

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



2035161 ONTARIO INC. O/A CONSUMER'S CHOICE AUTO SALES #2,
CONSUMER'S CHOICE AUTO SALES INC.,
JAWED YOUSUFZAY AND MOHAMAD HAMAD YOUSUFZAY

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

TO REFUSE REGISTRATION

TRIBUNAL: DEREK ISRAEL, Vice-Chair

APPEARANCES:

JERRY LEVITAN, Counsel, representing 2035161 Ontario Inc. o/a
Consumer's Choice Auto Sales #2,
Consumer's Choice Auto Sales Inc.
Jawed Yousufzay and Mohammad Hamad Yousufzay

AVIVA HARARI, Counsel, representing the Registrar,
Motor Vehicle Dealers Act

DATES OF
HEARING:

December 6 and 7, 2004

Toronto

REASONS FOR DECISION AND ORDER

BACKGROUND:

This hearing arises out of a written Notice of Proposal (the "proposal") dated July 16, 2004 issued by the Registrar under the *Motor Vehicle Dealers Act* (the "Registrar" and the "Act" respectively) to refuse the registrations of 2035161 Ontario Inc. operating as Consumer's Choice Auto Sales #2, ("Consumer's Choice #2"), as a motor vehicle dealer, Consumer's Choice Auto Sales Inc. (Consumer's Choice #1) as a motor vehicle dealers, Jawed Yousufzay ("Jawed") and Mohammad Hamad Yousufzay ("Hamad") as a motor vehicle salespersons.

The Registrar bases his proposal to refuse the registrations under section 7 of the Act as read with section 5. (1)(b)(c)(ii) and section 6.(1).

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

1. 2035161 Ontario Inc. o/a Consumer's Choice Auto Sales #2 (Consumer's #2) applied for registration as a motor vehicle dealer on or about November 24, 2003.
2. Jawed Yousufzay is the sole officer and director of Consumer's #2. Jawed has been the sole officer, and director since November 3, 2003.
3. Jawed submitted 2 applications on November 24, 2004; an application for registration (which accompanied the new dealer application for Consumer #2) and an application to transfer his then current registration to Consumer's #2. The transfer was held in abeyance until the possible registration of Consumer's #2. In the interim, Jawed's, registration expired on May 25, 2004. As a result of the expiry of the registration, the individual application received by the Registrar's office from Jawed on November 24, 2003 is deemed to be a reinstatement application.
4. Jawed was convicted of sexual assault on February 10, 1998.
5. Consumer's Choice Auto Sales Inc. (Consumer's) was registered as a motor vehicle dealer under the Act, however the registration expired May 3, 2004. The Dealer failed to submit its renewal prior to the expiry of the registration. The Dealer submitted a renewal on May 10, 2004. The dealer also submitted a reinstatement application on May 10, 2004.
6. Jawed was an officer and director of Consumer's from on or about February 1, 2002 until July 16, 2003.
7. When originally registered, Consumer's was subject to terms and conditions. The Terms and conditions were signed by Jawed on behalf of Consumer's.
8. Mohammed Hamad Yousufzay submitted an application for registration as a motor vehicle salesperson on or about May 10, 2004, The sponsoring dealer on the application is Consumer's Choice Auto Sales Inc. Hamad has been an officer and/or director of Consumer's Choice since on or about April 16, 2003 to present. Hamad was originally registered as a salesperson on or about June 5, 2002. At all times he was a registered salesperson for Consumer's Choice.
9. Consumer's breached the terms of conditions of registration. In particular clauses 12, 13 and 17.
10. Consumer's purchased a 1992 Lexus, VIN JY8VK13T4N0032354 with an odometer disclosure of true distance unknown with the last odometer reading being 209,000 kilometers. Consumer's subsequently sold the vehicle to a consumer on or about May 6, 2003 with an odometer disclosure of distance travelled as "165,800 TKU".
11. On or about April 24, 2003, Consumer's purchased a 1995 Dodge Neon with an odometer reading of 144,910 and a disclosure that true kilometers unknown and subsequently sold the vehicle to a consumer on or about October 13, 2003 without full disclosure that true kilometers unknown. Hamad was the salesperson who signed the retail bill of sale.
12. Consumer's included "TKU" on contracts, contrary to the OMVIC Code of Ethics, Standards of Business Practice.

