

**Licence
Appeal
Tribunal**

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March 27, 2008

MEMORANDUM

Re: Christopher Boyer 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:

Christopher Boyer, the Applicant
Michael Rothe, Counsel for the Respondent

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CHRISTOPHER BOYER

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

TO REFUSE REGISTRATION

TRIBUNAL: SHU-TAI CHENG, Vice-Chair

APPEARANCES: NO-ONE was present for the Applicant

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

DATE OF HEARING: January 30, 2008 Ottawa

REASONS FOR DECISION AND ORDER

BACKGROUND

This hearing arises from a written Notice of Proposal (the "Proposal") dated September 20, 2007, issued by the Registrar under the *Motor Vehicle Dealers Act* (the "Act") to refuse the registration of Christopher Boyer (the "Applicant") as a motor vehicle salesperson under the provisions of the Act.

PRELIMINARY MATTERS

The Applicant was not present at the start time of the hearing, at 9:30 a.m. Phone calls were made to the Applicant's home and work telephone numbers by Counsel for the Registrar and the Tribunal's staff member. The Applicant could not be reached despite at least five attempts.

This Tribunal agreed to a grace period until 11:00 a.m. in order for these attempts to contact Mr. Boyer to be conducted. At 11:15 a.m., Counsel for the Registrar made a motion that this hearing should proceed forthwith in the Applicant's absence.

After hearing Counsel's submissions and consideration of all the circumstances, this Tribunal decided that this hearing would proceed at 1 p.m. with or without the Applicant being present. The reasons for this decision include but are not limited to the following:

1. The Applicant was notified of the hearing date on October 17, 2007, by facsimile transmission to his work fax. This was confirmed by a transmission confirmation report and a call to his workplace to verify the work fax number;
2. The Notice of Hearing clearly states "upon failure to attend at the aforesaid time and place, the Tribunal may make a Decision in your absence and without further notice to you";
3. The Applicant did not request an adjournment, in accordance with the Tribunal's Rules of Practice. Although the Applicant was not spoken with directly, numerous attempts were made to contact him and messages were left for him; and
4. Both Counsel for the Registrar and its one witness, the Deputy Registrar of OMVIC, had travelled from out of town and stayed overnight in Ottawa in order to attend at the hearing.

This Tribunal advised of its decision on this motion prior to 12 noon. The Applicant did not contact the Tribunal, request an adjournment, or appear in person by 1:00 p.m., and the hearing of this matter proceeded in his absence.

It is noted that the Applicant sent a handwritten note by fax at 3:27 p.m. requesting an adjournment "until a later date". The reasons given by the Applicant were "I mixed up the time and date an [sic] thought it was next week. The weather today was also not in my favor." The hearing of this matter had been completed well prior to the time of the Applicant's faxed note.

ISSUES

The Registrar bases his proposal to refuse the Applicant's registration on section 5(1)(b) of the Act, which reads as follows:

5. (1)(b) An applicant is entitled to registration or renewal of registration by the Registrar except where the past conduct of the applicant affords reasonable grounds for the belief that the applicant will not carry on business in accordance with law and with integrity and honesty;

In support of the Proposal, the Registrar furnishes the following particulars:

The reasons for this proposal are:

1. On or about March 15, 2007, Christopher Boyer ("Boyer") applied for registration as a motor vehicle salesperson. He proposes to work for Wayne Albert Mayhew o/a Wayne's Auto Sales.
2. On his application to become a registered salesperson, Boyer disclosed the following: Prowl by Night, Breach of Undertaking, Breach of probation x2, Assault (sic) (common) x2 possession (sic) of stolen propertie (sic) under \$5000
3. A criminal record search revealed Boyer has engaged in conduct which resulted in the following findings of guilt:

February 26, 2003 Fail to Comply with Probation Order

May 31, 2004 Resist Arrest
Trespassing at Night
Fail to Comply with Recognizance

November 7, 2006 Assault (x2)
Possession of Property Obtained by Crime (x2)
Fail to Comply with Recognizance

4. Boyer's November 7, 2006 convictions, Possession of Property Obtained by Crime (x2), relate to a motor vehicle
5. Boyer is currently on probation which does not expire until in or around November 7, 2009

The Registrar furnishes the following further and other particulars:

1. On or about October 12, 2007, Boyer was charged with selling motor vehicles without benefit of registration (X5) pursuant to Section 3 of the Act.

THE REGISTRAR'S POSITION

Counsel for the Registrar summarized the position as follows.

