

**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: Marcel Motors Ltd. o/a Eastside Better Used Cars and Nitin Chopra v.  
Registrar, *Motor Vehicle Dealers Act, 2002*, 2018 ONLAT-MVDA 11640

Date: 2018-10-12  
File Number: 11640/MVDA

Appeal from the Notice of Proposal of the Registrar under the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, C. 30, Sched. B. to Revoke a Registration and Appeal from an Immediate Suspension Order

**Between:**

Marcel Motors Ltd. o/a Eastside Better Used Cars  
and Nitin Chopra

Appellants

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

**DECISION AND ORDER**

**Adjudicator:** Jeanie Theoharis, Vice Chair

**Appearances:**

For the Appellants: Justin M. Jakubiak, Counsel

For the Respondent: Michael Burokas, Counsel

**Place and Date of Hearing:** Toronto, Ontario, in person  
October 2, 2018

## REASONS FOR DECISION AND ORDER

### Overview:

- [1] On September 27, 2018, Marcel Motors Ltd. o/a Eastside Better Used Cars (“Dealer”) and Nitin Chopra (“Salesperson”) (together referred to as “Appellants”) filed a Notice of Appeal with the Licence Appeal Tribunal (“Tribunal”).
- [2] The appellants appeal from the Notice of Proposal to Revoke Registration dated September 24, 2018 (“Proposal”) issued by the Registrar pursuant to the Motor Vehicle Dealers Act (“Act”) to (i) revoke the registration of the Dealer as a motor vehicle dealer, and (ii) revoke the registration of the Salesperson as a motor vehicle salesperson under the Act.
- [3] The Registrar, pursuant to section 10 of the Act, also ordered an immediate temporary suspension of registration as a matter of public interest against both the appellants.
- [4] The appellants, on September 27, 2018, requested a hearing to address the Registrar’s Notice of Proposal to revoke, and an Order to immediately suspend the appellants’ registration pursuant to section 10(1) of the Act.
- [5] The in-person hearing commenced on October 2, 2018, in Toronto. The only issue dealt with on the first day of the hearing was whether the immediate suspension order ought to be extended until the completion of the hearing. In attendance were: Justin Jakubiak, counsel for the appellants; as well as Michael Burokas, counsel for the respondent.

### Issue

- [6] Is it in the public interest that the appellants’ licences remain suspended until the hearing related to the Notices of Proposal to revoke the licences is concluded?

### Result

- [7] For the reasons that follow, the immediate suspension order is extended until the hearing is concluded. Due to the counsel’s schedules, the hearing is scheduled to resume in November 2018.

### Law

- [8] The Registrar, pursuant to section 9 of the Act, has the authority to issue a notice of proposal to revoke the registration of the appellant Dealer and appellant Salesperson.

- [9] Pursuant to section 10, if the Registrar considers it in the public interest to do so, the Registrar may by order temporarily suspend the registration, which order would take effect immediately.
- [10] The immediate suspension order expires 15 days after a written request for a hearing is received by the Tribunal; or the Tribunal may extend the time of expiration until the hearing is concluded, if a hearing is commenced within 15 days from when the written request for a hearing was received by the Tribunal.

### **Position of the Parties**

- [11] The appellants submitted that the immediate suspension order should not be extended until the hearing is concluded; whereas the respondent argued that it is in the public interest to extend the immediate suspension order until the hearing is concluded.
- [12] The appellants submitted that the Registrar holds a \$30,000 line of credit given by the appellants to address any consumer compensation claims, which as of the date of the hearing, no consumer has made a claim for financial loss.
- [13] The respondent submitted that the appellants' actions were quite serious and the risk to the public will be great.

