

**Licence
Appeal
Tribunal**

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February 15, 2008

MEMORANDUM

**Re: Tammy Ruth Volpe and Tammy's Auto Sales Ltd. and Tammy's Auto Sales
Ltd. (Branch)
v.
Registrar, Motor Vehicle Dealers Act**

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

DISTRIBUTION LIST:

Tammy Ruth Volpe, representing herself and the corporate Applicants
A. Michael Rothe, Counsel for OMVIC

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TAMMY RUTH VOLPE AND TAMMY'S AUTO SALES LTD. AND TAMMY'S AUTO SALES LTD. (BRANCH)

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

TO REVOKE REGISTRATIONS

TRIBUNAL: ELIZABETH L. SPROULE, Vice-Chair

APPEARANCES: TAMMY RUTH VOLPE, representing herself and the corporate Applicants

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

DATE OF
HEARING: January 14, 2008

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 7 of the *Motor Vehicle Dealers Act* (the "Act"). The Proposal dated August 29, 2007, sets out the Registrar's reasons for proposing to revoke the registrations of Tammy Ruth Volpe (the "Salesperson"), Tammy's Auto Sales Ltd. (the "Dealer"), and Tammy's Auto Sales Ltd. (Branch) (the "Branch"), as follows:

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 continue to register Tammy Ruth Volpe, Tammy's Auto Sales Ltd., and Tammy's Auto Sales Ltd. (Branch) under the *Motor Vehicle Dealers Act*.

The particulars upon which the Registrar relies are stated in the proposal, as follows:

1. On or about July 23, 2001 Tammy's Auto Sales Ltd. (the "Dealer"), was registered as a motor vehicle dealer.
2. On or about March 15, 2007 Tammy's Auto Sales Ltd. (Branch) (the "Branch"), was registered as a motor vehicle dealer.
3. On or about July 23, 2001 Tammy Ruth Volpe ("Volpe") was registered as a motor vehicle salesperson. At all material times Volpe is the sole officer and director of the Dealer and the Branch.
4. On the June 30, 2003 application to renew registration as a salesperson question 1(a) asks:
"Are there currently any charges pending or has the applicant ever been found guilty or convicted under any law?"

Volpe said "no"

5. On the June 30, 2003 application to renew registration as a dealer question 1(a) asks:
"For the purpose of this application the applicant means the sole proprietor, each partner of a partnership or each officer or director of a corporation, or the corporation.
Are there any charges pending or has the applicant ever been found guilty or convicted under any law?"

Volpe on behalf of the Dealer said "no"

6. On the July 4, 2005 application to renew registration as a salesperson question 1(a) asks:
"Are there currently any charges pending or has the applicant ever been found guilty or convicted under any law?"

Volpe initially failed to answer and later said "no"

7. On the July 4, 2007 application to renew registration as a salesperson question 1(a) asks:
"Are there currently any charges pending or has the applicant ever been found guilty or convicted under any law?"

Volpe initially failed to answer and later said "no"

8. On the July 4, 2007 application to renew registration as a dealer question 1(a) asks:
"For the purpose of this application the applicant means the sole proprietor, each partner of a partnership or each officer or director of a corporation, or the corporation. Are there any charges pending or has the applicant ever been found guilty or convicted under any law?"

Volpe on behalf of the Dealer initially failed to answer and later said "no"

9. On the March 7, 2007 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). If yes, list all charges and/or convictions and the circumstances surrounding each (attach additional sheets if necessary)."

Volpe said "no".

10. A criminal record search found that Volpe engaged in conduct which resulted in the following criminal convictions:

Fraud Under \$5,000 (X7) April 16, 2002

11. The Dealer, Branch and Volpe have failed to comply with the Act and in particular with section 5.

The Applicant gave the following reason, in the Notice of Appeal form, for appealing the Registrar's Proposal:

1. I have not been charged with any criminal conduct.

In this decision, "Applicant" refers to Tammy Ruth Volpe as director of Tammy's Auto Sales Ltd. and Tammy's Auto Sales Ltd. (Branch), and "Applicants" refers to all three Applicants.

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 evidence presented by the Applicants consisted of the oral testimony of the Applicant.

The following is a summary of the relevant testimony.

Mary Jane South

Ms. South testified that she is the Deputy Registrar, *Motor Vehicle Dealers Act*.

Ms. South reviewed the individual and dealer renewal applications signed and submitted to the Ontario Motor Vehicle Industry Council ("OMVIC") by the Applicant in June 2003, July 2005, March 2007 and July 2007 (a total of six documents). She also reviewed the business application for the Branch dealership submitted in March of 2007. With this later application, the Applicant submitted a summary of a police check indicating there were no records. The Branch application triggered a search for convictions, which revealed that the Applicant had pleaded guilty, and was convicted of, seven counts of fraud under \$5,000 on April 16, 2002. These convictions had never been disclosed by the Applicant on any of the documents submitted to OMVIC.

According to the court documents obtained by OMVIC, and referred to by Ms. South, the Applicant was convicted on seven charges, fined \$700.00, ordered to pay restitution in the amount of \$2,719.50 and given two years probation. The restitution order was paid in full on June 27, 2002, by the law firm who had appeared on behalf of the Applicant at the criminal proceedings. A copy of the solicitors' letter enclosing the payment was filed with the court and stated as follows, "Please find enclosed a cheque in the amount of \$2,719.59 with respect to the restitution payment from Tammy Volpe".

