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Appeal  
Tribunal**

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January 10, 2005

**MEMORANDUM**

***Re: Vladimir Klinaev and Fleet Car Sales Ltd. 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:**

Vladimir Klinaev, Applicant  
Aviva Harari, Counsel for OMVIC

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VLADIMIR KLINAEV AND FLEET CAR SALES LTD.

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

TO REVOKE REGISTRATIONS

TRIBUNAL: DEREK ISRAEL, Vice-Chair

APPEARANCES: VLADIMIR KLINAEV, represented himself and Fleet Car Sales Inc.,  
as its Agent

AVIVA HARARI, Counsel, represented the Registrar, *Motor Vehicle  
Dealers Act*

DATE OF  
HEARING:

December 20, 2004

Toronto

### REASONS FOR DECISION AND ORDER

#### BACKGROUND:

This hearing arises out of a written Notice of Proposal (the "Proposal") dated August 6, 2004 issued by the Registrar under the *Motor Vehicle Dealers Act* (the "Registrar" and the "Act" respectively) to revoke the registrations of Vladimir Klinaev as a motor vehicle salesperson ("Klinaev") and Fleet Car Sales Ltd. as a motor vehicle dealer (the "Dealer").

The Registrar bases his Proposal to Revoke the registrations under section 7 of the Act as read with sections 5.(1)(a)(b) and (c)(i) and (ii) and 6.(2).

In support of his Proposal the Registrar furnished the following particulars:

1. Fleet Car Sale Ltd. is registered as a motor vehicle dealer under the Act. The dealer has been registered since on or about March 9, 1999.
2. Vladimir Klinaev is registered as a motor vehicle salesperson under the Act. He is an officer and director of the dealer.
3. Klinaev is an officer and director of Fleet Rent-A-Car.
4. Klinaev and Fleet Rent-A-Car have been convicted pursuant to the Environmental Protection Act. The convictions related to the issuance of drive clean certificates for vehicles which failed to meet emissions standards testing shortly after being issued the pass certificates. Klinaev and Fleet Rent-A-Car were also convicted of providing false or misleading

information to an agent of the Ministry of the Environment. Klinaev was convicted on or about April 2, 2004. Fleet Rent-A-Car was convicted on or about April 29, 2004.

5. Fleet Car Sale Ltd. was convicted pursuant to the Highway Traffic Act on or about February 26, 2004 for false statements on a safety standards certificate.
6. The dealer has engaged in conduct which has resulted in 2 charges being laid against the dealer pursuant to the Highway Traffic Act. The conduct relates to false statements of a safety standard certificate.

By Notice of Further and Other Particulars dated November 26, 2004 the Registrar further alleged as follows:

1. Paragraph 6 of the Notice of Proposal s hereby deleted.
2. Dealer was convicted for breach of the Highway Traffic Act on October 17, 2002.
3. Dealer was convicted for breach of the Highway Traffic Act on August 13, 2004 and on September 23, 2004.
4. Dealer was fined with respect to the 2004 Highway Traffic Act convictions.

### THE EVIDENCE:

The evidence presented by the Registrar at the hearing consisted of the testimony of the Ministry of Transportation's investigators, Corey Jin and Glen Dodwell as well as Mary Jane South the Deputy Registrar under the Act. The Registrar relied upon documentary evidence as well which was contained in the Registrar's Book of Documents (Exhibit 4). Klinaev and the Dealer relied on the testimony of Klinaev.

A summary of the various persons' testimonies follows:

#### COREY JIN

Jin testified that he is an investigator with the Ministry of Transportation and in the course of his employment became familiar with Klinaev and Fleet Rent-A-Car Ltd. His investigation of the two aforementioned was in relation to the *Environmental Protection Act*. Pursuant to his investigation charges under the latter statute were laid against Klinaev and Fleet Rent-A-Car Ltd. (Fleet").

