

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



AUTO RALLY INC. AND FARAMAZ ZARAINEH

APPEAL FROM PROPOSALS OF THE REGISTRAR UNDER
THE *MOTOR VEHICLE DEALERS ACT*

TO REVOKE REGISTRATIONS

TRIBUNAL: IRVIN H. SHERMAN Q.C., Vice-Chair

APPEARANCES: ARYAN ZARAINEH, Agent, representing Auto Rally Inc. and
Faramaz Zaraineh

AVIVA HARARI, Counsel, representing the Registrar, *Motor
Vehicle Dealers Act*

DATE OF
HEARING: September 28, 2006

Toronto

REASONS FOR DECISION AND ORDER

BACKGROUND:

The Registrar under the *Motor Vehicle Dealers Act* (the "Registrar" and the "Act") proposes to revoke the registration of Auto Rally Inc. as a motor vehicle dealer and the registration of Faramaz Zaraineh as a registered salesperson (the Applicants) under section 7 of the Act for the following reasons:

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 their 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 disqualification to registration under the Act. Therefore, the Registrar is unwilling to register Auto Rally Inc. and Faramaz Zaraineh under the Motor Vehicle Dealers Act.

Particulars relating to the refusal were stated in a Notice of Proposal to Revoke Registration dated May 11, 2006 and by Notice of Further and Other Particulars dated August 10, 2006. They may be stated as follows:

- Auto Rally Inc. retained the services of an unregistered salesperson named Khosrow Khatibi also known as David Katibi.

- On or about March 3, 2006, the Applicants were convicted of three counts each of retaining an unregistered salesperson contrary to the provisions of the Act in the Provincial Court.
- The Applicants have been convicted under the provisions of the *Highway Traffic Act* with respect to issues involving improperly issued safety standards certificates.
- The Licence Appeal Tribunal (the "Tribunal") by Order dated released January 23, 2006 had its licence to operate a motor vehicle inspection station revoked.
- Auto Rally Inc. has failed to pay the fines levied against it by Provincial Court.

REQUEST FOR AN ADJOURNMENT:

At the commencement of the hearing, Aryan Zaraineh, agent for the Applicants requested that the Tribunal adjourn the hearing of this appeal pending the hearing of the Applicants' appeal from their convictions in the Provincial Court.

Aviva Harari, counsel for the Registrar, objected to the request for the adjournment pointing out that the Applicants were convicted in March 2006, they filed their appeal out of time in September 2006, and a decision on their request to late-file will be made in November 2006. The Applicants have not requested that a judge of the Provincial Court to stay their convictions under section 112 of the *Provincial Offences Act* R.S.O. 1990 c. P 33.

The Tribunal denied the request for an adjournment and, in so doing, adopts the statements made by Sara Blake in her book *Administrative Law of Canada* (second edition) which it finds relevant and determinative of the issue. Ms. Blake states at page 40 of her text:

A tribunal should not adjourn its proceedings to await the outcome of a related civil proceeding. The tribunal has a statutory duty to hold a hearing. The public has an interest in the prompt and just exercise by the tribunal of its powers. The Tribunal's procedures, unlike those of the court, are expected to be simple, summary and expeditious. Likewise, a tribunal should not adjourn its hearing to await the outcome of a criminal proceeding because the two proceedings have two different purposes and different burdens of proof. The respondent's right to remain silent in respect of the criminal proceeding is not infringed by the administrative hearing because testimony given at the administrative hearing cannot be used to incriminate the respondent in the criminal proceeding.

