

**Licence
Appeal
Tribunal**

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August 26, 2008

MEMORANDUM

***Re: Johnbull Nosakhare Osayande
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:

Boniface U. Ahunwan, Counsel for the Applicant
Aviva R. Harari, Counsel for OMVIC

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JOHNBULL NOSAKHARE OSAYANDE

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

TO REFUSE REGISTRATION

TRIBUNAL: DONALD BENNINGER, Presiding Member

APPEARANCES: BONIFACE U. AHUNWAN, Counsel, representing the Applicant

AVIVA R. HARARI, Counsel, representing the Registrar,
Motor Vehicle Dealers Act

DATE OF
HEARING: August 1, 2008

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 (the "Proposal") issued by the Registrar under the *Motor Vehicle Dealers Act* (the "Registrar" and the "Act" respectively). The Proposal dated March 18, 2008, proposed to refuse the registration of Johnbull Nosakhare Osayande (the "Applicant"), as a salesperson under the Act.

The Registrar's Proposal is brought pursuant to section 7 of the Act as read with section 5. (1)(b) and section 6.(1) of the Act.

The reasons given by the Registrar in his Proposal state as follows:

The intention and objective of the Act is to protect the public interest. The requirements of the Act include that the registrants be financially responsible in the conduct of business and that the 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 Johnbull Nosakhare Osayande under the Motor Vehicle Dealer's Act.

In support of the Registrar's proposal the following particulars are stated:

1. Johnbull Nosakhare Osayande applied for registration as a motor vehicle salesperson on or about February 6,2008.
2. Osayande was previously registered pursuant to the Motor Vehicle Dealers Act. His registration was revoked by order of the Licence Appeal Tribunal. The revocation related to odometer misrepresentation.
3. Osayande has had his driver's licence suspended numerous times and has numerous convictions pursuant to the Highway Traffic Act.
4. Osayande's credit report indicates a number of bad debts.
5. Osayande has failed to act with financial responsibility.

PRELIMINARY MATTERS

There was a preliminary matter raised at the beginning of the hearing. The Applicant had provided additional disclosure that was received by the Respondent the day prior to the hearing. After hearing from both Parties, the Tribunal ruled in favour of admitting the documents for consideration and the hearing proceeded. If the authors of the reference letters had been present to answer questions from the Tribunal, the information contained would have been more beneficial.

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.

ISSUE

The issue in this case is whether 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 honesty and integrity and whether the Applicant cannot reasonably be expected to be financially responsible in the conduct of business. The Registrar's position concerning the Applicant's conduct is set out in the allegations in the Notice of Proposal to Refuse the Registration from the Registrar dated March 18, 2008, and as outlined in the background under the particulars above.

EVIDENCE

The evidence introduced by the Registrar consisted of both written documentation and the testimony of one witness.

Mary Jane South was affirmed and testified that she is currently employed as Deputy Registrar of Ontario Motor Vehicle Industry Council (OMVIC), which position she has held since 1997. She explained that OMVIC is a not for profit organization and has been delegated with authority to administer the Act, which is a consumer protection statute.

At the beginning of her testimony she stated that the Registrar was not pursuing particular number 2 as it was no longer an issue; however, the Applicant's credit reports and past conduct that brought him to the Tribunal in 2004 were still a concern to the Registrar.

Ms. South testified that the Applicant had credit card debts that were well overdue and the institution had written them off as a bad debt that they had determined was not collectable. In addition, she testified that the Applicant had student loan debts that he had not paid and the interest that had accumulated was significant. She stated that many payments were overdue and the debts had been turned over to a collection agency to determine if they could recover some of the funds and get payment from the Applicant. She testified that, after the proposal was issued, the Applicant made some efforts to pay, but even then there were late payments.

Ms. South in her testimony stated that she was aware of the Applicant's conduct, both prior to and during his hearing before this Tribunal in 2004. She stated that the Applicant's serious misconduct was industry related as there had been non-disclosure of the true odometer readings on at least two vehicles he sold. As well, she stated the Applicant had also provided false documents to the Registrar and attempted to give misleading information to the Tribunal.

