

**Licence
Appeal
Tribunal**

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June 4, 2010

MEMORANDUM

**Re: Rocky Moors o/a Rocky's Auto Sales
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:

Rocky Moors o/a Rocky's Auto Sales, the Applicant
Angela La Viola, Counsel for OMVIC

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ROCKY MOORS O/A ROCKY'S AUTO SALES

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

TO REVOKE REGISTRATION

TRIBUNAL: PATRICIA L. CASSIDY, Vice-Chair

APPEARANCES: ROCKY MOORS O/A ROCKY'S AUTO SALES, the Applicant,
unrepresented

ANGELA LA VIOLA, Counsel, representing the Registrar, *Motor
Vehicle Dealers Act*

DATE OF
HEARING:

April 26, 2010

Sudbury

REASONS FOR DECISION AND ORDER

BACKGROUND

This hearing, before the Licence Appeal Tribunal (the "Tribunal"), arose out of a Notice of Proposal (the "Proposal") issued under the *Motor Vehicle Dealers Act* (the "Act"). The Registrar, in the Proposal dated December 10, 2009, proposed to revoke the registration of Rocky Moors o/a Rocky's Auto Sales (the "Applicant") as a motor vehicle dealer under the Act. The Applicant appealed the Proposal to the Tribunal by Notice of Appeal dated January 11, 2010, and received by the Tribunal on January 14, 2010.

The intention and objective of the Act is to protect the public. The Act requires that registrants be financially responsible in the conduct of business, that they carry on business in accordance with the law and that they do so with honesty and integrity.

In the Proposal, the Registrar took the position that the Applicant's past conduct and financial position were inconsistent with the intention and objective of the Act, and, therefore, warranted disentanglement to registration under the Act.

ISSUE

The issues to be determined are whether or not the past conduct and the financial position of the Applicant give reasonable grounds to believe that the Applicant will not carry on business in accordance with the law and with honesty and integrity.

THE EVIDENCE

The Registrar's Case

Carey Smith, the Director of Investigations for the Ontario Motor Vehicle Industry Council ("OMVIC"), testified that OMVIC was established in 1997 to administer the Act, a public protection statute, which requires all motor vehicle dealers and salespersons to be licensed.

Mr. Smith testified that his initial involvement in this matter was in April 2004, when he received a telephone call from the Halton Regional Police - Auto Squad, regarding a Corvette Stingray automobile which had been advertised in the Auto Trader from the Applicant. His evidence was that the police advised him a private citizen had contacted the police with the belief that the advertised car was, in fact, the private citizen's vehicle, which had been stolen. The police advised that the new owner of the vehicle was Consumer A, and confirmed that they had driven by Consumer A's home a number of times but had not seen the car. Mr. Smith elaborated that the police advised him they did not know what Consumer A's involvement in the situation was.

Mr. Smith testified that there was an open complaint at OMVIC from Consumer A, who complained that he felt the Corvette Stingray he claimed to have purchased from the Applicant was inferior to what he thought he was buying.

Mr. Smith testified that, on hearing from the Halton Regional Police, he telephoned Consumer A, who advised him that the car was at a custom restoration shop. Mr. Smith presumed that is why the Halton Regional Police did not see the car when they had driven by Consumer A's home, in response to the private citizen's complaint they had received. It was Mr. Smith's evidence that, after speaking with Consumer A, he attended the custom restoration shop where the car was. He elaborated that this particular shop does nothing but Corvette Stingray restorations. Mr. Smith testified that, at the shop, he was told the body of the vehicle had been removed from the frame at some point.

Mr. Smith testified that the V.I.N. (vehicle identification number) is explicit to the vehicle. His evidence was that he looked for the V.I.N. on the car under the glove compartment where he should have found a factory plate bearing the V.I.N. unique to this particular vehicle. His evidence was that what he found was a manufactured plate bearing a V.I.N., which did not belong to the subject vehicle.

