

**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: 1958242 Ontario Ltd. o/a Kim's Auto & Kimar Chambers v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2017 ONLAT MVDA 10844

Date: 2018-01-26
File Number: 10844 MVDA

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

Between:

1958242 Ontario Ltd. o/a Kim's Auto & Kimar Chambers

Appellants

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

DECISION AND ORDER

ADJUDICATOR: Stephen Scharbach, Member

APPEARANCES:

For the Appellants: Kimar Chambers, representing himself and as Agent for 1958242 Ontario Ltd. o/a Kim's Auto

For the Respondent: Angela LaViola, Counsel

Heard in Toronto: November 14, December 1, 2017

DECISION and ORDER

Introduction

- [1] Under the *Motor Vehicle Dealers Act, 2002*, (“Act”), anyone who acts as a motor vehicle dealer or salesperson in Ontario must apply to, and be granted registration from, the Registrar appointed under the Act.
- [2] Mr. Kimar Chambers intends to enter the business of buying and selling motor vehicles. He is the sole officer and director of 1958242 Ontario Inc., an Ontario business corporation (the “corporation”).
- [3] Mr. Chambers applied for registration under the Act as a salesperson, and his corporation applied for registration as a dealer. His intention was to start his own motor vehicle dealership business with his corporation registered as a dealer and himself registered as the dealer’s salesperson.
- [4] The Registrar issued a notice of proposal to refuse both applications. According to the notice of proposal and the submissions made at the hearing, the Registrar’s proposal is based on three grounds;
 - Mr. Chambers’ financial position is such that he and his company cannot reasonably be expected to be financial responsible in conducting their business,
 - Mr. Chambers provided false information in his salesperson application, and in his responses to inquiries from the Registrar’s staff,
 - Mr. Chambers’ past conduct affords reasonable grounds for belief that he and his company will not carry on business in accordance with law and with integrity and honesty.
- [5] Mr. Chambers and his corporation (collectively referred to as “the appellants”), appealed the Registrar’s proposal to this Tribunal. Mr. Chambers’ position is that he has sufficient assets and a viable business plan to conduct his intended business, he did not knowingly provide false information to the Registrar, and his past conduct does not afford reasonable grounds for belief that he and his company will not carry on business with integrity and honesty.
- [6] As described more fully below, I have concluded that there are sufficient grounds to refuse both applications and I direct that the Registrar carry out his proposal to refuse.

The Act and the Notice of Proposal to Refuse

- [7] The Act regulates the trade of motor vehicles in Ontario in an effort to provide certain protections to the automobile buying public. It restricts the trade to those who are registered under the Act as salespersons or dealers, and makes it an offence for anyone else to engage in that trade.
- [8] In order to qualify for registration, applicants must meet certain requirements that are set out in the Act and regulations. They include completion of a designated course of study, providing detailed information about their intended business operation, undergoing background checks to determine suitability, and demonstrating financial responsibility.
- [9] The Act provides for the appointment of a Registrar and two deputy Registrars. The Registrar receives applications for registration, collects and reviews relevant information, and decides whether or not applicants are qualified and suitable for registration.
- [10] If the Registrar proposes to refuse an application, the Act requires that the applicant be given written notice of the proposal, including reasons and notification of the right to a hearing upon request.
- [11] If no hearing is requested, the Registrar may carry out the proposal and refuse to grant the application.
- [12] If, as in this case, a hearing is requested, the Act provides that the Tribunal shall hold a hearing and make an independent decision on whether to grant or refuse the application based on the facts presented at the hearing.
- [13] After holding a hearing, the Tribunal may direct the Registrar to carry out the proposal to refuse, or substitute its opinion for that of the Registrar, and the Tribunal may attach conditions to its order or to a registration.

Issues

- [14] Based on the Registrar's notice of proposal and submissions made by the parties, the issues for consideration in this case are:
- a. Having regard to Mr. Chambers' financial position, can the appellants be reasonably expected to be financially responsible in the conduct of their business?

- b. Did Mr. Chambers knowingly make a false statement in his application for registration as a salesperson?
- c. Does Mr. Chambers' past conduct afford reasonable grounds for belief that the appellants will not carry on business in accordance with law and with integrity and honesty?
- d. Given the answers to the above issues, should the appellants' applications be refused, granted, or granted with conditions?

ISSUE 1: Having regard to Mr. Chambers' financial position, can the appellants be reasonably expected to be financially responsible in the conduct of their business?

