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Appeal  
Tribunal

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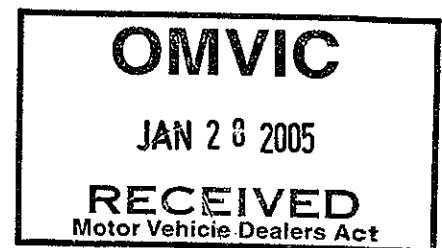
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January 24, 2005

**MEMORANDUM**



**Re: 1418412 Ontario Ltd. o/a Wholesale Auto Group and Haim Kotler v.  
Registrar, Motor Vehicle Dealers Act**

Enclosed herewith please find a copy of the Reasons for Decision of the Licence Appeal Tribunal with respect to this matter.

**DISTRIBUTION LIST:**

Haim Kotler, Applicant  
A. Michael Rothe, Counsel for Registrar under the *Motor Vehicle Dealers Act*

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1418412 ONTARIO LTD. O/A WHOLESALE AUTO GROUP AND HAIM KOTLER

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

TO REFUSÉ AND TO REVOKE REGISTRATIONS

TRIBUNAL: DEREK ISRAEL, Vice-Chair

APPEARANCES:

HAIM KOTLER, appeared on his own behalf and as Agent for  
1418412 Ontario Ltd., operating as Wholesale Auto Group.

A. MICHAEL ROTHE, Counsel, appeared on behalf of the  
Registrar under the *Motor Vehicle Dealers Act*.

DATE OF  
HEARING:

January 14, 2005

Toronto

## REASONS FOR DECISION AND ORDER

### BACKGROUND:

This hearing arises out of a written Notice of Proposal (the "proposal") dated June 16, 2004 issued by the Registrar under the *Motor Vehicle Dealers Act* (the "Registrar" and the "Act" respectively) to refuse the registration of 1418412 Ontario Ltd. o/a Wholesale Auto Group as a motor vehicle dealer under the Act (the "Dealer") and to revoke the registration of Haim Kotler ("Kotler") as a motor vehicle salesperson under the Act.

The Registrar bases his proposal under section 7 of the Act as read with section 5.(1)(b) and (c)(ii) as well as section 6.(2) of the Act.

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

- 1) 1418412 Ontario Ltd. o/a Wholesale Auto Group applied for registration as a motor vehicle dealer on or about September 22, 2003.

- 2) Haim Kotler was originally registered as a motor vehicle salesperson on or about March 25, 1991.
- 3) Kotler is the sole director of 1418412 Ontario Ltd. o/a Wholesale Auto Group.
- 4) On the application to become a registered salesperson question 9 asks:  

"Have you ever been found guilty or convicted of an offence under any law or are any charges pending? (This includes those instances, where a conditional or absolute discharge has been ordered). If yes, list all charges and or convictions, and the circumstances surrounding each (attach additional sheets if necessary).

The applicant said "Yes", indicating,  
 "Speeding valation (sic)"
- 5) On or about August 18, 2003 Kotler was found to be in possession of a stolen vehicle.
- 6) Kotler worked as a motor vehicle salesperson without benefit of registration.
- 7) Kotler has failed to notify the Registrar of a change in employment as he is required to do so under the "Act".

(Exhibit 3, tab 1)

The Dealer and Kotler filed a Notice of Appeal to the proposal.

### **THE EVIDENCE:**

The evidence presented by the Registrar at the hearing consisted of the testimony of William Goetz a detective with York Regional Police, Kevin Van-Pedro an employee of the Ontario Motor Vehicle Industry Council ("OMVIC") as well as OMVIC's Director of Compliance Ms. Laura Halbert. In addition to the above persons' testimonies the Registrar relied upon a Book of Documents (Exhibit 3). The Applicants relied upon the testimony of Kotler.

A summary of the various testimonies follow.

### WILLIAM GOETZ

Goetz testified that he is currently employed by the York Regional Police and his duties involve the investigation of stolen vehicles within his area of jurisdiction. In the course of his duties he became familiar with Kotler. Goetz stated that he swore the information upon which two charges were brought against Kotler. These two charges read:

"(1) Haim KOTLER

On or About the 13 August 2003 At the City of Vaughan in the Regional Municipality of York and elsewhere in the Province of Ontario did have in his possession property A BMW motor

vehicle of a value exceeding five thousand dollars, knowing that all of the property was obtained directly or indirectly by the commission in Canada of an offence punishable by indictment contrary to the Criminal Code section 354(1)(a).

