

**Licence
Appeal
Tribunal**

12th Floor
1 St. Clair Ave. W.
Toronto ON M4V 1K6

Telephone: (416) 314-4260
1-800-255-2214

Fax: (416) 314-4270
(416) 314-6307
1-800-720-5292

**Tribunal
d'appel en
matière de permis**

12^e étage
1 av St. Clair O
Toronto ON M4V 1K6

Téléphone : (416) 314-4260
1-800-255-2214

Télécopieur : (416) 314-4270
(416) 314-6307
1-800-720-5292



July 25, 2005

MEMORANDUM

**Re: J & A Garage Auto Repairs Ltd. and John Antoniadis 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:

Paul Mitchell, Counsel for Applicants
A. Michael Rothe, Counsel for Registrar Motor Vehicle Dealers Act

Licence Tribunal
Appeal d'appel en
Tribunal matière de permis



JOHN ANTONIADIS AND
J & A GARAGE AUTO REPAIRS LTD.

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

TO REFUSE REGISTRATION

TRIBUNAL: SIMON DANN, Presiding Member

APPEARANCES: PAUL MITCHELL, Agent, representing the Applicant,
John Antoniadis and J & A Garage Auto Repairs Ltd.

A. MICHAEL ROTHE, Counsel, representing the
Registrar, *Motor Vehicle Dealers Act*

DATE OF HEARING: June 15, 2005 Toronto

REASONS FOR DECISION AND ORDER

BACKGROUND:

This appeal is the result of a written Notice of Proposal (the "Proposal") dated January 7, 2005 issued by the Registrar (the "Registrar") under the *Motor Vehicle Dealers Act* (the "Act") to refuse the registration of John Antoniadis as a motor vehicle salesperson and J & A Garage Auto Repairs Ltd. ("J & A") as a motor vehicle dealer.

In support of the proposal to refuse the registrations of John Antoniadis and J & A Garage Auto Repairs Ltd., the Registrar has furnished the following reasons:

The intention and objective of the Act is to protect the public interest. The requirements of the Act include that Registrants be financially responsible in the conduct of business and that Registrants carry on business in accordance with the law and with integrity and honesty. The Registrant's past conduct is inconsistent with the intention and objective of the Act, and therefore warrants

disentitlement to registration under the Act. Therefore, the Registrar is unwilling to register John Antoniadis and J & A Garage Auto Repairs Ltd. under the *Motor Vehicle Dealers Act*.

The Proposal also stated the particulars to be as follows:

PARTICULARS:

The reasons for this proposal are:

1. John Antoniadis ("Antoniadis") was registered as a salesperson on or about April 8, 1997.
2. J & A Garage Auto Repairs Ltd. (the "Dealer") was registered as a dealer on or about September 27, 2000. At all material times Antoniadis was the sole officer and director of the Dealer.
3. On or about October 28, 2004, Antoniadis submitted an application for registration.
4. On the application to become a registered salesperson question 1(a) asks:
"Are there currently any charges pending or has the applicant ever been found guilty or convicted under any law. If yes to any of the above questions and you have not previously disclosed this information in writing, attach particulars on a signed and dated statement."
The Applicant originally stated "no".
5. On or about October 28, 2004, the Dealer submitted an application for registration.
6. On the application for registration to become a registered dealer, question 1(a) asks:
"For the purposes of this application the applicant means the sole proprietor, each partner of a partnership or each officer and director of a corporation, or the corporation. Are there any charges pending or has the applicant been found guilty or convicted under any law. If yes to any of the above questions and you have not previously disclosed this information in writing, attach particulars on a signed and dated statement."
The Applicant said no.
7. A criminal history check indicated that Antoniadis was found guilty on or about October 18, 2004 of two counts of Fraud over \$5000 and is currently under probation.
8. Antoniadis provided false and misleading information to the Registrar, on his application to become a registered salesman and application to become a registered dealer.

OPENING STATEMENTS:

Counsel for the Registrar, Michael Rothe, submitted that this was a refusal to register based on the Applicant's past conduct. Mr. Rothe said the two issues were:

1. two counts of fraud over \$5,000; and

2. that the Applicant failed to disclose this information through the application form and then continued to deny this before finally providing full disclosure.

