

**Licence  
Appeal  
Tribunal**

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August 2, 2006

**MEMORANDUM**



**Re: Jack John Czerepak  
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:**

Jack John Czerepak, Applicant  
Aviva R. Harari, Counsel for OMVIC

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JACK JOHN CZEREPAK

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

TO REFUSE REGISTRATION

TRIBUNAL: DONALD BENNINGER, Presiding Member

APPEARANCES: JACK JOHN CZEREPAK, Applicant, appearing on his own behalf  
AVIVA R. HARARI, Counsel, appearing for the Registrar under the  
*Motor Vehicle Dealers Act*

DATE OF  
HEARING: July 12, 2006

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 ("Proposal") dated February 28, 2006 proposed to refuse the registration of Jack John Czerepak (the "Applicant") as a salesperson under the Act. The Registrar's Proposal is brought pursuant to section 7 of the Act as read with section 5. (1)(b) of the Act.

The reasons given by the Registrar in his Proposal state as follows:

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 Applicant'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 Jack John Czerepak under the Motor Vehicle Dealers Act.

**PARTICULARS:**

The reasons for this proposal are:

1. Jack John Czerepak ("Czerepak") applied for registration as a motor vehicle salesperson on or about October 18, 2005.
2. While previously registered, Czerepak entered into side deals with consumers and sold warranties to consumers but failed to register same with the warranty company.
3. The Registrar's office received consumer complaints regarding non-submission of warranties to the warranty company with respect to Brantford Auto Centre Inc. The Motor Vehicle Dealers Compensation Fund paid out a claim to a consumer with respect to Brantford Auto Centre Inc. and to date the Fund has not received any repayment.
4. Czerepak was an officer and director of Brantford Auto Centre Inc. The corporation filed for bankruptcy on November 29, 2000. At the time of the bankruptcy the dealer owed monies to Automotive Finance Corporation, (AFC).
5. Czerepak was a personal guarantor on behalf of 869150 Ontario Inc. o/a Auto Centre. Monies were owing to AFC and AFC obtained judgement against Czerepak, and others. To date, Czerepak has not honoured the outstanding judgement. The monies owing resulted from a vehicle being sold out of trust.

**THE LAW:**

The *Motor Vehicle Dealers Act* (the "Act"), states as follows:

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;

**ISSUES:**

The issue in this case is whether the Registrar was wrong in his decision to refuse the registration of the Applicant, on the basis of the Applicant's conduct respecting the allegations as set out in the Registrar's Proposal dated February 28, 2006, and as outlined under the Particulars above.

**EVIDENCE:**

The evidence introduced by the Registrar consisted of the testimony from Gary Garmatz, John Murray and Carey Smith.

Gary Garmatz was affirmed and testified that he was the owner of a dealership named Auto Concepts and he did employ the Applicant for approximately two years from 2002 to 2004. He stated that he had to deal with unwritten promises that the Applicant had made to consumers such as a promise of new tires or repairs at no charge to the customer.

The witness testified that there was missing paper work required to warranty a vehicle and it was the Applicant's responsibility to complete and forward the same to the warranty corporation. The Applicant did not complete and forward as required and the witness had to deal with and correct the situation. He testified this was done after the termination of the Applicant's employment with his dealership. Thus he completed the Notice of Registration Change under the *Motor Vehicle Dealers Act* form and sent it to the Registrar indicating that he would not agree with the issuance of a new registration by the Registrar's office to this salesperson upon application.

The next witness for the Registrar was John Murray who gave the following sworn testimony. He stated he is currently employed by the Automotive Finance Corporation and has been for the past eight years as Branch Manager. He testified that the Corporation had business dealings with the Applicant offering inventory financing to dealerships where the Applicant was an officer or guarantor.

The witness testified that the Corporation had to initiate court action against the Applicant and that they won a court judgement in April 2001 against the Applicant dating back to December 2000. He further testified that to date no payment has been made nor has the Applicant attempted to arrange any repayment schedule.

