

**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: Steven Blake Johannes v. Registrar, *Motor Vehicle Dealers Act* 2002, 2018  
ONLAT MVDA 11163

Date: 2018-06-06  
File: 11163/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:**

Steven Blake Johannes

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

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**REASONS FOR DECISION AND ORDER**

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**ADJUDICATOR:**

Patricia McQuaid, Vice-Chair

**APPEARANCES:**

**For the Appellant:**

Justin Jakubiak, Counsel

**For the Respondent:**

Michael Rusek, Counsel

Heard in Toronto:

May 1 and 2, 2018

## REASONS FOR DECISION AND ORDER

### BACKGROUND

[1] This is a hearing before the Licence Appeal Tribunal (the “Tribunal”) arising out of a Notice of Proposal issued by the Registrar, *Motor Vehicle Dealers Act 2002* (the “Registrar” and the “Act” respectively). The Notice of Proposal dated January 4, 2018 proposes to refuse to grant the registration of Steven Blake Johannes (the “appellant”) as a salesperson under the Act.

[2] The Registrar is proposing to refuse Mr. Johannes’ registration on the basis that his past conduct and, in particular, his criminal conviction for “uttering a forged document” affords reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty. In addition, the Registrar asserts that the false statement that Mr. Johannes made on the application for registration disentitles him to registration. These two grounds for refusal of registration are the issues to be decided on this appeal.

[3] After carefully considering the evidence and submissions, I find that the appellant knowingly made a false statement on his application for registration which disentitles him to registration as a motor vehicle salesperson. Accordingly, I direct the Registrar to carry out the Notice of Proposal to refuse registration. Regarding Mr. Johannes’ past conduct related to the 2017 conviction, I do not find that it, in and of itself, affords reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty. Reasons for these findings are set out below.

### FACTUAL OVERVIEW

[4] Many of the key facts established in the evidence are not in dispute. These facts and their timeline provide important context for the issues to be decided.

[5] Mr. Johannes was registered with the Ontario Motor Vehicle Industry Council (“OMVIC”) as a motor vehicle salesperson continuously between 2004 and December 2016. In 2005, Mr. Johannes began working for Waterloo Honda where he worked in used car sales. Waterloo Honda was a family owned business and Mr. Johannes enjoyed working there and was very successful. In 2009, the owners asked him to become the used car manager. He agreed, though reluctantly. At some point between 2009 and 2012, the owners’ son took over the management of the dealership.

[6] Mr. Johannes testified that the resulting change in management caused him a great deal of stress. Goals were set, in terms of used car inventory and the age of that inventory, which were, from Mr. Johannes’ perspective, unrealistic. Michael Brenneman, one of the principals of Expressway Motors Ltd (“Expressway”), his current employer, testified that he recalled spending time with Mr. Johannes on a golf trip while he was still working at Waterloo Honda, and his stress was apparent.

[7] At the 2012 fiscal year end, management (the owners' son) of Waterloo Honda noticed some issues, which included declining sales margins and an abnormally high and aging inventory within the used car department. Management decided that a physical inventory count would be conducted on June 20, 2013. On that day, before the inventory was conducted, Mr. Johannes met with another Waterloo Honda employee, off site, and gave him his keys, work equipment and company vehicle. He never returned to Waterloo Honda and sent an email to them on June 26, 2013 indicating that he had resigned.

[8] The physical inventory and accounting records revealed several irregularities. Two forensic audits were subsequently done (which led to charges against Mr. Johannes in September 2015). Transactions for which records were manipulated and altered between June 2012 and May 31, 2013 were detected. However, no actual loss to Waterloo Honda was established.

[9] In August 2013, Mr. Johannes went to work for Expressway. Unfortunately, Mr. Johannes failed to renew his registration as a salesperson by his required renewal date of December 15, 2016. As a result, his registration lapsed. He did file the application for renewal, though late, and that application was received by OMVIC on January 11, 2017. Because the registration had lapsed in mid-December, OMVIC processed the application as a new application for registration (versus a renewal). Mr. Johannes assumed that it was a renewal (which permits a registrant to continue to work while the renewal application is being processed) and continued to work as a salesperson at Expressway until June 2017.

[10] While he was working at Expressway, in September 2015, a police officer came to his office and advised Mr. Johannes that he was required to attend at the police station. He attended on September 17, 2015 and was formally charged with "knowingly making false statements with the intent that they be acted upon as genuine and did thereby commit forgery, contrary to s. 367 of the Criminal Code of Canada" with respect to the inventory and accounting records referred to above. Mr. Johannes testified that he consulted with legal counsel before attending at the police station. He was arrested there, read his rights, was fingerprinted and released on a promise to appear.

[11] There were approximately 15 court appearances (usually attended by his counsel and not Mr. Johannes personally) before the matter was finally concluded with a guilty plea to one count of using a forged document. He was sentenced in August 2017, receiving a suspended sentence and probation for a period of 12 months. He paid restitution to Waterloo Honda in the amount of approximately \$32,700 which was its out of pocket costs for the forensic audits.