Mr. Smith elaborated that the V.I.N. he found under the glove compartment did match the ownership but it had not been factory installed. He stated that he knew this because a factory installed plate would have been secured by rivets resembling rosettes and these were not present. He also stated the fourth digit of the V.I.N. that he found riveted under the glove compartment was a "6" which means the vehicle is a convertible. However, the car in question is not a convertible model. Mr. Smith confirmed that he saw holes underneath where the factory installed V.I.N. plate would have been. His evidence was that, consequently, the Halton Regional Police attended the restoration shop and seized the vehicle for investigation. Mr. Smith noted that the police investigation showed the body on the subject vehicle had been reported stolen from Lexington, Kentucky and that the frame had been reported stolen from California.

Mr. Smith testified that he spoke with the Applicant on April 13, 2004, at which time the Applicant advised him the car had been his personal vehicle and he had sold it for personal reasons. Mr. Smith was advised by the Applicant that he did not have a Bill of Sale for the car because it was a personal vehicle. The Applicant noted that he would be happy to take the car back because he felt that he had let it go for less money than he should have. On April 14, 2004, Mr. Smith spoke with the Applicant. He was advised that the Applicant and Consumer A were in the process of negotiating the return of the car to the Applicant, who was in turn, going to sell the vehicle and refund Consumer A's money. Mr. Smith testified that since the car had been seized, the Applicant could not sell it, and testified further, that since the car had been stolen, at some point, the deal negotiated between the Applicant and Consumer A could not be finalized.

Mr. Smith spoke with the Applicant again on April 16, 2004, to advise him of the outcome of the police investigation, at which point the Applicant was told that he would have to pay back Consumer A. Mr. Smith's evidence is that the Applicant disagreed with that assertion, claiming the sale had been a private one. Mr. Smith replied to the Applicant that Consumer A had read an ad for the vehicle, which stated to contact Rocky's Auto Sales, and noted that the vehicle had been insured through Rocky's Auto Sales; therefore, the Applicant would have to reimburse the consumer. Mr. Smith advised the Applicant that he could pursue the person from whom he had purchased the car but noted that OMVIC would not be involved because no dealership would be involved. The Applicant did not accept Mr. Smith's advice. The Applicant continued to assert that the sale had been a private one and that the car had not been owned by or sold by Rocky's Auto Sales.

Mr. Smith's evidence was that the basis of this matter was a complaint by the purchaser, Consumer A, who, ultimately was compensated by the Motor Vehicle Dealers Compensation Fund (the "Fund") set up under the Act, and although the Applicant was given opportunities to respond, he refused and remains indebted to the Fund.

Laura Halbert, the Director of Compliance with OMVIC, testified that OMVIC is the regulatory body created by the Province of Ontario to oversee the Act. Ms. Halbert testified that the Fund was created in 1986 and replaced bonding. She elaborated that motor vehicle dealers make a one time contribution of \$300.00 to the Fund, and stated that the Fund is administered by a board of trustees made up of car dealers and consumers. The composition of the board is split five to four between those two groups. Ms. Halbert testified that she manages the Fund, that her office collects information and makes sure the board has the information necessary to sort out any claims. She elaborated that they first try to assist the consumer with working out a resolution to their complaint with the dealer.

Ms. Halbert testified that Consumer A had sued the Applicant and obtained judgment, which the Applicant did not pay, so the Fund stepped in and reimbursed the purchaser, Consumer A, to the extent that it could. Given that the Applicant has not paid the judgment or reimbursed the Fund, the Proposal to revoke registration was issued.

In her testimony, Ms. Halbert reviewed the first contact on March 8, 2004, which OMVIC had with Consumer A, who was seeking restitution. Ms. Halbert also testified about the many contacts between OMVIC and the Applicant, beginning with three separate telephone calls on March 24, 2004, and including letters, facsimile transmissions and further telephone discussions up to and including a telephone discussion on July 29, 2008. On that date, OMVIC had contacted the Applicant asking what he intended to do, given that the consumer had obtained judgment against him from the Ontario Superior Court of Justice. OMVIC offered the Applicant the opportunity to resolve the matter without the need for it to go through the Fund, but the Applicant refused to consider it.

