

**Licence
Appeal
Tribunal**

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November 9, 2006

MEMORANDUM

***Re: Robert Leclair o/a Leclair Motors, Robert Leclair o/a Leclair Motors (branch),
Dan Leclair, Marc Leclair and Marc Leclair o/a Aaron's Auto Sales and Service 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:

Adam D. Mauntah, Counsel for the Applicants
A. Michael Rothe, Counsel for the OMVIC

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ROBERT LECLAIR O/A LECLAIR MOTORS, AND ROBERT LECLAIR O/A LECLAIR MOTORS (BRANCH), AND DAN LECLAIR, AND MARC LECLAIR AND MARC LECLAIR O/A AARON'S AUTO SALES AND SERVICE

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

TO REVOKE AND REFUSE REGISTRATIONS

TRIBUNAL: DOUGLAS R. WALLACE, Vice-Chair

APPEARANCES: ADAM MAUNTAH, counsel for the Applicants

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

DATE OF
HEARING

October 4, 2006

Sudbury

REASONS FOR DECISION AND ORDER

This hearing arises out of a Proposal dated May 8, 2006 by the Registrar, *Motor Vehicle Dealers Act* (the "Registrar" and the "Act"), respectively to revoke the Dealer registrations of Robert Leclair o/a Leclair Motors and Robert Leclair o/a Leclair Motors (branch); revoke the registrations of Dan Leclair and Marc Leclair as salespersons, and to refuse the Dealer registration of Marc Leclair o/a Aaron's Auto Sales and Service.

The Reason for the Registrar's Proposal is that the past conduct of the Registrants is inconsistent with the intention and objective of the Act, and the requirement that Registrants be financially responsible and carry on business in accordance with the law and with honesty and integrity. Particulars are set out as follows:

1. Robert Leclair o/a Leclair Motors has been registered as a motor vehicle dealer since on or about September 21, 1999. The dealer also operates a branch location.
2. Marc Leclair o/a Aaron's Auto Sales and Service applied for registration as a motor vehicle dealer on or about November 23, 2005.
3. Dan Leclair is a registered salesperson for Leclair Motors.

4. Marc Leclair is a registered salesperson for Leclair Motors.
5. On or about January 23, 2003 Dan Leclair, on behalf of Leclair Motors, sold a 1995 GMC Jimmy, VIN <number deleted>, to a consumer without disclosing to the purchaser that the vehicle was branded rebuilt/salvage.
6. On or about June 4, 2005 Marc Leclair, on behalf of Leclair Motors, sold a 2002 Ford 150, VIN <number deleted>, to a customer without disclosing to the purchaser that the vehicle was branded rebuilt/salvage. Upon learning the true history of the vehicle the consumer returned the vehicle to the dealer and the transaction was cancelled.
7. On or about July 7, 2005 Marc Leclair, on behalf of Leclair Motors, sold a 1997 Jimmy, VIN <number deleted>, to a consumer without disclosing that the vehicle was branded rebuilt/salvage.
8. On or about October 25, 2005 Dan Leclair, on behalf of Leclair Motors, sold a 1998 Chevrolet Blazer, VIN <number deleted>, to a consumer without disclosing to the purchaser that the vehicle had been involved in an accident.
9. On or about January 25, 2006 Dan Leclair, on behalf of Leclair Motors, sold a vehicle to a consumer, 1996 Dodge Neon, VIN <number deleted>, without disclosing on the bill of sale that the vehicle was with a brand of rebuilt.

At the opening of the Hearing Counsel for the Registrar withdrew the Particulars set out in paragraph 9.

THE LAW:

Subsection 6(4) of the *Motor Vehicle Dealers Act* provides that the Registrar may suspend or revoke a dealer or salesperson's registration for any reason that would disentitle the registrant of registration under section 5 of the Act.

5. (1) An applicant is entitled to registration or renewal or registration by the Registrar except where,

(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

(c) the applicant is a corporation and,

(ii) the past conduct of its officers or directors affords reasonable grounds to for belief that its business will not be carried on in accordance with laws and with integrity and honesty

Subsection 7(4) of the Act gives the Tribunal jurisdiction after a hearing to make an order directing the Registrar to carry out his Proposal or refrain from carrying it out and "to take such other action as the Tribunal considers the Registrar ought to take in accordance with this Act and the regulations"

EVIDENCE:

Paragraphs 1 to 4 of the Particulars were not disputed and are found as facts by the Tribunal.

