

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



MICHAEL G. GOSELIN

APPEAL FROM A PROPOSAL OF THE REGISTRAR
UNDER THE *MOTOR VEHICLE DEALERS ACT* R. S. O.
1990 c. M. 42

TO REFUSE REGISTRATION

TRIBUNAL: HARINDER S. GAHIR, Vice-Chair

APPEARANCES: MILES D. O'REILLY, Q.C., Counsel, representing the Applicant

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

DATE

OF HEARING: April 21, 2008

Toronto

REASONS FOR DECISION AND ORDER

BACKGROUND

This hearing arises out of a Notice of Proposal to Refuse Registration (the "Proposal") dated August 17, 2007, issued by the Registrar under the *Motor Vehicle Dealers Act* (the "Registrar" and the "Act" respectively), to refuse the registration of Michael G. Goselin (the "Applicant") as a Motor Vehicle Salesperson under the Act.

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

The reason given by the Registrar in his Proposal is 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 Applicant'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 Michael Gerard Goselin under the *Motor Vehicle Dealers Act*.

In support of his Proposal the Registrar furnished the following particulars:

- 1) Michael Gerard Goselin (the "Applicant") applied for registration as a motor vehicle salesperson on or about May 18, 2007. He proposed to work for Trans Canada Motors Peterborough Ltd.
- 2) On the application to become a registered salesperson, question 3 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."

The Applicant answered "yes", and attached particulars indicating he had "lost" his licence to trade in securities.

- 3) The Applicant was registered with the Ontario Securities Commission (OSC) from 1998 until 2002.
- 4) On or about November 9, 2001 the OSC initiated proceedings against the Applicant in which it was *inter alia* alleged that the Applicant engaged in conduct contrary to the public interest by:
 - a) selling a security for which no preliminary prospectus was filed with the Commission and no prospectus exemption was available;
 - b) failing to provide his clients' access to substantially the same information that a prospectus filed under the Act would provide;
 - c) misrepresenting to his clients the nature and quality of and the return to be realized on the investments;
 - d) recommending and selling speculative investments unsuitable for his clients;
 - e) engaging in high pressure sales tactics including and advising investors to borrow funds or redeem mutual funds to invest;
 - f) failing to deal fairly, honestly and good faith with, and act in the best interest of his clients;
 - g) abusing his position of trust and took advantage of unsophisticated and vulnerable investors;
 - h) making several misrepresentations to clients;
 - i) selling notes to investors once he was aware that the investments were facing difficulties and failed to pay the promised returns.
- 5) The allegations made by the OSC involved an investment scheme where the Applicant sold \$1.5 million worth of units in North George Capital Limited Partnerships and \$570,000 worth of promissory notes of Lionard Capital Corp. to over 70 Ontario investors and this participated in illegal distribution of a securities and engaged in conduct contrary to Ontario securities law and contrary to public interest.
- 6) On or about November 18, 2002, the Applicant entered into settlement with the Ontario Securities Commission prohibiting him from trading in any securities (other than with respect to his RRSPs) for a period of 20-years. The Applicant was also prohibited from acting as an officer or director of a reporting issuer for 20-years; and the Applicant was reprimanded.
- 7) On or about August 17, 2005 the Applicant was discharged from bankruptcy, of which an assignment was made on April 17, 2002. Included in said bankruptcy was a class action lawsuit that was filed against the Applicant for \$30 million.

The Applicant filed an appeal against the Proposal on September 4, 2007.

THE EVIDENCE

The Registrar's evidence included the Respondent's Book of Documents, which the Tribunal marked as Exhibit 3, as well as the testimony of Laura Halbert. The evidence of the Applicant included reference letters, which the Tribunal marked as Exhibits 4, 5, and 6, the testimony of the Applicant and five character witnesses. The summary of evidence is as follows:

Testimony of Laura Halbert

Ms. Laura Halbert has been the Director of Compliance of the Ontario Motor Vehicle Industry Council ("OMVIC") since its creation in 1997. She testified that OMVIC is a not-for-profit corporation with the mandate to administer the Act and its Regulations.

