

**Licence  
Appeal  
Tribunal**

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**Tribunal  
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December 14, 2007

**MEMORANDUM**

***Re: Hilry H. Neale 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:**

Jim Hamilton, Agent for Applicant  
Aviva Harari, Counsel for OMVIC

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HILRY HILTON NEALE

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

TO REFUSE REGISTRATION

TRIBUNAL: DONALD BENNINGER, Presiding Member

APPEARANCES: JIM HAMILTON, Agent, representing the Applicant

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

DATE OF HEARING: November 9, 2007 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 June 29, 2007, proposed to refuse the registration of Hilry Hilton Neale (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 disentitlement to registration under the Act. Therefore, the Registrar is unwilling to register Hilry Hilton Neale under the *Motor Vehicle Dealers Act*.

## PARTICULARS

The reasons for this proposal are:

1. On or about May 10, 2007 Hilry Hilton Neale ("Neale") applied for registration as a motor vehicle salesperson. He proposes to work for Evans Ford Lincoln Inc.
2. 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 an absolute discharge has been ordered),  
Neale answered, "yes", indicating:  
"06/99 I was found guilty of fraud over \$5,000. I was placed on 12 months probation."
3. A criminal record search revealed Neale has engaged in conduct which resulted in the following convictions:  

May 29, 1990	Assault with a Weapon
October 20, 1992	Conspiracy to Commit an Indictable Offence
October 23, 1996	Conspiracy to Violate US Immigration Law
June 21, 1999	Fraud Over \$5,000.00 (x2)
June 23, 1999	Fraud Over \$5,000.00
4. A criminal record search revealed Neale has engaged in conduct which resulted in the following charges:  

May 24, 2006	Utter Forged Document
	Fraud Over \$5,000.00
	Theft Over \$5,000.00

The evidence presented to the Tribunal by the Registrar consisted of documentary evidence as well as the oral testimony of Christopher White and Laura Halbert.

The Applicant did not submit any documentary evidence other than the Notice Of Appeal, and gave oral testimony on his own behalf.

## EVIDENCE

Police Constable Christopher White, Toronto Police Services was sworn and testified that two years ago, while he was with the fraud squad, he was the detective assigned to investigate the Applicant's case, after the initial complaint was received from the Bank of Nova Scotia. He testified that he was familiar with the Applicant as he had called him to come to the police station to be charged and he had prepared the information regarding the three most recent charges. The witness stated he is no longer the case manager for the Applicant's case as he has left the fraud squad. However, he was aware that the three charges had gone to court recently and that they were adjourned for a pre-trial hearing.

The witness testified that during his investigation of this complaint, he found that the Applicant had a bank account since 1997 at the branch where he cashed a fraudulent cheque. He stated the Applicant went to the bank in February 2006, and gave the cheque for \$18,000.00 to the teller, who sought approval from another person to deposit the

cheque, as it was an amount that required another person's authority. They checked that the account of the payer had sufficient funds as the account was in the same branch. When they found there were sufficient funds to cover the cheque they deposited it in the Applicant's account.

P.C. White testified that before the subject cheque was deposited the Applicant's account was overdrawn by \$1987.21.

During the next four days, the Applicant withdrew or debited his account in the amounts of \$1800.00, \$2730.00, \$1247.99 and \$1000.00. P.C. White stated that the payer of the cheque advised the bank that payment was stopped; that the Applicant had never worked for them, and that they had never written a cheque to the Applicant. He stated that the bank authorities then reported to the police that the cheque was a forgery. He stated that the loss to the bank was \$8963.00 and that when he spoke to the bank officials in July 2007, the Applicant had not made any restitution.

On cross-examination the witness testified that the Applicant came to the station on his own, when called by the police. He stated the Applicant said "he felt he was a victim and he looked forward to his day in court".

P.C. White testified the Applicant did not tell him at the police station that another person had given him the subject cheque for any services he had rendered. He concluded his testimony by stating that the Applicant never did plead guilty.

