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Appeal
Tribunal

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June 8, 2006

MEMORANDUM



Re: *Narjess Aghashahi v. Registrar, Motor Vehicle Dealers Act*

Enclosed herewith please find a copy of the Decision of the Licence Appeal Tribunal with respect to this matter.

DISTRIBUTION LIST:

Narjess Aghashahi, the Applicant
A. Michael Rothe, Counsel for the Respondent

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NARJESS AGHASHAHI

APPEAL FROM A PROPOSAL OF THE REGISTRAR UNDER
THE MOTOR VEHICLE DEALERS ACT R.S.O. 1990

TO REFUSE REGISTRATION

TRIBUNAL: DEREK ISRAEL, Vice-Chair

APPEARANCES: NARJESS AGHASHAHI, representing herself

A. MICHAEL ROTHE, Counsel, representing the Registrar, *Motor Vehicle Dealers Act*

DATE OF
HEARING: June 5, 2006

Toronto

REASONS FOR DECISION AND ORDER

BACKGROUND

This hearing arises out of a written Notice of Proposal (the "Proposal") dated January 31, 2006, by the Registrar under the *Motor Vehicle Dealers Act* (the "Registrar" and the "Act" respectively) to refuse the registration as a motor vehicle salesperson of Narjess Aghashahi (the "Applicant").

The Registrar bases his Proposal to refuse under section 7 of the Act as read with section 5.(1) (a) and (b) and section 6.(1):

5.(1) An applicant is entitled to registration or renewal of 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;

6. (1) Subject to section 7, the Registrar may refuse to register an applicant where in the Registrar's opinion the applicant is disentitled to registration under section 5.

7.(1) Where the Registrar proposes to refuse to grant or renew a registration or proposes to suspend or revoke a registration, the Registrar shall serve notice of the proposal, together with written reasons therefore, on the applicant or registrant.

In support of the Proposal, the Registrar furnished the following 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 Applicant's past conduct is inconsistent with the intention and objective of the Act, and therefore warrants disqualification to registration under the Act. Therefore, the Registrar is unwilling to register Narjess Aghashahi under the Motor Vehicle Dealers Act.

In addition to the reasons given by the Registrar, the following particulars have been furnished in the Proposal:

- 1) On or about November 21, 2005, Narjess Aghashahi (hereinafter referred to as the "Applicant") applied for registration as a motor vehicle salesperson under the Act.
- 2) On the application to become a registered salesperson question 6 asks:
 "Are you engaged now or have been involved in personal bankruptcy proceedings? If yes, attach copy of the Assignment in Bankruptcy or proof of discharge, and provide explanation of circumstances leading to bankruptcy."
 The Applicant answered, "Yes", indicating:
 "I will bring copy to OMVIC".
- 3) On or about April 26, 2005 the Applicant filed an Assignment in Bankruptcy.
- 4) On the application to become a registered salesperson question 9 asks:
 "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 (attach additional sheets if necessary)."
 The Applicant answered, "yes", indicating:
 "I will send letter with all info"
- 5) A criminal search found that the Applicant engaged in past conduct which led to the following convictions:

June 7, 2005 Utter Forged Document (X2)
 Obtain Credit by False Pretences (X3)

(Exhibit 4, tab 1)

The Applicant filed a Notice of Appeal setting out the reasons for her appeal (Exhibit 4, Tab 2).

THE EVIDENCE

The Registrar relied upon the testimony of Louise Cohn, as well as documentary evidence disclosed in its Book of Documents (Exhibit 4). The Applicant relied upon her testimony as well as a letter from her present employer dated May 26, 2006 (Exhibit 5).

Testimony of Louise Cohn

Ms. Cohn testified that she is currently employed by the Ontario Motor Vehicle Industry Council ("OMVIC") where she has been employed for some ten years. She explained that OMVIC is a not for profit organization designated to administer the Act and its regulations and noted the Act is a consumer protection statute.

Ms. Cohn went on to state that she is familiar with the Applicant and the Proposal to refuse registration to the Applicant. She noted that by way of a written application (the "application") dated November 21, 2005, the Applicant applied for registration as a salesperson under the Act. The application was submitted by the Applicant to OMVIC on November 21, 2005. Question # 6 on the application stated as follows:

Are you engaged now or have you been involved in personal bankruptcy proceedings? If yes, attach copy of the Assignment in Bankruptcy or proof of discharge, and provide explanation leading to bankruptcy.

To this question, the Applicant answered "yes" and noted in her handwriting under the question the following: "I will bring copy to OMVIC" (Exhibit 4, Tab 3).