Carey Smith during his sworn testimony stated that he is the Director of Investigations, a position he has held with OMVIC for the past three years. He stated that prior to this he was employed with Halton Police Services with the fraud squad dealing with matters related to the automotive industry. He explained that OMVIC is a not for profit organization and has been delegated with authority to administer the *Motor Vehicle Dealers Act*. He explained that the Act is a consumer protection statute. He testified that he was familiar with the Proposal to refuse the registration of the Applicant dated February 28, 2006.

The witness testified that the reason was due to the Applicant's past history of not being financially responsible, as well as the Applicant not acting with honesty and integrity when completing his application for registration as a salesperson. He continued stating that the answer to question eight on the Applicant's application form was not accurate when the Applicant answered, "no", to the question "Are there any court orders or unpaid judgements against you?" He testified there was an outstanding court judgement as a result of the AFC action that the Applicant has not made any attempt to satisfy.

The witness testified that the answer to question seven was inaccurate also, as it stated the Applicant's answer as "no" to the question, "Have you been, or are you now, an officer, director or majority shareholder of a corporation which has been declared bankrupt, or is presently a party to bankruptcy proceedings?" He continued by stating that the Applicant was shown as a director and an officer of Brantford Auto Centre Inc.

The witness testified that as a result of a consumer complaint the Compensation Fund paid out \$355.35 to cover the costs of a warranty. This warranty should have been submitted by the Applicant. He testified that the Applicant had told the consumer that the warranty was in place but it was not, thus the claim. He stated that this payment is still outstanding even though the Applicant wrote in a letter dated 22 January 2002 that he could pay \$150.00 a month. He continued testifying that as of this date, the Applicant has made no payments nor has he established a repayment schedule.

The witness concluded his testimony stating that the Applicant should be refused registration due to his lack of financial responsibility in his past conduct as well as the Applicant's lack of honesty and integrity while completing his application for a licence. He stated this is the information that the Registrar relies on when making his decision to licence a prospective salesperson, as it is the first test of honesty and integrity.

The Applicant was sworn and testified that he applied for his licence to be a motor vehicle salesperson in 2005 and he had no idea that his application might be refused. He testified that he was aware of the AFC judgement but he forgot about the Compensation Fund outstanding payment. He testified that he always stands up for the customer and that he was well liked and respected in the automotive industry. He continued his testimony stating that he had integrity with other dealers and he knew people in every local dealership.

The Applicant testified that AFC should have recovered the vehicle in question and that was why he did not pay the judgement. He stated that he would pay the \$355.35 as he had forgotten about it.

On cross-examination the Applicant testified that he had not been truthful when completing his application to be a motor vehicle salesperson when he answered question seven and the same with eight. He acknowledged that he had not taken any steps to repay AFC and that he had forgotten about the Compensation Fund debt.

#### **FACTS FOUND PROVEN:**

The facts found proven by the Tribunal are as follows:

1. The Applicant applied for registration as a motor vehicle salesperson on or about October 18, 2005.

2. The Applicant while previously registered entered into side deals with consumers and sold warranties to consumers but failed to register same with the warranty company.
3. The Registrar's office received consumer complaints regarding non-submission of warranties to the warranty company with respect to Brantford Auto Centre Inc. The Motor Vehicle Dealers Compensation Fund paid out a claim to a consumer with respect to Brantford Auto Centre Inc. and to date the fund has not received any repayment.
4. The Applicant was an officer and director of Brantford Auto Centre Inc. The corporation filed for bankruptcy on November 29, 2000.
5. The Applicant was a personal guarantor on behalf of 869150 Ontario Inc. o/a Auto Centre. Monies were owing to AFC and AFC obtained judgement against the Applicant and others. To date the Applicant has not honoured the outstanding judgement. The monies owing resulted from a vehicle being sold out of trust.
6. The Applicant has made no attempt to establish a repayment schedule for the funds owed to AFC or the Compensation Fund.

