

**LICENCE APPEAL
TRIBUNAL**

**TRIBUNAL D'APPEL EN MATIÈRE
DE PERMIS**



**Safety, Licensing Appeals and
Standards Tribunals Ontario**

**Tribunaux de la sécurité, des appels en
matière de permis et des normes Ontario**

Citation: Ali Salahi v. Registrar, Motor Vehicle Dealers Act, 2002, 2018 ONLAT-MVDA
10870

Date: 2018-01-22
File Number: 10870/MVDA

An Appeal from a Notice of Proposal by the Registrar, *Motor Vehicle Dealers Act, 2002*,
S.O. 2002, c. 30, Sch. B - to Refuse Registration

Between:

Ali Salahi

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

DECISION AND ORDER

Adjudicator: Patricia McQuaid, Vice-Chair

Appearances:

For the Appellant: Vartan Manoukian, Paralegal

For the Respondent: Jane Samler, Counsel

Heard in Toronto: November 22 and 23, 2017

OVERVIEW

- [1] Ali Salahi (the “appellant”) has appealed the Registrar’s Notice of Proposal, dated June 26, 2017, to refuse his registration as a motor vehicle salesperson. The Registrar alleges that the appellant does not meet the test for registration as set out in s. 6 of the Act. Specifically, he bases his refusal on three grounds:
- Given the appellant’s financial position, he cannot reasonably be expected to be financially responsible in the conduct of business;
 - The appellant’s past conduct affords reasonable grounds for belief that the appellant will not carry on business in accordance with the law and with integrity and honesty; and
 - The appellant is alleged to have made a false statement in his application for registration.
- [2] These grounds for refusal are factually intertwined, particularly the first two grounds. Central to the Registrar’s refusal to register Mr. Salahi are the following: his financial situation at the time that he purchased a BMW vehicle in 2009, the disappearance of that vehicle and a subsequent bankruptcy in 2010. A Court decision in May 2017, which dealt with charges laid against Mr. Salahi as a result of the disappearance of the BMW, has caused the respondent to firmly oppose Mr. Salahi’s registration. Although Mr. Salahi was acquitted of the charge of fraudulently disposing of property (the “BMW”) contrary to the *Bankruptcy Act*, the judge made findings against Mr. Salahi, to the effect that he acted fraudulently with respect to the BMW.
- [3] The third ground for refusal relates to a failure by the appellant to disclose a garnishment order made against him, in response to a question on his application form. In addition, the Registrar alleges that the appellant provided false information when he was asked to provide details of the charges under the *Bankruptcy Act*.
- [4] Counsel for the Registrar submits that any one of the grounds would disentitle the appellant from registration.
- [5] The appellant is a licensed paralegal and a real estate and mortgage broker. He has had no disciplinary proceedings taken against him by any of the regulators in those professions. He states that at the time of his financial distress in 2009 and 2010, and through the period of time when the BMW disappeared, he may have been careless and displayed a lack of diligence with respect to his financial obligations. However, he states that he has changed, as has his financial situation, and therefore he ought to be registered.

ISSUES

- [6] Given the evidence heard, is the appellant disentitled to registration on the basis of any one of the following: that he cannot reasonably be expected to be financially responsible; there are reasonable grounds to believe that the appellant will not act in accordance with the law, or with integrity, honesty and in the public interest, having regard to his past conduct; and/or because of false statements on his application?
- [7] Alternatively, can the Registrar's concerns as set out in the evidence be addressed through conditions rather than refusal of the application for registration?
- [8] For the reasons that follow, I find that the Registrar has established that the appellant is not entitled to registration and accordingly, I direct that the Registrar carry out the Notice of Proposal to refuse the appellant's registration.

EVIDENCE and ANALYSIS

- [9] Four witnesses testified before me: Maria Roussopoulos, who, in 2009, was the senior collections officer from BMW Financial Services Canada, Andrea Korth, the business standards manager with the Ontario Motor Vehicle Industry Council ("OMVIC"), Abdul Mushfiq, the owner of G.W. Sales, the dealership which proposes to hire the appellant, and the appellant himself.

