

**Licence
Appeal
Tribunal**

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June 1, 2006

MEMORANDUM

***Re: Neneve (Nathan) Yonas
v.
Registrar, Motor Vehicle Dealers Act***

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

DISTRIBUTION LIST:

Neneve (Nathan) Yonas, Applicant
A. Michael Rothe, Counsel for OMVIC

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NENEWE (NATHAN) YONAS

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

TO REFUSE REGISTRATION

TRIBUNAL: WILLIAM McINTOSH, Vice-Chair

APPEARANCES: FRANK BOSCARIOL, Agent, representing the Applicant

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

DATE:

OF HEARING: April 10, 2006

Toronto

REASONS FOR DECISION AND ORDER

BACKGROUND:

This appeal comes before the Tribunal by way of a Notice of Appeal received by the Tribunal on January 3, 2006. The appeal is from a decision of the Registrar, *Motor Vehicle Dealers Act*, R.S.O. 1990, Chapter M.42 (the "Registrar" and the "Act") contained in a Notice of Proposal issued under his hand dated December 7, 2005.

ISSUES:

The Registrar takes the position that the Applicant's application for his salesperson's registration should be refused on the basis of his failure to reveal his past criminal record on his application for registration.

The Applicant's criminal record was stated in the Notice of Proposal to be:

March 25, 1991	Trafficking in a Narcotic
April 26, 1991	Theft Under \$1000.00
October 22, 1991	Possession of Narcotic; Obstruct Peace Officer
April 3, 1992	Trafficking in a Narcotic

January 19, 1998 Fraud; Obstruct Peace Officer; Fail to Comply with Recognizance
October 17, 2002 Possession of Property Obtained by Crime Under \$5000.00

On November 23, 2005 the Applicant plead guilty to possession of property obtained by false pretence under \$5000.00.

The Applicant takes the position that his past criminal record is not relevant to his employment as a salesperson and the failure to disclose his past record is therefore irrelevant to the assessment of his entitlement to registration.

In his Notice of Appeal the Applicant set forth his reasons for his actions:

My Employer was not hiring me or not hiring me based on my past criminal record but on my ability to represent the company honestly and with integrity. They are fully supporting me on my ability to do so and hired me.

I chose not to answer my criminal past and my application was sent back incomplete and I was forced to reply to my past criminal record.

I chose to answer no on the advice of co-workers who told me it was the past not my present. When the Industry Council contacted me and told me the only way they would proceed with my application was to have my employer review a full criminal history of my past and sign off on it, I did as I was instructed. I let my employer know my past and they were supportive of me.

EVIDENCE:

The case for the Registrar was put in through Ms. Louise Cohen, Chief Investigator of the Ontario Motor Vehicle Industry Council ("OMVIC"), the body designated to administer the Act. She described the application process and the steps taken by the regulator upon receipt of an application. She referred the Tribunal to section 5 of the Act wherein it states that there is an entitlement to registration unless the Registrar has a belief that an applicant for registration will not fulfill his obligations under the Act honestly and with integrity. The Registrar's position is that of a guardian of the public interest and as part of that mandate, there is a criminal background check carried out upon receipt of application forms by aspiring registrants.

In the present case the Applicant's application for registration as a motor vehicle salesman was received at OMVIC September 16, 2005. Question 9 on the form calls for an answer to the following question:

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's answer was "No".

Included in question 9 is a note which states:

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.

From the Applicant's testimony it was clear that he had no difficulty with the English language and that he understood the disclosure required. He knew when he answered question 9 that he had convictions that were not being disclosed and that such non-disclosure would result in disqualification for registration. The possession charge was not revealed.

He testified that his trouble with the law was the result of years of substance abuse, which in turned stemmed from a difficult upbringing. He went on to say that he had entered a twelve step program at St. Vincent de Paul and is presently "clean".

