

**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

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1-800-255-2214

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



October 26, 2005

MEMORANDUM



**Re: Ivo (John) Dzoic 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:

Ivo (John) Dzoic, Applicant
Yovanka McBean, Agent for the Registrar, *Motor Vehicle Dealers Act*

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IVO (JOHN) DZOIC

AN APPEAL FROM A PROPOSAL OF THE REGISTRAR
UNDER THE *MOTOR VEHICLE DEALERS ACT*, R.S.O. 1990,
Chapter M.42 AS AMENDED TO REFUSE REGISTRATION

TRIBUNAL: JANE WEARY, Vice-Chair

APPEARANCES: IVO (JOHN) DZOIC, Applicant, Unrepresented

YOVANKA MCBEAN, Agent for the Registrar, *Motor Vehicle
Dealers Act*

DATE OF
HEARING: September 22, 2005

Toronto

REASONS FOR DECISION AND ORDER

BACKGROUND

Ivo (John) Dzoic (the Applicant) applied for registration as a salesman under the *Motor Vehicle Dealers Act* (the Act) in January, 2005. He had previously been so registered from March 1983 through to October, 2001, when his registration was revoked by the Registrar under a Notice Of Proposal from which the Applicant did not appeal. The Registrar relies on the allegations of past conduct on which his 2003 Proposal was based to support his decision to refuse the application. The Applicant faxed a Notice of Appeal to this Tribunal stating he had been "found innocent" of all charges alleged in the prior Proposal by a jury.

A Notice of Hearing was served on the Applicant on April 5th advising of Hearing dates June 27 and June 28. On June 23, the Applicant requested an adjournment for medical reasons. On July 6, 2005 the Adjournment Order granting his request was couriered to him advising of the new dates for the Hearing being set as September 22, and 23, 2005. The Applicant left a voicemail with the Hearings Coordinator early in the morning of September 22nd advising he was unable to attend the Hearing due to transportation difficulties. He stated the hearing should proceed in his absence. At 9:30 a.m. the

Registrar's representative was present with witnesses and ready to proceed. At 10:00 a.m., with no further communication from the Applicant, the Hearing took place.

ISSUE

Are there reasonable grounds to believe the Applicant will not be responsible financially in the conduct of his business nor carry on that business in accordance with the law and with honesty and integrity as required by the Act?

EVIDENCE

Testimony as to the Applicant's past conduct was provided by Mr. Tom Reid, Branch Manager for the Toronto office of Automotive Finance Corporation ("AFC"), Mr. Andrew Snetsinger, National Account Manager for Autovin, Mr. Roy Van der Meer, Branch Manager of the Toronto office of AFC in 2001, Mr. John Stollery, Co-President of St. Thomas Ford Lincoln, Ms. Jill Dalybrozyk, Manager of John Bear Pontiac in St. Catherines and Ms. Mary Jane South, Deputy Registrar, Ontario Motor Vehicle Industry Council (OMVIC). The Registrar also relied on documentary evidence supplied in his Book of Documents (Exhibit #3). No documents were submitted, nor witnesses provided, for the Applicant.

Tom Reid testified that AFC provides financing for motor vehicle dealers. A line of credit is arranged for purchases from pre-approved auctions with a forty-eight hour repayment obligation. In cases where a dealer is making a private purchase AFC will reimburse him the cost on adequate proof of purchase price. In January, 1998 AFC entered into such an agreement with Western Auto Sales, of which the Applicant was the sole director, providing a \$100,000.00 line of credit. The agreement was amended in March, 2001 to reflect a higher amount requested by the Applicant of \$200,000.00. The Agreement (Tab 32) included in section 2.3 a repayment obligation period of 30 days; a prohibition against removing vehicles purchased under the Agreement from the Dealer's lot prior to their sale (section 4.1); and, a provision for inspection of books and records by AFC in section 4.3. By virtue of a Security Agreement the Applicant agreed any false information so provided would trigger his default under the contract. Schedule "D" contained his personal guarantee for the obligations undertaken by Western Auto Sales.

