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Appeal
Tribunal

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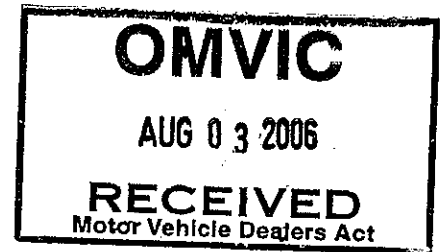
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August 2, 2006

MEMORANDUM



Re: Reza Toghraee
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:

Reza Toghraee, Applicant
A. Michael Rothe, Counsel for OMVIC



REZA TOGHRAEE

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

TO REFUSE REGISTRATION

TRIBUNAL: DEREK ISRAEL, Vice-Chair

APPEARANCES: REZA TOGHRAEE, Applicant, was not present nor was he
represented at the hearing

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

DATE OF
HEARING: July 21, 2006

Toronto

REASONS FOR DECISION AND ORDER

BACKGROUND:

This hearing arises out of a written Notice of Proposal (the "Proposal") dated January 31, 2006 issued by the Registrar under the *Motor Vehicle Dealers Act* (the "Registrar" and the "Act" respectively) to refuse the registration of Reza Toghraee (the "Applicant") 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) of the Act. In support of his Proposal the Registrar furnished the following particulars:

1. From on or about June 30, 2005 to on or about July 6, 2005, Reza Toghraee (the "Applicant") was registered as a motor vehicle salesperson under consent order of the Licence Appeal Tribunal. Said order attached as Schedule "A".
2. The Applicant, applied for registration as a motor vehicle salesperson on or about November 14, 2005.

3. On the application to become a registered salesperson question 6 asks:

Are you engaged now or have you been involved in personal bankruptcy proceedings? If yes, attach copy of the Assignment in Bankruptcy or proof of discharge, and provide explanation of circumstances leading to bankruptcy.

The Applicant answered, "No".

4. On or about January 23, 2004 the Applicant filed an Assignment in Bankruptcy.

5. 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 answered, "No".

6. A criminal record search found that the Applicant engaged in conduct which resulted in the following charges:

January 30, 2005	Breach of Recognizance – Peace Bond
May 23, 2005	Theft over \$5000.00
July 11, 2005	Assault with a Weapon (x3)
	Dangerous Operation of a Vehicle

(Exhibit #3, tab 1)

At the commencement of the hearing of the Applicant's appeal the Applicant was not present nor was he represented. An employee of the Tribunal, Ms. Stacy Fairley, testified under oath at the commencement of the hearing that she is employed by this Tribunal as a Hearings Co-ordinator and has carriage of this file. She further stated that she spoke with the Applicant on July 20, 2006 when he advised her that he did not intend to pursue his appeal to the Registrar's Proposal and wished to withdraw same adding he would not be appearing on July 21, 2006 when the appeal was due to be heard. The Applicant further advised Ms. Fairley that he no longer contested the Proposal as "some charges had now become convictions". Ms. Fairley requested the Applicant to advise the Tribunal of his withdrawal in writing prior to the hearing. The Applicant informed her that he was not able to do so as he was then driving and had no immediate access to a fax machine so as to fax in a notification to the Tribunal despite having been given the Tribunal's fax number by Ms. Fairley. Ms. Fairley further stated to the Tribunal that there has been no further communication received from the Applicant.

THE EVIDENCE:

The evidence presented by the Registrar consisted of the testimony of Mary Jane South and in addition thereto the Registrar relied upon documents as disclosed in his Book of Documents (Exhibit #3). No testimony or documentary evidence was presented on behalf of the Applicant.

Testimony of Mary Jane South

A summary of Ms. South's testimony is as follows:

South stated that she is currently the Deputy Registrar under the Act which position she has held since 1997. She stated further that she is employed by the Ontario Motor Vehicle Industry Council ("OMVIC"). The latter is a non-profit organization which is mandated to administer the Act and regulations. The Act itself, she stated, is a consumer protection statute.

She went on to state that the primary issue in this matter is the Applicant's failure to disclose pending charges against him in his applications to the Registrar for registration as a motor vehicle salesperson under the Act.

South explained that the Applicant made written application to OMVIC in December 2004 (Exhibit #3, tab 3, page 23). In that application, Question #9 stated as follows:

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.

In answer to this question the Applicant stated "No". Pursuant to OMVIC's receipt of this application OMVIC caused enquiries to be made and as a result of those inquiries the Registrar issued a Notice of Proposal dated March 30, 2005. The Applicant filed an appeal to that Proposal. On June 28, 2005 the Registrar and the Applicant entered into a settlement arrangement containing terms and conditions which was by consent of those Parties made an Order of this Tribunal dated June 29, 2005. In terms of the Order the Applicant agreed to, amongst other clauses, the following terms and conditions:

1. The Applicant agrees, if he is charged in the future, to immediately notify his employer in writing and to immediately give the Registrar a copy of this written notification signed by his employer.