The BMW and the bankruptcy – issues: can the appellant reasonably be expected to be financially responsible and are there reasonable grounds to believe that the appellant will not act in accordance with the law, or with integrity, honesty and in the public interest?

- [10] The evidence regarding the BMW and the bankruptcy are intertwined. The essential facts are not in dispute. The appellant purchased a 2006 BMW X5 in August 2009 for approximately \$48,000. He financed it through BMW Financial Services Canada. The monthly payments were \$690.97. When he signed his agreement with BMW, he gave his address as 77 Huntley Street. He was living there and at 82 Manor Heights Street which is the home of his common-law spouse. After the birth of their son in 2008, he spent most of his time at 82 Manor Heights Street, but continued to maintain the apartment at 77 Huntley. In September 2009, he filed a change of address to 82 Manor Heights Street for his driver's licence with the Ministry of Transportation. He did not advise BMW of any change to his address or contact information.

- [11] The appellant made three payments on the BMW, but defaulted as of December 2009. The BMW collections department began making calls to the appellant at the numbers given by him, mostly to the 77 Huntley Street phone number as opposed to his work number. Messages were left for him. By February 2010, the number at 77 Huntley was no longer in service. Around this time, Ms. Roussopoulos assumed carriage of the collection file. She sent a demand letter to the appellant at 77 Huntley Street on March 30, 2010. She also left a message for him at his work number. She never received a response to the demand letter nor did he respond to any of the calls made to him.
- [12] At about this time, Ms. Roussopoulos did a credit check on the appellant and discovered that all of his credit cards were 'maxed out'. She was concerned about possible fraud by the appellant so retained a bailiff to locate and seize the vehicle. The bailiff found the appellant at 82 Manor Heights late one evening in April 2010 and spoke to him personally. The appellant told the bailiff that he had come home about four months prior and discovered that the BMW was gone from the driveway. He did not call BMW to confirm that this had in fact occurred, nor did he call police or report it as stolen. He told the bailiff that that he believed that BMW had seized the vehicle from his driveway.
- [13] In the various proceedings between the appellant and BMW, and at this hearing, the appellant repeated this belief, stating that he was, in a way, relieved that BMW had repossessed the vehicle because of his increasingly difficult financial situation. This was one less problem that he had to deal with. Many creditors were calling him and he was not answering any of their calls. He would not even listen to the messages that they left for him.
- [14] While the appellant's representative questioned how many calls were in fact made by BMW and whether they could have traced him to 82 Manor Heights earlier or found him at his workplace, the extent of their efforts to find him, or whether three or ten calls were made, is, in many ways, moot. The appellant was avoiding all calls. The appellant testified that he was not in his right state of mind in 2010 because of the financial stresses, acknowledging that he should have been more diligent in dealing with BMW. He was, he stated, simply overwhelmed with life at that time.
- [15] As an indicator of his state of mind, the appellant pointed to the fact that despite the BMW's disappearance from his driveway in about February 2010, he renewed his insurance for the vehicle and continued making insurance payments until July 2010, when his insurer pointed this out to him. He had by that time purchased a