Paul Mitchell, the Applicant's agent, submitted that the information presented by the Respondent was "convoluted" as there was no conviction since the charges were dealt with. He added that the dates on which the application forms were filled out, the questions had been answered truthfully and the Registrar has not considered all the information.

THE EVIDENCE:

The evidence presented to the Tribunal by the Registrar at the hearing consisted of documentary evidence as well as the testimony of Detective Constable Julie O'Riley, Yovanka McBean, and Louise Gingras. The evidence presented by the Applicant consisted of John Antoniadis' testimony.

Julie O'Riley

Ms. O'Riley is a Detective Constable with the Toronto Police Force and a member of the fraud squad.

Ms. O'Riley testified the Applicant came to her attention through information sent to her from TD Canada Trust where he had applied for a small business loan about the end of July 2000. Ms. O'Riley said the Applicant submitted a proposal for a business start-up and attached invoices and a commercial lease to the proposal. According to Ms. O'Riley, the Applicant did not advise the TD Canada Trust about any health problems which he later referred to as being a reason for his default on the loan.

Ms. O'Riley stated the Applicant received a \$180,000 business loan, of which \$157,000 was issued to one of the Applicant's suppliers.

Through cross-examination, the Tribunal also heard of other individuals who were involved but only the Applicant went to trial (Exhibit 3, Tab 8). The Applicant then received a conditional discharge with two years probation.

When asked about the bank's monies, Ms. O'Riley stated that the bank had resolved the money issue through other means.

Yovanka McBean

Yovanka McBean is a senior law clerk with the Ontario Motor Vehicle Industry Council ("OMVIC") and has been with OMVIC for 5 years. She met the Applicant at a meeting in late November, 2004 to discuss the application forms (Exhibit 3, Tab 3) and the criminal record search results (Exhibit 3, Tab 4). The Applicant

denied the information about the criminal charges and was then advised he could clarify the information by going to the police for a fingerprint and record search.

In cross-examination, Mr. Mitchell asked about the difference between the corporate and personal applications, suggesting that the Applicant did not consider his company to have any criminal record but that it was only the individual.

Ms. McBean replied that the application form was referring to the personal conduct of a company's owner and officers. Ms. McBean acknowledged that while the letter from the Applicant's lawyer (Exhibit 3, Tab 6) stated the Applicant did not have a criminal record, the application form does refer to:

"...the applicant [which] means the sole proprietor, each partner of a partnership or each officer or director of a corporation, or the corporation".

Louise Gingras

Ms. Gingras is employed by OMVIC as manager of the inspections department. She has been with OMVIC since 1997. OMVIC is a non-profit organization empowered to administer the Act and its regulations.

Ms. Gingras stated that OMVIC has four main functions. These are the registration of applicants under the Act, inspections of motor vehicle dealers and their premises, investigations of complaints about motor vehicle dealers and salespersons as well as mediation of disputes between registrants and consumers.

Ms. Gingras said the Act is a consumer protection statute and that the Registrar is empowered under the Act to ensure compliance by all registrants.

In her testimony, Ms. Gingras reviewed the Notice of Proposal (Exhibit 3, Tab 1) and testified that the Applicant made written applications to OMVIC for registration as both a motor vehicle salesperson and motor vehicle dealer.

In the Applicant's written application for registration as a motor vehicle salesperson, he first answered "No" and then changed it to "Yes" and wrote in, "Previously Disclosed", to Question 1A, Section A, which asked the following:

"Are there currently any charges pending or has the applicant ever been found guilty or convicted under any law?" (Exhibit 3, Tab 3)

In the Applicant's written application for registration as a motor vehicle dealer, he answered "No" to Question 1A, Section A, which includes a definition for the applicant to consider and then asks:

"For the purpose of this application the applicant means the sole proprietor, each

partner of a partnership or each officer or director of a corporation, or the corporation.

Are there any charges pending or has the applicant been found guilty or convicted under any law?" (Exhibit 3, Tab 3).