Andrew Snetsinger works for Autovin, a company employed by AFC to perform inspections and audits of their outstanding accounts. In 2001 when the circumstances here allegedly arose, he was Field Manager, and so responsible for the verification of AFC collateral with dealers. He attended the premises of Western Auto Sales and met with the Applicant who gave a number of reasons for the fact that none of eleven vehicles financed by AFC were on his lot. Of these, he stated that seven had in fact been sold. Of these seven the Applicant provided sales documentation for three. He provided no documentation, nor advised of sale dates for the other four vehicles.

Roy Van der Meer was branch Manager of AFC in 2001 and, as such, was familiar with the Applicant who was then a client. He testified that at the end of June, 2001 he had received a non-sufficient funds cheque from the Applicant's business, Western Auto Sales. This concern was made serious by the results of his investigation which revealed that a number of the vehicles for which the Applicant's company had received funding under the Security Agreement with AFC had in fact, according to Ministry of transport records, never been in his possession as they were in the United States at all relevant times. Further, that a number of such transactions were never owned by the dealers from which the Applicant advised he had purchased and for which AFC had refunded him monies. As a result, Mr. Van der Meer had complained to the Registrar.

Mr. Van der Meer identified documentation consisting of AFC's account for Western Auto Sales as at June 28, 2001 showing a total outstanding amount of ten vehicles, representing a cost of \$203, 498.25 (Tab 9) which sum AFC had advanced to Western Auto Sales under the Security Agreement. In each case, Mr. Van der Meer identified documentation received from the Applicant representing alleged purchases of these vehicles from two selling dealers, Eastway Ford, and John Bear Pontiac. The documentation consisted in each case of Bills of Sale and corresponding cheques apparently written by the Applicant to the Dealer for a specified amount. Also identified by Mr. Van der Meer were the corresponding cheques written by AFC to Western Auto Sales to reimburse the Applicant for his purchases. In each case, documentation from Ministry of Transport VIN Searches reveal neither John Bear nor Eastway Ford as having ownership of the vehicles and selling same to Western Auto Sales.

Testimony presented to the Tribunal by both Mr. Stollery and Ms. Dalybozyk corroborates the evidence of Mr. Van der Meer. Both witnesses testified the documents provided to AFC purporting to be from their companies illustrating sales of vehicles to Western Auto were not their documents. Neither witness was able to find copies in their records; both disputed the alleged signatures of their employees; Mr. Stollery testified the letterhead was not typical of Eastway Ford; Ms. Dalybozyk testified the letterhead wrongly spelled the John Bear corporate address. Both witnesses also testified to having searched their respective corporate records and finding absolutely no record or trace of the purported Western Auto Sales cheques to them for the sales.

Ms. Mary Jane South is the Deputy Registrar of OMVIC, created in 1997 to administer the public protection provisions of the Act. Ms. South testified as to the reasons for the Registrar's conclusion that the Applicant was not a suitable candidate for registration as a motor vehicle salesperson under the Act. Firstly, she relied on the findings of dishonest and fraudulent actions by the Applicant during his previous company's registration as a motor vehicle dealer under the legislation, as evidenced by the testimony above noted.

Further, Ms. South expressed concerns from the Applicant's actual application for registration, received January 14th, 2005 (Tab 3). In response to a question asking about previous employment, Mr. Dzoic has advised he was a "car sales advisor from June, 2001 through April, 2004 with Beaudry Bros. Ltd. Car Sales in St. Thomas which

has closed down. However, Ms. South notes that, during this specific time period, the Applicant was not registered as a salesperson under the Act and was, thus, not qualified to sell cars.

So too, in response to Question 3 which asks whether any business registration has ever been refused or suspended or revoked previously and, if so, why - the Applicant wrote: "not sure why salesman licence". Ms. South testified however that the Registrar's Proposal to revoke his registration in 2001 was sent to his correct address and did provide as reasons details of the alleged violations of the AFC Security Agreement and consequent indebtedness to AFC. This Proposal was not appealed to the Tribunal resulting in a Final Notice of Revocation being mailed to the Applicant's disclosed business address.