- [15] Based on the evidence presented, I am not convinced that the appellants cannot reasonably be expected to be financially responsible in the conduct of their intended business, having regard to Mr. Chambers' financial position.
- [16] The Act (s.6), provides that an applicant who meets the prescribed requirements is entitled to registration unless, having regard to the applicant's financial position, or that of an interested person, "...the applicant cannot reasonably be expected to be financially responsible in the conduct of business."
- [17] Mr. Chambers, as the sole officer and director of the corporate applicant, is an "interested person" in respect of the corporation. His financial position is therefore relevant to both his personal salesperson application as well as the corporation's dealer application.
- [18] Mr. Chambers is 23 years old and has some, but limited, exposure to the business. He intends to operate a modest dealership, hoping to sell one vehicle per week with an anticipated gross revenue of \$4,000 per month. He has secured a lease of a business office and parking for one vehicle at a monthly cost of \$400. He has arranged for a municipal and provincial business licence, a GST registration, and an accounting firm to manage his books, accounts and taxes.
- [19] With respect to working capital, Mr. Chambers demonstrated that he has access to about \$10,000, a portion of which was lent to him by his parents. Although there was some lack of clarity during the application verification process about the source of those funds, during the course of the hearing Mr. Chambers satisfied me that he legitimately has access to that amount.
- [20] The Deputy Registrar, Ms. Linda Halbert, testified that there are no written requirements or guidelines setting out criteria by which financial responsibility can

be assessed and each application is assessed on its own merits. However, the Registrar requires dealer applicants to have a business plan which demonstrates a capacity to deal with financial downturns. Dealers may accept deposits and hold trust funds as part of their business, and an increased risk of cash flow problems or business failure leads to an increased financial risk to the vehicle buying public.

- [21] The Registrar's main concern involving Mr. Chambers financial responsibility is that the he owes approximately \$13,000 in student loans, and just over \$14,000 in outstanding *Highway Traffic Act* fines (for which he has requested extensions of time to pay).
- [22] Mr. Chambers currently works as forklift operator. He hopes to continue that employment and operate the dealership at the same time. He testified that he hopes to be able to pay down his debts once he starts to generate income from the dealership.
- [23] In the Registrar's view, although Mr. Chambers has access to start-up capital and the scope of his planned business is modest, his significant debt load, his failure to make much progress in satisfying those debts, and his limited industry experience, all indicate that he cannot reasonably be expected to be financially responsible in the conduct of his business.
- [24] Based on the information presented at the hearing, I cannot conclude that the applicants cannot reasonably be expected to be financially responsible in the conduct of their business.
- [25] While Mr. Chambers' debt load is significant, it does not appear to be crushing and he is earning a small but steady income from his employment which would appear to allow him to make payments on those debts over time. His business plan appears to be simple and modest, but in line with his financial resources. He has demonstrated commitment and responsibility in taking steps to make his intended business work, and has the financial support of his parents who have provided some of his working capital.
- [26] Mr. Chambers' intended business may or may not be successful - many new businesses fail for a variety of reasons. However, the question is not whether he would be successful but rather whether the business cannot reasonably be expected to be financially responsible having regard to Mr. Chambers' financial position.
- [27] On the evidence presented, and in the absence of some objective criteria that measures financial responsibility, I find the Registrar has not met the onus to prove that the appellants, "...cannot reasonably be expected to be financial responsible in the conduct of their business.

Issue 2: Did Mr. Chambers knowingly make a false statement in his application for registration and/or in his responses to follow-up questions?

[28] The Act (s.6), provides that an applicant who meets the prescribed requirements is entitled to registration unless the applicant, or an officer or director of an applicant, "...makes a false statement...in an application for registration..."

[29] According to the Divisional Court, in deciding this issue, I must determine whether the appellant made a false statement in his application and whether he knowingly did so. (*Registrar, Motor Vehicle Dealers Act, 2002 v. Vernon*, 2016 ONSC 304, at paragraph 8)

[30] I have concluded that Mr. Chambers knowingly made false statements in the application he submitted for a sales person registration.

[31] In that application, received by the Registrar on July 25, 2016, Mr. Chambers was asked a number of questions, including the following:

"Does the applicant currently hold a valid Ontario driver's licence?"

"Are there any unsatisfied judgements, court orders or collections currently pending against the applicant?"

"Has the applicant **ever** been found guilty or convicted of an offence **under any law** ... **Please note: this question refers to charges under any law...**" (bolding and underlining included in the application form).

[32] With respect to the first question, Mr. Chambers answered "yes". That answer was false. At the time he submitted the application, his driver's licence was under suspension for non-payment of fines since July 25, 2014.

[33] Mr. Chambers testified that he knew that answer was false but planned to quickly pay the fines and arrange for re-instatement of his licence. He intended that his answer would be accurate by the time the application was received and reviewed by the Registrar. However, in the end, he was unable to reinstate his licence.

[34] With respect to the second question, Mr. Chambers answered "No". That answer was false because at the time he answered it there were several court-ordered fines imposed under the *Highway Traffic Act* ("HTA") that were outstanding and unpaid.

[35] Mr. Chambers testified that he did not knowingly provide false information. He stated that he misunderstood the question and did not realise that it included court ordered HTA fines.

[36] With respect to the third question, Mr. Chambers answered "No". That answer was false because between August 2010, and the time the application was submitted, the appellant had been convicted 25 times for various HTA offences.