THE EVIDENCE:

Glen Dodwell is an enforcement officer with the Ministry of Transportation for Ontario and a class "A" mechanic who is familiar with the Applicants' conduct. Officer Dodwell gave evidence at the hearing of the appeal of Auto Rally Inc. from the proposal of the Director of Motor Vehicle Inspection Stations to revoke its licence to operate a motor vehicle inspection station. The Tribunal, by its Decision and Order released on January 23, 2006 ordered the Director to carry out his proposal to revoke. Officer Dodwell was referred to

those portions of the Registrar's Book of Documents, filed as an exhibit at the hearing, which referred to the convictions registered under the *Highway Traffic Act* against the Applicants with respect to Applicants' operating the motor vehicle inspection station. Officer Dodwell confirmed that the Applicant, Faramaz Zaraineh, the sole principle behind Auto Rally Inc., was convicted on three occasions between February 2000 and February 2006 of violating subsection 99(2) of the *Highway Traffic Act*, which refers to making a false statement with respect to the issuance of a safety standards certificate. Mr. Zaraineh was also convicted in February 2002 of a record keeping violation more specifically referred to in subsection 10 (a) of Regulation 601 made under the *Highway Traffic Act*. Auto Rally Inc. was convicted on seven counts of violating the *Highway Traffic Act* with respect to the improper issuance of safety standards certificates and two counts of record keeping violations.

Ralph Bayley, an experienced investigator for the Ontario Motor Vehicle Industry Council, (OMVIC) gave evidence as to his involvement with the Applicants that resulted in each Applicant being convicted of three counts of retaining Khosrow Khatibi as a motor vehicle salesperson when Mr. Khatibi was not registered as a salesperson as he was required to be under section 4 of the Act thereby knowingly committing an offence under section 22 of the Act. In early January 2006, Mr. Bayley attended upon a dealership in Richmond Hill on an unrelated matter. At that time he perused copies of bills of sales involving that dealership and Auto Rally Inc. His suspicions were aroused upon reading this documentation. His subsequent investigation gave rise to the charges being laid against the Applicants. The documentary evidence before the Tribunal reveals that each Applicant pleaded guilty to three of the six counts laid against them on March 3, 2006. Each Applicant was fined the sum of \$300 on each count for which he or it pleaded guilty. The Applicants were given 120 days to pay their fine. Inspected Bailey stated as of September 11, 2006 the fines remained unpaid.

Mary Jane South is the deputy registrar for OMVIC which enforces the Act which is a statute designed to protect the public. Ms. South stated that the Registrar's concerns relate to:

- the failure of the Applicants to comply with the provisions of the Act which led to their being convicted in the Provincial Court;
- the Applicants' failure to pay the fines levied against them shows financial irresponsibility on their part;
- the fact that the Auto Rally Inc. issue false safety standards certificates which compromised consumer safety; and
- the fact that the Auto Rally Inc. failed to keep proper records.

These concerns were of such magnitude that the Registrar desires an order directing him to revoke the Applicants' registrations.

The Applicants appeared through their agent Aryan Zaraineh who advised the Tribunal that the Applicants were aware of the hearing and that Faramaz Zaraineh, the sole person behind Auto Rally Inc., knowingly elected not to attend the hearing. Consequently, no evidence was offered on behalf of the Applicants.

THE LAW:

The *Motor Vehicle Dealers Act* (the 'Act'), states 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.

ANALYSIS:

The Tribunal is guided by that test enunciated by the Divisional Court in the case of *Brenner v. Ontario (Registrar of Motor Vehicle Dealers and Salesman)* [1983] O.R. No. 1017, which states:

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 case of *Ontario (Registrar, Motor Vehicle Dealers Act) v. Shine Car Sales* 40 M.V.R. (4th) 86 the Divisional Court added that:

Brenner must be read carefully. It does not establish a rule that the Registrar must be shown to be 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 the Applicants' past conduct affords reasonable grounds for belief that he will not carry on business in the manner prescribed by law. The Applicants have been convicted of violating the provisions of the *Highway Traffic Act* and its regulations with respect to the operation of a motor vehicle inspection station. In some cases, public safety may have been jeopardized. The Tribunal has directed the Director of Motor Vehicle Inspections Stations to revoke the licence granted Auto Rally Inc. to operate a motor vehicle inspection station.

The Applicants have pleaded guilt to charges under the Act with respect to their knowingly retaining the services of an unregistered salesperson. There is no evidence before the Tribunal to show that the fines levied against the Applicants have been paid.