During her testimony, she advised the Tribunal that the Applicant had previously signed that he would operate under specific conditions, but he failed to abide by the conditions. Those conditions had nothing to do with lack of training but did demonstrate lack of honesty and integrity. She testified that he offered no credible explanation for his failure to abide by the conditions and that she had no confidence that the Applicant would change, as he did not recognize and accept his wrong-doing.

Ms. South stated that the Applicant could have taken steps to deal with the victims of his misrepresentation and to compensate them, but as far as she was aware, he had done nothing to compensate the consumer. Thus, she stated the Registrar's view is that the Applicant should be refused registration as a salesperson under the Act.

The Applicant was sworn and testified that he was a married man with four children and that he had worked as a taxi driver on a part-time basis since 2004. He stated that in early 2003, his troubles started and he did not comply with the rules and regulations of OMVIC.

The Applicant testified that he bought cars from the auction and that he was aware of the situation and the serious breaches of the rules. He continued, stating that since then he has broadened his skills and through training he is now aware of the consequences of breaches of the rules. The Applicant stated that he has become a Christian and that by working with his pastor he is completely changed and now he is trustworthy.

The Applicant testified that he has found a potential employer who will give him employment if he is licensed. He stated he told his potential employer of his previous problems and the employer has stated that he will guide the Applicant who stated that he will not make serious mistakes while working with him.

During his testimony the Applicant advised the Tribunal he has been involved with a not for profit organization in Toronto and that since 2000 he has been a project leader and speaker, raising funds through donations for African children and hospitals. He continued, stating that he is presently the Treasurer and that there has been no misconduct or nothing financially detrimental in the organization.

The Applicant testified that he has completed the OMVIC certificate course at Centennial College. In addition, he stated that he completed an automotive technical administration course, as well as a damage analysis course.

The Applicant stated that he has not had stable employment and that he did not make enough money to pay his student loans, but he has been paying as much as he could toward his debts and that was the best he could do.

The Applicant in his testimony stated that he has a credit card that he pays at least the minimum required, so it has not been turned over to a collection agency. He stated that if he was granted an automotive salesperson licence, he then could combine his taxi driving job with it and increase his income and pay off some of his debts.

On cross-examination the Applicant confirmed that he had student loans that were accumulating interest and he missed payment charges that were greater than he was able to pay off. As well, he stated he had two credit card debts that the creditor had written off as not collectable.

When questioned during cross-examination regarding any attempts to contact or make offers of compensation to the consumers that had been misinformed by him in 2003. He stated that he had not tried to contact them. He believed that they would be uncomfortable if he called them and not want to talk to him. In addition, he stated he was embarrassed about the situation. He stated that he had paid \$300.00 to the Dealers Compensation Fund, that he thought the fund might compensate the consumer and, that it was not his responsibility.

FACTS FOUND PROVEN

The facts found proven by the Tribunal are as follows:

1. The Applicant applied for registration as a motor vehicle salesperson on or about February 6, 2008.
2. The Applicant was previously registered as a motor vehicle dealer and as a salesperson pursuant to the *Motor Vehicle Dealers Act*.
3. The Applicant had both his above registrations revoked in 2004 by order of the Licence Appeal Tribunal due to his industry related conduct of odometer misrepresentation.
4. The Applicant, since the 2004 decision has attended three industries related courses to improve his knowledge and skills.
5. The Applicant has been involved in some positive community activities and has testified to a religious commitment.
6. The Applicant's credit report indicates a number of debts that the lending institution has either turned over to a collection agency or written off as unable to collect.
7. Prior to the Notice of Proposal to Refuse Registration the Applicant had missed payments of his lawful debts, causing his debts to increase faster than his funds could accommodate.
8. Once the Notice of Proposal to Refuse Registration was issued, the Applicant made some additional efforts to pay some of his student loan debts.
9. The Applicant made no efforts to contact his previous consumer/victims to attempt to take responsibility or compensate them for the hardship he had caused.

APPLICATION OF LAW TO FACTS

The Act specifies the task that the Tribunal must fulfil. The test for the Applicant is in sub-sections 5 (a) and (b) and (c)(i) and (ii), which focus on the past behaviour of the Applicant to determine if there are reasonable grounds to conclude that in the future, he will not carry on business with integrity and honesty and in accordance with the law or in a financially sound manner.