Jin stated that the charges related to what is known as the Drive Clean Program which came into force in Ontario in 1998. Fleet was licenced by the Ministry of the Environment to conduct inspections on motor vehicles to ensure that such vehicles met with emission standards required by the aforementioned statute. If the vehicle being tested for compliance with that statute's prescribed emission standards met those standards it would pass the test conducted by the licenced facility carrying out the test. In this case Fleet was the facility carrying out tests on 4 vehicles. The charges laid by the Ministry of the Environment resulted from Jin's investigation of Fleet and its premises. Pursuant to Jin's inspection he concluded that the test results of 4 vehicles were falsified by Fleet and Klinaev, its Director. It was found that certain 4 vehicles that were presented to Fleet for

testing were not placed upon the Dynamometer machine that conducted the emission test and that another vehicle was placed upon that machine in the place of each of the 4 vehicles. The result was that each of the 4 vehicles received "a pass" without in fact being tested.

Jin further stated that Klinaev in his capacity as Director and Officer of Fleet plead guilty to 6 counts relating to the offences of permitting the operation of motor vehicles that did not comply with the prescribed emission standard, contrary to section 9.(13.1) of Ontario Regulation 361/98, R.R.O. 1990, as amended made pursuant to the *Environmental Protection Act*, R.S.O. 1990, c. E-19 as amended and thereby committed an offence contrary to section 186(1) of that Act. Klinaev and Fleet were found guilty on all 6 counts and were fined by court an amount of \$6,250.00 which amount has to date not been paid by either Klinaev or Fleet (Exhibit 4, tab 4).

#### GLEN DODWELL

Dodwell testified that he is an inspector with the Ministry of Transportation and is also a licenced mechanic with 15 years experience. He stated that he is familiar with the Dealer as his jurisdiction extends to motor vehicle inspection stations that are licenced by the Ministry of Transportation and which stations issue, inter alia, safety standard certificates. The Dealer is a licenced inspection station. He has spoken with Klinaev who is responsible for the licenced inspection station and the certificates it issued as a licenced inspection station. Essentially, a safety standard certificate issued by a licenced inspection station such as the Dealer's facility ensures that the vehicle in respect of which the safety standard certificate has been issued is in fact roadworthy and meets the standards and requirements set by the *Highway Traffic Act*, R.S.O. 1990 Chapter H.8 (the "HTA").

As a result of his investigation of the Dealer Dodwell ascertained that the Dealer had 4 convictions under the HTA during the period October 2002 and August 2004 (Exhibit 4, tab 8). All four convictions were pursuant to violations under section 99.(2) of the HTA relating to the making of false statements in safety standard certificates issued by the Dealer of which Klinaev is a Director and Officer. Dodwell stated in his evidence that while a mechanic is responsible for the inspection of vehicles relative to the issue of safety standard certificates, it is the facility's licensee, in this case Klinaev, who is responsible for the veracity of the certificate that is ultimately issued by the facility.

#### MARY JANE SOUTH

South testified that she is the Deputy Registrar under the Act and is employed by the Ontario Motor Vehicle Industry Council ("OMVIC") which administers the Act.

South stated that the Dealer is currently registered as a dealer under the Act and that Klinaev is currently registered as a salesperson under the Act and is registered as a salesperson of the Dealer. South referred to the search OMVIC instituted in the Companies' Branch relative to the Dealer and Fleet. The Companies' Branch records as revealed by OMVIC's search indicated that, relative to both the Dealer and Fleet, Klinaev is

and was at all material times both Director and Officer. (Exhibit 4, tabs 6 and 7). South went on to state that Klinaev had on a number of occasions represented himself to OMVIC as the President of the Dealer and Fleet. After reviewing the Proposal for the Tribunal South stated that the convictions regarding the issue of false emission certificates reflected directly as to the honesty and integrity of Klinaev as did the issue of false safety standard certificates of which Klinaev was convicted.

### VLADIMIR KLINAEV

Klinaev in his short testimony before the Tribunal did not deny the various convictions but stated to the Tribunal that he has at no time had customer's complaints made to him, the Dealership or Fleet. He further stated that the reason for the non-payment of the \$6,250.00 fine was due to the fact he did not know where to make payment.

