

October 26, 2005

MEMORANDUM

**Re: *Leonid Vorobeichik o/a Aldan Auto Sales v.
Registrar, Motor Vehicle Dealers Act***

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

DISTRIBUTION LIST:

Harvey A. Swartz, Counsel, Representing the Applicant
A. Michael Rothe, Counsel, Representing the Registrar, *Motor Vehicle Dealers Act*

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



LEONID VOROBELCHIK o/a ALDAN AUTO SALES

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

TO REVOKE REGISTRATION

TRIBUNAL: MAXWELL ROTSTEIN, Vice-Chair

APPEARANCES: HARVEY A. SWARTZ, Counsel, representing the Applicant

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

DATES OF
HEARING:

April 6, 2005
June 17, 2005

Toronto

REASONS FOR DECISION AND ORDER

BACKGROUND:

This is a hearing before the Licence Appeal Tribunal (the "Tribunal") arising out of a Notice of Proposal issued by the Registrar under the *Motor Vehicle Dealers Act* (the "Registrar" and the "Act" respectively). The Notice of Proposal dated November 30, 2004, proposed to revoke the registration of Leonid Vorobeichik operating as Aldan Auto Sales, (the "Dealer") under the Act:

The appeal was first heard on April 6, 2005 in a Hearing that lasted from 9:30 a.m. to 1:00 p.m. At 1:00 p.m., the counsel for the Applicant was required to attend at the Superior Court of Justice on another matter. On consent of both counsels, this matter was put over until June 17, 2005 when it was concluded.

The Proposal in this matter sets out the following reasons for the proposed revocation.

(1) 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 disentanglement to registration under the Act. Therefore, the Registrar is unwilling to continue to register Leonid Vorobeichik O/A Aldan Auto Sales under the Motor Vehicle Dealers Act.

The Registrar also sets out more particulars in the proposal to amplify the reasons for revoking the registration of Mr. Vorobeichik.

(2) The dealer sold a vehicle, 2001 Kia VIN KNDJA723415013145 to a consumer. The dealer advertised the sale as a private sale and represented to the consumer that it was a private sale. The consumer did not receive a bill of sale for the transaction. The consumer dealt with an unregistered salesperson. The bill of sale representing the transaction that was provided by the dealer to a representative of the Registrar, Motor Vehicle Dealers Act does not set out the price actually paid by the consumer.

(3) The dealer sold a 2000 Honda CRV, VIN JHLRD1864YC051797 to a consumer. At the time of the transaction, the dealer did not advise the consumer that the vehicle was branded "rebuilt" and had been declared a "total loss" in the United States. The dealer also failed to advise the consumer that the distance shown on the vehicle was in miles and not kilometers. The dealer misrepresented the actual purchase price on the consumer's bill of sale.

(4) The dealer provided false documents to a representative of the Registrar, Motor Vehicle Dealers Act.

In addition, during the course of the hearing, it became clear that items (2) and (3) of the particulars, both involved flagrant tax evasion under the *Retail Sales Tax Act* of the Province, underpayment of such retail sales tax by each of the purchasers and under collection of that sales tax by the Applicant as well as false filings with the Ministry of Revenue.

THE LAW

The following are the relevant sections of the Act:

Registration

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

(a) having regard to the financial position of the applicant, the applicant cannot reasonably be expected to be financially responsible in the conduct of business; or

(b) the past conduct of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty; 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

(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. R.S.O. 1990, c. M.42, s. 5 (1).

Conditions of registration

(2) A registration is subject to such terms and conditions to give effect to the purposes of this Act as are consented to by the applicant, imposed by the Tribunal or prescribed by the regulations. R.S.O. 1990, c. M.42, s. 5 (2).

Refusal to register

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. R.S.O. 1990, c. M.42, s. 6 (1).

Suspension or revocation

(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. R.S.O. 1990, c. M.42, s. 6 (2).

