

CITATION: Ontario v. Mander, 2018 ONSC 1795

COURT FILE NO.: DC-17-357-00

DATE: 20180319

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

WILTON-SIEGEL, MYERS and CHARNEY JJ.

BETWEEN:

Her Majesty the Queen in Right of Ontario
as represented by the Registrar, *Motor
Vehicle Dealers Act, 2002*

Appellant

– and –

Gordon Mander

Respondent

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) Michael Rusek, for the Appellant
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) Gordon Mander, In Person
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) **HEARD at Toronto:** February 12, 2018
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REASONS FOR DECISION

Introduction

- [1] The Respondent, Gordon Mander, was arrested and charged with assault by police in Calgary, Alberta on July 12, 2015. He was released on the condition that he attend court in relation to the assault charge. Mr. Mander did not attend court as required, and he was charged with failing to attend court. An arrest warrant was issued by the Calgary police.
- [2] Sometime after the charge and prior to the court hearing, Mr. Mander moved to Ontario. He applied to be registered as a motor vehicle salesperson under the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30 (the “MVDA”). Section 4(1)(b) of the MVDA prohibits any person from acting as a motor vehicle salesperson in Ontario unless he or she is registered as a salesperson under the Act.

- [3] The issue in this appeal is whether the Licence Appeal Tribunal (the “Tribunal”) erred in concluding that Mr. Mander should be registered as a motor vehicle salesperson in Ontario while he remains subject to the outstanding arrest warrant in Alberta.

Facts

- [4] In August 2016, Mr. Mander applied for registration to sell cars in Ontario. As part of that application process, Mr. Mander was required to submit the results of a Police Information Check. The document he obtained from the Peel Regional Police showed that he was wanted in Calgary, Alberta for assault and for failing to attend court. Mr. Mander acknowledged that he was aware of the pending charge but said that he was not aware of the warrant until he applied to the Peel Regional Police for the Check.
- [5] The Registrar under the *Motor Vehicle Dealers Act, 2002* (the “Registrar”) issued her proposal to refuse Mr. Mander’s registration on December 1, 2016, on the basis that Mr. Mander’s past conduct and, in particular, his failure to attend court in Calgary, Alberta in connection with his assault charge, afforded a reasonable basis to conclude that he will not carry on business in accordance with the law and with integrity and honesty as required by s. 6 of the MVDA.
- [6] The relevant provisions of s. 6 of the MVDA provide:

Registration

6 (1) An applicant that meets the prescribed requirements is entitled to registration or renewal of registration by the registrar unless,

(a) the applicant is not a corporation and,

...

(ii) the past conduct of the applicant ... affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty, or

- [7] Mr. Mander also had a record of convictions in 1985 and 1987 for attempt to obstruct justice and assault, for which he was fined. It is common ground that these convictions, on their own, would not preclude Mr. Mander from being registered as a salesperson. A criminal conviction, especially if it is dated or a minor offence, is not a bar to registration, and all of an applicant’s circumstances and past conduct are considered.
- [8] Prior to his move to Ontario, Mr. Mander had been employed as a motor vehicle salesperson in Alberta, and there was no record of complaints against him as a motor vehicle salesperson in that province. Given the outstanding criminal charges and warrant, however, this was not sufficient to merit registration in Ontario in these circumstances.
- [9] Mr. Mander appealed the Registrar’s refusal, and a hearing was held by the Tribunal on May 16, 2017.