A brief summary of the evidence relating to the four vehicle sales described in paragraphs 5, 6, 7 and 8 is as follows:

1. Sale of a 1995 GMC Jimmy by Dan Leclair (paragraph 5)

The purchaser of this vehicle, Witness 3, testified that when she bought the car in January 2003 with her partner she enquired of Dan Leclair if there was anything wrong with the vehicle. She was told there was not. The Bill of Sale does not indicate any cause for concern. She only found out that the vehicle had been branded "salvage/rebuilt" when she showed her vehicle permit some three years later to another dealer when attempting to negotiate a trade for a newer vehicle. When she was told that branded vehicles have very little trade-in value she returned to Leclair Motors and asked Dan Leclair for \$4,700 for her vehicle. When Dan indicated that \$2,300.00 was the maximum amount he was willing to pay she reluctantly accepted this amount. She identified a written statement given to inspector Paul Edwards of the Ontario Motor Vehicle Industry Council (OMVIC).

Dan Leclair admitted that he acted on behalf of the Dealer, Leclair Motors, in this transaction and that he did not tell the purchaser that the vehicle had been in an accident or that it was branded at the time of sale although he had the vehicle permit in his file showing this to be the case. When the purchaser confronted him in 2006 with the fact that she had been sold a branded vehicle they reached an agreement whereby he offered to pay her \$2,300.00 in compensation. He believed she was happy with the deal.

Mr. Leclair indicated that inspectors from the Ontario Motor Vehicle Industry Council had visited him on a number of occasions prior to this sale and reminded him of the importance of making full and proper disclosure to the purchaser of any vehicle. He agreed with Counsel for the Registrar that any accident history of branding or a vehicle affects the value of the vehicle.

2. Sale of 2002 Ford 150 by Marc Leclair (paragraph 6)

Witness 1, testified that she first saw this vehicle advertised for sale by Leclair Motors in the Auto Trader. She considered the asking price of \$18,995.00 cheaper than expected and telephoned Marc Leclair to enquire whether it had ever been used in the mines or had been involved in an accident. Marc told her "no" in answer to both questions. The vehicle was advertised as being in excellent condition so she and her partner arranged to drive from Timmins on the weekend to see it.

When they arrived Witness 1 saw that Marc Leclair had a used vehicle package and asked to see it. Mr. Leclair refused to show it to them. The vehicle appeared in good shape, however, so they decided to take it and drove it back to Timmins that day.

The first sign of trouble came when her partner in whose name the vehicle was registered, saw some red paint on the door of the vehicle. When contacted about this Marc Leclair advised that the lady who owned the vehicle previously had had a little accident putting a ding in the door. He immediately sent them a cheque to cover the cost of repairs.

When further problems arose Witness 1 asked for the safety certificate for the vehicle. It was sent by Leclair Motors indicating that the required inspection had been carried out on June 6, 2005. They found this difficult to believe as they had the vehicle in their possession in Timmins on this date. On being questioned on this point Mr. Leclair explained that the date shown on the Certificate must have been a typographical error.

The purchasers then obtained a vehicle permit for the vehicle and noted that it was branded "Rebuilt". A used vehicle Registration Package contained the warning that the vehicle was branded as "Salvage" and showed a greater number of previous owners than the purchasers expected.

When the purchasers asked, Marc Leclair returned all of the money they had paid for the vehicle except for part of the cost of the extended warranty they had purchased. When this money was not forthcoming as quickly as desired the purchasers commenced proceedings against Marc Leclair in the Small Claims Court that were ultimately resolved in their favour.

Witness 1 identified the written report of her interview with an investigator from OMVIC.

Witness 2 testified that when she traded in this vehicle she told Dan Leclair that it was rebuilt. This is confirmed on the Used Vehicle Bill of Sale she signed when purchasing another vehicle from Leclair Motors on March 22, 2005.