(Exhibit 1)

Consumer's Choice #1, Consumer's Choice #2 as well as Jawed and Hamad filed a Notice of Appeal.

The Evidence:

The evidence presented by the Registrar consisted of the testimony of Ralph Bayley, an employee of the Ontario Motor Vehicle Industry Council ("OMVIC"), Consumer "Z.I.", Louise Gingras, an employee of OMVIC and Laura Gordon the Director of Compliance with OMVIC. At the conclusion of the Registrar's case Jawed testified as well as Hamad. In addition to the testimony of the above persons the Registrar relied upon his Book of Documents filed with the Tribunal and entered as Exhibit 3.

The EVIDENCE:

The Testimony of Ralph Bayley.

Bayley testified that he has been employed by OMVIC since July 2001 as an investigator and was prior thereto with the Metro Toronto Police force for thirty-two years. He went on to state that on December 2, 2004, he attended on a consumer "X" at the latter's residence, the purpose being to serve a subpoena upon "X" to attend at the Tribunal's hearing relating to the proposal in this matter. When he attended at "X's" residence he spoke with "X" and discussed his anticipated evidence before the Tribunal. Upon leaving "X's" residence after serving the subpoena and discussing "X's" anticipated evidence the latter accompanied Bayley out of the residence and when outside "X" told Bayley that what he had told Bayley while inside the residence was not what had actually transpired when he bought the Dodge Neon motor vehicle from Consumer's Choice #1 on October 13, 2003. "X" indicated that nothing had been told to him by Hamad concerning the odometer reading on the Dodge Neon and he was not told by Hamad, with whom he dealt when purchasing the vehicle, that the kilometres shown on the vehicle's odometer was not correct. He only found out from an inspector of OMVIC when he was contacted by that inspector that the vehicle's odometer reading of 144,215 kms. was not the correct kilometres travelled by that vehicle. It was then that he contacted Hamad who offered a replacement vehicle if he signed a letter, which Hamad had prepared for his signature. When Hamad presented this letter to "X" (Exhibit 3, tab 17 last document) he signed it.

Bayley went on to state that he also served a subpoena upon "S.N." on December 2, 2004. At the time of service he had a discussion with "S.N." and her husband "Z.I." relative to a 1992 Lexus. Bayley stated that "Z.I." told him that he and Hamad had gone to an auto auction where "Z.I." saw the 1992 Lexus and had decided to buy it. Hamad purchased the vehicle at that auction for "Z.I." "Z.I." was purchasing the vehicle for his wife "S.N."

"Z.I." further informed Bayley at this meeting that a letter was presented to him by Hamad in July 2004 (Exhibit 3 tab 14) and he was asked to sign this letter. He signed the letter. "Z.I." was shown a copy of a bill of sale between his wife and Consumer's Choice #1 relative to the 1992 Lexus and dated May 6, 2003 (Exhibit 3, tab 14, page 3). "Z.I." denied that he had

previously seen this letter. Bayley also stated that when he met with "Z.I." and his wife on December 2, 2004 he was given by the former a copy of bill of sale that "Z.I." stated was the bill of sale given to him regarding the 1992 Lexus pursuant to its sale to "Z.I.'s" wife by Consumer's Choice #1(Exhibit 3, tab 13, page 4).

Under Cross examination Bayley was shown a copy of a letter dated July 16, 2004 which letter purports to bear the signature of "S.N." and which reads as follows:

July 16, 2004

To Whom It May Concern:

This letter is to conform the I (DELETED) purchased a 1992 Lexes ES300 (VIN-JT8VK13T4NO032354) from Consumer's Choice Auto Sales Inc. on the 06 Day of May 2003. The actual odometer shown on the car was 165800 at the time when I purchased it. The salesman also notified and showed me the auction bill of sale where the kilometer was 209000. I am very satisfied and showed me the auction bill of sale where the kilometer was 209000. I am very satisfied white this vehicle and had no problem since I purchased it. The dealer administrators were very provisional and honest to me, and since then I have recommended more people to them.