And Further That

(2) Haim KOTLER

On or About the 8 August 2003 At the City of Vaughan in the Regional Municipality of York and elsewhere in the Province of Ontario did by deceit, falsehood or other fraudulent means defraud Lease Win Incorporated of money contrary to the Criminal Code section 380(1)."

(Exhibit 3, tab 11)

Goetz went on to state that in the course of an investigation that he was conducting into stolen motor vehicles he stopped at the shopping plaza. While at the shopping plaza he observed a BMW motor vehicle with no registration plates affixed to it. This BMW vehicle was similar to and fit the description of a BMW vehicle he was investigating. Goetz approached the vehicle and noted that Kotler was behind the wheel of the vehicle. Kotler alighted from the vehicle and a discussion took place between Goetz and Kotler in which Kotler identified himself as a motor vehicle dealer. Goetz inspected the BMW's vin number as displayed on the vehicle's dash and on its door and ascertained that the displayed vin number was false. Kotler's explanation as to how he came to be in possession of the BMW appeared to be suspicious to Goetz. Kotler at Goetz's request accompanied Goetz to a police station. Goetz ran a computer check on the vin number displayed on the BMW vehicle and ascertained that the vehicle was in fact a stolen vehicle upon which a false vin number had been affixed. The false vin number affixed in fact belonged to another similar BMW vehicle which had been exported from Canada. Kotler, after Goetz read him his rights, consented to giving a statement which was duly video taped. Kotler stated in the video taped interview that he had seen the BMW in Ottawa. He, while in Ottawa, bought the vehicle on behalf of a motor vehicle dealer, A & I Inc. ("A & I"), for \$30,000.00 which sum he had received from A & I in cash before Kotler went to Ottawa. The person in Ottawa who sold Kotler the vehicle was "Kevin" whose address and last name were not known to Kotler. After obtaining possession of the BMW he drove the vehicle back to Toronto and armed with duplicate false registration papers for the vehicle in the name of A & I he negotiated the sale of the vehicle to Lease Win who in turn leased the vehicle back to Kotler. This latter transaction took place on the day prior to arrest by Goetz. The purchase price for the vehicle paid by Lease Win to A & I was \$72,000.00.

#### KEVIN VAN-PEDRO

Van-Pedro testified that he is currently employed as a complaints handler at OMVIC. He stated that in the course of his employment he handled a complaint involving a 1998 Volkswagen Jetta motor vehicle. The complainant was one "N.S.", a motor vehicle dealer, who stated that on May 16, 2003 he purchased the Jetta from A & I therein represented by Kotler. Subsequently, "N.S." resold the Jetta to Auto Mint, another motor vehicle dealer.

Shortly thereafter Auto Mint complained to "N.S." that the Jetta's odometer had been tampered with and demanded a refund of the purchase price it had paid to "N.S." "N.S." thereupon held a meeting with the owner of A & I and Kotler at which meeting the owner and Kotler both agreed that if "N.S." took back the Jetta from Auto Mint they would in turn buy back the Jetta for \$7,490.00 (the \$7,000.00 being the price plus tax N.S. was paid by Auto Mint) and gave "N.S." a cheque for such amount. This cheque was dishonoured by non payment when presented to A & I's bank. "N.S." then spoke with Kotler and gave him two options. The first option was to make immediate payment of the dishonoured cheque while the second option was to return the Jetta to "N.S." so as to enable "N.S." to sell the Jetta and if sold for less than \$7,490.00 then Kotler would pay "N.S." the difference. Kotler agreed to the second option. When Kotler was advised by "N.S." that the latter had found a buyer for the Jetta at \$5,000.00 Kotler told "N.S." that he was satisfied and would pay "N.S." the sum of \$2,000.00. Nothing has in fact been paid by Kotler to "N.S."

Van-Pedro noted that "N.S." told him that when he purchased the Jetta from A & I it was Kotler who represented A & I in the deal. Kotler however was not registered under the Act as a motor vehicle salesperson to A & I.

LAURA HALBERT

Halbert testified that she is Director of Compliance at OMVIC. She has held this position since 1997 and her duties include overseeing an OMVIC team of employees that handle complaints. Halbert also stated that OMVIC has delegated authority to administer the Act which is a public protection statute.

In referring to the Registrar's proposal (Exhibit 3, tab 1) Halbert noted that in Kotler's application for registration as a motor vehicle dealer (Exhibit 3, tab 4) dated September 22, 2003 in answer to question #9 which reads:

Have you ever been found guilty or convicted of an offence under any law or are any charges pending? (This includes those instances, where a conditional or absolute discharge has been ordered). If yes, list all charges and/or convictions, and the circumstances surrounding each (attach additional sheets if necessary).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Note: Applicants are subject to background and criminal record searches. Submitting a false or incomplete disclosure is an offence under the MVDA and will result in disqualification. Do not assume that convictions are automatically deleted from your record. If you have any questions about the information you must disclose please call OMVIC.

