

**Licence
Appeal
Tribunal**

12th Floor
1 St. Clair Ave. W.
Toronto ON M4V 1K6

Telephone: (416) 314-4260
1-800-255-2214

Fax: (416) 314-4270
(416) 314-6307
1-800-720-5292

**Tribunal
d'appel en
matière de permis**

12^e étage
1 av St. Clair O
Toronto ON M4V 1K6

Téléphone : (416) 314-4260
1-800-255-2214

Télécopieur : (416) 314-4270
(416) 314-6307
1-800-720-5292



April 3, 2007

MEMORANDUM

Re: Asad Andy Malik 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:

Asad Andy Malik, Applicant
A. Michael Rothe , Representing the Program

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



ASAD ANDY MALIK

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

TO REFUSE REGISTRATION

TRIBUNAL: NIVES MONTANO, presiding Member

APPEARANCES: ASAD ANDY MALIK, Applicant, appeared on his own behalf

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

DATE OF
HEARING: February 15, 2007

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 dated June 15, 2006, proposed to refuse the registration of Asad Andy Malik (the "Applicant"), as a salesperson under the Act.

In support of his proposal the Registrar furnished the following reasons and particulars.

REASONS

The Registrar bases his Proposal to refuse the Applicant's registration under section 6.(1) of the Act, which reads as follows:

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.

The Registrar further bases his Proposal to refuse under section 5.(1)(b):

5.(1) An applicant is entitled to registration or renewal of 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;

PARTICULARS

The Registrar relied on the following reasons.

The reasons for this proposal are:

1. Asad Andy Malik (hereinafter referred to as the "Applicant"), was first registered as a motor vehicle salesperson from on or about February 4, 1997 to on or about February 4, 1999.
2. The Applicant submitted an application for registration as a motor vehicle salesperson on or about January 9, 2006. He proposes to work for 1083153 Ontario Ltd. o/a Erin Mills Mazda (1994).

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, "Yes".

4. The Applicant made an assignment in Bankruptcy on or about June 27, 1997. The Bankruptcy was discharged on or about May 13, 1998.

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, "Yes".

6. A criminal record search found that the Applicant engaged in past conduct which led to the following convictions:

February 21, 2002	Fraud Over \$5,000.00
	Conspiracy to Commit and Indictable Offence
	Possession of Property Obtained by Crime (x3)
	Use of Credit Card (x2)
	Possession of Credit Card
	Possession of Counterfeit Money
	Fraud Under \$5,000.00
	Seek or Obtain a Scheduled Substance

In brief, the Registrar takes the position that the Applicant's past criminal conduct as referenced above provides reasonable grounds for belief that he will not carry on business in accordance with the law and with honesty and integrity and should therefore not be licensed as an automobile salesperson.

Counsel for the Registrar advised the Tribunal that he was not going to pursue any of the bankruptcy issues at this hearing as outlined in the Registrar's proposal.

EXHIBITS:

- Exhibit 1 Notice of Proposal to Refuse Registration dated June 15, 2006, issued by the Registrar, *Motor Vehicle Dealers Act*.
- Exhibit 2 Notice of Appeal form received at the Tribunal June 28, 2006, filed by the Applicant.
- Exhibit 3 Respondent Book of Documents Volumes 1 and 2.

FACTS FOUND PROVEN:

The Tribunal finds that the following facts were proven during the hearing of this matter:

1. The Applicant advised the Tribunal that he received Volume 1, but he did not receive Volume 2 of the Respondent's Book of Documents (part of Exhibit 3) prior to today's hearing. Counsel for the Registrar advised the Tribunal that he sent the Book of Documents by way of Express Post and the tracking information indicated that the package was delivered but the Applicant did not accept its delivery. A card was left at the Applicant's address and the package remained with Canada Post and was not picked up.
2. The Applicant's past conduct resulted in numerous criminal convictions culminating in a three-month investigation by the OPP and RCMP which included wire tapes and numerous interviews of accused victims and co-accused and the ultimate conviction of the Applicant in February 2002.
3. The Applicant was further charged and convicted in December, 2001, of fraudulently submitting an unemployment insurance claim application while in custody.
4. The Applicant, by his own admission, supplied incomplete and inaccurate application information to the Registrar.
5. The Registrar's evidence supports the conclusion that the Applicant submitted incomplete and inaccurate application information.