### **Analysis**

- [14] The request for a hearing was received by the Tribunal on September 27, 2018, and a hearing commenced on October 2, 2018. This is within the prescribed time set out in subsection 10(3)(b) of the Act, and as such the Tribunal has the discretion to extend the expiration of the immediate suspension order until the hearing is concluded.
- [15] The Act establishes the registration, regulation, and complaint procedures for individuals and corporations who trade in motor vehicles. It is consumer protection legislation which is intended to not only regulate the motor vehicle industry, but to also protect the public.
- (i) Prior Notice of Proposal and its Resolution by Consent Order
- [16] In determining that the immediate suspension order ought to remain in place until the end of the hearing I considered the history between the parties. In particular, the appellants received a Notice of Proposal dated May 26, 2017 (the "2017 Notice of Proposal") and a Notice of Further Particulars dated December 21, 2017.
- [17] The 2017 Notice of Proposal and Notice of Further Particulars, amongst other issues, detailed the Registrar's assertions about: (i) the Dealer not paying out liens on vehicles traded in by consumers; and (ii) the Dealer failing to remit consumer

warranty payments within seven days of the sale of the warranties to the warranty provider companies; and (iii) incidents of NSF cheques sent to creditors.

- [18] The appellants agreed to terms and conditions to resolve the 2017 Notice of Proposal. The appellants signed an agreement on May 25, 2018. It was understood that the appellants would need to comply with the terms and conditions to ensure their licences remain intact. As a result of entering into an agreement the appeal was resolved by way of a consent order dated June 6, 2018, which incorporated all the agreed to terms and conditions.
- [19] The parties agreed, amongst other things, that the (i) appellants will provide warranty providers with all warranty payments received from a purchaser within seven days; (ii) appellants will comply with all applicable laws relating to the trade in of motor vehicles, including compliance with the *Consumer Protection Act*; (iii) the Dealer will provide a \$30,000 CAD line of credit in favour of the Motor Vehicle Dealers Compensation Fund; (iv) the Dealer will employ a bookkeeper; (v) two named individuals to complete an online Automotive Record Keeping course; (vi) the Dealer will provide the Registrar with its reviewed financial statements within 90 days after the fiscal year completion; (vii) Dealer to satisfy all outstanding financial obligations to its warranty providers; and (viii) Dealer to satisfy the liens on vehicles they sell and the trade-in vehicles they receive within 7 days of the relevant transaction date.
- (ii) Present Notice of Proposal and Immediate Suspension Order
- [20] Following the issuance of the consent order on June 6, 2018, the appellants made substantial efforts to comply with the consent order and its attached terms and conditions. In particular, I note that the \$30,000 CAD line of credit was established, albeit late; a bookkeeper was hired; and the two named individuals completed the required online course, again albeit late. Moreover, it is understandable that it has taken some time to reduce the debt owed to creditors, namely the warranty companies, and I do appreciate the financial strain these Notices of Proposal have on the appellants.
- [21] However, it is not contested, that this is a consumer protection and public interest statute. In determining whether the immediate suspension order ought to remain in force until the hearing is concluded, I must consider the protection of the public's interest before the appellants' private interests.
- [22] In doing so, I find that what is most concerning is that shortly after the consent order was issued, the Registrar received further consumer complaints which related to the same kind of conduct that was the subject matter of the 2017 Notice of Proposal. It seems that the 2017 Notice of Proposal, and its resolution, did not change the appellants' behaviour.

- [23] Although the complaints have not been proven, the Notice of Proposal provides details of complaints regarding various consumers who purchased vehicles and/or warranties from the Dealer between June 7, 2018, and August 1, 2018. Each of these complaints allege the Dealer failed to pay out an outstanding loan on the consumer's trade-in vehicle within 7 days; did not submit the warranty payment to the warranty provider within 7 days; and/or failed to comply with the requirements of Ontario Regulation 333/08. The exact issues the appellants had agreed they would comply with in the consent order.
- [24] Moreover, since the issuance of the immediate suspension order, the Registrar's office has received approximately 19 other inquiries regarding the appellants' conduct.
- [25] The appellants argue that the Registrar has available to it the \$30,000 CAD line of credit to protect and pay out consumers in the event a public consumer suffers harm, and the intention was that any claims would first be paid from the line of credit, before using the compensation fund. Moreover, the appellants submit there have not been any claims since 2009, and the warranty companies assert they will honour the warranties despite delays in receiving payment.
- [26] I agree that having the \$30,000 CAD line of credit available gives some assurance to the public, but this does not mean the appellants' may continue engaging in similar business practices that resulted in the 2017 Notice of Proposal or the current Notices of Proposal. The potential harm to the public is not only measured by the number of monetary claims received by the Registrar, and the ability to reimburse compensatory claims. The potential public harm also has non-compensatory, intangible factors that should also be considered.
- [27] Consumer protection statutes address more than merely compensating a wronged consumer with a monetary amount. The essence of regulating various industries is to give the public confidence that people working within regulated industries do so with honesty, integrity and in accordance with the law; and that those working in the industry are financially responsible in the conduct of business. The public ought to have confidence that the industry is reliable, respected, and trusted. The law is enacted to protect consumers from having to engage with unconscionable, unfair, unreasonable or improper trade practices, and/or other conduct that may be deemed deceptive, misleading, unfair or fraudulent. In addition to the monetary claims, the Tribunal ought to also consider the damage to the industry reputation and stress imposed on consumers who have to address various questionable work practices.
- [28] Taking into consideration the intent and purpose of consumer protection statutes, I find that the risk to the public is great. The appellants' were permitted to continue working in the industry when they were provided an opportunity to enter into an agreement with the terms and conditions. They agreed to abide by the laws, and had time to change their business processes to ensure compliance with the laws