- [10] At the Tribunal, the Registrar took the position that the active warrant for Mr. Mander's arrest was an absolute bar to registration.
- [11] At the hearing Mr. Mander provided an explanation for the assault charge and the circumstances which led to him leaving Alberta before the charge was dealt with, and the reasons why he had not yet returned to Alberta to deal with the outstanding warrant and charge.
- [12] The Tribunal accepted Mr. Mander's evidence that he and his spouse moved to Ontario in the summer of 2015 to help out his spouse's son because the son and his fiancé were expecting a baby. They have been providing financial assistance to the son's young family, using up their savings in the process.
- [13] Mr. Mander testified that when he went to the Peel Regional Police station in August 2016 to obtain the Police Information Check, he was informed by the Peel Regional Police that the outstanding warrant for his arrest was an Alberta warrant, not a Canada wide warrant. Mr. Mander offered to turn himself in to the Peel Regional Police, but Calgary Police advised the Peel Regional Police "that the charge was not serious enough for them to pursue his arrest in Ontario".
- [14] There is some uncertainty as to when Mr. Mander was charged with failing to attend court and the warrant for his arrest was issued. It may have occurred in the latter part of 2015, or as late as February 2016.
- [15] It is clear, however, that Mr. Mander had not dealt with the outstanding charge by the time of his appeal to the Tribunal in May 2017.
- [16] In a decision released on June 8, 2017, the Tribunal ordered that Mr. Mander be registered subject to the following condition:
- Mr. Mander shall respond to and deal with the outstanding matters against him in Alberta related to the charge of assault laid in July 2015 within 12 months of this Order. Should the Appellant fail to do this, the Registrar may take further administrative action, including a proposal to suspend or revoke registration as a result of a failure to comply with this term and condition.
- [17] As of the date of the hearing of this appeal on February 12, 2018, Mr. Mander had still not addressed the outstanding charges in Alberta, and he is still the subject of an active warrant in that province. He advised the Court that he would be going to Alberta on February 27, 2018 to deal with the charge.

Jurisdiction and Standard of Review

- [18] The Registrar appeals the decision of the Tribunal pursuant to s. 11(1) of the *Licence Appeal Tribunal Act, 1999*, S.O. 1999, c. 12, Sched. G, which provides that a party to a proceeding before the Tribunal relating to a matter under the MVDA may appeal from its

decision or order to the Divisional Court in accordance with the rules of court. Subsection 11(3) provides that an appeal may only be made on a question of law.

- [19] The issue on this appeal is whether the Tribunal erred in the application of s. 6(1)(a)(ii) of the MVDA.
- [20] The parties agree that the standard of review in this appeal is reasonableness.
- [21] The onus is on the Appellant to demonstrate that the decision was unreasonable. Reasonableness is a deferential standard, animated by the principle that certain questions that come before tribunals do not lend themselves to one particular result. It is concerned with whether the outcome falls within a range of possible acceptable outcomes (see: *Tribute Resources Inc. v. Ontario Energy Board*, 2018 ONSC 265, at paras. 45-47 and cases cited therein).

Analysis of the Issues

- [22] At paragraph 17 of its decision, the Tribunal makes the following statement with respect to the test under s. 6 of the MVDA:

Does the evidence of past conduct that is before the Tribunal indicate a high degree of trustworthiness – the elements of honesty and integrity – so that it is reasonable and appropriate to place public trust in this Appellant with the granting of a registration to sell motor vehicles?

- [23] While this is a correct statement of the legal test, in my view the Tribunal fails to apply this test in a reasonable manner in paragraphs 18 and 19 of its decision for four reasons.
- [24] First, at paragraph 18, the Tribunal states:

The outstanding charge is not, even on the Registrar's evidence, a serious one, though the fact of the charge itself is by no means minimized by the Registrar or by this Tribunal. The fact of the outstanding warrant can at best be characterized as a very serious lapse of judgment, but it is not an issue which raises concerns about Mr. Mander's integrity and honesty when dealing with consumers nor should it undermine public confidence in the industry as a whole or, as counsel submitted, offend the public's sensibilities.

- [25] While the outstanding assault charge was not serious enough for the Calgary Police to pursue Mr. Mander's arrest in Ontario, Mr. Mander remains subject to an outstanding arrest warrant for failure to appear in court. Respect for the judicial process is fundamental to the question of whether an individual will "carry on business in accordance with law and with integrity and honesty". This cannot be characterised as "at best" a "lapse of judgment"; it raises directly the question of the applicant's willingness to accede to regulatory enforcement. His failure to attend court to answer to criminal charges, after he was released on the condition that he attend, raises a real concern that he

may fail to attend regulatory or other court proceedings to answer for any failure to comply with the requirements of the MVDA.