THE EVIDENCE:

The two witnesses for the Registrar and the Applicant were all sworn in before giving testimony.

Testimony of Detective Constable Richard Schell

This witness has been with the Ontario Provincial Police, Orillia Detachment, for the past 25 years. He is currently working on criminal investigation cases.

With reference to the Crown Brief Synopsis located in Volume 2, Tab 1, Exhibit 3, this witness was in the Anti-Rackets Unit within the OPP which investigates crimes from auto theft to fraudulent documents. His forte is health fraud and he is an expert on identity theft.

Counsel for the Registrar asked this witness to review and provide a brief explanation of the contents found in Volume 2, Tabs 1-6, Exhibit 3.

In summary, members of the RCMP were conducting an investigation originally focussed on three primary targets in organized crime. As a result, the investigating officer within the RCMP asked this witness to be assigned to the identity theft cases and was on secondment to the RCMP for approximately one year.

From September 3, 2001, to November 1, 2001, the RCMP was granted an authorization to conduct wire taps of communications between certain individuals in organized crime. During this timeframe, the police became aware that the Applicant was involved in identity theft and credit card fraud. The initial investigation branched off and the Applicant subsequently became part of a separate investigation since numerous crimes were being committed. The Applicant knew someone in an organization, international in scope, and as a result of recorded conversations of their telephone lines, he and others were identified as a crime group. The Applicant was associated and involved with co-conspirators who used stolen credit card information to purchase goods for business and resold the stolen merchandise for cash. Credit card data was placed on stolen or blank credit cards by means of a "skimmer".

Upon execution of a search warrant of the Applicant's residence, a laptop computer located on the floor of the Applicant's bedroom was later found to contain the program to "skim" and program credit card data to the magnetic strips. Numerous items of identification belonging to other persons (i.e., credit cards, personal credit application forms; birth certificates; driver's licences), a forged Canadian citizenship card and a U.S. social security card as well as counterfeit money were also found. The Applicant was responsible for collecting the information, finalizing the process of making a hard copy of a credit card and sales after the fact. The Applicant was identified by the witness and the RCMP as "the ring leader".

On November 1, 2001, the Applicant and a co-accused were arrested in a parking lot by members of the RCMP and OPP who found two credit cards on the centre console and two credit cards under the passenger's seat.

The Applicant was released from jail on December 18, 2001. On December 31, 2001, he was arrested again and charged with fraud because it was alleged he had been collecting unemployment insurance benefits from Human Resources Canada while he was incarcerated.

During the course of the wire tapped conversations, the witness heard a phone conversation between the Applicant and his girlfriend in which he was bragging that he had more credit card data which originated from the tragedy and disaster of the World Trade Centre. This information was passed on to the U.S. authorities.

This witness laid the original charges and the Applicant was arrested on November 7, 2001. The Applicant entered into an agreement with the Crown Attorney pleading guilty to specific charges and, without a trial, was convicted on February 21, 2002, of ten Criminal Code violations.

Testimony of Carey Smith

Mr. Smith holds the position of Director of Investigations for OMVIC. His duties include overseeing any investigations into offences committed by people within the industry. He also performs background investigations into applications and dealers applying for registration.

Prior to his tenure with OMVIC, he was a police officer for twenty-six years with the Halton Regional Police force.

His professional experience includes work as a fraud investigator and dealing with complicated fraud schemes. In 1997, Mr. Smith was the officer in charge of a joint forces operation comprised of the OPP, RCMP and Revenue Canada that investigated organized crime activities within the car industry, apparently the biggest automotive/tax fraud in the history of Canada.

OMVIC was created in 1997 as a public not-for-profit corporation to administer the Ontario *Motor Vehicle Dealers Act*. The Act is intended to give consumers a level of confidence in their dealings with the car industry. It is ultimately designed as a public protection statute.

Counsel for the Registrar asked this witness to review and explain Volume 1 of the Respondent's Book of Documents (Exhibit 3), essentially tabs 1, 3, 6, and 7.

Tab 1, Exhibit 3, is the Notice of Proposal to Refuse the Registration dated June 15, 2006, which outlined the grounds for refusal being the Applicant's past conduct in criminal activity and convictions.