Kotler had answered "Yes" and had written "speeding violation". Kotler had not disclosed the two pending charges which had come to the knowledge of OMVIC as a result of a CPIC report that OMVIC obtained and which report disclosed that Kotler had pending

charges of "possession property obtain, fraud over \$5,000.00: Offence date 13-Aug-2003: Court date 28-July-2005." (Exhibit 3, tab 9)

Halbert went on to state that when the CPIC report became known to OMVIC, the latter wrote to Kotler seeking fuller and further disclosure from Kotler but despite this Kotler still did not disclose the pending charges. Furthermore, Halbert stated that in Kotler's letter to OMVIC dated October 20, 2003 (Exhibit 3, tab 8) Kotler made no mention of the two pending charges and stated that "the officer" after speaking with Kotler at the shopping plaza let him go. This statement, according to Halbert, was in direct contradiction to Goetz's evidence who stated that he had Kotler accompany him to the police station where he charged Kotler with the two offences.

Halbert also refers the Tribunal to Van-Pedro's computer notes (Exhibit 3, tab 11, page 2) where "N.S." clearly stated that when he purchased the Jetta from A & I he negotiated the purchase with Kotler who represented A & I in that transaction. Kotler, according to Halbert, was not registered as a salesperson of A & I as is required by section 3.(1)(b) of the Act.

#### HAIM KOTLER

Kotler testified that he completed the OMVIC automobile certification course conducted by Georgian College some two or three years ago. Kotler further stated that he did not know the BMW vehicle he purchased from "Kevin" in Ottawa was a stolen vehicle and that when making the purchase he was acting in good faith. Kotler conceded that he was at no time registered as a salesperson of A & I. He also stated that he was arrested by Goetz and was taken by Goetz to the police station where he was charged with two offences (Exhibit 3, tab 10).

#### **FACTS FOUND PROVEN:**

The following are the facts found proven by the Tribunal.

1. KOTLER acted as a salesperson of motor vehicles for A & I in negotiating and completing the sale transaction between A & I and "N.S." relating to a certain 1998 Volkswagen Jetta motor vehicle purchased by "N.S."
2. KOTLER acted as a salesperson for A & I in negotiating the purchase by A & I of a certain BMW motor vehicle from one: "Kevin" in Ottawa.
3. Kotler acted as a salesperson for A & I in negotiating and completing the sale of the aforesaid BMW motor vehicle by A & I to Lease Win which latter firm then leased the BMW motor vehicle to Kotler.
4. At no time has Kotler been registered under the Act as a salesperson of A & I.

5. KOTLER was charged with one offence under section 354.(1)(a) and a further offence under section 380.(1) of the *Criminal Code*. The first charge related to having in his possession a BMW motor vehicle knowing it to be property obtained directly or indirectly by the commission of an indictable offence. The further charge related to defrauding Lease Win of money. The aforesaid charges relate to alleged offences having been committed on or about August 2003.
6. After being charged with the two aforesaid offences and pending the hearing of those two charges, Kotler when asked by OMVIC in his written application for registration as a motor vehicle dealer under the Act, failed to disclose such charges.

### THE LAW:

The *Motor Vehicle Dealers Act* states:

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.
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;
6. (1) Subject to section 7, the Registrar may refuse to register an applicant where in the Registrar's opinion the applicant is disentitled to registration under section 5.

## REASONS FOR DECISION

The onus of proof rests upon the Registrar on a balance of probabilities to prove that Kotler and the Dealer contravened the Act and Regulations made under the Act.

Having considered the issues in this matter the Tribunal's findings and conclusions are set out hereunder.

### 1. First issue - Kotler worked as a motor vehicle salesperson without benefit of registration.

The Tribunal finds that both in regard to the BMW transaction and in regard to the Volkswagen Jetta transaction Kotler represented A & I. In his testimony Kotler far from denying that he represented A & I, confirmed his involvement in both transactions as a salesperson of A & I. In addition, at no time did Kotler dispute that he was not registered as a salesperson of A & I. Section 3.(1)(b) of the Act requires that a salesperson be registered as a salesperson of a registered motor vehicle dealer, in this instance A & I. Kotler was not registered as a motor vehicle salesperson of A & I. He did not dispute the evidence of Goetz when Goetz stated in his testimony that he had spoken with the Manager of Lease Win who had confirmed that Kotler was a salesperson employed by Lease Win. Nor did Kotler deny that he had taken OMVIC's Automotive Certification course through Georgian College which course examined the Act amongst other aspects. Kotler was not a neophyte in the motor vehicle industry having been originally registered in 1991 as a motor vehicle salesperson under the Act. He should have been aware that a salesperson of motor vehicles in Ontario is required to be registered to a motor vehicle dealer in order to transact sales of motor vehicles. This is clearly well known within the industry and is set forth in section 3.(1)(b) of the Act which he contravened by conducting sales for A & I.