The Applicant also proffered an explanation regarding the Alberta possession charge. He stated that he returned to that jurisdiction and entered a guilty plea in an attempt to clear the matter after OMVIC had brought the charge to his attention. The disposition was by way of an order of probation, which was filed as an exhibit. The order contained a restitution clause requiring monthly payments by the Applicant. These payments were not maintained leaving a present balance outstanding.

Mr. Brian Rapelje, General Manager of Eastway Chrysler and the Applicant's employer, was called to testify as to the character of the Applicant. He stated that while in the employ of Eastway, some 60 days, the Applicant comported himself in a professional manner and that there were no complaints lodged against him. He stated that the Applicant would be welcome as an employee even with terms and conditions attached to his registration.

THE LAW:

The *Motor Vehicle Dealers Act* states:

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 his 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; ...
8. A further application for registration may be made upon new or other evidence or where it is clear that material circumstances have changed.

APPLICATION OF THE LAW TO FACTS:

The governing legislation has as its primary purpose consumer protection. The legislature to that end has decided that in the area of the retail sales of motor vehicles a regulatory scheme is required. That scheme mandates that persons involved in that industry become registrants under the Act. While the Act allows for a prima facie right to registration it also allows the Registrar to intervene in the registration process if he feels that there are grounds for such intervention. Those grounds are set forth in section 5 of the Act and the registrant or applicant are informed of that intervention by the issuance of a Notice of Proposal. An appeal from the Registrar's Proposal lies to the Tribunal by way of hearing de novo.

In the present case the Applicant's application for registration was denied on the basis of non-disclosure of a criminal record on the application form. Every aspiring registrant is informed of the fact of a criminal background check being done and of the consequences of concealment right in the application form.

Past decisions indicate clearly the seriousness with which the Tribunal regards instances of concealment. The application form is the first contact between a hopeful registrant and the regulator and as such should be completed honestly. The Registrar has every right to hold the view that if there is a lack of forthrightness at the application stage there is the potential of further deception by the registrant in the future.

The Registrar along with the evidence of concealment set out the details of the offences listed and argued that they were of an economic nature, the very type that auger against the Applicant being allowed to deal with the public. The Registrar's position was that his (the Applicant) is more properly a case, which should be dealt with upon a new application under section 8 at a later date and upon new evidence.

The Applicant in response put forth the case that his rehabilitation efforts at St. Vincent de Paul should be taken as sufficient evidence that he has reformed and as such does not threaten the public protection aspect of the governing legislation. As the source of his criminal behavior was substance abuse conquering those demons should serve as evidence of the return to such behavior being unlikely. As well he points to the confidence shown in him by his employer. Finally he argues that a registration with terms and conditions attached would adequately deal with any concerns of the regulator thus making the sanction on non-registration unnecessary.

The Tribunal had sympathy for the Applicant's attempts to cope with his substance abuse problem. As well the Tribunal took note of the support shown by his employer. Clearly, the Applicant is a young man who has shown a talent for his chosen profession.

It is the task of this and all oversight tribunals to attempt to find a balance between the entitlement to registration under the Act and the regulator's duty, also under the Act, to maintain a retail automobile marketplace as open and transparent as possible.

The evidence suggests to the Tribunal that this is a case of an applicant who has taken positive steps to reverse a course of conduct leading nowhere. He has the support of St. Vincent de Paul and an employer. He has not however lived up to the terms of the probation order issued upon his plea. The Registrar is not satisfied with the evidence of reformed behavior over time sufficient to assuage his fears regarding the public interest.

ORDER:

The Tribunal agrees with the Registrar's position and by the authority vested in it under section 7. (4) of the *Motor Vehicle Dealers Act*, the Tribunal directs the Registrar to carry out the Notice of Proposal to refuse the registration of Neneve (Nathan) Yonas.

LICENCE APPEAL TRIBUNAL



William McIntosh, Vice-Chair

RELEASED: June 1, 2006

FILE NAME: 3304.mvda.Yonas.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.