Ms. Halbert further testified that, after the consumer received judgment against the Applicant, the Applicant brought a motion before the Ontario Superior Court of Justice seeking to have the judgment obtained by Consumer A set aside. The evidence is that the Applicant was successful with that motion. The order granted on October 10, 2008, by Madame Justice Baltman who decided the motion, provided that the judgment of Sproat J. granted on February 5, 2008, be set aside, and that the Applicant post security by paying the judgment amount of \$18,240.29, plus costs of \$6,000.00, into court within 30 days of the date of her order, or the judgment granted by Mr. Justice Sproat on February 5, 2008, would be restored. The Applicant did not comply with the conditions set out by Madame Justice Baltman, and, consequently, the judgment of Mr. Justice Sproat was restored.

Ms. Halbert testified that there is a cap under the legislation, whereby the maximum a consumer may be compensated by the Fund is \$15,000.00, plus costs. She elaborated that, since the Applicant did not pay any monies to the consumer, the board reviewed the claim made by Consumer A and approved the claim for the maximum permitted under the Act, being \$15,000.00 plus the costs awarded to him by the court of \$6,000.00, for a total of \$21,000.00.

Ms. Halbert confirmed that, by letter dated February 10, 2009, the Applicant was advised of the board's decision regarding Consumer A's claim, and given 21 days to make payment to the Fund of the full amount of \$21,000.00. The letter further advised the Applicant that if he failed to make the payment to the Fund, there would be a recommendation made to the Registrar to pursue legal action against him, which could include a proposal to revoke his dealership licence.

In cross-examination by the Applicant, Ms. Halbert testified that the Fund cannot go behind a court judgment. They were presented with the judgment obtained by Consumer A, wherein the Applicant was ordered to pay Consumer A the total sum of \$24,240.29, and the Fund paid the maximum allowable under the legislation, totalling \$21,000.00.

The Applicant's Case

The Applicant has been an automotive car dealer for almost 24 years, having been registered since September 11, 1986. He owns and operates Rocky's Auto Sales, which is a sole proprietorship, and the Applicant is the only salesperson registered to the dealership. The Applicant testified that he has a good reputation and many repeat customers. He elaborated that he is familiar with and follows OMVIC's Code of Ethics.

The Applicant testified that he bought the Corvette Stingray automobile privately and for his own use. His evidence is that he owned the vehicle for two years before he sold it and was surprised by the deficiencies the purchaser complained about. On cross-examination, the Applicant confirmed that he bought the car and registered it under his name and his company name.

The Applicant testified that he put the vehicle into his business' name solely for insurance purposes and then sold the vehicle privately; not through his business. He stated the only receipt given to Consumer A was an "as is, where is". He deposed that although the address given, in Auto Trader, was the address of his business, that address is also his home address since he resides where he sells cars. Further, his evidence was that the payment made by Consumer A to purchase the vehicle was made to him personally, and not to Rocky's Auto Sales. Copies of the bank drafts used to pay for the vehicle form part of the evidence in this matter, which confirm that payment was made to the Applicant personally and not his business. Further, the Applicant testified that Consumer A only paid Provincial Sales Tax when the purchaser bought the car from the Applicant, and, as a dealer, he would have had to have charged Goods and Services Tax as well if it had been sold through his business instead of a private sale.

The Applicant testified that he thought everything was "legit" when he purchased the car and that he had no reason to suspect it had ever been stolen. He elaborated that he did not misrepresent the car in any way, and noted that the vehicle had ten previous owners but he is the one "getting picked on".