Tab 3, Exhibit 3, is the Applicant's Application for Registration under the *Motor Vehicle Dealers Act* originally received by OMVIC January 9, 2006, in which the original application was received incomplete and undated, together with a copy of the Applicant's driver's licence, a copy of page 2 and 3 of his Canadian passport, a copy of his citizenship card and a two-page handwritten letter outlining the circumstances surrounding his criminal convictions.

On page two of the said application, the Applicant failed to provide the reasons he left three places of employment. Referring to questions 8 and 9 on page 3 of the original application, these questions require the Applicant to detail his criminal record and any pending charges. These questions were left blank.

There is a warning at the bottom of the section that incomplete or false disclosure will result in disqualification and is also an offence under the Act. OMVIC relies on the information submitted when assessing an application for registration. In this instance, the Applicant did not provide enough details. OMVIC requested more information, some of which, but not all, was received by fax on January 17, 2006 and is included under the aforementioned Tab 3, Exhibit 3.

When asked to submit more information about the convictions, the Applicant faxed his application and cover sheet dated January 17, 2006 addressed to "Maria" at OMVIC at Tab 6, Exhibit #3. The Applicant's handwritten note on the fax cover sheet reads as follows:

Maria regarding my criminal record I have very long explanation please call me when you get my record and I'll discuss with you and I have applied for pardon in Brampton court as well. Thanks.

On April 24 2006, three months after the Applicant filed his initial application for registration, he faxed his criminal record, an explanation regarding his convictions and a document outlining the Fine Order/Victim Surcharge relating to his convictions.

The position of the Registrar is that this Applicant was convicted for fraud. He was not a juvenile at the time. The fraud was not an inadvertent act and it was not isolated. It was premeditated and sophisticated. He victimized his employer and its customers. He committed a serious breach of trust by having access to people's personal credit card information and he abused that position of trust by stealing that information and using his position of trust to perpetuate a criminal act. As mentioned above in the first witness testimony, the Applicant capitalized on the victims of the World Trade Centre disaster.

In this witness' opinion, the car industry is highly sought after by organized criminal groups who carry out fraudulent acts. There is potential for money laundering since large bank balances are not suspicious and are not scrutinized. The propensity to steal information is assisted because personal, financial and credit information would also be at their fingertips. Since OMVIC is a public protection organization, it is trying to keep criminal groups out of the industry.

This witness maintains his position to refuse the registration of this Applicant's application.

Evidence of Asad Andy Malik

In his opening remarks, the Applicant indicated that he was not in a position to say that he was innocent, but he did say: *"not guilty of all this". "This was a one time incident in my life. I have changed completely and have become very spiritual. I was wrong, I made a mistake. It's been seven years. I have suffered a lot. It has affected me emotionally, psychologically. I paid the price and I have been in good conduct. I have not done anything bad or wrong in seven years. It has completely changed my life"*.

The Applicant advised the Tribunal that he was remorseful and apologetic for his past conduct, but then he refused to accept responsibility for his past convictions and contradicted and denied the level of his participation in the crimes which he committed. There were a number of inconsistencies which were addressed by Counsel for the Registrar during the Applicant's cross-examination. They are as follows:

1. Inaccuracies and omissions contained in the original application:
 - a. The Applicant indicated that he was a first-time registrant, whereas Counsel for the Registrar as well Mr. Smith advised that the Applicant was previously registered as a motor vehicle salesperson from February 4, 1997, to February 4, 1999. The Applicant allegedly was unaware of his previous registration. Neither the Registrar nor Mr. Smith provided the Tribunal with proof in this regard.
 - b. It was further revealed by the Applicant that the dates of employment listed on the application were inaccurate.
 - c. The Applicant failed to provide full and complete disclosure regarding his criminal convictions. Full disclosure was made three months after the original application for registration was filed with OMVIC.
 - d. In Volume 1, Tab 3, Exhibit 3, the Applicant provided a handwritten letter addressed to "To Whom it May Concern" in which he writes that he was framed by way of retaliation by his ex-girlfriend's father, who allegedly was a police officer at the time of his arrest. The excerpt reads as follows:

"I was living with my exgirlfriend at that time who's father was in police who charged me with lots of unfair charges at that time..."

"...my exgirlfriend was aware of the use but her dad who happened to be a cop wanted to put me in big trouble".

The first witness for the Registrar admitted under oath that he was not the Applicant's ex-girlfriend's father. DC Schell was the sole OPP officer involved in the joint force investigation and was the lead investigator. It was the information he had collected which led to the Applicant's arrest. In his testimony, DC Schell advised the Tribunal that he does not have any daughters.