[12] His employers at Expressway were aware as early as September 2013 that there had been some issues at Waterloo Honda, because of rumours within the industry. Dwight Brenneman testified that he recalled talking to Mr. Johannes about the rumours in the fall of 2014. He testified that Mr. Johannes was well liked at the dealership and

was one of their top performers. Michael Brenneman who worked more closely with Mr. Johannes seemed to have more conversations about the issues and rumours regarding Waterloo Honda, but had little or no specific knowledge about the charges that resulted until the spring of 2017.

[13] Michael Brenneman testified that he helped Mr. Johannes with the January 2017 application filed with OMVIC, but there seemed to be some confusion as to whether the Mr. Johannes' registration had lapsed. As a result, Mr. Johannes continued to work as a salesperson until the end of June 2017 when an OMVIC inspector was at the Expressway premises and questioned why Mr. Johannes was working, given that his registration had not been renewed. Expressway responded quickly to this information. Mr. Johannes stopped selling cars immediately and his name was removed from the website. However, they continue to be supportive of him, viewing him as integral to their team. He continues to work for them in an administrative capacity, though at a significant reduction in pay.

## **ISSUES**

[14] Based on the evidence before me, is the appellant disentitled to registration on the basis of any one of the grounds as set out in section 6(1)(a)(ii) and/or (iii) of the Act:

- (a) Does the past conduct of the appellant, in particular his conviction in 2017, give rise to reasonable grounds to believe that the appellant will not carry on business in accordance with the law and with integrity and honesty?
- (b) Has the appellant made a false statement in his application for registration or for renewal of registration?

## **ANALYSIS**

[15] Given that my findings on the second issue, the making of the false statement on the application, are determinative of the appellant's entitlement to registration, I will deal with that issue first.

### **False statement on the application**

[16] Relevant sections from the application completed by Mr. Johannes and submitted to OMVIC on January 11, 2017 are as follows.

#### ***SALES SHORT FORM IMPORTANT NOTICE***

***To allow adequate time for processing please submit this application by November 15, 2016. Your sales registration will lapse on December 15, 2016 if we have not received this application by that date.***

### **SECTION D: ELIGIBILITY**

**Question 5:** Have you ever been found guilty or convicted of an offence under any law or are there any charges pending? ....

Mr. Johannes answered “No” to this question.

**SECTION E: CONSENT AND UNDERTAKING**

*I confirm that I have not misrepresented or omitted any material facts in any document or statement in support of this application. I understand that each statement is subject to verification....I further understand the provision of false, incomplete or misleading information , or the omission of information , in this application or the documents submitted with it, may result in the refusal, suspension or revocation of registration.*

...

Mr. Johannes signed and dated the application below Section E which requires the applicant to confirm and certify the truth of the information contained in it. Michael Brennehan also certified, as required of a dealer in Section F of the application, that he had discussed the response to each question of the completed application with Mr. Johannes prior to signing the document.

[17] Upon receipt of the application, Agni Pipilas, an OMVIC employee, reviewed it and proceeded to verify the information provided. Through the verification process, she learned that there were pending charges against Mr. Johannes. Ms Pipilas testified that she called Mr. Johannes to ask about the status of the pending charge against him and asked him to send an email providing an update. Her calls to him and his responses were logged by her, and a copy of those notes was introduced into evidence at the hearing. Mr. Johannes’ response to her on February 2, 2017 was that the ‘matter was still in limbo’. When she did not receive an update, she called him again. He responded by email on February 27<sup>th</sup> stating:

*Yes this has been going on for far too long, every month my lawyer goes to court and the crown has no position!!*

*The pending charge was forgery but not proven. My lawyer seems to think it will just been thrown out because nearly 4 years ago now.*

*You guys did charge me for renewal on my credit card.*

....

[18] On April 5, 2017, he emailed Ms Pipilas advising that “As of now my lawyer is going to resolve with a conditional discharge if I plead guilty to using a forged document which means I will be on probation for one year after that year no record.”

[19] Ms Pipilas testified that asking an applicant for more information is not uncommon. Laura Halbert, OMVIC’s Director of Compliance and Deputy Registrar, testified that mistakes in the completion of forms do occur. She stated that providing a false statement may not be an automatic bar to registration; they will look at the particular

circumstances. People misunderstand questions, sometimes because of a language issue. OMVIC will try to determine whether there was a clear misunderstanding of the question. Her conclusion was that there was no indication that Mr. Johannes had any issue in understanding the question and further, it was clear on the application form that making a false statement had consequences for registration.

