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May 25, 2010

**MEMORANDUM**

***Re: Unity-A-Automotive Inc. and Ramanathan Thangarajah 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:**

Justin M. Jakubiak, Counsel for the Applicants  
Christopher Ezrin, Counsel for the Respondent

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UNITY-A-AUTOMOTIVE INC. & RAMANATHAN THANGARAJAH

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

TO REFUSE REGISTRATIONS

TRIBUNAL: TERRANCE SWEENEY, Vice-Chair

APPEARANCES: JUSTIN JAKUBIAK, Counsel representing the Applicants

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

DATES OF  
HEARING:

April 26 and 27, 2010

Toronto

## REASONS FOR DECISION AND ORDER

### BACKGROUND

This is an appeal to this Tribunal from a Notice of Proposal (the "Proposal"), dated May 13, 2008, to refuse registration to the Applicants under then section 7 of the *Motor Vehicle Dealers Act* ("MVDA" or the "Act").

The Registrar, in his Reasons in the Proposal, said that the intention and objective of the Act is to protect the public interest. He alleged that the past conduct of the Applicants is inconsistent with the intention and objective of the Act and, therefore, warrants disentanglement to registration under the Act.

The Applicants (Mr. Ramanathan Thangarajah, the individual Applicant, and Unity-A-Automotive Inc., the Corporate Applicant) successfully appealed to the Tribunal which, on January 9, 2009, directed the Registrar to register the Applicants as a dealer and salesperson, respectively, under the MVDA.

The Registrar then appealed that decision of the Tribunal to the Divisional Court. The Divisional Court, which released its judgment on December 3, 2009, allowed the appeal, set aside the order of the Tribunal and referred the matter to the Tribunal for a new hearing before another member.<sup>1</sup>

### Agreed Facts

At the opening of this hearing, counsel agreed upon the following facts which the Tribunal accepts as proven:

1. Mr. Ramanathan Thangarajah ("Mr. Thangarajah") immigrated to Canada from Sri Lanka in 1991. He trained as a mechanic at Centennial College between 1994 and 1999.
2. On June 30, 1999, Unity-A-Automotive Inc. ("Unity") was incorporated. It employs seven people and does mechanical and body work. On three occasions, it was convicted of being an unregistered dealer under the MVDA ("curbsiding") - ten counts in February 2002, four counts in May 2003 and twelve counts in April 2005.
3. On December 19, 2005, Unity informed OMVIC in writing that it had sold three cars that year without a licence.
4. In December 2006, Mr. Thangarajah completed the Automotive Certification course required by the Registrar of all OMVIC applicants. The course is geared to people with grade eight level skills. One of the instruction topics in the course was dealer requirements under the MVDA.
5. Mr. Thangarajah studied for the course at home. Because of his problems with English, his son helped him. He failed the course twice, but passed the third time, and he was certified on December 13, 2006.
6. On November 22, 2007, Unity, in its operations as a motor vehicle inspection station, was convicted of two counts of not filing required documentation on time and one count of issuing a false safety certificate under the *Highway Traffic Act*, R.S.O. 1990, c. H.8 (the "HTA"). The employee who had given the false safety certificate was fired in February 2007, prior to the conviction.
7. On January 15, 2008, Unity applied to become registered as a dealer and Mr. Thangarajah applied to become registered as a salesperson under the MVDA. The application was filled out by his wife, who copied it from earlier versions of applications that he had not pursued. On the applications, the reply was "no" to

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<sup>1</sup> Registrar, *Motor Vehicle Dealers Act v. Unity-A-Automotive Inc.*, 2009 CanLII 67420 (On. S.C.D.C.)

- the question whether Unity had been found guilty of an offence under law, or whether there were any charges pending.
8. Unity breached OMVIC's Standards of Business Practice by failing to disclose "TKU" (true kilometres unknown) status.
  9. Unity engaged in conduct that resulted in charges being laid on or about March 30, 2009 and April 21, 2009, for 22 counts of making a false statement in a structural inspection certificate contrary to the HTA.
  10. Mr. Thangarajah engaged in conduct that resulted in charges being laid on or about April 21, 2009, for 21 counts of making a false statement in a structural inspection certificate contrary to the HTA.
  11. Eight of the offences alleged in paragraphs 9 and 10, above, occurred between January and March 2009.
  12. Unity has been advertising vehicles for sale without the benefit of registration.