Lastly, Ms. South relies on the fact that bankruptcy information supplied by Mr. Dzoic in February of this year illustrates he is not discharged from numerous indebtedness to numerous creditors, including \$200,000.00 to AFC, dating from June, 2001 (Tab 4).

Ms. South explained that, despite a number of efforts on her part to obtain explanations from Mr. Dzoic concerning his situation since 2001, he has never made any effort to contact the Registrar or provide the office with any mitigating reasons as to why he should not be refused registration. She testified that his claim as to having not been criminally convicted for the situation concerning AFC is not persuasive as a criminal conviction might not issue for any number of reasons not connected with dishonesty in the conduct of one's business. She further testified that terms and conditions attaching to a registration are only effective if the licence itself is considered merited. In this case, given the seriousness of the past conduct, the extent of the current indebtedness and the paucity of explanation for either, the Registrar is of the opinion registration is not warranted.

In her submissions the Registrar's Agent urged this Tribunal to consider the decision of Fiaccio as to the obligations of a corporate director registered under public protection legislation as well as the decision of Redlick as it concerns the conduct of a principal dealer. She further requested the Tribunal award costs against the Applicant given his non-attendance without notice. She noted the Registrar had numerous witnesses, some from out of town, who had attended at no small cost and inconvenience.

LAW

The statutory provisions relevant to this matter are found in the Act and read as follows:

5. (1) An applicant is entitled to 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)

(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).

Section 6 of the Act states as follows:

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).

(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).

ANALYSIS AND DECISION

The onus of proof rests on the Registrar to establish, on a balance of probabilities, that either the Applicant's financial position demonstrates he cannot reasonably be expected to be financially responsible in his business conduct, or, that his past conduct affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty.

The test the Tribunal should apply to the facts is that enunciated by the Divisional Court in *Brenner v. Ontario (Registrar of Motor Vehicle Dealers and Salesmen)* [1983] O.R. No. 1017 as:

The proper question at the rehearing remains, however, whether the past conduct of the Applicant affords reasonable grounds for belief that he will carry on business in accordance with law and with integrity and honesty. Unless the Tribunal can find that it does not, the Tribunal should not order the Registrar to refrain from carrying out his proposal.

In the more recent case of *Ontario (Registrar, Motor Vehicle Dealers Act) v. Shine Car Sales* [2003] 40 M.V.R. (4th) 86 the Divisional Court clarified:

Brenner must be read carefully. It does not establish a rule that the Registrar must be shown to have been wrong in having concluded that there was reason to doubt that the registrant would carry on business inappropriately. The Tribunal approaches the matter uninhibited in any way by the Registrar's view.

The Tribunal finds that credible witnesses, supported by documentary evidence, revealed that in 2001 the Applicant, acting as a motor vehicle dealer under a previous registration, tendered false documentation to AFC for which he received substantial monies. In response to these allegations, of which the Applicant has had notice, he has provided no contradictory evidence to this Tribunal such that the only evidence demonstrates that Mr. Dzoic has shown a lack of honesty and integrity in violating his business' Security Agreement with AFC. The Tribunal accepts the Applicant's un-sworn statement that he was not criminally convicted of charges for such activity is insufficiently persuasive. As noted by the Divisional Court in the case of *Gillen v. College of Physicians and Surgeons of Ontario*[1989] O.J. No. 470 :

There is no authority or logic for the proposition that a criminal acquittal is in disciplinary proceedings prima facie evidence or proof that the gravamen of the criminal charge was unfounded or untrue.

Further, while these alleged purchases were all conducted over a short period of time, May – June 2001, they demonstrate a repeated course of conduct, involving a significant number of vehicle transactions, the nature of which reveals a lack of integrity and dishonesty. The Applicant has failed to tender any evidence demonstrating he has changed his business conduct since that time. While he noted on his application that he had been involved in vehicle sales since losing his licence in 2001, no witness was forthcoming to support his application for registration.