[20] The Divisional Court in *Ontario (Registrar, Motor Vehicle Dealers Act, 2002) v. Vernon*, 2016 ONSC 304 (“*Vernon*”) stated that the Tribunal when applying s. 6(1)(a)(iii) of the Act must determine whether the applicant made a false statement to the Registrar and whether he knowingly did so and noted that the Act does not speak to intent or motive.

[21] Mr. Johannes stated that he was confused by Question 5, and was so uncertain about how to answer it that he talked to Michael Brenneman about it. Mr. Brenneman also recalled that discussion. Together they decided to answer “no”, and Mr. Brenneman testified that if they were wrong, he assumed OMVIC would clarify matters. But it is noteworthy that in January 2017, Mr. Brenneman seemed to have no indication from Mr. Johannes that there were in fact pending charges. He just thought Mr. Johannes had been under investigation for some time. He had not been fully informed by Mr. Johannes at the time they completed the application form together.

[22] I find Mr. Johannes’ testimony that he honestly did not know he was charged (hence his discussion with Mr. Brenneman about how to answer the question) not to be credible in light of the totality of the evidence. He was arrested and fingerprinted in September 2015. He retained counsel (two in fact) who attended Court on numerous occasions on his behalf. He testified that he hired the second counsel in late 2016 because of his concerns that the first lawyer was not moving matters forward. The evidence does not support a conclusion that his answer was a mistake because of a misunderstanding of his circumstances.

[23] Furthermore, his communications with Ms Pipilas do not suggest any confusion about the words ‘pending charge’. Indeed it suggests otherwise. Particularly telling is his email of February 27 2017 noted above, where he references the pending charges and the fact that the matter has been going on for nearly four years.

[24] The application process, especially in a highly regulated industry such as motor vehicle sales, cannot be treated lightly nor should an applicant assume that the regulator will remedy any omissions. Mr. Johannes, like all OMVIC applicants, is required to be honest in the application process. He was not. I find that Mr. Johannes knowingly made a false statement to the Registrar in his application for registration under s.6(1)(a)(iii) of the Act and is therefore disentitled to registration. His motive for this untruthfulness or his lack of candour with Dwight and Michael Brenneman is not apparent, but as noted in *Vernon*, his motive is of lesser importance. But a lack of candour, also as noted in *Vernon*, may be highly relevant to the issue of whether his past conduct gives rise to reasonable grounds to believe that he would not carry on business in accordance with law and with integrity and honesty.

[25] Counsel for the Respondent submitted that the fact that Mr. Johannes continued to work after December 2016 is also suggestive of a lack of integrity and honesty. While it is true that the application form states in bold that his registration would lapse on December 15, 2016 if OMVIC did not receive the application form by then, the February 27, 2017 email to Ms Pipilas implies that he believed (albeit mistakenly) that he had been charged for a renewal. There was no response from Ms Pipilas advising otherwise. Based on this, I do not find that Mr. Johannes (or Expressway) was consciously flouting OMVIC's requirement for registration when he continued to work.

### **Past conduct**

[26] Mr. Johannes pled guilty to uttering a forged document. The charge of forgery was withdrawn as part of the plea deal. The actions which gave rise to the charges took place while working at Waterloo Honda, and occurred between June 2012 and May 31, 2013. Ms Halbert stated in her evidence the fact of a conviction in and of itself does not preclude registration. But this is undeniably recent industry-related conduct, which is a concern to OMVIC. Consumer harm though not the only consideration (conduct with other dealers is also a factor), is the paramount consideration for the Registrar. There is no evidence of consumer harm at any point in Mr. Johannes' career as a salesperson, before or after the incidents in question.

[27] As noted by the Judge in the criminal matter, this was not a 'one-off' - the appellant's conduct occurred over many months. It was, however, a specific course of conduct related to inventory records while he was in a stressful managerial position. There was no documented loss to Waterloo Honda. He has made restitution to Waterloo Honda for the cost of its forensic audits carried out because of his conduct. This in no way diminishes the criminality of his conduct; however, but for my findings on the issue of the false statement on the application, the fact of the conviction may not have precluded registration, with or without conditions, especially given that Mr. Johannes is not seeking a managerial role with oversight of inventory or any signing authority on sales transactions, nor was it the intention of Expressway to put him in such a role or give him, as a salesperson, signing authority.

[28] I do not find that Mr. Johannes' past conduct related to the 2017 conviction, standing alone, affords reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty.

[29] However, 'past conduct' in this context requires me to look at the totality of the evidence of conduct before me. I find that conduct in relation to the criminal conviction considered with the seriousness of his false statement on the application exacerbated by his lack of candour, both with Expressway and the Registrar throughout the application process, does give rise to reasonable grounds for that belief.

**ORDER**

[30] Therefore, pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar to carry out the Proposal to refuse the application for registration as a salesperson.

LICENCE APPEAL TRIBUNAL

A handwritten signature in cursive script, reading "Patricia McQuaid".

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Patricia McQuaid, Vice-Chair

*Released: June 6, 2018*