Thank you,

Yours truly,

(Exhibit 3, tab 14 last document)

Bayley stated in answer to questions put to him in cross-examination that he at no time, when speaking with "Z.I." and his wife on December 2, 2004, asked either of those persons any questions relating to the second and third sentences of the above letter.

Testimony of "Z.I."

"Z.I." stated that he was involved in the purchase of the 1992 Lexus for his wife. He stated further that he owns an auto repair shop and knows Hamad and Jawed from dealing with them in so far as vehicle repairs are concerned. He confirmed that on May 1, 2003 he went with both Hamad and Jawed to the auction at which the 1992 Lexus was purchased on his behalf. The Lexus had an odometer reading of about 165, 000 kms when he saw it at the auction. No other information was given to him regarding the car.

On May 6, 2003 "Z.I." received a yellow carbon copy of the bill of sale relating to the Lexus when he received delivery of the vehicle (Exhibit 5). "Z.I." went on to state that only in the summer of 2004 did he learn that the Lexus had traveled in excess of 209, 000 kms when he purchased the vehicle.

During his testimony "Z.I." was shown a copy of a bill of sale relating to the 1992 Lexus

(Exhibit 3, tab 14, page 3). "Z.I." compared the latter bill of sale to the yellow copy of the bill of sale he received in May 2003 when he took delivery of the 1992 Lexus (Exhibit 5). "Z.I." denied that he received the copy bill of sale (Exhibit 3, tab 14, page 3) with the words written as follows under the heading "optional extras":

"The true distance travelled is unknown, but is believed to be substantially higher than that shown on the odometer".

"Z.I." further stated that only in the summer of 2004 did he learn that the Lexus had travelled more than 209,000 kms. He also denied that the initials near the above handwritten words are in fact his initials. Shown the copy of letter dated July 16, 2004 (Exhibit 3, tab 14 second last page) "Z.I." denied the last sentence in that letter was true, as he has never recommended any persons to Consumer's Choice #1.

The Testimony of Louise Gingras:

Gingras testified that she is an inspector with OMVIC where she has been employed for the past seven years. She stated that she met with Kaled Yousufzay ("Kaled") on December 17, 2003 when she inspected the books and records of Consumer's Choice #1. She reviewed twenty-five transactions that the latter had entered into between August and November 2003. On the December 17, 2003 she obtained documents from Kaled. Amongst the documents reviewed was the bill of sale of Toronto Auto Auctions (T.A.A.) (Exhibit 3, tab 15, third page) relating to a Dodge Neon vehicle purchased at auction on April 24, 2003 by Consumer's Choice #1 and drew the Tribunal's attention to the words hereon "true kilometres unknown". She also referred to the bill of sale (Exhibit 3, tab 15, second last page) when the Dodge Neon vehicle was sold by Consumer's Choice #1 to consumer "M". This bill of sale was also obtained by Gingras on December 17, 2003 from Kaled. Gingras pointed out to the Tribunal that when the Dodge Neon vehicle was sold by Consumer's Choice #1 to "M" Hamad's signature appeared on the bill of sale as the authorized representative of the seller. On this latter bill of sale there was no disclosure of the words "true kilometres unknown" only the initials of "M" alongside the figures "144215 kms" and the letter "TKU" being the distance disclosed as travelled by the Dodge Neon. Gingras stated this was contrary to the Standards of Business Practice issued by OMVIC to all motor vehicle dealers and contrary to what was taught in the course taken by all applicants for registration under the Act including Jawed and Hamad who took and passed that course which is a prerequisite to registration. When Gingras contacted consumer "M" after obtaining relevant documents from Consumer's Choice #1, she discussed with "M" his purchase of the Dodge Neon vehicle and was informed by "M" that he had "no idea that the mileage was not the true mileage". Notes made by Gingras at this interview are found at Exhibit 3, tab 15 page 1. Subsequently Gingras mailed to "M" a questionnaire for his completion, signature and return to OMVIC and in that completed and signed questionnaire, which was returned by "M" to OMVIC, one of the questions asked of "M", was;

Did the dealer/salesperson indicate anything to you regarding the odometer reading/mileage on the car?