Ms. Halbert identified the documents contained in Exhibit 3. Explaining the Applicant's conduct as an investment advisor, she testified that he made misrepresentations to his clients. Providing an example of his misrepresentation, Ms. Halbert referred the Tribunal to Exhibit 3, Tab 4, which is a Statement of Allegations of Staff of the Ontario Securities Commission, outlining the Applicant's professional misconduct. The Commission had disciplined the Applicant in November 2001 due to his questionable professional conduct with his dealings with clients. She also referred the Tribunal to Tab 5 of Exhibit 3, which is a settlement agreement between staff of the Ontario Securities Commission and the Applicant. The relevant portion of the agreed Statement of Facts provides as follows:

Acknowledgment

3. Solely for the purposes of this proceeding, and of any other proceeding commenced by a security regulatory agency, Staff and Goselin agree with the facts set out in paragraphs 4 through 23 of this Settlement Agreement.

20. Between August 1995 and February 1998, Goselin sold approximately US\$1.5 million worth of units in the North George Limited Partnership to 52 Ontario investors and approximately \$570,000 worth of Lionaird notes to 19 investors. Many of Goselin's clients were retired or on the cusp of retirement. Many investors had been clients of Goselin for several years and trusted him implicitly.

21. Goselin participated in illegal distribution of a security and engaged in other conduct contrary to Ontario Securities law and public interest by:

- a. failing to deal fairly and in best interest of his clients.

When Goselin started to sell the North George Limited Partnerships units to his clients, he had been registered for seven years. Goselin failed to conduct the appropriate due diligence concerning the nature and quality of the Partnerships and Lionaird investments and requirements of Ontario Securities law relating to their distributions.

Goselin made inquiries only of the principals of the Partnerships and Lionaird, individuals who were in an obvious conflict position. For the most part, Goselin took their representations at face value notwithstanding

discrepancies in the Offering Memoranda, a lack of credible supporting documentation and a logical inconsistency between a "no risk" investment and high rates of return.

Goselin sold the North George Limited Partnerships and Lionard investments without fully understanding the nature of the investments and how they worked.

The Offering Memoranda prepared by the Partnerships and Lionard contained inconsistent statements and did not provide a clear or logical explanation as to how the investment worked and why it was able to generate significant rates of return (in excess of 120% (60% to investors) in case of the Partnerships). He did not provide to certain investors a copy of the Offering Memorandum prior to their purchase. Further, Goselin made statements to his clients which were directly contradicted in the Offering Memoranda.

- b. Representing to his clients:
- (i) that the North George Limited Partnerships and Lionard investments were safe and that an investors' principal was 100% guaranteed notwithstanding, among other things, that the Offering Memoranda stated that the securities were speculative and Lionard Offering Memorandum stated that each note was secured against the assets of the company;
 - (ii) That the North George Limited Partnership investment product was like a GIC;
 - (iii) that all his or her funds could be retrieved on 30 days' (90 days for Lionard) notice notwithstanding, among other things, that the Lionard notes matured in five years and were only redeemable by the company;
-
- c. recommending that investors borrow funds, or mortgage their homes, to invest in the North George Limited Partnerships and/or Lionard;
- d. selling Lionard notes to investors notwithstanding that the North George Limited Partnership were facing difficulties and were failing to pay the promised return, particularly given that the principals and general investment strategy were the same for both investments; and
- e. Recommending and selling investments unsuitable for his clients. Goselin advised clients to transfer and redeem conservative investments to invest in the Partnerships and Lionard. In at least two cases, Goselin paid the redemption fee. Certain elderly clients invested virtually all of their retirement savings/RRSP monies in the North George Limited Partnerships and/or Lionard on the advice of Goselin.

Many of Goselin's clients were financially and emotionally devastated by the loss of their savings. Several of his clients' health suffered because of their resulting anxiety and stress.

22. By selling units in the North George Limited Partnerships and promissory notes of Lionard to clients, Goselin earned commissions and trailer fees (ie monthly or quarterly payments on each client's investment) of approximately \$378,600. The Offering Memoranda stated that no commission were payable.