Notice of proposal to refuse or revoke

7. (2) Where the Registrar proposes to refuse to grant or renew a registration or proposes to suspend or revoke a registration, the Registrar shall serve notice of the proposal, together with the written reasons therefor, on the applicant or registrant. R.S.O. 1990, c. M.42, s. 7 (1).

Powers of Tribunal where hearing

(4) Where an applicant or registrant requires a hearing by the Tribunal in accordance with subsection (2), the Tribunal shall appoint a time for and hold the hearing and, on the application of the Registrar at the hearing, may by order direct the Registrar to carry out the Registrar's proposal or refrain from carrying it out and to take such action as the Tribunal considers the Registrar ought to take in accordance with this Act and the regulations, and for such purposes the Tribunal may substitute its opinion for that of the Registrar. R.S.O. 1990, c. M.42, s. 7 (4).

Conditions of order

(5) The Tribunal may attach such terms and conditions to its order or to the registration as it considers proper to give effect to the purposes of this Act. R.S.O. 1990, c. M.42, s. 7 (5).

ISSUE:

Does the Registrar have sufficient grounds for revoking the registration of Leonid Vorobeichik o/a Aldan Auto Sales?

EVIDENCE**(A) The Evidence of The Respondent**(1) The Honda Vehicle

The Respondent introduced evidence in connection with the sale of a Honda CRV 2000 automobile to Consumer # 1 – Serial # VIN JHLRD1864YC051797.

Consumer # 1 was sworn and gave evidence. Her evidence showed that the Dealer had misrepresented the mileage of the vehicle to her. In addition, the Dealer's own records had been falsified or forged to show a different mileage total to the inspector representing the Registrar.

The Dealer represented that the 2001 KIA was the subject of an "accident repair" when in fact he had purchased it as salvage from Prestige Collision.

Salvage vehicles are subject to very strict requirements so that they cannot be put back into service without being completely rebuilt. It is obviously very profitable for a dealer to purchase a vehicle as "salvage" and resell it as only "accident repair".

The Bill of Sale signed by Consumer # 1 was put into evidence:

- (i) under the "remarks column" of that document appears the following:
"Car sold with safaty E-Test. Accid. Repeir". (Sic.)
- (ii) the price stated was \$10,000.
- (iii) the distance traveled was written 038514 (not marked as miles or kilometers).

It is clear that all these statements were false. Indeed,

- (i) the vehicle was a salvage vehicle which was sold by Prestige Collision (2002) Inc., and was not to be resold without the necessary warnings and rebuilding.
- (ii) the true price was \$19,000. Retail sales tax of \$720 was not paid to the Province of Ontario based on a false price of \$10,000.
- (iii) the records of the distance traveled were altered by the Dealer to show miles when none were originally filled in.

After the Registrar had issued his Notice of Proposal (now being appealed), the Applicant tried to reverse the transaction by buying the vehicle from Consumer # 1. This was obviously an attempt to try to escape the consequences of his conduct. The re-purchase in no way lessens the false representations or bad conduct of the Applicant.

(2) The KIA Vehicle

Consumer # 2 was affirmed as a witness.

He gave evidence that he responded to a private sale advertisement and came to a private home where he met an unregistered person (not the Applicant).

He entered into an agreement to purchase a KIA vehicle Serial # VIN KNDJA723415013145. Leonid Vorobeichik had purchased this car from Halifax Insurance and Suburban Auto Parts. The vehicle was termed by these vendors as a "write off".

The Applicant had the vehicle patched up, falsely branded as an accident repair, marketed and sold to Consumer # 2.

Consumer # 2 subsequently resold the vehicle to another Consumer at a profit but this is irrelevant. What is essential is that the Applicant conducted his business in a totally dishonest manner.

By the conduct of the Applicant, a very suspect vehicle was placed back on the highways of Ontario. Whatever the deceit involving Consumer # 2 and sales tax, there is the risk factor to the general population of the Province.