With regard to the outstanding judgment of the Ontario Superior Court of Justice, the Applicant deposed that when he found out about Justice Sproat's order, he obtained legal counsel and moved to have the order set aside. He was successful on his motion in that judgment was set aside, but it was conditional upon him paying close to \$25,000.00, but he did not have that kind of money. He elaborated that his only recourse is through the current process and opined that OMVIC should never have become involved in his private sale to Consumer A.

The Applicant's friend testified and confirmed that the Applicant had paid cash for the car, that Consumer A bought the car from the Applicant without ever even seeing the vehicle and that she has always known the Applicant to be a very honest person.

FACTS

1. The Act is a public protection statute, which sets out the parameters to protect the public.
2. The Applicant was originally registered as a motor vehicle dealer on September 11, 1986.
3. In March 2004, the Registrar's office received a complaint from a consumer, Consumer A, regarding his purchase of a Corvette Stingray automobile from the Applicant.
4. Consumer A commenced a claim at the Ontario Superior Court of Justice and obtained judgment against the Applicant on February 5, 2008, in the amount \$18,240.29, plus \$6,000.00 costs.
5. The Applicant successfully brought a motion to set the judgment aside but it was conditional upon him posting security, which he did not do. Accordingly, pursuant to the order of the Court, the judgment was reinstated.
6. Consumer A brought the judgment from the Ontario Superior Court of Justice to the Fund.
7. The Applicant was given the opportunity to deal with this matter and avoid the proposal to revoke being issued but he did not do so.

THE LAW

The Act states as follows:

Registration Required

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.

Dealer to ensure salesperson registered

- 4. A motor vehicle dealer shall not retain the services of a salesperson who is not registered under this Act.

Registration

- 5. (1) An applicant is entitled to registration or renewal of 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; ...

Suspension or revocation

- 6. (2) Subject to section 7, the Registrar may refuse to renew or may suspend or revoke a registration for any reason that would disentitle the registrant to registration under section 5 if the registrant were an applicant, or where the registrant is in breach of a term or condition of the registration.

APPLICATION OF LAW TO FACTS


This is a very unfortunate situation. The Applicant has made his living as a motor vehicle dealer for close to 24 years, and, prior to the current situation, has conducted his business without issue or problems. He has been registered for an extensive period of time without incident. Unfortunately, the Applicant does not seem to appreciate the situation that evolved. This Tribunal is not a process to re-litigate. The Ontario Superior Court of Justice has found him liable to Consumer A for a significant amount of money which he did not pay. Consumer A is entitled to try to enforce that judgment. One remedy available to the consumer is to make application to the Fund, which cannot go behind a judgment of the Court. While this Tribunal has some sympathy for the manner in which this matter evolved and the situation in which the Applicant finds himself, the fact is that the intention and objective of the Act is to protect the public and that must be the primary focus. Simply stated, the Applicant has an outstanding judgment against him, granted by the Ontario Superior Court of Justice. The person to whom that judgment is owed made a claim against the Fund, as was his right.

The Board of Trustees, which administers the Fund, determined to allow the claim and paid the consumer the maximum permitted under the Act, which is less than the amount of the outstanding judgment. The Act provides, in part, that where the past conduct of an applicant provides reasonable grounds to believe that the applicant will not carry on business in accordance with the law and with integrity and honesty, registration may not be granted. The Act also requires that the Applicant act in a financially responsible manner in the conduct of his business. By not abiding by the terms of the judgment granted by the Ontario Superior Court of Justice and by simply refusing to try to resolve this matter, the Applicant has failed to meet the requirements of the Act.

ORDER

Pursuant to the authority vested in it by section 7(4) of the Act, the Tribunal directs the Registrar to carry out the Proposal, dated December 10, 2009, to revoke the registration of the Applicant as a motor vehicle dealer under the Act.

LICENCE APPEAL TRIBUNAL


Patricia L. Cassidy, Vice-Chair

RELEASED: June 4, 2010

The hearing was recorded. Transcripts can be made available at your expense. The period to appeal a decision to the Ontario 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> in approximately three weeks. The decision may also be available on Quicklaw at a later date.