The Applicant's conduct affords reasonable grounds for the belief that the Applicant will not carry on business in accordance with law and with integrity and honesty as a result of four principle reasons:

1. The Applicant did not make complete disclosure on his application for registration and the disclosure that was made was misleading;
2. The Applicant's past conduct which resulted in a number of convictions as recent as November 2006 demonstrates the Applicant's inability to act with honesty, integrity and in accordance with the law;

3. The Applicant is currently serving the balance of his probationary period until November 2009, and has not shown a period of positive conduct since the conduct resulting in the convictions; and
4. The Applicant has sold five motor vehicles without benefit of registration and in contravention of the Act.

THE APPLICANT'S POSITION

In the absence of the Applicant, it is reasonable to proceed on the basis that the Applicant continues to seek registration, denies the allegations of the Registrar and relies on the reasons set out in the Notice of Appeal.

EVIDENCE

The evidence of the Registrar consisted of the testimony of Ms. Mary-Jane South, Deputy Registrar of OMVIC, in addition to the documentary evidence.

The following documents were filed as Exhibits at the hearing:

- Exhibit A - Notice of Proposal to Refuse Registration, dated September 20, 2007, and Notice of Further and Other Particulars, dated November 15, 2007;
- Exhibit B - Notice of Appeal of the Applicant, dated October 3, 2007, received by the Tribunal Office on October 9, 2007;
- Exhibit C - Registrar's Book of Documents, received by the Tribunal Office on January 7, 2007;
- Exhibit D - Notice of Hearing and Fax Transmittal Record, dated October 15, 2007;

Ms. South testified that her primary duty as Deputy Registrar is to oversee the registration of salespersons and motor vehicle dealers under the Act and that the Act is a public protection statute.

Ms. South testified that after receipt of an application for registration, a criminal record check is conducted in the normal course. In the case of the Applicant, the record check disclosed convictions that were not listed or described in the application.

The Applicant's application disclosed the following convictions:

1. prowl by night
2. breach of undertaking

3. breach of probation x2
4. common assault x2
5. possession of stolen property under \$5000

The criminal record check disclosed the following additional charges and convictions: one count (and conviction) of resisting arrest in 2004, and one additional charge (and conviction) of possession of property obtained by crime. The check also showed that the Applicant is subject to a probation order relating to the assault and possession convictions until November 2009.

In the normal course, the Registrar also sent a letter to the Applicant's sponsoring employer asking for the circumstances of the Applicant's convictions or charges; a copy of this letter was filed at Tab 6 of Exhibit "C". A response was provided by the Applicant by faxed letter, dated April 10, 2007, a copy of which is at Tab 7 of Exhibit "C". This letter gave a description of the convictions, which the Applicant disclosed on his application but was silent in respect of the additional charges and convictions; it was signed by both Mr. Boyer and his employer. It is noted that, in this letter, the prowl by night and two assaults were described as being in relation to the Applicant's ex-wife and the possession of stolen property conviction was described as being related to a bathtub.

The Registrar obtained copies of court documents in relation to the Applicant's various charges and convictions. These documents were filed at Tabs 8, 9, 10 and 11 of Exhibit "C". These documents state, amongst other things, the following:

- a. The two assault convictions resulted from a guilty plea by the Applicant and a probation period of three years, from November 7, 2006, was imposed in relation to each;
- b. The prowl at night conviction resulted from being on the property of one "RH" and not on the Applicant's ex-wife's property; the conviction of resisting arrest was a consequence of this activity; an 18 month probationary period and certain conditions were imposed (from May 4, 2004 to November 4, 2005);
- c. The Applicant breached an undertaking and conditions of probation in relation to b.
- d. The Applicant was charged in 2005 of possession of stolen property, namely, "to wit a 1996 Chevrolet truck [...]", the information for this charge was filed in June 2005, the accused was ordered to stand trial in July 2006. The date November 7, 2006, is stamped on this document.

Ms. South testified that the Registrar's conclusion in relation to the Applicant's two convictions of possession of stolen property was that one item was a bathtub (that the Applicant disclosed), and the other item was a motor vehicle (that the Applicant did not disclose). This caused grave concern, given the Applicant's desire to obtain registration as a motor vehicle salesperson.

Also during the process of considering this application, the Registrar conducted searches on the database of the Ministry of Transportation. Ms. South advised that the record relating to any person's driver's license number will show any and all vehicles registered in that person's name and the dates of acquisition and transfer of ownership. In the normal course, a search was conducted using the Applicant's driver's license number. Copies of a number of these enquiries were filed at Tab 12 of Exhibit "C".

Five vehicles were shown to be registered to the Applicant (see pages 40 to 55 of Ex. "C") in late 2006 and early 2007, which caused the Registrar some concern. Each of these vehicles was registered to the Applicant for a short period of time (11 days to 2 months) and was never plated by him. The significance of this, according to Ms. South, is that none of these vehicles were for the Applicant's personal use thereby qualifying for an exemption in relation to its sale to another person. The conclusion of the Registrar upon review of the search results was that the Applicant sold these vehicles and did so without benefit of registration.

