

**Licence
Appeal
Tribunal**

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February 26, 2010

MEMORANDUM

***Re: George Demetriou o/a Car Care Auto Sales and Repairs
v.
Registrar, Motor Vehicle Dealers Act***

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

DISTRIBUTION LIST:

George Demetriou, Applicants
Michael Rothe, Representing Registrar, *Motor Vehicle Dealers Act*

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GEORGE DEMETRIOU O/A CAR CARE AUTO SALES AND REPAIRS

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

TO REFUSE AND REVOKE REGISTRATION

TRIBUNAL: CHRISTINA BUDWETH MINGAY, Vice-Chair

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

DATE OF HEARING: January 20, 2010 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 August 6, 2009 proposed to refuse and revoke the registration of George Demetriou o/a Car Care Auto Sales and Repairs ("the Applicant"), as a motor vehicle dealer under the Act.

A pre-hearing in this matter was held on November 18, 2009. The Applicant and Counsel for the Registrar attended. A pre-hearing Order was issued on December 18, 2009. The Order confirmed the date for hearing of this matter to be January 5.

The Applicant did not attend the scheduled hearing on January 5, 2010. The hearing of the matter was adjourned to January 20, 2010 upon the Tribunal being advised by Counsel for the Registrar that the Applicant had recently undergone surgery of an undisclosed nature. An Interim Order restricting the operation of the Applicant's business and confirming a new hearing date of January 20, 2010 was issued and served on January 13, 2010.

At the commencement of the hearing at 9:30 a.m. on January 20, 2010, the Applicant was not present at the Tribunal's Chambers. A member of staff telephoned the Applicant and was advised by his wife that the Applicant would not be attending the proceeding.

The matter proceeded on its merits in the absence of the Applicant. At the commencement of the proceeding, Counsel for the Registrar tendered as evidence a letter dated November 16, 2009 confirming that the Respondent's Book of Documents had been served on the Applicant in accordance with the terms of the pre-trial Order. The Respondent's Book of Documents was received and marked as Exhibit #6 to the proceeding. Further disclosure, relied on by the Registrar, was provided to the Applicant under cover of letter dated December 22, 2009.

The evidence on behalf of the Registrar was received through Mary Jane South, the Deputy Registrar of the Ontario Motor Vehicle Industry Counsel ("*OMVIC'S Witness*").

ISSUES:

The issues at the hearing are set out in the Registrar's Notice of Proposal to Revoke Registration received into evidence as Exhibit #1 to the Hearing. It was the Registrar's position that the Applicant's alleged conduct are indications of his failure to carry on business in accordance with law and with integrity and honesty as is required under Section 5 of the Act. The complained of conduct is: (1) being the subject of convictions under the *Highway Traffic Act* and 47 moving violations under the *Highway Traffic Act* (2) failing to disclose the aforesaid convictions, and (3) failing to remit fees for motor vehicle transaction fees.

FACTS AND EVIDENCE:

Mary Jane South testified that she has been employed in her current role since 1997. She confirmed that OMVIC is a not for profit organization whose role is to administer the MVDA for the protection of the public.

Mary Jane South identified Tab 3 of Exhibit #6 as being a computer printout from Company's Branch confirming that the Applicant Car Care Auto Sales and Repairs is a sole proprietorship operated by the Applicant G. S. Demetriou in Kitchener, Ontario.

Mary Jane South identified Tab 4 of Exhibit #6 as being the Terms and Conditions for Registration of Car Care Auto Sales and Repairs between the Applicant and the Registrar dated December 19, 2002. Of particular concern to the Registrar in regard to this document are items (r) which requires the Applicant to maintain books and records that accurately reflect all transactions of the Applicant and (t) which requires the Applicant to accurately and completely prepare all documents submitted to the Registrar.

Tab 5 of Exhibit #6 is a copy of the Applicant's Renewal Application, a standard form document. It was received by OMVIC on or about October 23, 2008. In Section A, the Applicant denied being found guilty or convicted under any law. In Section B, the Applicant reported only one transaction for which a fee was charged during the period February to September 2008.

Mary Jane South testified that the Registrar caused a search of the Ministry of Transportation data base to be conducted. This data base contains a record of convictions of for both individuals in the automotive industry regarding offences in relation to the Equipment Section of the *Highway Traffic Act* as well as Moving Violations under the same Act. Tab 7 of Exhibit #6 shows that the Applicant has 5 convictions under the Equipment Section which were not disclosed to the Registrar. Tab 8 reveals that the Applicant has 47 Moving Violations which were also not disclosed.

By letter dated December 12, 2008, the Registrar brought the convictions set out in Tabs 7 and 8 to the attention of the Applicant and requested an explanation for the failure to disclose the convictions. In two (2) separate responses, found at Tabs 10 and 11 of Exhibit #6, the Applicant revealed only 2 of the convictions and attempted to provide a defence on the merits of the charges of which he had already been convicted. He failed to address the multiple other convictions.

In regard to the issues of failing to remit registration fees, the Witness identified the document at Tab 12 of Exhibit #6 and the lettered Tabs appended thereto. Tab 12 is a print out from the Ministry of Transportation Data Base setting out all vehicle activity attributed to the Applicant during the period June to October 2008. Tab 12 contains a record of every automobile which passed through the hands of the Applicant. Not all vehicles which passed through the hands of the Applicant are the subject of a registration fee; however, there are at least 19 vehicles identified for which the \$5 fee should have been remitted.

All oral evidence provided by the Witness was corroborated by clear and compelling written evidence received as Exhibits to the hearing. On the basis of the oral and written evidence received at the hearing, I find that all twelve (12) of the factual bases for the Registrar's Proposal have been made out.

THE LAW:

The *Motor Vehicle Dealers Act* states:

5. (1) An applicant is entitled to registration or renewal of registration by the Registrar except where,
 - 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;

APPLICATION OF LAW TO FACTS:

The burden of proof in this matter rests on the Registrar and the requirement of the Registrar to prove the elements of it's case is not lessened by the absence of the Applicant.

The issues in this matter are straightforward and entail the important question of honesty and integrity of the Applicant.

The evidence reveals a serious failure by the Applicant to reveal a series of convictions under the *Highway Traffic Act*, despite his obligation to disclose and his separate agreement with the Registrar to provide complete information to the Registrar in all instances of communication. The evidence in the hearing also supports the Registrar's contention that the Applicant has failed to reveal and remit certain transactions fees that he is required by law to remit.

The conduct of the Applicant is not limited to a single incident. Furthermore, when provided with any opportunity to rectify his conduct, the Applicant failed to do so. The lack of honesty in the preparing of his application material and in remitting monies he is required to under law does not speak well of the Applicant, and future efforts to conduct himself with honesty and integrity.

The Act is a consumer protection statute. Having regard to the evidence placed before the Tribunal, the Registrar's conclusions as stated in the Proposal are soundly based on evidence.

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 August 6, 2009, to refuse the Registration of George Demetriou o/a Car Care Auto Sales and Repairs, as a motor vehicle dealer under the Act.

LICENCE APPEAL TRIBUNAL


Christina Budyweth Mingay, Vice Chair

Released: February 26, 2010

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.