[37] Mr. Chambers testified that again he did not intend to provide false information - he was under the mistaken impression that the question only referred to criminal offences.

[38] I conclude that Mr. Chambers knowingly provided false information in his answers to the above questions.

[39] With respect to the first question, he acknowledged providing a false answer although he intended to re-instate his licence quickly.

[40] The second and third questions are unambiguous and clearly worded. Mr. Chambers' assertion that he misunderstood them is difficult to accept, especially in the case of the third question which includes bolded and underlined text specifically designed to make it clear that it is asking about convictions under any law, and not just criminal convictions.

Issue 3 - Does Mr. Chambers' past conduct afford reasonable grounds for belief that the appellants will not carry on business in accordance with law and with integrity and honesty?

[41] I have concluded that Mr. Chambers' past conduct affords reasonable grounds for belief that the appellants will not carry on business in accordance with law and with integrity and honesty.

[42] The Act (s.6), provides that an applicant who meets the prescribed requirements is entitled to registration unless the past conduct of the applicant, or that of an officer and director of an applicant, affords reasonable grounds for belief that the applicant or its business "...will not be carried on in accordance with law and with integrity and honesty."

[43] The Registrar raises two aspects of Mr. Chambers' past conduct that he says affords reasonable grounds for belief that the applicants will not carry on business in accordance with the law and with integrity and honesty.

[44] Firstly, Mr. Chambers knowingly made false statements in his application for registration as I have described above.

- [45] Secondly, the Registrar points to Mr. Chambers' significant history of HTA convictions, non-payment of fines, multiple suspensions for non-payment, and subsequent convictions for driving while under suspension.
- [46] Mr. Chambers' driving record was an exhibit at the hearing and indicates that from August 2010 to the time the application was made, Mr. Chambers was convicted of 25 HTA offences including operating a vehicle with no insurance, and 3 convictions for driving while under suspension. Since the application was made in July 2016, he has been convicted of careless driving and again for driving while under suspension.
- [47] Mr. Chambers' driving while under suspension convictions are significant because they indicate a willingness to defy court orders. In addition, fines have been imposed on numerous occasions. While some of them have been paid, others have not and are apparently still outstanding. The appellant's failure to deal with those court ordered fines also suggests a willingness to ignore court ordered sanctions.
- [48] The appellant testified that some of the convictions resulted from someone else using his ID, and some of the driving while suspended offences occurred when he was required to look after his infant nephew and had no other means of transportation.
- [49] Presumably the appellant had an opportunity to raise any defences and mitigating circumstances at the HTA proceedings which resulted in the convictions. I am not in a position to second guess those findings in these proceedings.
- [50] Mr. Chambers' past conduct in relation to the HTA offences indicates repeated non-compliance with the provisions of the HTA and a willingness to ignore court ordered sanctions. It suggests that if granted registration, the appellants may similarly disregard the requirements of the Act and the orders of the Registrar. Mr. Chambers' past conduct in that regard, together with knowingly giving false information to the Registrar in his application, affords reasonable grounds for belief that the appellants will not carry on business in accordance with law and with integrity and honesty.

Issue 4: Given the answers to the above issues, should the appellants' applications be refused, granted, or granted with conditions?

- [51] I have found Mr. Chambers' knowingly provided false information to the Registrar, and that his past conduct affords reasonable grounds for belief that the appellants will not carry on business in accordance with law and with integrity and honesty.

[52] The Registrar's counsel submitted that the issues concerning the appellants' suitability cannot be effectively addressed by conditions attached to their registration.

[53] I agree. Any such condition, whether it involves enhanced monitoring, supervision by another registrant, or frequent reporting to the Registrar, depends on Mr. Chambers' willingness to comply with regulatory requirements and be forthright with the Registrar and his staff. The evidence presented at the hearing does not inspire confidence in that regard.

[54] The Deputy Registrar suggested in her testimony that at some point in the future, after Mr. Chambers' fines and debts have been dealt with and his driver's licence restored, the Registrar may be willing to consider an application from him for registration as a salesperson. Mr. Chambers made it clear that he does not want to work as a salesperson and his goal is to operate his own dealership business. However, registration as a salesperson, if granted, would allow him to work for a specified dealer, hopefully with some supervision. That would allow Mr. Chambers to get some instructive exposure to the business and establish a positive track record with the regulator.

[55] The appellant may wish to consider this suggestion. However, for the reasons stated above, I have decided to deny the appeal and direct the Registrar to carry out his proposal to refuse the applications.

Order

[56] Pursuant to s. 9(5) of the *Motor Vehicle Dealers Act, 2002*, I direct the Registrar to carry out his proposal dated June 25, 2017 to refuse the application of Mr. Kimar Chambers for registration as a salesperson under the Act, and the application of 1958242 Ontario Inc. for registration as a dealer under the Act.

LICENCE APPEAL TRIBUNAL



Stephen Scharbach, Adjudicator