#### **APPLICATION OF LAW TO FACTS:**

The onus of proof rests on the Registrar to satisfy the Tribunal that he has reasonable grounds to believe that the registration of the Applicant ought to be refused based upon the past conduct of the Applicant, and which conduct affords reasonable grounds of belief that the Applicant will in the future not carry on business in compliance with section 5 of the Act.

In *Brenner v. Ontario (Registrar of Motor Vehicle Dealers and Salesmen)* [1983] O.J. No. 1017 Southey, J. stated:

...the Tribunal should only have refused to direct the Registrar to carry out his proposal if it thought the Registrar was in error concluding that the past conduct of the applicant afforded reasonable grounds for belief that he would not carry on business in accordance with law and with integrity and honesty.

When referring the matter back for rehearing to the Tribunal Southey, J. stated:

The proper question at the rehearing remains, however, whether the past conduct of the applicant affords reasonable grounds for belief that he will not 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 matter of *Registrar, Motor Vehicle Dealers Act v. Shine Car Sales and Omar Hassan Rahim*, Lane, J. stated in a decision of the Divisional Court that *Brenner* "remains the proper test" but it does not establish a rule that the Registrar must be shown to be wrong.

The *Shine* decision went on to state that, "the Tribunal approaches the matter uninhibited in any way..." and "owes no deference to the Registrar's opinion. The Registrar is the investigator. The Registrar is not a trier of fact whose opinion is based upon a hearing and so entitled to deference".

The Tribunal must therefore examine whether or not the past conduct of an applicant would afford reasonable grounds for the belief that such applicant would not carry on business in accordance with the law, with honesty and integrity and be financially responsible.

The Applicant did not dispute that there was a court action brought against him in December 2000 by AFC and that the judgment rendered in April 2001 was still totally outstanding. He concurred that he had made no arrangements to establish a repayment schedule.

The Applicant did not dispute that he owed the Compensation Fund but indicated that he forgot about this debt but he was willing to pay this in the near future when he has employment and money. The Tribunal was convinced that this conduct was not acting with financial responsibility.

With regard to the Application for Registration under the *Motor Vehicle Dealers Act*, completed by the Applicant on October 15, 2005; the answers to questions seven and eight were both "no", when the honest answers should have been yes. The Respondent proved that the Applicant had been an officer and a director of a corporation that had declared bankruptcy. Likewise, the Respondent proved to the Tribunal and the Applicant testified that he had an unpaid judgement outstanding against him.

If there are deliberate, significant and relevant inconsistencies in the application material submitted by the Applicant this would reflect an attempt to mislead. Such an attempt would suggest that the Applicant could not be counted on to function with honesty, integrity and within the law if registered.

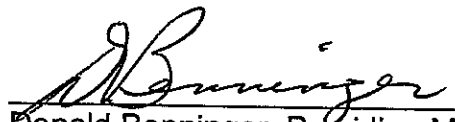
On the basis of the facts as found and the application of the law to those facts, the Tribunal finds that the past conduct of the Applicant, taken as a whole, did provide reasonable grounds that the Applicant would not carry on business as a salesperson with honesty, integrity, in accordance with the law and with financial responsibility.

Thus the Tribunal finds the Registrar to be correct in his decision to refuse the Applicant's registration.

**DECISION:**

Therefore by virtue of the authority vested in it under section 7. (4) of the *Motor Vehicle Dealers Act*, the Licence Appeal Tribunal directs the Registrar to carry out his Proposal dated February 28, 2006 to refuse the registration of Jack John Czerepak as a motor vehicle salesperson under the Act.

LICENCE APPEAL TRIBUNAL

  
Donald Benninger, Presiding Member

*RELEASED: August 2, 2006*

FILE NAME: 3467.mvda.Czerepak.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](http://www.lat.gov.on.ca) in two weeks time. The decision will also be available on Quicklaw at a later date.