(Exhibit 3, tab 16)

In answer "M" stated "No". Attached to this questionnaire was a copy of a bill of sale also forwarded to OMVIC by "M" (Exhibit 3, tab 15 page 5). This latter document according to Gingras differs from the copy bill of sale given to her by Hamad on August 19, 2004 (Exhibit 3, tab 17, page 4).

Gingras also referred in her testimony to the transaction involving the 1992 Lexus vehicle. A copy of the auction bill of sale was obtained by OMVIC from Consumer's Choice #1 when it purchased the vehicle and this bill of sale indicated that the vehicle's "True kms unknown" although the odometer disclosed 209,000 kms. The latter bill of sale related to the purchase by Consumer's Choice #1 of the vehicle on May 1, 2003. (Exhibit 3 tab 13). On receipt of this copy bill of sale OMVIC sent a questionnaire to "Z.I".

Gingras also noted that the copy bill of sale relating to a Honda Odyssey (Exhibit. 3 tab 18) was obtained from Consumer's Choice #1's records on January 8, 2004. This copy contains the handwritten words "car sold as is" and such wording is contrary to OMVIC's Standards of Business Practice given to all dealers. Those Standards (clause 2.5), require the following words to appear on the bill of sale and such words do not appear on this bill of sale.

"VEHICLE SOLD AS IS: I agree that if the appropriate space is initialed by me, the vehicle is sold AS IS and is not represented as being in a road worthy condition, mechanically sound or maintained at any guaranteed level of quality. The vehicle may not be fit for use as a means of transportation and may require substantial repairs at my expense.

Purchaser's Initials "

Gingras further sated that the use of the letters "TKU" were not to be used by dealer on a bill of sale in relation to the distance travelled by a vehicle and that the Standards (clause 2.2.3 and 2.2.4) require the following appear on the bill of sale.

2.2.3 Where a Dealer knows, or has reasonable grounds to believe that the distance shown on an odometer is not accurate, the purchaser is notified. Where this is the case, the contract includes one of the following plain language statements on the front of the contract:

- (a) "The true distance traveled is unknown, but is believed to be in excess of {estimate of distance traveled} which was recorded on {date}".
- (b) "The true distance traveled is unknown, but is believed to be substantially higher than that shown on the odometer".

2.2.4 Further to section 2.2.3, Dealers do not use abbreviations when disclosing the fact that an odometer does not accurately reflect the true distance traveled by a motor vehicle. Examples of prohibited abbreviations include: "T.K.U." and "T.M.U."

Gingras further stated that the Terms and Conditions signed by Consumer's Choice #1 and Jawed on April 24, 2002 (Exhibit 3, tab 5) have been breached, as the Standards of Business Practice have not been complied with by either Jawed or Consumer's Choice #1.

Gingras also referred to other documents she inspected and being part of the records of Consumer's Choice #1 copies of which she obtained on January 8, 2004. Amongst these documents is a copy bill of sale of a Honda Accord vehicle from Consumer's Choice #1 to a consumer (Exhibit 3 tab 19, page one) dated April 19, 2003 in which there are no disclosures whatsoever on that bill of sale as to the vehicle's condition whereas it was purchased by Consumer's Choice #1 on March 27, 2003 on auction when the auction bill of sale stated that the vehicle was "Salvage Branded Rebuilt" (Exhibit 3, tab 19, page 3). This is a necessary and material disclosure that Gingras stated should have been made to the purchaser when that purchaser purchased the vehicle. Jawed represented Consumer's Choice #1 as representative when purchasing the vehicle on auction and when the latter sold the vehicle.