The next witness called by the Registrar was Laura Halbert who was affirmed and testified that she had been employed as the Director of Compliance for OMVIC since 1997. She stated that 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 and that she was familiar with the proposal to refuse registration of the Applicant dated June 29, 2007.

The witness reviewed the Notice of Proposal dated June 29, 2007, signed by the Registrar and testified that the concern of the Registrar was the Applicant's criminal background and the issues not disclosed which were, for the most part, economic in nature.

The witness reviewed the Applicant's application, testifying that the answer to question number three which asks, "Have you ever had a commercial, professional or business registration, certification or licence of any kind refused, suspended revoked or cancelled, or are you currently involved in such proceedings? If yes, please provide details" was answered incorrectly when the Applicant indicated "no". She stated that the accurate, honest response would have been "yes," as the Applicant did have his licence revoked by the Ontario Security Commission for defrauding clients.

The witness testified that in this case the Applicant's application for registration as a motor vehicle salesperson shows question #9, having to do with criminal charges and convictions,

as being answered "yes," with a brief and incomplete explanation on the application, but it did not match the Applicant's criminal history or reflect the outstanding charges before the courts, as revealed by CPIC.

Ms. Halbert testified that when the Registrar requested further particulars regarding the Applicant's criminal history the Applicant provided a partial explanation of his three fraud convictions and his need to declare bankruptcy, but he still did not include his total criminal history with appropriate details as required. She stated he also did not disclose his three 2006 charges that are still before the courts.

The witness testified that this non-disclosure was self-serving and since this is a public protection statute, it is essential to declare truthful answers. She stated the application is viewed by the Registrar as the first test of an aspiring applicant's honesty, integrity and ability to act within the law.

She testified that given the Applicant's lack of disclosure of his serious criminal history and recent charges led 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 agent for the Applicant called the Applicant to testify on his own behalf.

The Applicant was sworn and testified that he went to the dealership to buy a vehicle, and was asked if he wished to be a motor vehicle salesperson. He stated that he was already in furniture sales and had no desire to sell vehicles but, when asked again, he decided to leave furniture sales and become a motor vehicle salesperson. He testified that this was in May 2007.

The Witness stated he told the dealership about his bankruptcy and his three convictions for fraud.

He testified he did not believe he had to declare his other criminal record as he was told by someone at OMVIC, when he was applying for the appeal, that he needed to declare those convictions that are "economic in nature". Since his other convictions were not related to economic situations he did not include them. He did not know the name of the person he spoke to at OMVIC. On cross-examination, he advised the Tribunal that this conversation with someone from OMVIC did not take place while he was completing his application for registration but, instead, while he was preparing for the appeal.

The Applicant testified that he did not deliberately leave the other convictions off and he thought OMVIC staff would find out the details when they did his criminal record search. He had no explanation to offer for leaving out details in his follow-up letters to OMVIC or for not declaring that he has charges of uttering forged document, fraud over \$5,000.00, and theft over \$5,000.00, presently before the courts.

The Applicant testified that he had done some immigration work for an individual who claimed he won money, and this person gave him the winnings cheque for \$18,000.00 to deposit because he had no identification or bank account, as he was a recent arrival in this country. He stated that this client owed him \$5,000.00 for his services; that he intended to give the balance of the remaining funds from the cheque to his client; and that was the reason for small withdrawals or debits for purchases.

He testified that the services he provided for his client were that of an advocate and completing paper work related to immigration.

On cross-examination, the Applicant testified that he had been previously employed at the Securities Commission, and at an insurance organization, and that he held dual registration. He testified that he was not registered as an immigration consultant as he knew when registration of such practitioners became the law, he would not meet the requirements. When questioned further he stated he worked for a company but put the payment from his client in his and his wife's personal account.

During cross-examination, the Applicant agreed that he had not provided complete information regarding his criminal history or his current charges before the Court to the Registrar. He stated he thought he might have a pardon for some previous convictions but he had no pardon certificate or paperwork to present to the Tribunal.