Question # 9 on the application stated as follows:

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 (attach additional sheets if necessary).

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.

In answer to the above question, the Applicant replied "yes" and in the space noted above, she wrote the words "I will send letter with all info".

Ms. Cohn went on to state that the Applicant made an assignment of her estate in bankruptcy (Exhibit 4, Tab 4) and in that bankruptcy assignment, the Applicant noted liabilities of \$69,300.00 to fourteen creditors of which eleven creditors were banking institutions. She also referred to a consumer report by Equifax that was obtained by OMVIC relative to the Applicant. Ms. Cohn further noted that the Applicant is an undischarged bankrupt. She went on to further testify that the Applicant's record has

shown the Applicant to have no financial responsibility and is in contravention of section 5.(1)(a) of the Act.

Insofar as the criminal convictions of the Applicant are concerned, Ms. Cohn stated that pursuant to receipt of the Applicant's application, OMVIC applied for and received a CPIC report regarding the Applicant and which report states as follows:

THE CRIMINAL RECORD HELD IN THE CPIC IDENTIFICATION DATA BANKS

AS OF: DECEMBER 8, 2005
NAME: AGHASHAHI, NARJESS
D.O.B: [REDACTED]

<u>DATE & PLACE</u>	<u>CHARGE</u>	<u>DISPOSITION</u>
AUG 18 2003	OBSTRUCT-PEACE OFFICER ST CATHARINES SEC 129 CC	CONDITIONAL DISCHARGE & PROBATION 12 MOS

INFORMATION ON TORONTO OPP DETACHMENT LOCAL FILES:

JUN 07 2005	(1) UTTER FORGED DOCUMENT (2 CHGS) SEC 368CC	(1-2) SUSPENDED SENTENCE & PROBATION 12 MOS ON EACH CHG & RESTITUTION \$277.25
	(2) OBTAIN CREDIT BY FALSE PRETENCES (3 CHGS) SEC 362 (1) (B) CC	

The summary of police information on the criminal record not intended for sentencing purposes has not been included. This summary includes withdrawals and dismissals.

ENTRIES ON THE CPIC INVESTIGATIVE DATA BANKS AS OF:

DECEMBER 8, 2005
NAME: AGHASHAHI, NARJESS
D.O.B: [REDACTED]

<u>TYPE OF ENTRY</u>	<u>AGENCY & DATE</u>	<u>PARTICULARS</u>
PROBATION	TORONTO PS 08-AUG-2005	SUSPENDED SENTENCE OBTAIN CREDIT BY FALSE PRETENCES, UTTER FORGED DOCUMENT START DATE: 07-JUN-2005 EXPIRY DATE: 06-JUN-2006 CASE: 2005.013887

(Exhibit 4, Tab 6)

Ms. Cohn noted that the restitution order referred to in the CPIC report contained a typographical error as to the amount of restitution payable by the Applicant and noted the correct figure was \$12,277.25 (which was not disputed by the Applicant). She further noted that a probation order imposed by Court only expires on June 6, 2006. Ms. Cohn then read into the record the following five criminal charges brought against the Applicant, which read as follows:

(1) on or about the, 06, __day of June, 2001 at the Cjty of Toronto
le ou vers le jour de

In the said region
Dans ladite region

knowing that a document was forged, did cause Sheila ACERET to act upon a forged document, to wit a Province of Ontario driver's licence, application form in the name of. Eleftheria MEIMAROGLOU as if it were genuine contrary to section 368 (1)(b) of the Criminal Code of Canada.

2) AND FURTHER THAT, Narjess AGHASHAHI, [date of birth deleted], of [address deleted], Markham, Ontario, on or about June 7, 2001 knowing that a document was forged, did cause Cherish DEMOURA to act upon a forged document, to wit a Province of Ontario driver's licence application form in the name of Eleftheria MEIMAROGLOU as if it were genuine contrary to section 368(1)(b) of the Criminal Code of Canada.

3) AND FURTHER THAT, Narjess AGHASHAHI, [date of birth deleted], of [address deleted], Markham, Ontario, on or about December 11, 2001 did by a false pretence obtain credit in the name of Eleftheria MEIMAROGLOU from Canadian Imperial Bank of Commerce in the amount of \$5000.00 contrary to section 362(1)(b) of the Criminal Code of Canada.