Marc Leclair testified that he has taken the Certification course offered by OMVIC and is aware of the obligation to disclose all material facts. He agreed that this includes any facts such as a known accident history or branding. He also agreed with Counsel for the Registrar that when Dan Leclair took this vehicle in on a trade from Witness 2 it was shown as being branded "Rebuilt" on the Bill of Sale completed at that time. He knew this to be the case from the copy of the Bill of Sale in the file but did not reveal it to the purchaser orally or on the new Bill of Sale evidencing the sale to the partner of Witness 1. He stated that he told Witness 1 that the vehicle had been involved in an accident but agrees that this fact was not included on the Bill of Sale. He told OMVIC inspector John Berezcki that the fact that the vehicle was branded "Rebuilt" was noted in writing on the Bill of Sale but admitted in oral testimony that this is not the case. He agreed that Witness 1 asked to see the used vehicle information package but denied any obligation to provide one and stated that he only obtained one at the time of getting the

ownership registered in the new owner's name. He stated that he telephoned Witness 1 to advise her that the vehicle was branded as "Rebuilt" as soon as he received the Used Vehicle Information Package.

3. Sale of 1997 Jimmy by Marc Leclair (paragraph 7)

Witness 8 testified that he purchased this vehicle from Marc Leclair acting on behalf of Leclair Motors on July 7, 2005. He was not told that the vehicle was "Rebuilt" and only found out when he took the vehicle permit to his bank or insurance company and they asked why he was purchasing a wreck. When he found out his vehicle was branded he approached Marc Leclair asking for compensation. The parties arrived at a compromise settlement package composed of some cash and an equal amount of vehicle parts and services. Mr. Leclair also offered to cancel the sale and provide a full refund but the witness is happy with the vehicle and declined the offer. The witness does not think Mr. Leclair is "a bad guy" and feels that he has been treated fairly.

4. Sale of 1998 Blazer by Dan Leclair (paragraph 8)

Witness 4 purchased this vehicle from Dan Leclair acting on behalf of Leclair Motors on October 25, 2005. He was given no oral assurances about the quality of the vehicle and no branding was shown on the Bill of Sale. He was surprised to learn later that the vehicle had been owned by an insurance company, indicating that it had been written off after an accident, and gone through many hands. He would not have purchased the vehicle if he had known that it had been involved in a serious accident. He did not make a complaint to Leclair Motors on finding out the history of the vehicle or request a refund.

In answer to questions by Applicants' counsel Dan Leclair indicated that the vehicle was not shown as branded when he purchased it from another dealer.

He also indicated that he only received the Auto Check report and Vehicle History some time after the sale was completed. He did not feel that he was obliged to report the prior accident to his purchaser because the dealer who sold the vehicle to him did not report the damage. Further, he did not offer Witness 4 any compensation on learning of the prior damage because the purchaser failed to contact him to ask for any. In cross-examination Mr. Leclair admitted that a prior sale of the vehicle by Leclair Motors had fallen through when the purchaser discovered the previous history of the vehicle. He also admitted that an Auto Check and Vehicle History search had been conducted by the Used Car Dealer Association on October 13, 2005, prior to the sale. An OMVIC inspector testified that the results of this search were found in Leclair Motors' files.

In addition to the evidence relating to the sale of the four vehicles noted above the Tribunal heard evidence from three OMVIC employees, John Berezcki, Paul Edwards and Mary South, and the Applicants, Dan Leclair and Marc Leclair.

John Berezcki

John Berezcki has been an inspector with OMVIC for six and one half years. He conducts routine inspections and audits in Northern Ontario to ensure compliance with the Act. He conducted inspections of Leclair Motors in 2001 and 2003 during which he stressed the need for full disclosure with Dan Leclair. His last inspection in February 2006 was primarily in relation to Marc Leclair's application for registration as a Dealer operating as Aaron's Auto Sales but included interviews with both Dan and Marc Leclair relating to two complaints he was aware of (the sale of the 2002 Ford 150 and the 1997 Jimmy noted above) and the 1998 Blazer which he discovered from his review of some 39 sales selected at random. The results of his investigation are set out in a written report that was included in the Respondent's Book of Documents.

Paul Edwards

Paul Edwards has been an OMVIC inspector for approximately five years since his retirement as a Detective Inspector with the O.P.P. He reviewed John Berezcki's report then conducted interviews with the purchasers of the three vehicles noted by Mr. Berezcki as well as the purchaser of the 1995 GMC Jimmy noted above. The gist of these interviews as well as interviews with Dan and Marc Leclair concerning these sales are included in the Respondent's Book of Documents, filed as an exhibit.

