

**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: Hassan Almrei v. Registrar, *Motor Vehicle Dealers Act 2002*, 2018 ONLAT-MVDA 11213

Date: 2018-06-25
File: 11213/MVDA

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

Between:

Hassan Almrei

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR:

Patricia McQuaid, Vice-Chair

APPEARANCES:

For the Appellant:

Lorne Waldman, Counsel

Rebeka Lauks, Counsel

For the Respondent:

Michael Rusek, Counsel

Heard in Toronto:

May 18, 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 to apply conditions to the registration of Hassan Almrei, issued by the Registrar, *Motor Vehicle Dealers Act 2002* (the “Registrar” and the “Act” or “MVDA” respectively).
- [2] The Registrar has determined that Mr. Almrei is entitled to registration as a motor vehicle salesperson, but asserts that his past conduct both prior to and following his entry into Canada in or about 1998 warrants the imposition of conditions on that registration. The conditions of registration that the Registrar seeks to impose are as follows.
1. Hassan Almrei (“Almrei”) shall comply with all requirements of the MVDA and Ontario Regulation 333/08, the *Code of Ethics* in Ontario Regulation 332/08, the Ontario Motor Vehicle Industry Council (“OMVIC”) Standards of Business Practice, 2010 and OMVIC Guidelines, as may be amended from time to time. Almrei shall read all correspondence and bulletins from OMVIC as released.
 2. Almrei shall provide the Registrar with copies of the results of Police Information Checks (PIC), obtained by him from and at his expense, twenty four (24) months and forty-eight (48) months after these Conditions come into effect.
 3. Almrei shall provide the Registrar with notice in writing, and within five (5) days, of any future charges or findings of guilt and/or convictions under any law in Canada or elsewhere, or of the commencement or final determination of admissibility, removal or security certificate proceedings pursuant to the Immigration and *Refugee Protection Act*. This requirement to report future charges or findings of guilt and/or convictions does not include those related to Parts I and II of the *Provincial Offences Act*.
 4. Almrei shall provide the Registrar with full and complete disclosure in all future correspondence and on all future applications, as requested by the Registrar, regardless of whether or not disclosure has previously been made to the Registrar.
- [3] Mr. Almrei appealed the imposition of conditions on the basis that the proposed conditions are unreasonable and unjustified in light of the facts.

- [4] After considering the evidence and submissions, I find that the proposed conditions are not warranted and direct the Registrar not to carry out the Notice of Proposal. No conditions will attach to the registration.

EVIDENCE AND ANALYSIS

- [5] The facts in this appeal are not in dispute. Mr. Almrei made an application to OMVIC for registration as a motor vehicle salesperson in October 2017. There were no issues regarding disclosure on the application. Mr. Almrei indicated on the application that he is a permanent resident of Canada (as of December 2016). To the question whether he had ever been found guilty or convicted of an offence under any law, or whether there were any charges pending, he answered “no”. Also, as required on an initial application for registration, Mr. Almrei provided a “Backcheck” report, which is a police information check.
- [6] OMVIC, through its review of Mr. Almrei’s application, discovered that he had been subject to a national security certificate issued in 2001. Mr. Almrei had been arrested in 2001, following the events of September 11, 2001. He remained in custody for approximately seven years. In 2008, he was released from detention on strict terms and conditions, which were later lifted in 2009. A number of Federal Court proceedings resulted from the national security certificate; these were ultimately resolved in Mr. Almrei’s favour in 2009, with the quashing of the certificate.
- [7] The Registrar completed his assessment of Mr. Almrei’s application in December 2017 and advised that he would register Mr. Almrei but required terms and conditions, which he asserted were ‘nominal’ and not onerous.
- [8] Mr. Almrei was not prepared to agree to terms and conditions, asserting that there was no basis upon which to single him out in this way. Lacking Mr. Almrei’s consent to those conditions, the Registrar then issued this Notice of Proposal.
- [9] Andrea Korth, OMVIC’s Manager of Business Standards and Legal Project Manager was the only witness to testify before me. She stated that the Registrar has done no independent investigation regarding Mr. Almrei’s past conduct, but rather relies on the decision of Mosley, J. in *Almrei (Re)*, [2011] 1 F.C.R.163. This is the decision in which the Federal Court determined that Mr. Almrei had not engaged in terrorism and is not and was not a member of an organization and that there were no reasonable grounds to believe that he was a danger to the security of Canada. The Court concluded that the certificate was not reasonable and must be quashed. However, Mosley J. accepted evidence before him that Mr. Almrei had lied and engaged in criminal activities prior to and following his entry into