4) AND FURTHER THAT, Narjess AGHASHAHI, [date of birth deleted], of [address deleted], Markham, Ontario, on or about January, 2002 did by a false pretence obtain credit in the name of Eleftheria MEIMAROGLOU from Canadian Imperial Bank of Commerce in the amount of \$5000.00 contrary to section 362(1)(b) of the Criminal Code of Canada

7) AND FURTHER THAT, Narjess AGHASHAHI, [date of birth deleted], of [address deleted], Markham, Ontario, on or about October 21, 2002 did by a false pretence obtain credit in the name of Eleftheria MEIMAROGLOU from TD Canada Trust in the amount of \$500.00 contrary to section 362(1)(b) of the Criminal Code of Canada.

The Applicant, according to the further testimony of Ms. Cohn, plead guilty to the above charges and was found guilty in respect thereof on June 7, 2005. It is these convictions that are contained in the CPIC report. In addition to these five convictions, there is also a further conviction registered against the Applicant on August 18, 2003, for the obstruction of a Peace Officer. Ms. Cohn stated that in relation to the charges of uttering forged documents and obtaining credit by false pretenses, OMVIC requested details from the Applicant, but none was received. Only after further requests to the Applicant did she send OMVIC a letter which OMVIC received on January 17, 2006 and which in no way answered the enquiries made by OMVIC.

The Testimony of Narjess Aghashahi (the "Applicant")

The Applicant stated in her testimony that she considers herself to be a good salesperson and she would like to be given the opportunity by OMVIC by registering her as a motor vehicle salesperson. She stated that "charges are a big mistake which now hold her back". She did not dispute the charges or convictions registered against her and which were referred to in the CPIC report. She conceded that she signed and completed her application to OMVIC and that she understood questions 6 and 9 therein.

She also stated that due to a complaint by creditor Amex Bank addressed to her Trustee in Bankruptcy, there is no automatic discharge of the bankruptcy order and that she is now required to appear in court at an enquiry in July 2006. In conclusion, she stated that she entered Canada using a "false passport" which she knew was false.

FACTS FOUND PROVEN

The following are the facts found proven by the Tribunal:

1. The Applicant, on October 24, 2005, completed and signed an application for registration as a salesperson under the Act and submitted it to OMVIC on November 21, 2005.
2. In completing the application, the Applicant disclosed that she had been involved in personal bankruptcy proceedings but failed to provide details or an explanation as requested in the application despite promising to provide same to OMVIC.
3. In completing the application, the Applicant disclosed that she had been found guilty of offences but despite such question requiring a list of charges and/or convictions and circumstances surrounding such charges and convictions, the Applicant failed to provide the requested details despite promising to provide same to OMVIC.
4. The Applicant, at the time of signing the application, was under bankruptcy protection and had disclosed to her Trustee in Bankruptcy that she owed fourteen creditors \$69,300.00. Eleven of such creditors were listed by the Applicant as commercial banks and being owed some \$65,000.00.
5. At date of the hearing, the Applicant remains an undischarged bankrupt.
6. On March 3, 2005, the Applicant plead guilty to and was found guilty of two charges of uttering forged documents contrary to section 368 of the Criminal Code of Canada; in addition, on March 3, 2005, the Applicant plead guilty to and was found guilty of three charges of obtaining credit by false pretences contrary to section 362(1)(b) of the Criminal Code of Canada, and on August 18, 2003, was found guilty of obstructing a peace officer contrary to section 129 of the Criminal Code of Canada.

REASONS FOR DECISION

The legislation applicable to this matter has been set out in this decision under the heading "Background" and there is no necessity to repeat the relevant sections of the Act. The onus of proof rests with the Registrar to satisfy the Tribunal that he has reasonable grounds for his belief that the Applicant is not entitled to registration by the Registrar having regard to the Applicant's financial position. Furthermore, the past

conduct of the Applicant affords reasonable grounds for belief that he Applicant will not carry on business in accordance with law and with integrity and honesty.

The test the Tribunal should apply to the facts of this case is that test enunciated by the Divisional Court in the case of *Brenner v. Ontario (Registrar of Motor Vehicle Dealers and Salesman)* [1983] O.J. No. 1017, which reads as follows:

The proper question at the rehearing remains however, whether the past conduct of the applicant affords reasonable grounds for belief that he will carry on business in accordance with law and with 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 case of *Ontario (Registrar, Motor Vehicles Dealers Act) v. Shine Car*, 40M.V.R. (4th) 86, the Divisional Court added that:

Brenner must be read carefully. It does not establish a rule that the Registrar must be shown to be wrong in having concluded that there was reason to doubt that the registrant would carry on business inappropriately. The Tribunal approaches the matter uninhibited in any way by the Registrar's view.

The grounds for the Registrar's refusal are threefold namely:

- the Applicant's criminal convictions.
- the Applicant's bankruptcy
- the Applicant's failure to make full disclosure to the Registrar of her criminal convictions and bankruptcy.