OMVIC carried out a background check and received a CPIC report, dated November 24, 2004 (Exhibit 3, Tab 4), which reported that the Applicant had two fraud charges registered against him. The disposition of those charges was a conditional discharge with two years probation.

As the Applicant's written application had not disclosed the above convictions he was asked by OMVIC to give the reason for his failure to disclose the convictions and to explain the circumstances surrounding each charge and conviction. (Exhibit 3, Tab 5).

Ms. Gingras testified that when the Applicant called to say he had no knowledge of the charges, he was advised to contact the police for clarification.

OMVIC then received two letters and the first was from his lawyer. This first letter was dated December 2, 2004 and said the Applicant had been found guilty of Fraud but not convicted of any offence and he had been given a conditional discharge. The Applicant's lawyer also wrote that "He does not have a criminal record." (Exhibit 3, Tab 6).

The second letter, dated December 3, 2004, was from the Applicant directly and in it, he apologized "For this unintentional error on my part. I truly believed I answered this question honestly to the best of my understanding of the question." (Exhibit 3, Tab 7).

The Applicant further explained that...

"I was charged around a year ago of fraud, relating to a business venture I was involved in a few years ago. This venture was unrelated to my recent job. On October 18, 2004 I had received a conditional discharge, was not convicted and pleaded guilty to relieve myself of the long and expensive cost of the legal system. I do not have a criminal record."

Ms. Gingras testified that the fraud charge is representative of deceit and because the application is the first test of an applicant's honesty, the Registrar places substantial reliance upon it.

Ms. Gingras stated the Applicant has also not yet completed his probation period. She added that as the Registrar also considered how recent the charges were, this confirmed the Registrar's view that the application for registration should be refused.

In cross-examination, Mr. Mitchell asked Ms. Gingras about the differences between a corporation's application and an individual's application.

Ms. Gingras explained that the corporation application is clear in stating that "the applicant means the sole proprietor, each partner of a partnership or each officer or director of a corporation, or the corporation".

John Antoniadis

While the Applicant's complete testimony was fully considered, the relevant points noted are as follows:

- that he did not deny the fraud charges but accepted his lawyer's advice to plead guilty because he had not wanted a long and expensive court action;
- the bank had issued a claim against his debt and to resolve it he sold his house and paid it in full;
- he had hired a lawyer and relied on this lawyer to guide how he completed the salesperson and dealer registration applications;
- he could not remember whether he had signed the application personally or as a corporation though his lawyer had suggested the application was "tricky";

CLOSING STATEMENTS:

In his closing statement for the Registrar, Mr. Rothe submitted that the two elements to consider were:

1. the impact of the 2 charges
2. the failure to disclose these charges.

Mr. Rothe added Exhibit 3, Tab 8 contained court certified documents confirming that the Applicant had been charged on 2 counts of fraud and he had also pled guilty.

Regarding the findings of guilt, Mr. Rothe submitted that the Applicant hadn't denied the finding but had said he couldn't remember, but the Tribunal should not consider a "plea of convenience as by nature, fraud is deceitful". as was referenced in *Harrison (Re)* [1998] O.C.R.A.T.D. No. 65.

Regarding the fact that the Applicant's period of probation will not end until October 2006, Mr. Rothe cited the matter of *Rubin (c.o.b. Affordable Auto Sales)* (Re) [2000] O.L.A.T.D. No. 377, page 4, paragraph 16, in which the Tribunal also referenced other cases dealing with applications for registration which were not permitted until after probation has been completed and that "a period of reformation has been exhibited".

In the matter of disclosure, the application poses simple questions regarding prior convictions or disclosures. The Applicant disclosed traffic violations but not

convictions.

There was testimony from Ms. McBean that the Applicant, when confronted with the CPIC report, claimed he was not charged.

In *Diego Martin Lucero v. M.V.D.A.*, April 22, 2005, the Tribunal confirmed that "the need for an applicant to complete the application form completely and truthfully is a vital part of the application process and an applicant's failure to do so is reason to refuse registration".

It was the Registrar's position that the test as set out in *Brenner [1983] O.J. No. 1017* and defined in *Shine [2003] O.J. No. 507/01* had been met and that the past conduct of the applicant provides "reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty."