Mary Jane South

Mary Jane South has been the Deputy Registrar of OMVIC since January 1997. In this capacity she oversees the activities of the Complaints Team of investigators. Ms. South explained that the purpose of the *Motor Vehicle Dealers Act* is to protect the public from dealers and salespersons who fail to conduct their business in accordance with the law and with honesty and integrity. Due diligence in discovering and then making full disclosure to purchasers of all facts that could materially affect the value of their intended purchase is essential if the intent of the Act is to be met. She stressed that inadvertence in discovering or disclosing material facts and then dealing with complaints only as they arise does not meet the requirements of the Act or OMVIC's Standards of Business Practice. The necessity of making full disclosure had been made clear to Leclair Motors in previous inspections, courses offered by OMVIC, and the Terms and Conditions under which Leclair Motors were operating.

Dan Leclair

Dan Leclair gave evidence that he has been in business since 1989, primarily at the Val Caron location. He sells 150 to 200 vehicles a year, the majority of which are purchased through auction. A small portion of the vehicles purchased is branded and all

are safety certified before sale. He only obtains a Used Car Vehicle Package or Vehicle History if the circumstances call for it.

With respect to the sale of the 1995 GMC Jimmy, he was not aware that it was branded when he bought it or when he sold it. This in spite of the fact that he had the vehicle permit in the file indicating it was "rebuilt" for approximately one month prior to the sale. When the purchaser approached him three years later he offered to buy it back for \$2,300.00, which he considered to be the fair market value considering the age and mileage of the vehicle. The purchaser appeared happy with the offer. He denied statement made in evidence by the purchaser that she had asked for \$4,700.00.

With respect to the 2002 Ford 150 he noted the damage to the vehicle when he took it in on a trade and changed the Bill of Sale to show "yes" as the answer to the question whether the vehicle had sustained accidental physical damage while in the vendor's possession. He told his cousin, Marc, that the vehicle had been involved in an accident and the fact that the vehicle was branded was clearly noted in the file available to Marc. He placed the advertisement in the Auto Trader or allowed it to be placed showing the vehicle to be in excellent condition although he knew at the time that it had been branded "Salvage and Rebuilt" because it was completely certified, clean and ran well.

With regard to the sale of the 1998 Blazer it was shown as having no brand when he purchased it as a trade-in and he did not feel that it was necessary to disclose to the purchaser anything that was not reported to him at the time of purchasing it, although he knew it had been previously involved in an accident, had been written off and rebuilt. He did not try to resolve any complaint the purchaser might have as the purchaser never contacted him to request compensation.

Dan Leclair indicated he now understands his obligations with respect to disclosure better and automatically does a Vehicle Check on all vehicles.

Marc Leclair

Marc Leclair testified that he has been registered as a salesperson since 1999. He recalls that he has had a couple of visits from OMVIC inspectors but has no recollection of anything they might have said to him during these visits. He only did Auto Checks when he felt vehicles had been tampered with or suspected something was wrong.

His evidence concerning the sale of the Ford 150 confirmed the purchasers' evidence in most respects. He agreed, for example, that the purchasers had asked to see the used car package and he refused to let them see it. His evidence differed from Witness 1, however, in several important respects. First, he stated that he told Witness 1 prior to concluding the sale that the door had been replaced due to an accident and secondly, he testified that he telephoned the purchaser as soon as he found out the vehicle had been rebuilt. Both were contrary to the direct testimony of Witness 1. Finally, he testified that he only obtained the Used Vehicle Information Package after the

completion of the sale. He made no attempt to explain how he could have refused to show it to the purchasers on the day of the sale.

Under questioning by counsel for the Registrar he admitted that he had a Bill of Sale for the vehicle in his file showing the vehicle to be branded "rebuilt" at the time of sale and that he did not disclose this to the purchaser. He also admitted that the safety check could not possibly have been done on the date indicated on it. His only explanation was that he had not checked the date. Finally, he agreed with Counsel that he had lied to OMVIC inspector, John Bereczki when he said that the Bill of Sale showed the vehicle to be branded, and lied again in the Statement of Defence filed in the Small Claims Court action brought by the purchaser.

With respect to the sale of the 1997 Jimmy, Marc Leclair admitted under cross-examination that information in the file showed the vehicle to be "salvage/rebuilt" and that he did not reveal this to the purchaser at the time of the sale. His explanation was that he did not look at it. He agreed with the purchaser that he offered to refund the sale price a couple of days later but that the Purchaser was happy with the vehicle and declined his offer.