Mr. Jakubiak stated that while his clients admitted the charges against them, as set out in 9 and 10, they were going to defend vigorously those charges in court.

### The Case for the Registrar

Daniel Ventura was sworn and testified that he is the head of the Mandatory Vehicle Branding Unit ("MVBU"), a division of the Ministry of Transportation. The MVBU is charged with licensing and enforcement in respect to Motor Vehicle Inspection Stations. If an auto body repair shop or collision repair shop is issued a licence to issue motor vehicle inspection certificates, it does so as an agent of the Ministry. Branding is the process of assigning "brand types" that indicates whether a vehicle has been severely damaged in the past. The MVBU uses four brand types including "irreparable", "rebuilt" and "salvage". When a brand is assigned to a damaged vehicle the brand is recorded in the Ministry's Vehicle Registration System. This service protects the consumer by providing important information about possible past damage to a vehicle.

When a licence is issued to a "Qualified Tradesperson", one of Mr. Ventura's officers meets with the licensee and explains what is expected, including the standards that have to be met before a damaged vehicle is allowed back on the road.

Mr. Ventura referred only to some of the documents submitted in respect to the charges laid against the Applicants under the HTA. In 2008 the Applicants had submitted the required documents to his group, but on inspection the MVBU found that in one case, notwithstanding that the vehicle was severely damaged and that the repairs did not conform to Ministry specifications, the Applicants issued a vehicle inspection certificate for that vehicle.<sup>2</sup>

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<sup>2</sup> Exhibit 6, Tab C

Mr. Ventura then referred to other documentation<sup>3</sup> where, again, the Applicants sent the required documentation for a particular car to the MVBU. The MVBU inspected and found that on the Applicants' own documents the car was condemned, yet the Applicants issued a certificate.

Mr. Ventura next took the Tribunal through other documents.<sup>4</sup> He said the documents dealt with the same issue. The documents sent to the MVBU condemned the car and the inspection by the MVBU so confirmed, but the Applicants issued a certificate. It was Mr. Ventura's opinion that the Applicants simply do not understand the required documentation. For example, a square in the form signifies that the engine is in the vehicle when testing is done. A circle indicates that the engine was not in the car when the testing was done. The Applicants consistently mixed these up.

#### Allan Gibson

Mr. Gibson is a structural inspection advisor with MVBU. He testified that he attended on Mr. Thangarajah and his son, who is fluent in English, a number of times from and after 2007. He went over the legislation and Regulation 601 with them. He offered to help them in any way he could and was prepared to answer any questions they might have. He mentioned that it was required by the legislation that the forms in respect to a damaged vehicle and a certificate issued must be sent to the MVBU within seven days. The Applicants were chronically late. He referred to a spreadsheet<sup>5</sup> which lists the numerous warning letters issued to the Applicants and convictions against them. He pointed to another spreadsheet<sup>6</sup> which details the number of times that the Applicants were late in submitting the required forms to the MVBU during the 2005-2007 period. He described the case of a false certificate issued for a car.<sup>7</sup> In another case the same insurance estimate was used on two different automobiles.<sup>8</sup> In 2006 Officer Gee of the MVBU attended on the Individual Applicant and his son to go over the requirements in the Act. When he was there, he discovered pre-signed certificates. Pre-signing certificates is contrary to the Act and procedures of the MVBU.

#### Jennifer Andrew

Ms. Andrew testified that she is an inspector with the Ontario Motor Vehicle Industry Council ("OMVIC"). It is a not-for-profit organization which administers the MVDA.

She inspected the premises of the Applicants in June 2009, where she met with Mr. Thangarajah and his son. She referred to a "New Dealer Report"<sup>9</sup> which she prepared.

<sup>3</sup> *Ibid*, Tab D

<sup>4</sup> *Ibid*, Tab E

<sup>5</sup> Exhibit 4, Tab 14

<sup>6</sup> Exhibit 5, Tab 27

<sup>7</sup> *Ibid*, Tab 32

<sup>8</sup> *Ibid*, Tab 33

<sup>9</sup> Exhibit 6, Tab 37

She found that the Applicants had purchased a vehicle from "Impact" which buys "insurance write-offs". Under OMVIC's Standards of Business Practice, when this happens and the vehicle is sold, the invoice must show clearly "TKU"- true kilometres unknown.