- [26] Moreover, his failure to attend court, and the resulting and still outstanding arrest warrant, were not the result of a lapse of judgment that was corrected as soon as possible, but an on-going failure in judgment that had already continued for at least 16 months by the time the Tribunal heard the appeal in May 2017.
- [27] Mr. Mander's failure to attend court and deal with the outstanding warrant over this extended period of time does raise concerns about his integrity and honesty and his ability to "carry on business in accordance with law" as required by s. 6(1)(a)(ii) of the MVDA. There is an overriding public policy interest in ensuring that individuals who are charged with criminal or regulatory offences and are released on a promise to attend court comply with that obligation.
- [28] Second, the Tribunal stated that Mr. Mander's failure in this regard was "not an issue which raises concerns about Mr. Mander's integrity and honesty when dealing with consumers". In our view, this states too narrowly the legal test to be applied under the MVDA. The ability to "carry on business in accordance with the law" encompasses more than just the applicant's dealing with consumers. It also includes his relationship with the regulatory agency charged with enforcing the MVDA and, potentially, the court.
- [29] The Tribunal erred in law in that it failed to consider the broader meaning of the term "carry on business in accordance with the law", and in our view this failure takes the Tribunal decision out of the range of reasonable results or possible acceptable outcomes. An individual's continuing failure to comply with a court order or outstanding arrest warrant gives rise to serious concerns regarding his ability to carry on business in accordance with the law.
- [30] Third, in paragraph 18, the Tribunal also finds that:
- [T]here is simply no evidence that the Appellant is a risk to put personal interests ahead of his financial obligations to consumers.
- [31] Contrary to the Tribunal's conclusion, Mr. Mander's failure to appear in court as promised and his failure to respond to the arrest warrant because he moved to Ontario to assist his spouse's children are indeed evidence that he is a risk to put his personal interests ahead of his legal obligations. These legal obligations include, but are not limited to, his financial obligations to consumers. It was a legal error on the part of the Tribunal to disregard this evidence and find that there was "simply no evidence" that he might put his personal interests first. See: *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 SCR 748, at para. 41: "If the Tribunal did ignore items of evidence that the law requires it to consider, then the Tribunal erred in law." and *Shooters Sports Bar Inc. v. Alcohol and Gaming Commission*, 2008 CanLII 25052 (ON SCDC), at para. 38: "[W]here a tribunal completely misapprehends the evidence or completely fails to take relevant and important evidence into account, this constitutes an error of law":

- [32] Mr. Mander did, and as of the date of this hearing continues to, put his personal interests ahead of his legal obligation to obey court orders. The Tribunal's narrow focus on Mr. Mander's obligations to consumers, rather than his broader duty to carry on business in accordance with law, was a legal error and was not a reasonable interpretation of the statutory regime.
- [33] Lastly, the Registrar points out the apparent contradiction between the Tribunal's finding in para. 19 that "there are not reasonable grounds for belief that Mr. Mander will not carry on business in accordance with the law and honesty and integrity", and the Tribunal's acknowledged concern that Mr. Mander "has not taken it upon himself to respond to the warrant and charge in almost two years despite his stated intention to do so on his application for registration", which resulted in the Tribunal's conditional order "to ensure that he complies with his obligations in respect to the outstanding warrant and charge, in accordance with the law".
- [34] Clearly the Tribunal understood that Mr. Mander's continued disregard for his legal obligations in Alberta was a reflection of his ability to act in accordance with the law and his honesty and integrity; otherwise there would have been no purpose to his registration being conditional on his belated compliance with those obligations.
- [35] Based on the foregoing, the Tribunal's conclusion fell outside of the range of reasonable, acceptable and defensible outcomes available to the Tribunal. The appeal is therefore granted.

Remedy

- [36] Mr. Mander has been a registered motor vehicle salesperson in Ontario since the Tribunal's decision on June 8, 2017, and it appears from the information provided by Mr. Mander that he has been employed as a motor vehicle salesperson in Ontario since that date.
- [37] As indicated above, the concern of this court is that the Tribunal applied the legal test too narrowly by failing to consider Mr. Mander's failure to comply with his legal obligations in Alberta as evidence that "the applicant will not carry on business in accordance with law".
- [38] Mr. Mander may well have complied with the warrant and addressed the Alberta charges by the time these reasons are released. In these circumstances, we think it could be unjust for us to set aside the order of the Tribunal and to direct the Registrar to carry out her proposal, which was based on the facts as they existed at December 1, 2016 (and continued unchanged when the Tribunal released its decision on June 8, 2017).
- [39] Accordingly, the proper remedy in this case is to set aside the Tribunal order and order that the matter be remitted for a new hearing before a different Tribunal member. The Tribunal will hold a *trial de novo*, and may consider any evidence that Mr. Mander has now complied with his legal obligations in Alberta.

[40] The Registrar has advised that she is not seeking costs, so there will be no order as to costs.




CHARNEY J.

I agree



WILTON-SIEGEL J.

I agree



MYERS J.

Released: March 19, 2018

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