On cross-examination, when asked if he had paid restitution to one of the victims of his fraud, he stated that he had not. In addition, he stated that he had not paid any restitution related to his charges presently before the court to the bank because the Crown told him not to do that until later.

At the conclusion of his testimony the Applicant stated he did not intend to mislead the Registrar.

## 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;

## **FACTS FOUND PROVEN**

The facts found proven by the Tribunal are as follows:

1. Hilry Hilton Neale ("the Applicant") applied for registration as a motor vehicle salesperson on or about May 10, 2007. He proposed to work for Evans Ford Lincoln Inc.
2. The Applicant was convicted of criminal offences from 1990 to 1999. These convictions resulted from charges as follows: Assault with a weapon, Conspiracy to Commit an Indictable Offence, Conspiracy to Violate US Immigration Law, and three charges of Fraud over \$5,000.00.
3. The Applicant is currently before the Courts on three charges that are economic in nature, namely, Utter Forged Document, Fraud Over \$5,000.00 and Theft Over \$5,000.00.
4. The Applicant had his registration revoked by the Ontario Securities Commission for conduct that led to criminal convictions.
5. The Applicant did not fully disclose his criminal history.
6. The Applicant did not disclose that he had his registration revoked by the Ontario Securities Commission.
7. The Applicant did not disclose his recent conduct that has resulted in him currently being before the Courts.
8. The Applicant has not paid any restitution related to his current charges to the bank, or to one of his previous victims.

## **APPLICATION OF LAW TO FACTS**

The Tribunal must 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, and with honesty and integrity.

The governing legislation has, as its primary purpose, consumer protection. The legislature, to that end, 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 is 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.

In the present case, the Applicant's application for registration as a motor vehicle dealer was refused on the basis of his failure to disclose a past criminal record, and failure to disclose that he was currently before the Courts on economic related charges, as well as failure to disclose that he had his registration with the Ontario Securities Commission revoked.

The Applicant, in his testimony, did not dispute his previous convictions. Although the Applicant stated he had applied for a pardon from some of his earlier convictions, he provided no persuasive credible proof, evidence or explanation to the Tribunal that the pardon was forth coming. The Applicant testified that he did not intend to conceal information from the Registrar but when offered a chance to declare his total criminal history, he chose to conceal vital information for self-serving purposes. 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 Applicant in this case checked "no" in the answer box for question # 3 but the honest answer was "yes" as proven in cross-examination. The fact that the Applicant's registration with the Ontario Securities Commission was recently terminated must have been readily recalled by the Applicant when he was applying for registration as a motor vehicle salesperson and when asked this question. Thus, he should have answered this question truthfully.

In this case, the Applicant responded checking the "yes" box to question # 9. However, he did not include all his convictions or sufficient detail for the Registrar in the additional explanation he provided. When the Applicant was requested to provide further details he chose not to include all his convictions or the fact that he is presently before the Courts on three economic related charges. The Tribunal views these actions as deliberate concealment of information.

The Applicant could not provide any credible explanation for the total amounts that were taken from the bank account after he deposited the fraudulent cheque.

The Applicant did not convince the Tribunal that he had applied for a pardon for his earlier convictions, as he could not remember the dates of application or provide the Tribunal with any related documentation.

The Applicant, by his own testimony, stated he did not pay restitution to one of the previous victims of his criminal activity. In addition, even though he has used monies defrauded from the bank, he has not paid any restitution and appears not to accept responsibility for his conduct.

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, provides reasonable grounds to believe that the Applicant would not carry on business as a salesperson with honesty, integrity and in accordance with the law.

## 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 June 29, 2007 to refuse the registration of Hilry Hilton Neale as a motor vehicle salesperson under the Act.

### LICENCE APPEAL TRIBUNAL

  
Donald Benninger, Member

*Released: December 14, 2007*

Filename: 4284.mvda.neale.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/> within three weeks. The decision will also be available on Quicklaw at a later date.