Ms. Halbert went on to testify that there are a number of parallels between motor vehicle and security regulation. In both instances, the consumers often rely on the salesperson as an expert to explain to them the terms of a contract. It is particularly relevant in case of vehicle leasing contracts. She stressed that the Applicant was an experienced person who knew what he was doing. She further testified that the Applicant was, in the public interest, banned to deal in securities for 20 years, and was officially reprimanded by the Commission. Ms. Halbert went on to state that OMVIC continues to believe that, if the Applicant is registered as a salesperson, he will not carry on his business in accordance with law, and with integrity and honesty. She stressed that registration of the Applicant, if registered, will send a dangerous message to the industry and the public at large.

In cross-examination, Ms. Halbert confirmed that she relied on documents contained in Exhibit 3, and the statements made by the Applicant. She equated the car salesperson with the securities agent. She further testified that potential customers rely on a salesperson with respect to previous history of the vehicle, terms and conditions of the lease contract, which has several pages and a lot of detail. She agreed that she did not have detailed information regarding securities business, and has never personally bought securities; however, she went on to testify that it is more likely that an average person would deal with a car salesperson rather than a securities salesperson.

Testimony of the Applicant

The Applicant is a university graduate. His employment background includes working for Correctional Services, Trans Canada and Bank of Montreal. In 1986, he started working as a mutual funds salesperson until he got disciplined by the OSC in November 2001. Afterwards, he worked with Brampton Cycle as a salesperson for about four years. Presently, he is employed in farm and business consulting.

Explaining his role in the investment fiasco, he testified "we accepted the product and invested our own money. We had our own lawyer and accountant look at the prospectus, and they relied on their positive opinion". He further testified that it was acceptable to rely on the dealer regarding the reliability of the product and the dealer had guaranteed the funds in question. He testified, however, that he did not have expert knowledge or the understanding of the prospectus.

Explaining the fall of the funds, the Applicant testified that when one of the funds he dealt with, "Triple A Financials", fell in value, the people started asking for money back. One of the customers "went public" resulting in the implication of six salespersons. At that point of time, the dealer, when confronted, told the salespeople that the products were not guaranteed and that he had lied. This revelation by the dealer created a lot of anguish among the salespeople. He went on to testify that he retained lawyers to fight the newspapers, and hired agents to find out where the money was. Due to the failing business and expense of defending himself, the Applicant had to declare bankruptcy in 2002. The whole fiasco resulted in a class action lawsuit against the salespeople involved in the sale of the funds. The salespersons did not have insurance to cover this. The Applicant was never accused of any criminal wrongdoing. He went on to testify that due to lack of resources, he could not defend the proceedings initiated by OSC. He had

to choose settlement because he was broke. He testified that he never wanted to put people in risk, and never wanted to be in the position he is in today.

Under cross-examination, the Applicant testified that he has been in and around financial services since 1970. He agreed that his 20 ban is a lifetime ban, which was the result of settlement discussions over several months. He testified that throughout the process, he felt that he was a victim, as he believed the dealer had provided false information regarding the funds.

Explaining his duties as a salesperson, he testified that he would sit down with clients and do a needs analysis. The next step would be to talk about their expectations and his explaining the risks. He would always suggest diversification and a balanced approach, and would recommend the product that would meet the needs of his clients. However, he testified that people have to rely on prospectus, as it is a regulated industry. The information has to be reflected on prospectus or offering memorandum. He agreed with the Registrar's counsel that a salesperson is responsible for conducting his own due diligence.

Testimony of Witness No. 1

Witness No. 1 went to Trent University where he met with the Applicant. The witness earned a Masters degree from York University. He became head of a human resources firm in 2004, and has been an Ombudsman in an aerospace company for the last two years.

He has known the Applicant socially since 1972-73. The witness stated that he did not know the Applicant professionally, but stated that the Applicant is an honest, humorous, fun loving, sincere and totally loyal person. The witness stated that he came to testify as to the Applicant's character as he is full of integrity and the witness totally believes the Applicant. He said that the Applicant might have been naïve his dealings with the dealer.