The Applicant admitted under oath that he had met his ex-girlfriend's father once before being arrested. He confirmed that the ex-girlfriend's father was not DC Schell. The ex-girlfriend's father was not present at the time of the arrest, nor was he in court at anytime. The Applicant therefore admitted that his statement was not accurate.

With reference to the his ex-girlfriend, the Applicant indicated at this hearing that her name was Name #1; however, he provided a statement to DC Schell and Detective Sergeant Bowen on November 7, 2001, that his ex-girlfriend's name was Name #2.

2. The Applicant challenged Counsel for the Registrar by arguing that only one laptop computer was found in his bedroom during the execution of the search warrant. According to the Crown Brief Synopsis (Vol. 2, Tab 1, Exhibit 3), DC Schell listed the seized printer, scanner and two laptop computers with their serial numbers. On page 20 of the Applicant's statement (Vol. 2, Tab 3, Exhibit 3), the Applicant stated

"I bought it like, one computer I bought it like about two weeks ago, another one I bought it, like, about two and a half months ago".

He further re-iterated his statement on page 29 (Vol. 2, Tab 3, Exhibit 3),

"...I bought two laptops from my cousin, thirty seven hundred dollars (\$3,700.00)".

3. During the course of this hearing, the Applicant kept indicating that his past convictions happened seven years ago. He was charged on November 2001, convicted of his crimes on February, 2002 and released from probation in February 2003. He has not had any convictions since his release from probation, being 4 years ago.

The Tribunal concludes, based on one of the Applicant's final comments, that the Applicant did not expect that his past conduct would be called into question and magnified as it has at today's hearing, saying *"I didn't realize it was going to be that intense"*.

The Applicant failed to provide any evidence to respond to the effect of these consistencies and that would allow this Tribunal to consider his application favourably.

THE LAW:

Sections 5(1)(a)(b) of *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;

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.

APPLICATION OF LAW TO FACTS:

The test the Tribunal should apply to the facts it has found is the test outlined by the Divisional Court in the case of *Brenner v. Ontario (Registrar of Motor Vehicle Dealers and Salesman)*[1983] O.R. No. 1017, which reads as follows:

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. (emphasis added)

The Applicant failed to provide any evidence that would rebut the facts proven in the evidence of DC Schell and Mr. Smith. The only issue before the Tribunal is whether the Applicant could carry on business in accordance with the law and with honesty and integrity.

The Applicant participated in criminal conduct including fraud involving use of credit cards, large sums of money and personal financial information, acts which constituted a breach of trust.

His conduct in inaccurately completing the application to the Registrar and then making contradictory and inconsistent statements indicates he is unlikely to abide by the restrictions of a regulated industry designed to protect the public.

The conduct of the Applicant at today's hearing does not convince the Tribunal that it would be in the public's best interest to grant the application for registration to the Applicant. Although he was apologetic with regard to his past conduct, he was not in agreement with his past convictions which he pleaded guilty to. This Tribunal is of the opinion that the Applicant is not fully aware of the impact and seriousness of his past criminal convictions. He was not expecting the Registrar nor OMVIC to fully investigate his background.

The Applicant was released from probation in February 2003. He was unemployed and/or performing odd jobs until he was hired as an employee in the Parts/Customer Service department at Erin Mills Mazda in September 2005. The Applicant has been on sick leave from his current employer since October 2006.

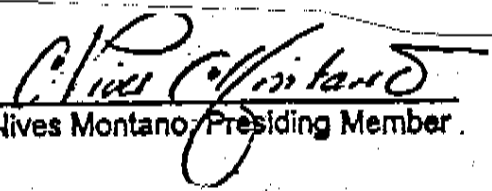
The Tribunal is in agreement with Mr. Smith that the car industry is found to be quite lucrative by crime groups to carry out fraudulent acts and criminal activity. The common goal is to protect the public against such activity.

The Tribunal finds that section 5(1)(b) of the Act applies, and that 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 since he has only been back in the workforce for one year since his release from probation in February 2003.

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 to refuse the Applicant's registration as a motor vehicle salesperson.

LICENCE APPEAL TRIBUNAL


Nives Montano, Presiding Member

Released: April 3, 2007

Filename: 3654.mvda.Asad Andy Malik.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.