Canada. The Registrar also took note of other statements in the judgment that Mr. Almrei was “economical with the truth when provided with opportunities to explain where he had been and what he had done” at certain times between 1998 and 2001 and was involved with or connected to people who could obtain false documents and were involved with human smuggling.

- [10] The various incidents which were considered by Mosley, J. all occurred before 2001. In his conclusion, the judge stated, at paragraphs 506 and 507 that:

The Hassan Almrei of 2001 is not the same person that I heard and observed in the courtroom. As he acknowledged in his testimony, he has been changed by the experience, by the people who have befriended him and supported him in the years in which he was in custody and through the reading he has done on a broad range of subjects[...] I am also persuaded by the evidence that if he is the person that the Ministers believe him to be, it is unlikely that after such a prolonged period of detention that he could re-enter the life he had and reactivate his contacts in the false document trade.

- [11] Appellant’s counsel objected to the Registrar’s exclusive reliance on Mosley, J.’s findings within his judgment quashing the security certificate. He stated he is not objecting to the decision being admitted into evidence as proof of the fact that Mr. Almrei was exonerated, but rather, he objects to the reliance on various findings of fact by Mosley, J. as proof of misconduct relevant to the Registrar’s decision to impose conditions, especially given there is no evidence independent of the 2009 Federal Court decision.

- [12] I do not find it necessary to decide, in the context of the issues to be decided in this appeal, whether I can take judicial notice of the ‘adjudicative facts’ within the Mosley, J. decision. I have given weight to the Court’s decision that the security certificate was not reasonable and the judge’s assessment of Mr. Almrei’s character in 2009. Given that assessment and the fact that as Ms Korth testified, there is no evidence of any adverse or negative conduct since 2009, the findings made by the judge within the context of immigration and security concerns prior to 2001 have little relevance to the issue of the requirement for and reasonableness of conditions on registration in 2018.

- [13] Registrar’s counsel submits that the conditions are not onerous nor intrusive, but to fulfill the mandate of consumer protection, conditions are required to address risks. As Ms. Korth stated, the Registrar wants these conditions to provide some reassurance in the consumer protection context.

[14] I will therefore consider each of the conditions in light of the facts and any consumer protection issue identified to determine the reasonableness of the proposed condition.

Condition 1: Hassan Almrei ("Almrei") shall comply with all requirements of the MVDA and Ontario Regulation 333/08, the *Code of Ethics* in Ontario Regulation 332/08, the Ontario Motor Vehicle Industry Council ("OMVIC") Standards of Business Practice, 2010 and OMVIC Guidelines, as may be amended from time to time. Almrei shall read all correspondence and bulletins from OMVIC as released.

[15] Ms. Korth stated that all registrants are expected to comply with the Act, its regulations and the *Code of Ethics* and Standards of Business Practice. This expectation exists regardless of a condition. What has been added is the requirement that Mr. Almrei read OMVIC correspondence and bulletins. While one can query the enforceability of such a condition, there has been no evidence of why this condition is required in this instance. There may be situations in which a registrant has in the past failed to comply with or read communications from a regulator, suggesting a risk going forward of wilful ignorance or unresponsiveness. But there is no suggestion of that here.

Condition 2: Almrei shall provide the Registrar with copies of the results of Police Information Checks (PIC), obtained by him from and at his expense, twenty four (24) months and forty-eight (48) months after these Conditions come into effect.

[16] As set out in s. 31(1)(a) of Ontario Regulation 333/08, every registrant shall, within five days after the occurrence of the event, notify the Registrar in writing of any change to the information that the registrant supplied for the purpose of obtaining registration. There is a duty to inform the Registrar and on a renewal application, at 24 and 48 month after the initial registration, a registrant will be asked whether there are any pending charges or convictions subsequent to the previous application. Only if the response is 'yes', is the applicant, on the renewal application, required to provide further documentation.