Testimony of Witness No. 2

Witness No. 2 has known the Applicant for approximately 25-26 years, first socially, and then he invested money with him about 20 years ago. The witness never had any difficulty in his dealings with the Applicant, and he never lost money because of his conduct. He found the Applicant to be a friendly honest person.

Testimony of Witness No. 3

This witness is a retired police officer who spent 31 years in policing. He stated that the Applicant is a relative of his and he has known him for the last 55 years. The witness stated that he purchased some RRSP through the Applicant and the latter is a straightforward and honest person. He went on to state that he felt comfortable dealing with him, and that he invested money in partnership and got his money back. The witness said that he sees the Applicant as an honest, trustworthy and sincere person and has no doubts about his honesty and integrity.

Testimony of Witness No. 4

Witness No. 4 has known the Applicant since childhood, and was his financial planner. He testified that he could not fully understand the "Triple A financials". The dealer with whom the Applicant was associated did not answer his questions regarding the product and therefore, he was not comfortable investing in it. This witness further testified that if the Applicant was in business, today, he would be his client.

Testimony of Witness No. 5

Witness No. 5 also testified that he considered the Applicant to be an honest person.

THE LAW

Section 7 of the *Motor Vehicle Dealers Act* states as follows:

3. (1) No person shall,
 - (a) carry on business as a motor vehicle dealer unless the person is registered under this Act; or
 - (b) act as a salesperson of or on behalf of a motor vehicle dealer unless the person is registered as a salesperson of such dealer and such dealer is registered as a motor vehicle dealer under this Act.

Section 5 of 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; or
 - (c) the applicant is a corporation and
 - (i) having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its business, or
 - (ii) the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty; or
 - (d) the applicant is carrying on activities that are or will be, if the applicant is registered, in contravention of this Act or the regulations.

Subsections 7(1) to (5) of the Act provides as follows:

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.

- (2) A notice under subsection (1) shall state that the applicant or registrant is entitled to a hearing by the Tribunal if the applicant or registrant mails or delivers, within fifteen days after service of the notice under subsection (1), notice in writing requiring a hearing to the Registrar and the Tribunal, and the applicant or registrant may so require a hearing
- (3) Where an applicant or registrant does not require a hearing by the Tribunal in accordance with subsection (2), the Registrar may carry out the proposal stated in the notice under subsection (1).
- (4) Where an applicant or registrant requires a hearing by the Tribunal in accordance with subsection (2), the Tribunal shall appoint a time for and hold the hearing and, on the application of the Registrar at the hearing, may by order direct the Registrar to carry out the Registrar's proposal or refrain from carrying it out and to take such action as the Tribunal considers the Registrar ought to take in accordance with this Act and the regulations, and for such purposes the Tribunal may substitute its opinion for that of the Registrar.
- (5) The Tribunal may attach such terms and conditions to its order or to the registration as it considers proper to give effect to the purposes of this Act.

REASONS FOR DECISION

The Tribunal has consistently taken the view that the Act is a consumer protection Statute, which regulates the retail sales of motor vehicles in Ontario. The legislation requires that people involved in that industry be registered under the Act. While the Act gives an entitlement to registration, it also allows the Registrar to refuse registration on specified grounds. Those grounds are set forth in section 5 of the Act and the registrant is informed of the refusal by the issuance of a Notice of Proposal. An appeal from the Registrar's Proposal lies to the Tribunal by way of a hearing.

The Applicant's application for registration as a motor vehicle salesperson was refused on the basis of his past conduct, as a securities salesperson. The only issue for determination in this matter is whether or not the Applicant's past conduct as a securities salesperson affords reasonable grounds for belief that he will not carry on business in accordance with the law, and with integrity and honesty. If reasonable grounds for such belief exist, the Applicant is not entitled to registration.