### **FACTS FOUND PROVEN:**

The Tribunal finds the following facts to have been proven:

1. The Dealer and Klinaev are currently registered under the Act as motor vehicle dealer and salesperson under the Act and have been so registered at all material times.
2. Klinaev is and was at all material times the Director, Officer and controlling mind of the Dealer and Fleet.
3. On April 2, 2004 and April 29, 2004, respectively, Klinaev and Fleet were convicted of committing the offence of permitting the operation of various motor vehicles that did not comply with the prescribed emission standard, contrary to section 9(13.1) of Ontario Regulation 361/98, R.R.O. 1990, as amended made pursuant to the *Environmental Protection Act*, R.S.O. 1990, c. E-19 as amended. The fines totalling \$6,250.00 levied by the Court on the above convictions have not been paid.
4. On October 17, 2002, February 26, 2004, September 23, 2004 and August 8, 2004 the Dealer was convicted under section 99.(2) of the HTA, R.S.O. 1990 of making false statements in four safety standards certificates issued by the Dealer and therein represented by Klinaev as director, officer, and controlling mind of the Dealer.

### **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,

- (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; or
- (c) the applicant is a corporation and,
  - (i) having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its business, or
  - (ii) the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty; or

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.

The *Highway Traffic Act* states:

99.(2) Any person who makes a false statement in safety standards certificate is guilty of an offence and on conviction is liable to a fine of not less than \$400 and not more than \$20,000.

The *Environmental Protection Act* states:

184.(2) No person shall orally, in writing or electronically, give or submit false or misleading information in any statement, document or data, to any provincial officer, the Minister, the Ministry, any employee or agent of the Ministry or any person involved in carrying out a program of the Ministry in respect of any matter related to this Act or the regulations.

Ontario Regulation 361/98 under the *Environmental Protection Act* states:

9.(13.1) No person shall operate or cause or permit the operation of a motor vehicle that does not comply with subsection (9).

## REASONS FOR DECISION:

The onus of proof rests upon the Registrar to establish on a balance of probabilities that Klinaev and the Dealer contravened the Act and regulations made under the Act.

The Tribunal has considered the issues in this matter and its findings and conclusions are set out hereunder.

The Tribunal finds that Klinaev was at all material times the director, officer and controlling mind of the Dealer and of Fleet. The Tribunal also finds that the convictions registered against Klinaev as well as the Dealer and Fleet were not disputed or contested by Klinaev.

Those convictions are recent in time and are all industry related. No remorse was shown by Klinaev for his actions that led to the convictions. No effort has been made to pay any portion of the \$6,250.00 levied against him on conviction. Klinaev's conduct is one of dishonesty and reflects practices that are contrary to law. There were no mitigating circumstances offered by Klinaev and none were found by the Tribunal.

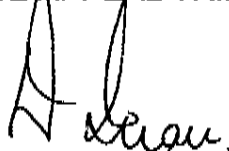
Falsifying records and/or documents are serious violations. Such violations are indicative of a person unwilling to comply with a legally ordered society. The Act, as no doubt envisioned by the legislature, was to protect the public in their dealings with persons in the industry and to prevent consumers being harmed by the dishonesty and lack of integrity perpetrated by such persons. It would be an affront to society generally and the industry to permit a person such as Klinaev to continue to be a member of the motor vehicle dealer industry

There is no doubt, for the reasons stated above, that the recent and repeated acts of dishonesty and patently illegal conduct displayed by Klinaev affords reasonable grounds for belief that neither Klinaev nor the Dealer will carry on business in accordance with law and with integrity and honesty. The Tribunal therefore sees no justification in interfering with the Registrar's proposal to revoke the registrations of Klinaev and the Dealer and finds no reason whatsoever to order that the Registrar refrain from carrying out his proposal.

#### **DECISION:**

Therefore by virtue of the authority vested in it under section 7(4) of the *Motor Vehicle Dealers Act*, the Tribunal directs the Registrar to carry out his Proposal dated August 6, 2004 to revoke the registrations of Vladimir Klinaev as a motor vehicle salesperson and Fleet Car Sales Ltd. as a motor vehicle dealer under the Act.

LICENCE APPEAL TRIBUNAL



Derek Israel, Vice Chair

*Released: January 10, 2005*

Filename: 2560.mvda.Fleet

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.