The above grounds are analysed hereunder

THE APPLICANT'S CRIMINAL CONVICTIONS

The five convictions under the Criminal Code of Canada that have been registered against that Applicant are recent in time, being registered exactly one year ago. All five matters that lead to charges and subsequent convictions took place commencing June 2001. Two of those charges and convictions relate to forgery and uttering and the other three charges and convictions relate to obtaining credit from the Canadian Imperial Bank of Commerce and TD Canada Trust. The offences are of a serious nature, are by no means isolated events but on the contrary were ongoing from June 2001 until October 2002.

Each and every one of the offences involved fraud, which equates to deceit. This deceitful conduct reflects a lack of integrity and honesty on the part of the Applicant, quite apart from being acts that are contrary to law. There is nothing, save the Applicant's own words during her testimony, to show or lead the Tribunal to believe that she will not repeat this conduct in the future. Too little time has passed since the

commission of the events to lead the Tribunal to believe that the Applicant will not repeat these actions in the future. Of additional concerns to the Tribunal, was the testimony of the Applicant, under questioning, that she entered Canada on a false passport, well knowing it to be false.

The conduct of the Applicant as evidenced by her record does nothing to inspire confidence in the Tribunal that she will not once again stray beyond the bounds of legality and honesty and integrity. Bearing in mind that the Act is a consumer protection statute and that there is both a duty and an obligation on the Registrar to protect the public in their dealings with members of the motor vehicle industry, the Tribunal believes the Registrar, having regard to the recent ongoing past conduct of the Applicant, is correct in his belief that the Applicant will not in the future carry on business in accordance with law and with integrity and honesty.

THE APPLICANT'S FINANCIAL POSITION

The Applicant is an undischarged bankrupt and has incurred large debts which are now irrecoverable by her various creditors. In the Applicant's Statement of Affairs and the information she supplied to her Trustee in Bankruptcy, she stated that gambling is the reason for her financial difficulty. No evidence or reference to this aspect was made by the Applicant in her testimony nor whether she is presently dealing with this situation or whether she is still gambling.

The large amounts of debt incurred by the Applicant over a relatively recent and short period of time on various credit cards issued to the Applicant by commercial banks produce a feeling of unease and concern by the Tribunal that the Applicant has been financially irresponsible having regard to the present financial position in which she finds herself. The Tribunal finds no comfort and little belief that the Applicant will be more responsible in the future in regard to financial matters. The Applicant failed to place any information or evidence before the Tribunal that in the future she can reasonably be expected to be financially responsible in the conduct of business. The Tribunal accordingly believes that the Registrar does have reasonable and realistic concerns regarding expectations of the Applicant's future financial responsibility. Having regard to the terms of the Act and the obligations and duties imposed upon the Registrar, the Tribunal finds he is correct in his belief that the Applicant will not in the future be financially responsible in the conduct of business.

THE APPLICANT'S FAILURE TO MAKE FULL DISCLOSURE

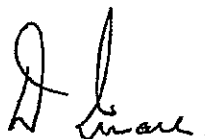
There is no doubt that the Applicant failed to make full and proper disclosure as required of her when answering questions 6 and 9 on her application. The Tribunal does not believe, nor does it find, that the Applicant was motivated in this regard by an intention to mislead the Registrar. After all, the Applicant did make some disclosure, albeit not full. The Tribunal believes that as indicated by the Applicant in her letter to OMVIC (Exhibit 4, tab B), she did not really know how to give a full explanation and disclosure of the charges brought against her.

The fact that she was tardy in giving details is insufficient to justify sanctions being imposed against her. The Tribunal does however not condone her tardiness and lack of full openness with the Registrar. Accordingly, on this ground only, the Tribunal finds against the Registrar as the facts do not afford him reasonable grounds for belief that the Applicant will not carry on business in accordance with law and integrity and honesty.

DECISION

Accordingly, pursuant to the authority vested in it by section 7.(4) of the *Motor Vehicle Dealers Act*, the Tribunal directs the Registrar to carry out his Proposal dated January 31, 2006, to refuse the registration of Narjess Aghashahi, as a salesperson under the Act.

LICENCE APPEAL TRIBUNAL



Derek Israel
Vice-Chair

RELEASED: June 8, 2006

File name: 3410.mvda.Aghashahi.doc

The hearing was recorded. Transcripts can be made available at your expense. The period to appeal a decision to the Superior Court of Justice or Divisional Court 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, will also be posted on the Licence Appeal Tribunal's website <http://www.lat.gov.on.ca/> in approximately two weeks time. The decision will also be available on Quicklaw at a later date.