It is clear from the Agreed Statements of Facts (Exhibit 3, Tab 5) that the Applicant, as a mutual funds salesperson, had, between August 1995 and February 1998, made grave violations of the *Securities Act*, R.S.O. 1990, c. S.5 and public policies by:

- a) misrepresenting to his clients the nature and quality of and the return to be realized on the investments;
- b) recommending and selling speculative investments unsuitable for his clients;
- c) engaging in high pressure sales tactics including and advising investors to borrow funds or redeem mutual funds to invest;

- d) failing to deal fairly, honestly and in good faith, and act in the best interest of his clients;
- e) abusing his position of trust and taking advantage of unsophisticated and vulnerable investors;
- f) making several misrepresentations to clients;
- g) selling notes to investors upon becoming aware that the investments were facing difficulties and failing to pay the promised returns.

The Applicant, in his testimony, tried to prove that he was a victim as the dealer had mislead him and other salespeople to believe that the investments in question had guaranteed returns. The Tribunal finds that the position of the Applicant is to evade responsibility for his past actions. The Applicant is a well-educated person, having a university education and diverse experience. He knew or should have known that in the business world, no risk free investment could guarantee over 120% return. Moreover, one of the persons who wrote a reference letter in support of the Applicant (Exhibit 4) outlined that he asked a number of detailed questions to the Applicant regarding the investments, which the Applicant could not explain. Similarly, Witness No. 4 testified that the Applicant's investment dealer did not answer his questions regarding the products, which raised questions in his mind about the product, resulting in him not investing in these investments. The Tribunal finds that the Applicant, having many years of banking experience, and being a trained investment salesperson, was better positioned to understand the investment products in question, than those who bought the products from him.

The Tribunal does not have jurisdiction to go beyond the decisions of the Securities Commission. Certainly, the Agreed Statement of Facts, which outlines serious allegations as to the honesty and integrity of the Applicant, is the basis of the Commission's discipline action against the Applicant. The Applicant had agreed, in his agreed statement, that several of his clients were financially and emotionally devastated by the loss of their savings, and several of his clients' health suffered due to anxiety and stress. By selling these securities to his clients, the Applicant earned a commission of approximately \$378,600.00, contrary to the offering memoranda, which stated that no commission was payable. Upon being questioned by the Tribunal about his commission, the Applicant testified that he was under the impression that this provision was applicable to the dealer. In the Tribunal's view, either the Applicant was grossly negligent in his conduct or knowingly put his client in peril in order to make a commission. There is no doubt, in the Tribunal's view, that the act of such grave misrepresentation involves deceit and dishonesty. The Applicant's position that "he was at the end of the rope" and that he could not afford to defend the proceedings do not persuade the Tribunal that he was in fact a victim. The very nature of the repeated violations by the Applicant speaks of the Applicant's disregard for the law, and of the Applicant's refusal to act in an honest manner.

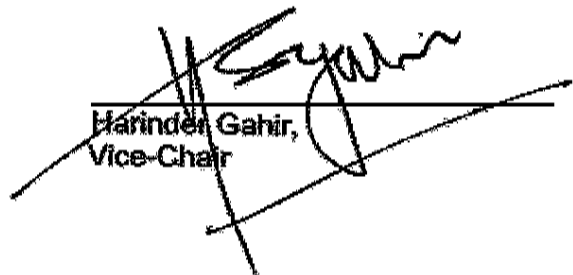
The Tribunal agrees with the Registrar's counsel that the motor vehicle industry and the security industry have many parallels. Both industries require that people who serve in such industries conduct themselves with honesty and integrity. The Tribunal finds that

the Applicant has failed to take responsibility of his past conduct. The Tribunal is not persuaded that his past conduct in the securities industry will not be repeated to the disadvantage of his customers in the motor vehicle industry if he were registered as a salesperson. Therefore, the Applicant's past conduct affords reasonable ground for belief that he will not carry on his business in accordance with law, and with integrity and honesty.

DECISION

The Tribunal, pursuant to the authority vested in it by section 7(4) of the *Motor Vehicle Dealers Act*, upon carefully considering of the evidence, directs the Registrar to carry out his Proposal to Refuse the Registration of the Applicant.

LICENCE APPEAL TRIBUNAL


Harinder Gahir,
Vice-Chair

Released: June 20, 2008

File name: 4385.mvda.goselin.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 approximately three weeks time. The decision will also be available on Quicklaw at a later date.