2002 Jeep Grand Cherokee for \$1,500 to replace the BMW and was paying insurance on that vehicle as well.

- [16] Through their investigation, BMW also discovered that the appellant was still paying for insurance on the BMW, as well as paying fees related to driving on the 407 highway, traced through a transponder that was associated with the BMW. These facts heightened BMW's suspicions that the appellant had defrauded them.
- [17] In October 2010, the appellant's wages owed to him by the realty company for which he worked were subject to a garnishment order as a result of an approximate \$42,000 debt owed to the Bank of Montreal. Because of this, and other escalating debts, the appellant filed for bankruptcy in November 2010. BMW was not listed as a creditor in the bankruptcy proceedings, and therefore received no notice of creditors' meetings. The appellant told the trustee in bankruptcy that BMW had repossessed the vehicle.
- [18] At the time of his bankruptcy, the appellant's assets were valued at \$6,500. His monthly income was estimated at \$1,500 and his debts owing totalled \$278,100. On the form filed with the trustee in bankruptcy, it states: "A 2006 BMW was picked up from the bankrupt's residence. The location of the vehicle is unknown to the bankrupt, but he believes the vehicle was picked up by BMW. They claim they do not have the car."
- [19] BMW never located the vehicle. And, because the appellant did not file a report with the police that the vehicle had been stolen, there was no claim made or payment from the insurer, a payment which may have paid the debt owed to BMW.
- [20] The Superintendent of Bankruptcy opposed the discharge of the 2010 bankruptcy. However, the Court granted an order in November 2013 setting out terms of discharge. The appellant complied with these terms and received a discharge from bankruptcy in May 2016. The appellant had declared bankruptcy once before, in 1999, and was discharged approximately eight months later. The Registrar made reference to this earlier bankruptcy in the Notice of Proposal, but little evidence was led regarding it and given that it was 18 years ago, I have given it less weight in assessing the financial responsibility issues in this proceeding.
- [21] The appellant's issues relating to the disappearance of the BMW and the bankruptcy did not end with the order setting terms of discharge in 2013. In April 2014, charges were laid against the appellant as a result of an information filed by the Office of the Superintendent of Bankruptcy alleging that the appellant had failed to fully and truthfully answer all questions put to him at the examination in

the bankruptcy proceedings and that he had disposed of assets, namely the BMW, all contrary to the *Bankruptcy and Insolvency Act*.

[22] These proceedings were protracted. The trial took place over several days, starting in February 2015. A mistrial was declared in July 2016 and the matter was re-tried in April 2017, leading to the judgment of Justice Borenstein in May 2017. As noted above, the Registrar relies heavily on statements made by the Court. In the judgment (*R. v Salahi*, 2017 ONCJ 287), the Court noted that the appellant's statement that BMW stopped calling after the vehicle went missing was incorrect. The Court stated, at paragraph 36 as follows:

"I am satisfied beyond a reasonable doubt that Salahi either transferred the BMW to someone or he still has, is concealing it and is lying about the BMW. In both cases, his conduct is fraudulent. He acted dishonestly in a manner which created a risk of deprivation to his creditors. More than a risk in this case. There was actual deprivation."

[23] The appellant did not testify at the trial and disputes those statements made by the Court. However, as the appellant's representative noted, because the Court found him not guilty, he was not in a position to challenge those findings on an appeal. The Court stated that the appellant was charged with disposing of (as opposed to keeping and hiding) assets and that could not be proved beyond a reasonable doubt.

[24] The Registrar asks that when I assess whether there are reasonable grounds for the belief that the appellant will not carry on business in accordance with the law and with integrity and honesty that I give considerable weight to the statements of Borenstein J. even though he acquitted the appellant of the specific charge before him. These statements were, in effect, obiter, and while on their face damning, it is not required of me that I conclude whether the appellant did or did not hide, conceal, or otherwise fraudulently deal with the BMW. The appellant's actions relating to the BMW in 2010 which he now concedes showed a lack of diligence and carelessness, are themselves cause for concern as an indicator of integrity, especially in the context of this regulated industry where responsiveness both to consumer complaints or a regulator's inquiries regarding compliance issues is crucial when public interest issues are at play.

[25] His representative submitted that the appellant's actions, or inaction, may suggest a "wilful blindness". As his testimony made clear, the appellant decided to wish his financial problem (the BMW obligation) away. Though he had no concrete evidence that they did so, he convinced himself that BMW re-possessed the vehicle and thus this significant financial problem was gone. And as the evidence

shows, even after the visit from the bailiff, when it ought to have been clear that BMW had not re-possessed the car, the appellant did not sway from his position that BMW had taken the car and that he had never received any phone calls from BMW regarding payments. Indeed, he continued to hold firmly to it, as made clear in his bankruptcy filing, and his application for registration with OMVIC. Even at this hearing, he stated that after going through the evidence, he had to concede that it is possible that BMW called him and that he was simply avoiding all calls and that he now knows that he should have been more diligent in dealing with this matter. Seven years, and several court proceedings later, he is coming to this realization.