The Applicants failed to disclose TKU on the invoice when they sold the vehicle.

### Mary Jane South

Ms. South is the Deputy Registrar of OMVIC and is familiar with the Applicants' file.

Her evidence:

1. The Applicants had a series of convictions in 2002, 2004 and 2005 for curbsiding. The Applicants continued to curbside in 2005 notwithstanding the convictions. This shows that the Applicants are ungovernable.
2. The Applicants failed to disclose previous convictions three times in filing applications as a motor vehicle dealer and salesperson.
3. The Individual Applicant completed the automotive certificate course in 2006. The course material deals with the requirement in respect to the TKU notation. Nevertheless, the Individual Applicant failed to comply in 2009, as discussed above by Ms. Andrew.
4. She noted that some of the charges against the Applicants under the HTA occurred in early 2009 when the Applicants were operating as a dealer and salesperson, respectively.
5. She checked the Applicants' website recently and saw that they were advertising vehicles without the benefit of registration.
6. She said that the Applicants cannot be relied upon and should be refused registration.
7. She has no confidence that, if OMVIC were to agree to conditional licensing, the Applicants would comply with the terms of such a conditional registration.

### Case for the Applicants

#### Kumanan Ramanathan

Kumanan Ramanathan is the son of Mr. Thangarajah. He is a graduate of the University of Toronto (2009) in Commerce and is currently employed at a national accounting firm as a student. He hopes to earn his CA designation.

He is fluent in Tamil and English and has worked for his father over the years in dealer servicing and management of the Corporate Applicant. He referred to the meeting with Ms. Andrew and the TKU issue in 2009.

He said that it was his fault that the Corporate Applicant's website still advertised vehicles for sale. Apparently, he removed one link but forgot to delete a link at the bottom of the website. He will do this immediately.

On cross-examination, he agreed that he is busy at the national accounting firm everyday but is available to help his father after hours and on weekends.

#### Ramanathan Thangarajah (the Individual Applicant)

Mr. Thangarajah was sworn and the Tamil interpreter, Mr. Kanapapahypillai Uthayamoorthy (the "Interpreter"), solemnly affirmed.

Mr. Thangarajah answered a few questions from his counsel but it was obvious that he has no real knowledge of the English language and needed the Interpreter to communicate in English.

Mr. Thangarajah is the sole director and officer of Unity. He has taken courses in auto mechanics, brakes and air conditioning. He is currently taking a course in English.

He explained that a friend had completed the applications to MVDA the first time and that the subsequent applications were completed first by his sister and then his wife. In each case the person simply copied the earlier application. The question as to previous convictions was answered "No" as he thought he only had to report "criminal charges".

He said that the Ministry withdrew the Proposal to revoke his motor vehicle inspection station licence in May 2007 as a result of a plea bargain where he pleaded guilty to the three charges under the HTA.

He switched his testing and measurement system to Car-O Liner in 2007 after MVBU asked him to upgrade. He plans to acquire a new laser system which, according to him, will significantly reduce the risk of mismeasuring damaged vehicles.

On cross-examination, he candidly admitted signing safety certificates without making sure that the vehicles were inspected properly. He said that following the 2007 convictions, he changed his practices including firing a "body" man whom he blamed for part of his problems.

He remarkably admitted to continuing curbsiding after his conviction in 2005 for that offence because he had "financial difficulties" ... and he had a "number of vehicles in stock...".

## THE LAW

Subsection 6(1) (a) of the MVDA reads, in part, as follows:

An applicant that meets the prescribed requirements is entitled to registration ... unless,

(ii) the past conduct of the applicant or of an interested person in respect 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;

Section 8(1) of the Act reads, in part, as follows:

Subject to section 9, the registrar may refuse to register an applicant ... if, in his ... opinion, the applicant ... is not entitled to registration under section 6.

The Registrar must prove his case on a balance of probabilities.