In connection with this KIA transaction, there is ample evidence that showed:

- (i) The transaction was falsely advertised as a private sale;
- (ii) The Applicant, although the owner of the car, allowed an unregistered person to sell it;

- (iii) The vehicle was previously marked down as a "total loss" – this information was concealed from the purchaser;
- (iv) Sales tax was falsely reported – the purchase price was misrepresented and false filings were made based on a fictional lower price.

Mr. Lee, an inspector for the Registrar did not give evidence but his marshalling of the voluminous evidence in this matter made the examination of witnesses much easier.

Although both witnesses participated in sales tax fraud, I find their other evidence very truthful.

(B) The Evidence Of The Applicant

Mr. Vorobeichik was affirmed and gave evidence. His evidence was generally evasive and aimed at rationalizing his conduct. It was clear that he did not seem to appreciate the seriousness of his conduct.

Counsel for the Applicant, Mr. Swartz put forward a very creative theory to explain away his client's action. Unfortunately for Mr. Swartz, the Applicant by his own testimony basically confirmed the facts set out herein.

While he confirmed most facts, Mr. Vorobeichik attempted to explain away everything.

He relied heavily on the settlement agreement he had signed with Consumer # 1 (the Honda car) after the Registrar's decision, in the false hope that this would make the complaint "go away".

For example, he couldn't understand how Consumer # 2 could possibly complain, since he had sold the KIA car for more than he paid. In his mind, that closed the matter. In the Honda case, he blamed it on some mysterious friend for whom he said he was doing a favor by selling a car.

He showed no remorse for cheating the Retail Sales Tax of the Province of Ontario.

The only argument that Mr. Swartz made, for which one might have sympathy, was that the Applicant wishes to withdraw from dealing with the general public and restrict himself to selling into the Eastern European Market. Thus, Mr. Swartz argued, by removing his registration, the Registrar was prohibiting him from making a living in export sales. The Registrar rejected this compromise and, I believe, correctly did so.

DECISION AND ORDER

Despite a vigorous and capable defense by Mr. Swartz, Mr. Vorobeichik gave every indication of a person who had no shame for his conduct. He demonstrated a complete lack of respect for the rules and standards of the automobile industry. The Registrar's findings in connection with Mr. Vorobeichik's operations are fully justified.

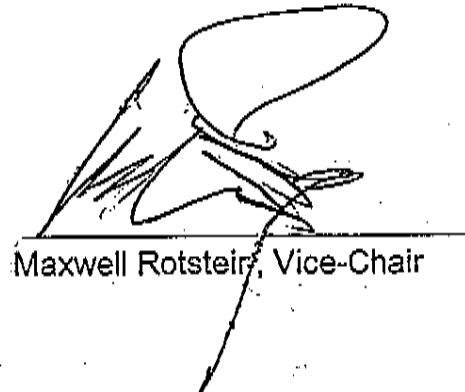
Mr. Vorobeichik seems to lack the very fundamentals of honest business dealings. It would not be appropriate to foist his sales onto an unsuspecting export market anymore than he should be allowed to continue to deal with Ontario Consumers.

In conclusion, the Notice of Proposal of the Registrar is confirmed and the registration of Leonid Vorobeichik carrying on business as Aldan Auto Sales is revoked.

The Tribunal also expresses deep concern about the flagrant breaches of the *Retail Sales Tax Act* of the Province that ought to be followed up upon by those responsible for the administration of these taxes.

I want to thank Mr. Rothe and Mr. Swartz for the high quality of their presentation and the very civil manner in which the hearing was conducted.

LICENCE APPEAL TRIBUNAL



Maxwell Rotstein, Vice-Chair

RELEASED: October 26, 2005

FILENAME: 2719.mvda. Leonid Vorobeichik.doc

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.

This decision, which is being released to the parties in this proceeding, will also be posted on the Licence Appeal Tribunal's website www.lat.gov.on.ca in two weeks time. The decision will also be available on Quicklaw at a later date.