

Licence  
Appeal  
Tribunal

Tribunal  
d'appel en  
matière de permis



MOHAMAD ASSAF o/a A & S AUTO SALES

APPEAL FROM A DECISION OF THE REGISTRAR, *Motor Vehicle Dealers Act*, R.S.O. 1990, c. M.42

TO REFUSE REGISTRATION

TRIBUNAL: LAURIE SANFORD, Vice Chair

APPEARANCES: MOHAMAD ASSAF, the Applicant, self-represented

CHRISTOPHER EZRIN, Counsel, representing the Registrar,  
*Motor Vehicle Dealers Act*

DATE OF HEARING: May 10, 2010 London

### DECISION AND ORDER

The Applicant, Mr. Assaf operating as A & S Auto Sales, appeals to the Licence Appeal Tribunal (the "Tribunal") from a decision by the Registrar, *Motor Vehicle Dealers Act*, (the "Act") to refuse his application for registration as a motor vehicle dealer.

### FACTS

Mr. Assaf has been previously registered as a motor vehicle salesperson. Starting in 2000, he worked for his brother, who was a motor vehicle dealer. However, both the dealership and the two brothers had their registrations suspended for six months as a result of an Order from this Tribunal in 2003. Key among the concerns was the failure to disclose material information about certain vehicles and the poor maintenance of financial records. During the six month suspension, the two brothers continued to sell cars, in contravention of the Act. When this was discovered, the Registrar revoked their registrations and Mr. Assaf did not appeal that revocation.

In April, 2009, Mr. Assaf applied for a new registration as a sole proprietor of a proposed dealership. In his application he did not disclose that he had previously been

registered or that his registration had been revoked despite questions on the application form that very specifically request such information. He also denied having a criminal record. A criminal record search performed on behalf of the Registrar revealed a previous assault charge and a failure to comply with his probation. On request, he explained the circumstances surrounding the charge but his explanation as to why he did not disclose it - that he did not think it was still on his record but that in any event, the Registrar probably knew about it - was inconsistent and not credible.

Mr. Assaf was also asked on the application form whether he had engaged in buying and selling cars in the past two years and he answered "no". Sometime after the application, Mr. Assaf was charged with 12 counts of "curbsiding" or buying and selling cars without being registered under the Act. When asked to explain this, both as part of his application process and during this hearing, Mr. Assaf asserted that he was not curbsiding. Rather, he said he merely chose bad cars and had to re-sell them, 12 times in two years. He also said he understood that he was entitled to sell up to six cars a year without being registered. The witness for the Registrar testified that no such provision exists. Mr. Assaf was subsequently convicted of 12 counts of curbsiding. His credibility at the hearing was substantially undermined when he asserted, incorrectly, that 11 of those charges had been dismissed.

Mr. Assaf elected not to give sworn or affirmed evidence at the hearing, relying instead on an oral statement. Such a statement has very limited value as evidence. In this case, his explanation of why he did not disclose his prior registration, his prior revocation and his prior criminal record is not credible. In addition to the other assertions noted above, he alleged that he misunderstood the various questions concerning these matters. Mr. Assaf is an intelligent man who is quite capable of understanding the clearly worded questions or of phoning the Ontario Motor Vehicle Industry Council, which administers the Act, to seek clarification. In the application form, there is a specific invitation to phone the Council if applicants have any questions.

Concerning the previous revocation of his registration, Mr. Assaf asserted at the hearing that he had merely been a salesman and that his brother had been the controlling mind of the dealership. It was a finding of the previous hearing that he had been more directly involved in the offenses that gave rise to the original suspension. In his application, he asserted that he had very little contact with his brother. However, investigation on behalf of the Registrar revealed that his brother was the co-signatory on the line of credit Mr. Assaf proposes to use to fund his business, suggesting a closer relationship that gives Mr. Assaf's brother a beneficial interest in the proposed business.

## **DECISION**

Mr. Assaf is applying for a new registration as a sole proprietor of a dealership. The application itself represents the first opportunity to demonstrate that a dealer meets the criteria set out in Section 6 of the Act. Under that section, an applicant is entitled to registration unless certain circumstances exist. In this case, the key criteria are that "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 . . .”

Mr. Assaf, in light of his past history, had particular reason to be honest and forthright in his responses on the application for registration and to seek clarification of the meaning or intent of certain questions if he was in doubt as to the scope of information sought. Instead, he gave a series of answers that were misleading, incomplete or untruthful. His subsequent explanations for these shortfalls show a consistent pattern of attempting to avoid responsibility for his past and present actions. There are excellent reasons, on the basis of his performance on this application, to believe that Mr. Assaf will not carry on his business in accordance with law and with integrity and honesty.

## ORDER

Accordingly, pursuant to subsection 9(5) of the Act, the Tribunal orders the Registrar to carry out his proposal of December 17, 2009 to refuse the registration of Mohamad Assaf, operating as A & S Auto Sales.

LICENCE APPEAL TRIBUNAL



Laurie Sanford, Vice-Chair

RELEASED: May 12, 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 (<http://www.ontariocourts.on.ca/>) 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, may also be posted on the Licence Appeal Tribunal's website <http://www.lat.gov.on.ca/> in approximately two weeks time. The decision may also be available on Quicklaw at a later date. However, the Applicant's name will not appear in the decision nor will the name of any witnesses or other third parties (unless they took part in the hearing in a professional capacity or as a regulator).