- [26] The concern that this highlights is that the appellant is quite prepared to base his conduct on what he wills himself to believe, in order to minimize his personal responsibility or to rid himself of a problem. This is not a situation such as in the case of *Adiyaman (Re)* [2002] O.L.A.T.D. No. 63, cited by the appellant's representative in submissions, where the statements made about BMW re-possessing the vehicle could be said to be a 'mistake'. At best, perhaps it could be characterized as a mistake in April 2010, but not after the visit from the bailiff and certainly not after the first of the court proceedings in 2014. Yet, the appellant repeatedly, in fact, until this hearing, actively, presented a different version of events when he knew or ought to have known that was not the reality. It does not suggest a level of integrity and honesty required in this regulated profession nor instill confidence that the appellant, when faced with a difficult situation, will put the public interest ahead of his own.
- [27] The appellant continues to be registered as a paralegal and as a real estate and mortgage broker, with no action taken against him by the respective regulators even though he testified that he has disclosed the Borenstein decision to each of them. His representative stated that there was nothing looming against the appellant that they are aware of. The appellant's representative also submits that I should take this fact into consideration. As he stated, the appellant comes into contact with the public on a daily basis. This fact has been considered by me. However, it is only the appellant's entitlement to registration with OMVIC that is before me. I heard no evidence regarding his work history in those other professions.
- [28] The Tribunal's jurisprudence, as pointed out by the appellant's representative, suggests that past conduct that involves serious criminal conduct may not in and of itself preclude registration. And it is clear here there is no finding of criminal conduct by a court. But what the jurisprudence also suggests is that a high degree of trustworthiness is required - the elements of integrity and honesty- so that it is

reasonable and appropriate to place public trust in an appellant with the granting of registration. As the cases such as *Coyle (Re)* [2015] O.L.A.T.D. No 233 show, appellants often call character witnesses to counter assertions of a lack of integrity and honesty and to support a standard of conduct required by a regulator. Such evidence is often given considerable weight. There is no evidence before me from the real estate brokerage with whom the appellant works or the paralegal firm to show that the appellant has worked diligently to ensure that financial pressures and debt do not overwhelm him, causing him to display a lack of judgment as they have previously.

- [29] I therefore find that the appellant's past conduct affords reasonable grounds to believe that he will not carry on business in accordance with the law and with integrity and honesty.
- [30] The appellant acknowledges that OMVIC may have concerns; he is not proud of his actions in 2010, but states that he cannot change that. There is no question that people make mistakes, and may experience financial stress and tough times from time to time. A prior bankruptcy may not in and of itself preclude registration. As noted previously, the fact of the bankruptcy in 1999 has not been given much weight and would likely be given no weight if it was the only bankruptcy for the appellant. However, the fact that there have been two bankruptcies does strongly suggest that the appellant has challenges with maintaining a stable financial position.
- [31] The appellant states he was overwhelmed in 2010. He recognizes that what transpired in 2010 both regarding BMW and the ensuing financial issues might cause concern from the public's perspective. He testified that he is trying to work and to do his best to avoid any further financial issues, but he offered little or no evidence about what he has done to improve and manage his financial situation even though he appears to still be working in the real estate industry and as a paralegal.
- [32] The evidence before me, in particular the past history, does raise questions about whether the appellant can reasonably be expected to be financially responsible in the conduct of business. However, the wording of s. 6(1)(a)(i) requires that this assessment be made "having regard to the applicant's financial position". The onus is on the Registrar to establish lack of entitlement to registration. There was no evidence led as to the appellant's financial position since the terms of discharge from bankruptcy were set in 2013 (other than that he complied with those terms) and his subsequent discharge in 2016. While there may be concerns as a result of his past financial situation, there is no evidence that having regard to his more

recent financial position, he cannot reasonably be expected to be financially responsible and I make no such finding.