The Tribunal accordingly finds that Kotler is in violation of section 3.(1)(b) of the Act by virtue of his representing A & I as its salesperson in the two transactions involving the BMW and Volkswagen Jetta motor vehicles.

### 2. Second Issue - Failure to disclose pending charges.

The Tribunal has no hesitation in accepting the testimony of Goetz and in particular to his testimony of what took place at the shopping plaza and subsequent thereto. Goetz's testimony on all material aspects was not disputed by Kotler.

The Tribunal finds that Kotler, subsequent to what transpired at the plaza as described by Goetz, was in fact charged by Goetz at a police station with the two offences referred to in this decision. These two charges were brought against Kotler on August 13, 2003 and both charges are presently pending against him. A short time after Kotler was charged he made written application to OMVIC for registration as a motor vehicle salesperson, his previous registration having lapsed. This application was, on Kotler's own admission under cross-examination, completed and signed personally by him on September 22, 2003 some five weeks after the charges were laid. Having failed to disclose the pending charges,

OMVIC gave Kotler a further opportunity to disclose such pending charges by asking him for further and better information. Kotler in his written reply to OMVIC (Exhibit 3, tab 8) again failed to disclose the pending charges. Not only did Kotler continue in his failure to disclose but compounded this failure by attempting to mislead OMVIC by stating in his written reply to OMVIC that he was "let go" by "the officer" inferring that no charges were brought against him.

The Tribunal finds that Kotler's failure to disclose the pending charges was not due to an oversight or carelessness. The Tribunal further finds that his failure to disclose was due to dishonesty on the part of Kotler and was intentionally and consciously done in order to mislead the Registrar born out of fear that if these two charges were disclosed his application would have been in all probability denied. The intentional concealment amounts to deceit and dishonesty and as such gives the Registrar grounds for serious concern as to the honesty and integrity of Kotler and his ability to carry on business in accordance with law.

### 3. Third Issue - General

Quite apart from what is stated above, the Tribunal notes and finds that Kotler undertook to replace the dishonoured cheque given to "N.S." arising out of the Volkswagen Jetta transaction but has failed to replace such cheque and this amount remains unpaid and outstanding. This finding, causes the Tribunal concern as to not only the honesty and integrity of Kotler but as to his financial responsibility as required by section 5.(1)(a) of the Act.

The Tribunal does not believe that the Registrar was incorrect in deciding that the past conduct of Kotler disentitles him to continued registration. The Tribunal finds that based on the recent past conduct of Kotler there are reasonable grounds for revoking Kotler's application for registration as a salesperson of motor vehicles. The Registrar in so doing was faithfully carrying out his duties under the Act.


The Tribunal also finds that Kotler is and was at all material times the sole director and officer of the Dealer and was the latter's controlling mind. Kotler at no time denied that he was the sole director and officer of the Dealer and in fact the undisputed documents in the Registrar's Book of Documents (Exhibit 3, tab 3) reflects Kotler to hold such offices as well as the office of president of the Dealer. The Tribunal having found Kotler to be the sole director, officer, president and controlling mind of the Dealer and having found the past conduct of Kotler to be as described above, finds there are also reasonable grounds for refusing the Dealer's application for registration as a motor vehicle dealer based upon section 5.(1)(a)(i) and (ii) of the Act.

## **DECISION**

Pursuant to the authority vested in it by section 7.(4) of the *Motor vehicle Dealers Act*, the Tribunal directs the Registrar to carry out its proposal of June 16, 2004 and to refuse the

registration of 1418412 Ontario Ltd. o/a Wholesale Auto Group as a motor vehicle dealer and revoke the registration of Haim Kotler as a motor vehicle salesperson under the said Act as amended.

LICENCE APPEAL TRIBUNAL

A handwritten signature in black ink, appearing to read "Derek Israel", written over a horizontal line.

Derek Israel, Vice-Chair

*Released: January 24, 2005*

File: 2455.mvda.Kotler

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.