In his closing, Mr. Mitchell submitted that the court records state the Applicant was conditionally discharged and he should be allowed to make a living. In the alternative, conditions could be imposed and the Tribunal could consider the kind.

In his response, Mr. Rothe referred to *Hosseini-Rad [2004] O.J. No. 1273*, page 3, paragraph 19, and the court's finding that personal and economic considerations "play no part in a determination as to whether or not an applicant should be granted a licence".

FACTS FOUND PROVEN:

1. On October 28, 2004 the Applicant completed and signed an application for registration under the Act as a motor vehicle salesperson, which was received by OMVIC on the same date;
2. On October 28, 2004 the Applicant completed and signed an application for registration under the Act as a motor vehicle dealer, which was received by OMVIC on the same date;
3. On or about June 5, 2003 the Applicant was criminally charged with fraud over \$5000 and was subsequently given a conditional discharge and 2 years probation;
4. The Applicant, in his signed and completed application for registration as a motor vehicle dealer failed to disclose the criminal charges referred to in paragraph 3 and which are more fully referred to in the CPIC report dated November 16, 2004 (Exhibit 3, Tab 4);
5. At the time of completing and signing this application for registration as a motor vehicle dealer, the Applicant was aware and had full knowledge of the charges and their disposition, including the probation period;
6. As there was no dispute to the Applicant's statement that he repaid the TD Canada Trust for the commercial loan originally made to him, the Tribunal

finds the repayment as a fact.

THE LAW:

Section 5.(1) of the *Motor Vehicle Dealers Act* states:

- 5(1) An applicant is entitled to registration or renewal of registration by the Registrar except where,
 - (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

Section 6.(1) of the Act states:

- 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.

DECISION AND REASON FOR DECISION:

The Registrar has the onus of proof to satisfy the Tribunal that he has reasonable grounds to believe the registration of the Applicant should be refused.

The evidence is clear with regard to:

- (1) the fraud charges and guilty plea (as evidenced in Exhibit 3, Tab 8, page 7);
- (2) the Applicant remains on probation until October 2006;
- (3) the recent occurrence of the charges and their disposition;
- (4) the failure to disclose on the application form and the subsequent denial as testified to by Ms. McBean.

In consideration of the seriousness of the fraud charge and court disposition, as well as the facts that the charges are recent and the Applicant's probation period has not been completed, the Tribunal finds that the Registrar has satisfied the onus of proof and that there are reasonable grounds to remain concerned as to whether the Applicant will carry on business in accordance with law and with integrity and honesty.

While there was more evidence given by the witnesses, including the Applicant's uncontested statements that there had never been any other complaints about his past dealings with his customers, the above points are found to represent the principal facts for the Registrar's decision.

In the Tribunal's view, the essential considerations are the nature of the charges, and importantly, both that they were recent in time, and that the probation period has not been completed.

The Applicant's testimony that he accepted his counsel's advice to plead guilty

so as to avoid a lengthy and expensive court process was not considered favourably. The Tribunal also agrees that the existence of a corporate entity does not relieve an individual applicant from personal disclosure compliance with the requirements of the Act.


However, the Tribunal did consider the fact the Applicant had repaid the bank the full amount of their loss and is of the opinion that this may be seen as a positive factor should he choose to reapply for registration at some future time.

Given the reasons as reviewed above, it is the Tribunal's view that the registration of J & A Garage Auto Repairs Ltd. should also not be granted based upon the current information put forth in its application, and therefore, the Registrar's decision to refuse registration to J & A Garage Auto Repairs Ltd. should be upheld.

DECISION:

Accordingly, the Tribunal pursuant to the authority vested in it by section 7(4) of the *Motor Vehicle Dealers Act*, directs the Registrar to carry out his Proposal dated January 7, 2005, in respect of John Antoniadis and J & A Garage Auto Repairs Ltd.

LICENCE APPEAL TRIBUNAL


Simon Dann, Presiding Member

RELEASED: July 25, 2005

File name: 2800.mvda.Antoniadis.order.doc