision as the Registrar is the Investigator and is not the trier of fact whose opinion is based upon a hearing and so entitled to deference.”

The Tribunal must therefore examine whether or not the past conduct of an Applicant would afford grounds for the belief that such Applicant would not carry on business in accordance with the law, with honesty and integrity and be financially responsible.

The governing legislation has as its primary purpose consumer protection. The legislature to that end has decided that in the area of the retail sales of motor vehicles a regulatory scheme is required. The scheme mandates that persons involved in that industry become registrants under the Act. While the Act allows for a prima facie right to registration it also allows the Registrar to intervene in the registration process if he feels that there are grounds for such intervention. Those grounds are set forth in section 5 of the Act and the registrant or applicant are informed of that intervention by the issuance of a Notice of Proposal. An appeal from the Registrar’s Proposal lies to the Tribunal by way of hearing

de novo.

Section 8 of the Act sets forth the requirements that must be met once an Applicant has been refused registration. The Act is clear that the application for registration may be made upon new or other evidence or where it is clear that material circumstances have changed. If these requirements are met then the Registrar may consider approving registration if all the requirements of section #5 have also been satisfied.

In the present case the Applicant's application for registration was denied on the basis of past conduct not reflecting honesty and integrity, not acting within the law, not being financially responsible, as well as not revealing or minimizing his past conduct, that brought him before the courts in 2003, while he was completing his application for registration.

The Applicant in his testimony did not dispute his previous charges or findings of guilt. He stated that although he appears not to want to do what the Court ordered by failing to pay his fines, that is not the case. The Applicant testified that they are all now paid in full and this occurred after he received the Notice to Refuse Registration letter from the Registrar. His explanation did not convince the Tribunal that he could not have paid something toward these fines at an earlier date. The Tribunal was convinced that his conduct was not acting with financial responsibility.

Every aspiring registrant is informed of the fact of a criminal background check being done and of the consequences of concealment right in the application form. Past decisions indicate clearly the seriousness with which the Tribunal regards instances of concealment. The application form is the first contact between a hopeful registrant and the regulator and as such should be completed honestly. The Registrar has every right to hold the view that if there is a lack of forthrightness at the application stage there is a potential of further deception by the registrant in the future.

In this case the Applicant responded checking the "yes" box to question # 9. However, he did not include all his convictions nor sufficient detail for the Registrar in the additional explanation as requested. When the Applicant responded to this request he minimized the seriousness of the assaults understandably giving the Registrar concern regarding the Applicant's ability to conduct business with the public with honesty, integrity and within the law.

On the basis of the facts as found and the application of the law to those facts, the Tribunal finds that the past conduct of the Applicant, taken as a whole, did provide reasonable grounds for the Registrar to believe that the Applicant would not carry on business as a salesperson with honesty, integrity, within the law and with financial

responsibility. With regard to section 8 of the Act, it is not intended to provide an Applicant the opportunity to obtain reconsideration on the same facts. The construction of the section is such as to clearly imply that there must be “new or other evidence”, or a material change in circumstances, on which to base a further application.

The Tribunal was not presented with any information to lead it to a conclusion that there was any new or other evidence or material changes in circumstances on which to base the consideration of the most recent application for registration as a motor vehicle salesperson. The Tribunal was presented with evidence that the Applicant’s recent criminal conduct demonstrated his lack of respect for the law and gave reason for the Registrar to refuse the Applicant’s registration.

Thus, the Tribunal finds the Registrar to be correct in his decision to refuse the Applicant registration as a motor vehicle salesperson.

DECISION:

Therefore by virtue of the authority vested in it under section 7(4) of the *Motor Vehicle Dealers Act*, the Licence Appeal Tribunal directs the Registrar to carry out his proposal dated May 11, 2006 to refuse the registration of L J as a motor vehicle salesperson under the Act.

LICENCE APPEAL TRIBUNAL

D B, Member

Released: November 14, 2006