Gingras also referred to Exhibit 3, tab 20, pages 1 and 3, which are copies of bills of sale, she obtained from Consumer's Choice #1. The first bill of sale related to the sale by Consumer's Choice #1 of a Chrysler vehicle and the second bill of sale related to the sale of a Honda Civic vehicle. These documents indicate the vehicles were sold to consumers with the letters "TKU" being used. This is prohibited by the Standards of Business Practice. Both bills of sale were signed by Hamad.

The Testimony of Laura Gordon:

Gordon, the Director of Compliance, stated in her testimony that she has been with OMVIC since 1997.

Gordon testified that Jawed signed Terms and Conditions on April 24, 2002 at which time he was both a director and officer of Consumer's Choice #1. Gordon stated that Jawed had failed to comply with the Terms and Conditions.

Gordon went on to refer to Consumer's Choice #2. She stated that this party made new application for registration as a dealer which application was signed by Jawed as sole officer and director of Consumer's Choice #2. (Exhibit 3, tab 6). Jawed also signed an application for transfer of his registration to Consumer's Choice #2 based on the assumption that the latter received its registration as dealer. (Exhibit 3, tab 7). Gordon also noted that OMVIC's Standards of Business Practice had been distributed to all dealerships and was incorporated in the certification course in December 2001 which course was compulsory for all applicants to pass prior to certification being considered. The Standards of Business Practice were reviewed with all applicants at the time of the latter's first inspection by OMVIC." All this applied to Jawed and Hamad.

Gordon expressed her concerns with the Applicants' applications for registration stating that OMVIC should be able to rely on the authenticity of documents in a dealer's records when inspected by OMVIC. This proved not to be the case when OMVIC obtained documentation from the applicants as well as from Jawed.

The Testimony of - Jawed Yousufzay:

Jawed testified that he is thirty-one years of age and has been in Canada since August 1997.

He was registered in May 2002 as a Motor Vehicle Dealer and as a salesperson under the Act. He stated that he enrolled in OMVIC's Automotive Certification course in February 2002 which course he duly passed. After registration as a dealer of which he was the sole owner he used the services of "Z.I.'s" motor repair shop to repair cars he purchased and to certify them for transfer of ownership purposes.

Insofar as the 1992 Lexus vehicle that was purchased by "Z.I.'s" for his wife was concerned, he stated that he and his brother Ahmed went to the auction with "Z.I.". Delivery of the Lexus was made to Consumer's Choice #1 about a week after the auction and delivery of it was made to "Z.I." whose wife never came to sign the bill of sale although "Z.I." said she would do so. "Z.I." himself was happy with the vehicle. Under cross-examination Jawed admitted that he took OMVIC's certification course and obtained and retained the instruction manual for the course as well as OMVIC's Standards of Business Practice. He also admitted signing Terms and Conditions on April 24, 2002 (Exhibit 3, tab 5).

Insofar as the 1990 Honda Accord was concerned, Jawed stated that he attended and represented Consumer's Choice #1 when the Honda Accord was purchased on March 27, 2003 at auction (Exhibit 3, tab 19, last page). He further stated that on the auction bill of sale the vehicle was described as "salvage branded rebuilt" but this was not noted on the bill of sale when Consumer's Choice #1 sold the vehicle to a consumer under a bill of sale dated April 19, 2003 (Exhibit 3, tab 19, First page). He and Hamad signed the latter document on behalf of Consumer's Choice #1. He stated further that it was a mistake not to have disclosed that the vehicle was branded as salvage.

The Testimony of Hamad Yousufzay:

Jawed's younger brother Hamad testified that he came to Canada in 1997 and commenced working at Consumer's Choice #2 in April 2003 where Jawed was working. He applied for and was granted registration as a salesperson having passed the certification course in April 2002.