6. The Applicant agrees to provide full and complete disclosure on all future applications and discussions with the Registrar regardless of whether or not disclosure has been made previously to the Registrar.

(Exhibit #3, tab 1, page 5)

The Applicant was then registered as a motor vehicle salesperson under the Act. Subsequent to his registration he permitted his registration to lapse which necessitated his re-instatement.

Desiring re-instatement the Applicant completed, signed and forwarded to OMVIC a fresh written application for registration dated November 8, 2005 (Exhibit #3, tab 8, pages 50-53). Question #9 on this application was identical to the same numbered question of the Applicant's application of December 2004 (Exhibit #3, tab 3, page 23). Once again in answer to this question the Applicant answered "No". Upon receipt of this application dated November 8, 2005 OMVIC applied to the Ontario Provincial Police for a C.P.I.C. report which gave the following pending charges:

**ENTRIES ON THE CPIC INVESTIGATIVE DATA BANKS
AS OF: NOVEMBER 17, 2005
NAME: TOGHRAEE. REZA
D.O.B: SEPTEMBER 3, 1977**

<u>TYPE OF ENTRY</u>	<u>AGENCY & DATE</u>	<u>PARTICULARS</u>
ACCUSED	TORONTO PS 11-JUL-2005	ASSAULT W' WEAPON X3, DANGEROUS OPERATION OFFENCE DATE: 10-JUL-2005 COURTDATE: 02-DEC-2005 EXPIRY DATE: 30-JUN-2006 CASE: D53.AR#1027261
ACCUSED	TORONTO PS 23-MAY-2005	THEFT OVER \$5000 OFFENCE DATE: 03-MAY-2005 COURT DATE: 02-DEC-2005 EXPIRY DATE: 30-APR-2006 CASE: D53.AR#1010365
PROBATION	TORONTO PS 30-JAN-2005	RECOGNIZANCE-PEACE BOND START DATE: 24-JAN-2005 EXPIRY DATE: 23-JAN-2006 CASE: 2005.001592

(Exhibit #3, tab 9, page 57)

OMVIC sought further information from the police regarding the above pending charges all of which had not been disclosed by the Applicant in his December 2004 application for registration nor in his November 2005 application for re-instatement. To the inquiries instituted by OMVIC the following information was obtained from the police.

In relation to the January 30, 2005 "Recognizance – Peace Bond" that recognizance had bound the Applicant to keep the peace for 12 months arising out of two incidents on November 26, 2004 and December 2, 2004 in which the Applicant had threatened death to a female and her child contrary to section 264.1 (1) (a) of the *Criminal Code* (Exhibit #3, tabs 10 and 11).

In relation to the assault charge laid on August 30, 2004 under section 266 of the *Criminal Code* and the mischief charge also laid on August 30, 2004 under section 430 (4) of the *Code* these incidents allegedly occurred on August 30, 2004 and arose out of the Applicant assaulting another motor vehicle driver and damaging that driver's vehicle as a result of road rage.

In relation to the theft charge such charge arose out of an incident that allegedly occurred on May 19, 2005 pursuant to which the Applicant was charged with theft over in terms of section 334 of the *Criminal Code*. The complainant in this incident was Holt Renfrew Limited and the Applicant was charged with stealing designer clothing from the complainant valued at \$12,760.00.

Ms. South concluded her testimony by stating that in answer to question #6 on the Applicant's application for registration dated November 8, 2005 the Applicant did not disclose the fact that his estate was placed in bankruptcy in January 2004 with debts totaling \$187,200.00.

FACTS FOUND PROVEN:

The Tribunal finds the following facts to have been proven:

1. On December 20, 2004 the Applicant applied to OMVIC for registration under the *Motor Vehicle Dealers Act* for registration as a motor vehicle salesperson.
2. The Registrar by way of Notice of Proposal served on the Applicant refused to grant the Applicant registration following receipt of the Applicant's aforesaid application.
3. The Applicant appealed the Registrar's aforesaid Notice of Proposal.
4. Pursuant to receipt of the Applicant's appeal, the Registrar and the Applicant entered into a written agreement containing terms and conditions to be complied with by the Applicant in the event of his registration.
5. By consent of the Registrar and the Applicant the terms and conditions contained in the aforesaid written agreement were made an Order of this Tribunal on June 29, 2005 and the Applicant was subsequently registered under the Act as a salesperson subject to the terms and conditions agreed upon and which were made an Order by consent.