The Divisional Court in its decision in this case<sup>10</sup> provides guidance to the Tribunal in determining cases of this kind. For example:

The Tribunal was then required to ask if the past conduct of the respondent provides reasonable grounds to believe that he will act in accordance with the law and with honesty and integrity in the future.<sup>11</sup>

And later:

The legislation does not create a subjective test to determine whether the applicant... knowingly acts outside the law. The legislation asks whether the conduct of the applicant affords reason to believe that he...will act within the law.... 'Conduct does not require evidence of deceit or even of wilful blindness'.<sup>12</sup>

And again:

The MVDA is consumer protection legislation and, therefore, it is important for an applicant for registration to know his obligations under the governing legislation.<sup>13</sup>

### Reasons for Decision

The Tribunal has carefully considered all of the evidence in the case. There is no real dispute as to the facts. Indeed, all of the salient facts have been admitted by the Applicants.

<sup>10</sup> Registrar, *Motor Vehicle Dealers Act*, *supra*

<sup>11</sup> *Ibid*, para. 20

<sup>12</sup> *Ibid*, para. 22

<sup>13</sup> *Ibid*, para. 27

The task of the Tribunal is to weigh the evidence and determine if the past conduct of the Applicants is such as to afford reasonable grounds to believe that they will not conduct business in accordance with law and with integrity and honesty. This, as has been pointed out by the Divisional Court, is an objective test.

There are numerous damaging facts against the Applicants. The following figured prominently in the Tribunal's deliberations:

1. The Tribunal accepts the evidence of Mr. Ventura and finds that it is probable that the Applicants issued at least three false structural inspection certificates in 2008. It is a particular concern to the Tribunal that no less than eight charges for this offence have been levied against the Applicants during the time in 2009 that they operated as a dealer and salesperson, respectively. The Tribunal notes that the Applicants have said that they intend to fight these charges. That may be so, but there the Crown is burdened with the criminal standard of proof. In this Tribunal the Registrar need only prove his case on a balance of probabilities, which he has done, at least in respect to the 2008 charges.
2. Mr. Thangarajah continued to curbside in 2005 after being convicted a number of times for that offence. Mr. Thangarajah, on his own testimony, destroyed any semblance of a defence when he admitted that he continued to sell vehicles in order to meet his financial obligations and to clear out his inventory.
3. The Applicants failed to comply with OMVIC's best business practice in 2009 when it failed to put TKU on a bill of sale.
4. The Applicants continued to advertise vehicles for sale on the website right up to the day of this hearing.

The MVDA is consumer protection legislation and is to be interpreted liberally to best achieve its objects. It might be that any one of the above factors would be sufficient for the Registrar to refuse registration. When combined with all of the other facts admitted and found, the evidence is overwhelmingly against the Applicants.

The Tribunal owes no deference to the Registrar, but the Tribunal agrees that the Applicants are not governable and conditions on a licence for these Applicants would be inappropriate.

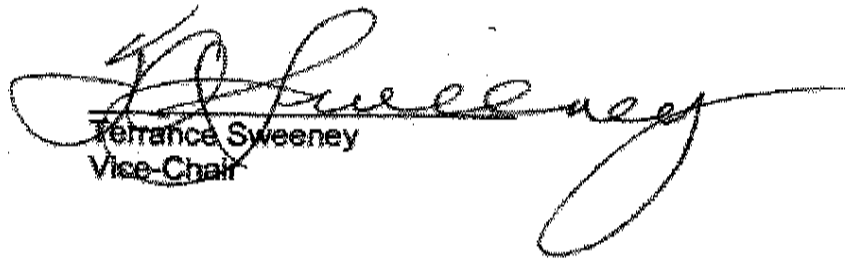
The Registrar has easily proven his case.

## **DECISION**

There are reasonable grounds to believe that the past conduct of the Applicants is such that in the future they will not carry on business in accordance with law and with integrity and honesty. Accordingly, by the power conferred on it in section 9 of the Act the

Tribunal orders the Registrar to carry out his Proposal and refuse registration to the Applicants.

LICENCE APPEAL TRIBUNAL



Terrence Sweeney  
Vice-Chair

*RELEASED: May 25, 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 (<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> within three weeks time. The decision may also be available on Quicklaw at a later date.