Insofar as the 1992 Lexus vehicle was concerned he stated that he accompanied "Z.I." and Jawed to the auction when that vehicle was purchased by Consumer's Choice #1 on behalf of "Z.I.'s" wife. "Z.I." asked Hamad to bid on the vehicle as he liked what he saw

when he inspected it. When he told "Z.I." that the kilometers travelled by the vehicle was unknown "Z.I." told him " It does not matter". The bill of sale relating to the sale of the vehicle to "Z.I." by Consumer's Choice #1 (Exhibit 3 tab 13, page four) was not in Hamad's handwriting and after the vehicle was purchased at auction Hamad had "nothing to do with this vehicle".

In July 2003 Hamad stated he took over Consumer's Choice #2 from Jawed who had left that business. Hamad further stated that the proposal came to his attention about July 16, 2004. Upon becoming familiar with the proposal he went to see "Z.I." However, prior to doing so he inspected the bill of sale in the records in Consumer's Choice #1's offices (Exhibit 3, tab 13, fourth page). He then wrote in the words " the true distance travelled is unknown but is believed to substantially higher than that shown on the odometer." These words were added by Hamad after he read the instruction manual for the certification course. Having added the above words he then prepared a letter for "Z.I." to sign (Exhibit 3, tab 14, second last page) and took this letter to "Z.I." who signed it. Under cross-examination Hamad stated that the above letter was prepared for "Z.I.'s" signature after he had been to OMVIC's offices and after he knew that the proposal had been prepared for issue and after he knew of the allegations in the proposal relating to the Lexus vehicle. Hamad stated that no other customers of Consumer's Choice #1 were approached to sign letters. He also stated the bills of sale used by Consumer's Choice #1 contained the following words above the purchaser's signature.

"I HAVE READ THE TERMS ON THE FRONT AND BACK OF THIS PAGE AND AGREE THAT YOU HAVE NOT MADE ANY PROMISES TO ME, NOR ARE THERE ANY OTHER TERMS RELATING TO THIS AGREEMENT EXCEPT AS WRITTEN ON THE FRONT AND BACK OF THIS PAGE AND THAT THIS AGREEMENT WILL ONLY BE EFFECTIVE WHEN SIGNED BY YOUR AUTHORIZED REPRESENTATIVE."

FACTS FOUND PROVEN:

The following are the facts found by the Tribunal to have been proven.

1. Jawed was sole officer, director and controlling mind of Consumer's Choice #1 commencing February 1, 2002 until July 16, 2003.
2. Jawed became the sole officer and director of Consumer's Choice #2 on November 3, 2003 and remains so registered.
3. Hamad became an officer, director and controlling mind of Consumer's Choice #1 on April 16, 2003 and remains so registered.
4. Terms and Conditions dated April 24, 2002 were signed by Consumer's Choice #1 on April 24, 2002. Jawed was the authorized representative of Consumer's Choice #1 when signing the Terms and Conditions. Consumer's Choice #1 has breached clauses 13 and 17 of the Terms and Conditions.

5. Jawed was convicted of sexual assault on February 10, 1998.
6. Consumer's Choice #1 therein represented by Jawed sold under a written bill of sale dated May 30, 2003 a certain 1995 Honda Odyssey to a consumer with the following remarks written on such bill of sale by Jawed namely, "car sold as is" and "TKU".
7. Consumer's Choice #1 therein represented by Jawed sold under a written bill of sale dated April 19, 2003 a certain 1990 Honda Accord to a consumer without disclosing the material fact that that vehicle, to the knowledge of Jawed, had been branded salvage/rebuilt.
8. Consumer's Choice #1 therein represented by Jawed failed to make disclosure to the purchaser of a 1992 Lexus Motor vehicle material facts regarding the distance travelled by that vehicle as required by the Standards of Business Practice which standards were within the knowledge of Jawed and which standards required full disclosure of known facts within Jawed's knowledge.
9. Hamad, with intent to mislead OMVIC materially altered and/or added to Consumer's Choice #1's copy of bill of sale relating to a 1992 Lexus motor vehicle and pursuant to such alteration tendered a copy of such altered document to OMVIC with the intent to mislead OMVIC in its legitimate duties to protect the interests of consumers' rights.