6. The Applicant breached clauses #1 and #6 of the Consent Order by failing to give the Registrar written notification when he was subsequently charged and failing to make complete and full disclosure of pending charges on his November 8, 2005 application for re-instatement as a motor vehicle salesperson.
7. Prior to the Applicant signing his application for reinstatement as a motor vehicle salesperson dated November 8, 2005 and submitting it to OMVIC had the following pending criminal charges:
 - (i) a charge under section 264.1 (1)(a) of the *Criminal Code* of Canada being a charge of threatening death to an individual and her child in connection with which charge the Applicant has entered into a Peace Bond on or about January 30, 2005.
 - (ii) a charge of assault under section 266 of the *Criminal Code* of Canada and a charge of mischief under section 430.(4) of the *Code* both of which charges occurred on August 30, 2004.
 - (iii) a charge of theft in the sum of \$12,760.00 in terms of section 334 of the *Criminal Code* of Canada such charge arising out of an incident that occurred on May 19, 2005.

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 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 ...
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.
 - (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.

7. (4) Where an applicant or registrant requires a hearing by the Tribunal in accordance with subsection (2), the Tribunal shall appoint a time for an 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.

APPLICATION OF LAW TO FACTS:

The issue in this matter is whether the Registrar erred in his decision that the Applicant should have his application for registration as a salesperson refused. Section 6. (1) of the Act states the Registrar may refuse to register an applicant where in the opinion of the Registrar the Applicant is disentitled to registration under section 5. Section 5. (1) (b) of the Act entitles an applicant to registration by the Registrar except where the past conduct of the Applicant affords the Registrar with reasonable grounds for belief that the Applicant will not carry on business in accordance with law and with integrity and honesty.

The law is well established in the case of *Brenner* 19 CRAT SCO Decisions and Orders (1971-1989) page 95. In that decision Southey, J. held that the Tribunal should only refuse to direct the Registrar to carry out his proposal if it thinks the Registrar was in error.

The Tribunal is cognizant of the decision in *Shine Car Sales and Omar Hassan Rahim* of Lane, J. sitting in the Divisional Court with Then, J. and Wright, J. on February 11, 2003 in which it was held that *Brenner*, supra, "remains the proper test" but it "does not establish a rule that the Registrar must be shown to be wrong". The Tribunal is further cognizant of Lane, J.'s statement that "the Tribunal approaches the matter uninhibited in any way" and "owes no deference to the Registrar's opinion".

In this matter, the Tribunal notes that the Applicant chose not to appear before it at the hearing and the evidence, both documentary as well as the testimony of Ms. South, stands uncontested. The Tribunal accepts the evidence of the Registrar in its totality.

The issue for decision by the Tribunal is whether the past conduct of the Applicant affords reasonable grounds for belief that the Applicant will not in the future carry on business in accordance with law and with integrity and honesty.

The past conduct of the Applicant insofar as his honesty, integrity and acting within the law is blemished. Not only once, but twice, he has completed applications for registration that contain the withholding of relevant and material information that the Registrar is entitled to in order to make a proper and informed decision. Such conduct does not instill confidence in this Tribunal that in the future the Applicant will comport himself with honesty and integrity. He ignored the terms and conditions which he signed and which were made an Order of this Tribunal. His conduct of withholding relevant information is both recent in time and ongoing.

The charges as contained in the CPIC report - not contested by the Applicant - reflect not only an angry individual but an individual given to violence and threats of violence. This in and of itself detracts from permitting him registration when as a salesperson he would be constantly interacting with the public many of whom may be at risk in their dealings with the Applicant.

Apart from the Applicant's alleged anger and violence there is the uncontested allegation of theft against him. This latter allegation is well documented in the detailed investigation of the police and involved many thousands of dollars in value. Here, again, the Applicant by his failing to appear at the hearing and failing to deal with the allegation has to all intents and purposes conceded the truth and correctness of the allegations.


Additionally, his bankruptcy, which in and of itself does not necessarily justify grounds for denial of registration, nevertheless does indicate that the Applicant may not reasonably be expected to be financially responsible in the conduct of business.

Having regard to all the above factors - the ongoing recent criminal charges, the repeated failure to disclose same as well as the nature of the Applicant's conduct which gave rise to the charges - it is the finding of this Tribunal that the Registrar's Proposal is well founded and that the Applicant is not entitled to registration as a motor vehicle salesperson.

DECISION:

Accordingly, 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 his Proposal of January 31, 2006, to refuse the registration of Reza Toghraee as a salesperson under the Act.

LICENCE APPEAL TRIBUNAL



Derek Israel, Vice-Chair

RELEASED: August 2, 2006

FILE NAME: 3440.mvda.Toghraee.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 <http://www.lat.gov.on.ca/> in approximately two weeks time. The decision will also be available on Quicklaw at a later date.