As a result, charges were laid against the Applicant in relation to these five vehicles. A copy of the Summons is at Tab 12 of Exhibit "C". Ms. South testified that she does not know at what stage this proceeding is currently but believes that convictions have not yet been entered.

On behalf of the Registrar, Ms. South stated that the Registrar maintains its position on refusing registration to Mr. Boyer. Not only was there nondisclosure of certain convictions, there was insufficient disclosure of others; the recency and pattern of the convictions are concerning; and the Applicant is still subject to probation on the most recent convictions. In addition to the foregoing, the Applicant is charged with violating the very Act under which he seeks registration.

Ms. South also stated, when questioned, that even if the Applicant had disclosed all of his criminal convictions fully and accurately, the Registrar would most likely have refused registration, on the basis that his conduct affords reasonable grounds for the belief that he will not carry on business in accordance with law and with integrity and honesty.

FACTS FOUND PROVEN

This Tribunal accepts the testimony of Ms. South as credible and reliable. It also accepts the documentary evidence filed and proven.

REASONS FOR DECISION

The only issue for determination in this matter is whether the Applicant's past conduct affords reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty.

The onus of proof rests upon the Registrar to prove that the past conduct of the Applicant affords reasonable grounds for the belief that he will not carry on business in accordance with law and with integrity and honesty (*Brenner v. Ontario (Registrar of Motor Vehicle Dealers and Salesmen)* [1983] O.R. No. 1017). The standard of review is "that there are reasonable grounds" on a balance of probabilities *Registrar, (Motor Vehicle Dealers Act) v. Bilal Khan*, 2007 CanLII 12715 (ON S.C.D.C.).

The uncontraverted evidence in this matter is that the Applicant has a significant criminal record and that he did not fully and accurately describe it as required in the application for registration as a salesperson. The Applicant failed to disclose, even after being asked for a written explanation of all charges and convictions, two convictions, one for resisting arrest and one for possession of a stolen motor vehicle.

Although the Tribunal is fully entitled to look at the circumstances giving rise to the criminal charges for the purpose of mitigation, it is not entitled to do so for the purpose of relitigation. It is not open to the Tribunal to go behind a criminal conviction (*Registrar Motor Vehicles Act v. Jacobs*, 2004 CANLII 9450 (ON S.C.D.C.)).

Further, while applying for registration as a salesperson, the Applicant is charged with selling five vehicles without benefit of registration. While charges are not tantamount to convictions, there is credible documentary and viva voce evidence that leads this Tribunal to conclude, on a balance of probabilities, that the Applicant sold motor vehicles without the benefit of registration and in contravention of the very Act under which he seeks registration.

The important principle in matters of this nature is the promotion and safeguarding of the integrity and honesty of salespersons within the motor vehicle industry. To permit the Applicant to be registered as a motor vehicle salesperson in light of the above-described conduct and the fact that he is still on probation sends the wrong message to the public at large.

It is, therefore, the finding of this Tribunal that the Applicant, by virtue of his previous convictions, his nondisclosure of same, and his conduct in the industry since making the application, is ineligible for registration at this time because his past conduct affords reasonable grounds to believe he will not act with honesty and integrity and in accordance with the law.

DECISION

The Tribunal, pursuant to the authority vested in it by section 7(4) of the *Motor Vehicles Dealers Act*, directs the Registrar to carry out his proposal dated September 20, 2007 to refuse the registration of Christopher Boyer as a motor vehicle salesperson under the Act.

COSTS

Counsel for the Registrar requested an order of costs against the Applicant, pursuant to Rules 14.1 and 14.2 of the Rules of this Tribunal. The grounds for this request are Mr. Boyer's non-attendance at the hearing and the necessity of two Ministry employees to attend from out of the town of Ottawa. Counsel relied on the case of *Oshawa Auto Sales*, where there was a previous adjournment and a preemptory order.

Costs are a discretionary matter to be decided upon by the Tribunal taking into consideration all of the circumstances. While this Tribunal agrees that being an unrepresented party does not absolve the Applicant of his responsibility to appear at the hearing, it notes that there were no previous requests for adjournment or resulting orders. In addition, although too late, the Applicant did send a fax letter explaining the reasons for his non-attendance.

This Tribunal makes no order as to costs.

LICENCE APPEAL TRIBUNAL



Shu-Tai Cheng, Vice-Chair

RELEASED: March 27, 2008

FILE NAME: 4499.mvda.White.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 within three weeks. The decision will also be available on Quicklaw at a later date.