THE LAW

The *Motor Vehicle Dealer Act* states as follows:

5. (1) An applicant is entitled to registration or renewal of registration by the Registrar except where,
 - a) having regard to 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 afford reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty; or
 - (d) the applicant is carrying on activities that are, or will be, if the applicant is registered, in contravention of this Act or the regulations.

REASONS FOR DECISION:

The onus of proof rests upon the Registrar to prove on a balance of probabilities that Jawed and Hamad as well as Consumer's Choice #1 and Consumer's Choice #2 are not entitled to registration under the Act.

The Tribunal has considered the various issues that have arisen in this matter and its findings and conclusions together with reasons are set forth hereunder.

First Issue:

The Tribunal finds that Jawed and Hamad were at all material times the sole officers and directors of Consumer's Choice #1 and Consumer's Choice #2 respectively. This issue was not placed in contention by either Jawed or Hamad.

Second Issue:

The Terms and Conditions dated April 24, 2002 was duly executed by Jawed in his capacity as authorized representative of Consumer's Choice #1. Subsequent to the execution of those Terms and Conditions Jawed represented Consumer's Choice #1 when it sold a certain 1995 Honda Odyssey Motor Vehicle to a consumer (Exhibit 3, tab 18, page 1) with words "car sold as is" written by Jawed on the face of the bill of sale. This notation on the bill of sale is in direct contradiction of paragraph 2.5 of the Standards of Business Practice of OMVIC. It was not denied by Jawed that he was aware of these standards which he conceded were part of the Automotive course he enrolled in with Georgian College and which course he passed. In addition the Terms and Conditions, which Jawed admitted having signed specifically noted and incorporated the obligation on both Jawed and Consumer's Choice #1 to comply with the Standards of Business Practice (Exhibit 3, tab 5, paragraph 17). Jawed violated one of the basic requirements of the ethical standards imposed upon him.

In addition Consumer's Choice #1, again represented by Jawed, sold a Honda Accord motor vehicle to a consumer without making any disclosure whatsoever on the bill of sale that the vehicle was "salvage" (Exhibit 3, tab 19). Jawed attended at an auction and represented Consumer's Choice #1 when it purchased the Honda Accord. Jawed signed the bill of sale on behalf of Consumer's Choice #1. The auction bill of sale clearly notes the vehicle was sold as salvage, a condition defined in the Standards of Business Practice and which condition is clearly a material fact that should have been brought to the purchasing consumer's notice but which fact was ignored by Jawed when the vehicle was sold. Jawed had an obligation to disclose the fact that the vehicle was a salvage vehicle and it is immaterial that the purchasing consumer may not have complained about the non-disclosure, for the Act is a consumer statute and is for the benefit and protection of the public. The failure of Jawed, in his capacity as an officer of Consumer's Choice #1, to disclose a material fact to the purchaser of the Honda Accord reflects adversely on the integrity of Jawed and on his ability to be registered as a motor vehicle salesperson or dealer under the Act. The further fact that Jawed breached clause 13 of the Terms and Conditions that was signed as recently as April 2002 also speaks adversely as to the future conduct of Jawed and whether he is governable at all. Clause 13 above contains an undertaking to disclose "all material facts in writing". It is clearly material to the purchaser of a vehicle, such as in the case of the Honda Accord, to know that the vehicle he is buying is a "branded" vehicle that has suffered serious damage which goes to the very root of the contract and could, if known to the purchaser, affect his decision whether or not to purchase.

Third Issue:

In so far as the transaction involving the 1992 Lexus motor vehicle is concerned the Tribunal finds that Jawed and Hamad attended with purchaser "Z.I." at the auction when the Lexus was purchased by Consumer's Choice #1. The Tribunal also finds that at the time of the auction the Lexus odometer read 165,800 kilometers. The Tribunal accepts the evidence of "Z.I." that both he and his wife did not know that the vehicle had travelled in excess of 209,000 kilometers. when the Lexus was purchased on auction. The lack of full disclosure by Jawed once again reflects adversely on his integrity and honesty.