FINDINGS:

Based on a consideration of the evidence as a whole, including the oral testimony of the witnesses noted above and the documents filed as exhibits the Tribunal finds as follows:

1. There was a failure by Dan and Marc Leclair to make full disclosure of material facts affecting the value of the vehicles in the four sales noted above.
2. The withholding of information as to branding and accident history was intentional in the last-noted three cases. It may have been intentional in the first sale as well, but if not intentional the failure to disclose in this case was at the least the result of a complete lack of due diligence.
3. Wherever there is a conflict the Tribunal accepts the evidence of the witnesses called by the Registrar over the evidence of the Applicants. The witnesses for the Registrar, without exception, gave their evidence in a straightforward manner, never hesitating or contradicting themselves in cross-examination. Their evidence matched precisely what they had told the OMVIC inspectors earlier and, most importantly, corresponded with what one would expect from one's experience in similar circumstances. The evidence of the Applicants on the other hand appeared evasive and too often tailored to justify their actions. Further, much of Marc Leclair's evidence was patently unreasonable. You cannot, for example admit that you refused to show a Used Vehicle Information Package indicating that a vehicle is rebuilt to a purchaser and say at the same time that you only found out that the vehicle had been rebuilt after the sale. It also makes no sense to say that you telephoned the purchaser as soon as you found the

vehicle had been rebuilt when you knew that it was a rebuilt vehicle before the purchaser even came to the dealership.

4. Three cases of serious non-disclosure were found in a random sample of 39 sales. It is reasonable to expect that more cases would have been found if the sampling had been greater.
5. Although the Lieutenant Governor in Council has not seen fit to include information on the branding of vehicles or a vehicle's accident history in the list of items that must be shown in a bill of sale, a course of conduct in which a salesperson either intentionally or negligently fails to include this information on a bill of sale may in the proper circumstances constitute reasonable grounds for the Registrar to conclude that the salesperson will not carry on business in the future in accordance with the law and with honesty and integrity.
6. The proper circumstances exist in this case. They include the fact that the Applicants, Dan and Marc Leclair, had received instruction stressing the importance of making full disclosure, neither Applicant showed any remorse prior to the receipt of the Registrar's Notice of Proposal, there was a somewhat less than frank admission of the facts surrounding the sales to the OMVIC inspectors and the Tribunal, and the lack of witnesses to testify as to the generally good character and reputation of the Applicants for honesty and integrity in the conduct of their business.
7. The Tribunal does not accept the Applicants' submission that the failure to make a full and proper disclosure in the four sales was the result of inadvertence. Further, even if the failure to make full disclosure was in one or more case the result of inadvertence rather than any intent to mislead, the inadvertence in matters of such consequence to the purchasers was inexcusable. Neither does the Tribunal accept the submission that the purpose and intent of the Act can be achieved by registrants returning money to purchasers who complain. Purchasers have the right to know that they can rely on the honesty and integrity of registrants in all their dealings.
8. No evidence was led to indicate that Robert Leclair, operating as Leclair Motors either knew or should have known that his salespersons were not making full and honest disclosure of all material facts in their sales. Although the Act makes provision in paragraph 5 (1) (c) (ii) for holding a corporate dealer responsible for the acts of its officers and directors, the Act does not make similar provision for holding an individual dealer carrying on business in a business name responsible for the acts of its salespersons. In the absence of such a provision the Tribunal finds that there are no reasonable grounds to believe that the Applicant, Robert Leclair operating as Leclair Motors or the Applicant, Robert Leclair o/a Leclair Motors (branch) will not carry on his business in accordance with the law and with honesty and integrity.

DECISION:

By virtue of the authority vested in it under subsection 7(4) of the *Motor Vehicle Dealers Act*, the Tribunal directs the Registrar to carry out his proposal to revoke the registrations of Marc Leclair and Dan Leclair as salespersons and refuse the application of Marc Leclair for registration as a dealer operating as Aaron's Auto Sales and Service.

The Tribunal further directs the Registrar to refrain from implementing his proposal to revoke the registrations of Robert Leclair, operating as Leclair Motors and Robert Leclair o/a Leclair Motors (branch) as dealers.

LICENCE APPEAL TRIBUNAL



D. R. Wallace
Vice -Chair

RELEASED: November 9, 2006

FILE NAME: 3590.mvda.Leclair_Motors_et_al.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 approximately two weeks time. The decision will also be available on Quicklaw at a later date.