The application for registration – issue: did the appellant give false statements on his application for registration

- [33] The appellant applied for registration in November 2014. The Notice of Proposal refusing the application was issued in June 2017. Ms. Korth conceded that 2 1/2 years was a long time to wait for the Registrar's decision, but they were waiting for the outcome of the court proceedings.
- [34] On his application, the appellant proposes to work as a salesperson for G.W. Sales, a sole proprietorship owned by Abdul R. Mushfiq. Mr. Mushfiq described himself as a close family friend of the appellant. He believes him to be honest and knows about the disappearance of the BMW. Mr. Mushfiq has been registered as a used car dealer for almost 20 years. He has no disciplinary history with OMVIC.
- [35] Mr. Mushfiq explained that he has had some health issues and approached the appellant to help him out. Mr. Mushfiq has renewed his registration with OMVIC recently but has it "on hold" because he gave up his sales location. However, he said that he can no longer run the business alone, hence his desire to hire the appellant. While he could be at the business every day, he stated that how much time he would actually spend there would depend on his own health and how able the appellant might be to handle the business on his own.
- [36] The appellant did disclose the fact of his personal bankruptcy and the *Bankruptcy Act* charges. He did not disclose the garnishment in October 2010 in response to a specific question about garnishment within the previous five years on the application. At the hearing, the appellant explained that he was confused about the timing, believing it was in October 2009 and therefore, in that instance, it did not occur within five years of the November 2014 application.
- [37] In light of the fact that the appellant disclosed both his personal bankruptcy and the charges against him, both significant issues, I am prepared to accept that this nondisclosure was a simple calculation error and not intentional.
- [38] The other false statement which the Registrar asserts was made is contained in his written statement to the Registrar dated December 8, 2014 in which the appellant stated that after the disappearance of the car, BMW never called or contacted him. Given the facts set out above, and as conceded by the appellant at the hearing, this was not true. The appellant's explanation is that at the time, he believed that to be true, perhaps because of his state of mind in 2009. However,

by December 2014, repeating that assertion given what was occurring in the context of the bankruptcy related proceedings, is less credible.

- [39] Based on the evidence outlined above, I find that the information provided by the appellant on his application by way of explanation for the charges against him was indeed a false statement which he knowingly made. In reaching that conclusion, I note the decision of the Divisional Court in *Registrar, Motor Vehicle Dealers Act v. Vernon* 2016 ONSC 304 where the Court said that the task of this Tribunal in applying s. 6 of the Act regarding false statements on an application was to determine whether an applicant made a false statement to the Registrar and whether he knowingly did so; the issue was not whether he deliberately tried to mislead. The Court concluded in *Vernon* that the applicant did know of the falsity of the information; it was not a question of an honest mistake. Given that he knowingly made false statements about important facts, the Court concluded that it was unreasonable for the Tribunal to conclude that the particular prohibition in the Act (s. 6(1)(a)(iii)) did not apply.

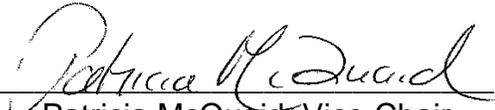
Issue: Conditions on Registration

- [40] As found by me, the Registrar has successfully established two of the three grounds for refusal to register the appellant. Based on those findings, I will direct that the Registrar carry out his proposal. However, for completeness, I will briefly address the issue of whether conditions on registration may have mitigated the Registrar's concerns.
- [41] The only character evidence provided was that of Mr. Mushfiq who knows the appellant as a friend. While he believes the appellant to be honest, he offered no other insight. And while the appellant has stated that he would, given that he understands the Registrar has concerns, accept any conditions on his registration, I am not persuaded that Mr. Mushfiq is able to provide, nor did he intend to provide a supervision or oversight of the appellant. His goal in hiring the appellant is to have him run the business given his personal health situation. As the Registrar's representative submitted, terms and conditions will only work when a sponsoring dealer is in place to supervise. There would be no such assurance in this instance.

ORDER

[42] Pursuant to the authority vested in me under the provisions of the Act, I direct the Registrar to carry out the Notice of Proposal to refuse registration.

LICENCE APPEAL TRIBUNAL


Patricia McQuaid, Vice-Chair

Released: January 22, 2018