[17] What is being asked of Mr. Almrei is that he provide documentation to support a 'no' response as well. This is not the norm. Ms. Korth did not explain why it is necessary. No nondisclosure issues have been flagged by the Registrar and there is no prior criminal record. Mr. Almrei has been living and working freely within Canada since 2009 without incident. There is no evidence to support the imposition of this condition.

Condition 3: Almrei shall provide the Registrar with notice in writing, and within five (5) days, of any future charges or findings of guilt and/or convictions under any law in

Canada or elsewhere, **or of the commencement or final determination of admissibility, removal or security certificate proceedings pursuant to the *Immigration and Refugee Protection Act***. This requirement to report future charges or findings of guilt and/or convictions does not include those related to Parts I and II of the *Provincial Offences Act*. (emphasis added)

[18] Again, there is no indication of any criminal charges or convictions that would warrant this condition, and as Ms. Korth testified, the Registrar has never imposed a condition with respect to immigration status. The fact that Mr. Almrei's application may be the first time the Registrar has encountered a registrant who has been subject to immigration proceedings as Ms. Korth testified does not in and of itself justify the condition. Between 2009 when the security certificate was quashed and 2016 when Mr. Almrei was granted permanent resident status, there appears to have been no immigration proceedings, nor is there any suggestion that there may be in the future. There are no terms attached to his residency status. There is simply no evidence to support the imposition of this condition.

Condition 4: Almrei shall provide the Registrar with full and complete disclosure in all future correspondence and on all future applications, as requested by the Registrar, regardless of whether or not disclosure has previously been made to the Registrar.

[19] Ms. Korth characterized this condition, in cross examination, as 'boilerplate'. The requirement for full and complete disclosure to the Registrar is required of all registrants. It is an ongoing obligation as the Act and Regulations make clear. This obligation exists irrespective of a condition on registration. Non-disclosure on the application for registration has not been an issue here. If it had been, it is less likely that the Registrar would have granted Mr. Almrei registration at all. Ms. Korth stated that the Registrar wants the condition in order to highlight the disclosure obligation for Mr. Almrei, but without offering any reasons as to why that is necessary.

[20] What I infer from the evidence of Ms. Korth is that the Registrar, while seeing no basis on which to deny registration, has concerns because of the uniqueness of Mr. Almrei's past circumstances. The national security certificate, though quashed, looms large. As Registrar's counsel submitted, the Registrar cannot ignore what happened prior to 2001- there is a 'risk' that Mr. Almrei may be 'economical' with the truth in the future, to the detriment of the car buying public. Yet, he is prepared to use a 'light touch' in terms of conditions.

[21] Ms. Korth testified that of the approximate 28,000 registrants in Ontario, about 2,000 may have conditions on their registration. To suggest that Mr. Almrei represents a risk any greater than 26,000 other registrants based on incidents that

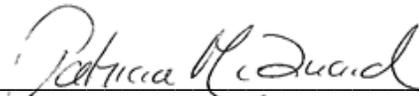
occurred prior to 2001, with absolutely no criminal charges or convictions subsequent to his release from pre-hearing custody in 2008 requires more than the uniqueness of his history. Even Mosley J. indicated in 2009 that he was a changed man with little risk that he would return to his previous life. That assessment has been borne out by the history of the past nine years.

- [22] The reasonableness of conditions must be considered in light of the evidence presented and then linked to the purpose and objects of the Act. The Registrar has not established that there is cause for concern for the public's protection that warrants conditions that would give the Registrar oversight of Mr. Almrei's conduct in addition to what the stringent regulatory requirements already provide for. The assertion that the conditions are nominal or not onerous does not make the conditions either appropriate or reasonable.

ORDER

- [23] Therefore, pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar not to carry out the Proposal to apply conditions to the registration of Hassan Almrei. The Tribunal orders that no conditions attach to the registration of Hassan Almrei.

LICENCE APPEAL TRIBUNAL



Patricia McQuaid, Vice-Chair

Released: June 25, 2018