Ms. South testified that, according to the ICON search OMVIC carried out, \$650.00 of the Applicant's fines remain unpaid. She made reference to a copy of an "Application for Change of Terms and Conditions of Fine Order" completed by the Applicant in October 2002, and filed with the court. In this application, the Applicant was asked to fill in the date of her "conviction", which she correctly did, and to identify her "offence", which she also did, namely "fraud".

It was Ms. South's evidence that in response to a request by OMVIC for particulars of her criminal record, the Applicant provided a hand written letter, dated June 26, 2007, which included the following statements:

This is a letter to explain what is on my criminal record and why in 2004 I worked at <name of company deleted> and was fired from my job. They accused me of doing false returns. This was not me but later found out it was another associate. Who was later charged. I am currently working with my lawyer <name of lawyer deleted> to get this removed from my record. ...Since I am just getting the information in regards to this matter for the application. It will take a couple of days to get the letter from my lawyer.

The lawyer referred to by name in the above letter was one of the two solicitors, both of the same firm, who had appeared on the Applicant's behalf in the criminal proceedings, and had paid the restitution ordered in June of 2002. It was Ms. South's evidence that no letter of explanation was ever received from the Applicant's solicitor.

The Registrar's position is that the nature of the Applicant's convictions and her repeated failure to disclose these convictions suggest a lack of honesty and raises serious concerns regarding her governability.

The Applicant

It was the Applicant's evidence that until she received notice from OMVIC of the criminal charges, she "did not know about it". She stated that she has paid \$50.00 towards the fines but she has never seen a probation officer. She testified that the Branch has closed down, that she has a lot on her plate and would hate to lose the dealership.

In cross-examination, the Applicant testified that she recollects being called to a police station and being advised that charges could be laid. She acknowledged that the charges related to a previous employer, and that she had been fired as a result. However, she testified that she did not know that a lawyer had appeared on her behalf at criminal proceedings. She testified that she herself never went to court. She confirmed that she knew that she had to pay fines, acknowledged that she had completed a form asking for an extension to pay those fines, and further acknowledged that the fines have not been paid. However, it was the Applicant's evidence that she had not assumed the fines meant convictions. It was her evidence that she did not know about the restitution order and has no knowledge about it being paid, nor who instructed the lawyer. Although the Applicant makes reference to this individual as "her lawyer" in her letter of June 2007, it was her oral evidence that she did not know of him until she received information about the charges from OMVIC in April 2007.

FACTS FOUND PROVEN

1. The Applicant is the sole director of the Dealer and the Branch.
2. The Applicant pled guilty to, and was convicted of, seven counts of fraud on April 16, 2002.
3. The Applicant had knowledge of her convictions.
4. The Applicant's repeated failure to disclose her convictions to OMVIC was intentional.

LAW

The *Motor Vehicle Dealers 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 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; or...
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.

APPLICATION OF THE LAW TO THE FACTS

The issue before the Tribunal is whether the past conduct of the Applicants affords reasonable grounds to believe that they will not carry on business in accordance with the law and with honesty and integrity.

The evidence before the Tribunal is that the Applicant was charged with fraud and pled guilty to seven counts in April of 2002. Although difficult to believe, it may be possible that the Applicant did not attend any court proceedings, and it also may be possible that she was never contacted by a probation officer. However, in an "Application for Change of Terms and Conditions of Fine Order" completed by the Applicant herself in October of 2002, she provided the date of her conviction and identified her offence as "fraud". This is clear evidence to the Tribunal that the Applicant was well aware that she was convicted of fraud in April of 2002.

Her testimony during these proceedings that she did not know that she had convictions, that a lawyer unknown to her, at the time, made numerous court appearances, pled guilty on her behalf and paid the restitution ordered, all without her knowledge or instruction, is simply not credible and is rejected by the Tribunal. The Tribunal finds the Applicant had knowledge of her fraud convictions and given the clear wording of the OMVIC forms' questions as to what had to be disclosed and the consequence for failing to disclose, the Tribunal concludes that her omissions were intentional and not simply mistakes.

The Tribunal notes that despite acknowledging having a criminal record in her letter to OMVIC in June of 2007, the Applicant still stated in the Notice of Appeal, filed in September of 2007 with this Tribunal, that she "has not been charged with any criminal conduct". In the Tribunal's opinion, this demonstrates an amazing persistence to ignore or deny the truth.

In conclusion, the Applicant's seven convictions for fraud, her failure to be forthright and truthful regarding her convictions to OMVIC, her false statement in her Notice of Appeal to this Tribunal, and her incredible testimony before this Tribunal, provides ample and reasonable grounds to conclude that she is not an honest individual and will not carry on business with honesty and integrity and in accordance with the law. Given that the Applicant is the sole director, and thereby the directing mind of each of the corporate Applicants, the Tribunal reaches the same conclusion with regard to the corporate Applicants.

DECISION

Accordingly, pursuant to the authority vested in it by Section 7. (4) of the Act, the Tribunal directs and orders the Registrar to carry out his Proposal of August 29, 2007, to revoke the registration of Tammy Ruth Volpe, as salesperson, and Tammy's Auto Sales Ltd. and Tammy's Auto Sales Ltd. (Branch) as motor vehicle dealers under the Act.

LICENCE APPEAL TRIBUNAL


Elizabeth L. Sproule, Vice-Chair

RELEASED: February 15, 2008

FILE NAME: 4394.mvda.Tammy Ruth Volpe et al.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 www.lat.gov.on.ca in three weeks time. The decision will also be available on Quicklaw at a later date.