The onus is on the Registrar to prove the allegations on the balance of probabilities, with the qualification that the proof must be clear and convincing and based on cogent evidence.

The witness for the Registrar in her testimony stated that the Registrar was no longer pursuing item number 3 of the particulars but would concentrate on the previous industry related conduct and the Applicant's financial situation.

The witness stated that the conduct that brought the Applicant before the Tribunal in 2004 was serious and industry related. She testified that the Applicant was aware of his wrong-doing and deliberately attempted to cover up his actions by creating and

submitting a misleading paper trail, as well as attempting to mislead the Tribunal. However, she stated the Tribunal noted the same and ordered the Registrar to refuse both the dealership application and his salesperson licence.

The Applicant in his testimony did acknowledge that he had committed industry related offences but did not appear to accept full responsibility for his actions but rather stated his wrong-doing was because he did not have enough knowledge of the rules and laws governing the industry. He stated that he attended courses to improve himself in this area. Although the Tribunal credits the Applicant for improving his education, it is not convinced this will change the honesty and integrity of an individual. This change can be accomplished by many years of business practices that are proof that the individual always acts with honesty and integrity, no matter what situation presents itself. The Applicant appears to have started on the path to redeem himself and the Tribunal would encourage him to continue his efforts.

Although the Applicant argued that the past conduct should now be excused, there is no doubt that such a step would be premature. There has not been either sufficient time or persuasive evidence presented to convince the Tribunal that this past conduct will not reappear and the unsuspecting consumer taken advantage of again.

The second issue to be considered is the financial situation of the Applicant. Specifically, the non-payment of credit card debts and financial institutions writing off the Applicants debts as not collectable were presented in detail to the Tribunal. The failure to make student loan and the penalty are of concern to the Tribunal.

The student loan debt demonstrates the Applicant's inability, to develop a payment schedule in conjunction with the student loan office, to commit to a payment plan or to develop other alternatives to missed payments and the penalty costs incurred, or, to consider other options. The Tribunal found from the evidence presented that the Applicant had not made sufficient payments in 2006 or in 2007 to even pay the accumulating interest; however, after the Registrar's Notice of Refusal letter, there were some payments of \$100.00 each and some post-dated cheques presented.

In this regard, the Applicant would need to make an on-going consistent effort until satisfaction of this loan before one could say that the Applicant acts in a financially responsible manner. The Applicant in his testimony did not convince the Tribunal that he had sought in a meaningful way any of these options suggested above.

The Tribunal found from the evidence presented that the Applicant had made no attempts or efforts to contact the previous consumers who were affected by his previous industry related actions to either apologize or compensate them for their losses he had caused.

In the written evidence from the Applicant as well as his testimony, it is clear the Applicant cannot reasonably be expected to be financially responsible in the conduct of business.

To permit the Applicant to become a licensed member of the motor vehicle industry would send the wrong message to the industry and to the general public in view of his credit reports indicating the non payment of credit card debts, that the lending institution had to declare as not collectable, the non-payment of the student loan and the accumulating interest and thus the involvement of a collection agency.

The Applicant needs to prove himself for a significant period of time, certainly longer than three to four years, and have his financial affairs in order, to demonstrate he is capable of acting with honesty and integrity and within the law and of being financially responsible.

The Tribunal sought from the Parties the possibility of some conditions being considered for the Applicant, should he be granted a licence. After hearing from both Parties and considering that there were several conditions that the Registrar required that the Applicant could not agree to, as well as, the facts that the Applicant did not adhere to previous conditions and that the proposed employer was operating conditionally, the Tribunal determined this was not an acceptable remedy.

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, did provide reasonable grounds to believe that the Applicant would not carry on business as a salesperson in a financially responsible manner, and with honesty and integrity and within the law.

DECISION

Therefore by virtue of the authority vested in it under section 7. (4) of the Act, the Tribunal directs the Registrar to carry out his proposal dated March 18, 2008 to refuse the registration of Johnbull Nosakhare Osayande as a motor vehicle salesperson under the Act.

LICENCE APPEAL TRIBUNAL



Donald Benninger, Presiding Member

RELEASED: August 26, 2008

FILE NAME: 4786.mvda.Osayande.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.