The Tribunal also accepts that "Z.I." did observe the odometer reading of the vehicle at the time its auction and observed the reading to be about 165, 000 kilometers. The Tribunal also finds that "Z.I." for the first time observed the auctioneers bill of sale (Exhibit 3, tab 13, page 5) when it was shown to him by Bayley and that he was lead to believe by Jawed when, about a week after the auction, he took delivery of the Lexus and was then handed a copy of the bill of sale which showed that the distance travelled by the vehicle was, as stated in that bill of sale, (Exhibit.5) 165,800 kilometers. The Tribunal also accepts that when about a week after the auction delivery of the Lexus was made to "Z.I.", he was handed a copy of the bill of sale found at Exhibit 5.

The Tribunal noted that the proposal was executed by the Registrar on July 16, 2004 at or about which time the proposal's contents were brought to Hamad's notice. It is the further finding of the Tribunal that when the allegations in the proposal became known to Hamad he prepared the letter dated July 16, 2004 (Exhibit 3, tab 14 second last page). Hamad stated quite clearly that after he saw the proposal, he looked at Consumer's Choice #1's copy of the Lexus bill of sale (Exhibit 13, tab 4). He then prepared the letter dated July 16, 2004 and took it to "Z.I." for his signature. At the same time Hamad, accordingly to his evidence, added the words to Exhibit 13, tab 4 which added words read "the true distance traveled is unknown but is believed to be substantially higher than that shown on the odometer." These additional words, according to Hamad, were taken by him from the lecture notes of the certification course he had taken at Georgian College. He then presented the bill of sale to "Z.I." for his signature. "Z.I." then signed the bill of sale although his wife did not.

The action of Hamad in altering and adding to the bill of sale after the event, was done in order to attempt to overcome the difficulty Hamad saw in answering the allegations in paragraph 10 of the proposal. This is in the Tribunal's mind an act that demonstrates a lack of honesty and integrity. Sensing a situation that could be adverse to the interests of Jawed, Hamad entered upon a course of altering and adding to a bill of sale, which as it stood was a contravention of the Standards of Business Practice. He deliberately chose a course of action, which was not only self-serving and dishonest but was a scheme to mislead the Registrar and subvert the course of justice. On this basis alone he has shown a course of conduct, as recently as July of 2004, that does not bode positively in relation to his future conduct in the industry should his registration be granted. His conduct in materially altering a bill of sale is the conduct of a mischievous and deceitful mind. His actions were designed to mislead OMVIC in its legitimate quest for protection of the public interest. Furthermore, Hamad knew or ought to have known of the requirements to comply with OMVIC's Standards of Business Practice. After all he had taken the certification course at Georgian College.

Having regard to what is stated above the Tribunal sees no reasons to permit Hamad or Jawed to be registered. As was stated by the Ontario Superior Court of Justice (Divisional Court) in the matter of *Tri-Star Sales and Leasing v. Registrar, Motor Vehicle Dealers Act*,

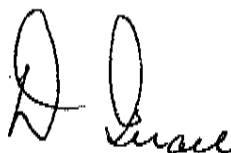
released January 28, 2004 "a breach of the consent order alone - by anyone - was sufficient to result in the revocation of registration". Here Jawed breached a consent order and Hamad by virtue of his knowledge of that order, has also breached that order.

To allow either Jawed or Hamad to be registered would be to condone their actions discussed in this decision and would constitute a disservice to persons who may in the future have dealings with them in the industry.

DECISION:

Accordingly, 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 July 16, 2004 to refuse the registrations of 2035161 Ontario Inc., Consumer's Choice Auto Sales Inc., Jawed Yousufzay and Mohammad Hamad Yousufzay .

LICENCE APPEAL TRIBUNAL



Derek Israel, Vice-Chair

Released: January 12, 2005

Filename: 2518.mvda.consumer's choice

The hearing was recorded. Transcripts can be made available at your expense. The period to appeal a decision to the Superior Court of Justice 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.