On the contrary, the evidence demonstrates a continued lack of honesty and integrity. By virtue of the Applicant's response to question 4 in his application for registration this January stating he was "not sure why" his earlier registration was suspended, he was, given his having been properly served with both the Notice of Proposal as well as the Final Notice of Revocation in 2001, clearly not open and forthcoming. By doing so, the Applicant has demonstrated an on-going and current propensity to provide misleading information to the office of the Registrar which is of particular concern to this Tribunal.

Counsel relied on the L.A.T. decision of *Sam Redlick* (2004). In that case Redlick, the controlling mind and singular director of his corporation, Formula Auto Leasing, had failed to pay monies owing to AFC by his dealership, the registration of which had terminated under the Act in 2002. He subsequently applied for registration under the Act as a salesperson. The Registrar Proposed to refuse the application and Redlick appealed to the Tribunal. The Tribunal found that Redlick had attempted to mislead auditors employed by AFC in their efforts to track inventory of Formula for which AFC was due funds. It also found Redlick had been dishonest in completing his subsequent application for registration as a salesperson, which application was being proposed by the Registrar for refusal. The Tribunal upheld the Registrar's Proposal as it concluded: "a repeated and ongoing course of disinformation and dishonesty on the part of

Redlick... is a good indicator by virtue of its ongoing and recent nature, that the future conduct of Redlick will more than likely follow the same pattern".

The evasive nature of the Applicant's response to question 4 also infers that he may have been less than honest with his sponsoring dealer employer who has signed the application for his registration as salesman. Certainly, that employer did not appear to support Mr. Dzoic's appeal before this Tribunal, which appearance might have assisted the Tribunal in determining whether the 2001 conduct remains reflective of the Applicant's current propensity to conduct his business within the perimeters set out in the public protection statute under which he seeks licence.

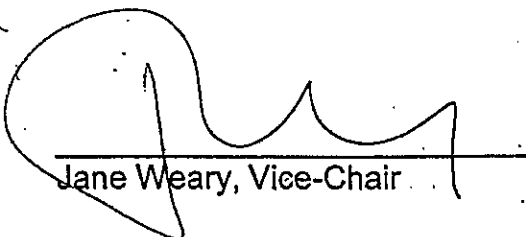
Finally, the evidence indicates the Applicant has not taken responsibility for his actions leading to the 2001 debt he owes AFC. It demonstrates that AFC remains an outstanding creditor as there is no indication the Applicant has made any effort to make good these losses.

In light of all the evidence before it, the Tribunal does find the Applicant's past conduct demonstrates reasonable grounds for belief he will not in the future act with honesty, integrity and in accordance with the law in the course of conducting his business as set out in section 5 (1) (b) and for these reasons orders the Registrar to carry out his Proposal.

While the Tribunal acknowledges the inconvenience in time and expense to the Registrar in having witnesses from out of town available when the Applicant failed to make arrangements for his own attendance, it is not persuaded this is a sufficient case for awarding costs against him. Under the Act the Applicant is entitled to a hearing under the legislation before being refused his application for registration. Rule 14 of the Tribunal's Rules of Practice stipulates that costs may be awarded against a party where that party has been found to have acted "...unreasonably, frivolously, vexatiously or in bad faith...". Examples of such are set out and include: *failing to attend a hearing before the tribunal... without contacting the tribunal and other parties* (Rule 14.2(a)).

Since the Applicant did give notice, albeit extremely short, that he was unable to attend and that he asked the proceedings to take place nonetheless, this Tribunal concludes he was genuinely unable to attend and was not thereby acting unreasonably nor in bad faith. Costs are, therefore, denied.

LICENCE APPEAL TRIBUNAL



Jane Weary, Vice-Chair

Released: October 26, 2005

File: 2831.mvda.Dzoic.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.