and regulations. Unfortunately, further complaints were brought to the Registrar's attention which addressed the same issues noted on the 2017 Notice of Proposal, particularly failing to pay warranty providers and not paying off trade-in vehicle liens.

- [29] Another factor that I considered as important is the customer base of the appellants. The appellant Salesperson indicated that approximately 80% of the customers are people with poor credit histories or people who would not be able to purchase a vehicle elsewhere. He further described them as "sub-prime customers" whether because they are new to the country or because of a low credit rating. As a result, these customers demand more attention and he must take more time to educate them about the motor vehicle purchase process.
- [30] These are the exact type of individuals who are most vulnerable and could be subjected to harm, whether it be emotional harm or financial implications. The appellants' customers need to have confidence in the industry and be assured that what is being expressed to them during this experience is accurate and reliable; and that they obtain exactly what they bargained for. These are individuals who, being new to the country, may not understand their rights. It is up to the regulator to ensure its licence holders operate with honesty, integrity and in accordance with the law; and are financially responsible in the conduct of their business.
- [31] For these reasons, I find the immediate suspension order ought to be extended to the completion of the hearing.

**The case management processes agreed upon and ordered is as follows:**

**Rules**

- [32] The *Licence Appeal Tribunal, Animal Care Review Board, and Fire Safety Commission Common Rules of Practice & Procedure, Version 1 (October 2, 2017)* apply to this appeal, except where varied by this Order (the "Rules").

**Case Conference Date:**

- [33] The parties agree to attend a case conference. The parties agreed they are available on either **October 25<sup>th</sup> or 30<sup>th</sup>, 2018**, via telephone. A Notice of Case Conference will be sent to the parties confirming the teleconference details.

**Hearing Dates:**

- [34] Based on estimates made at the hearing, the parties agreed that six additional hearing days be scheduled. However, following attendance at the case conference, the number of additional hearing days may be less.

[35] The hearing is scheduled to continue on **November 27, 28, 2018; and January 9, 10, 17, and 18, 2019**. A Notice of Hearing will be sent to the parties confirming the hearing details. The hearing will take place in Ottawa, Ontario.

[36] Given the decision that the immediate suspension order continue till the hearing is concluded, the parties may wish to find earlier dates to resume the hearing. A request for earlier agreed to dates can be brought to the Tribunal's attention. The intent is to complete the hearing in an expeditious manner given that there is an immediate suspension order until the completion of the hearing.

Case Management Particulars:

[37] At the **October 2018**, case conference:

- a. The parties agreed to identify the issues in dispute that will be addressed at the hearing.
- b. As required under Rule 14, the appellants shall attend at the case conference.
- c. Although there has been a significant exchange of documents between the parties, it is understood by the parties that further disclosure may be required. The details are to be discussed at the case conference.
- d. The parties ought to be prepared to name the witnesses each intends to present evidence at the hearing.
- e. The parties ought to be prepared to discuss working together to prepare and file an Agreed Statement of Fact.

[38] In accordance with Rule 13.2 the hearing will be recorded as follows:

- a. The Tribunal will arrange for and pay for a court reporter to audio record the hearing.
- b. A party may request, from the court reporter in attendance at the hearing, a copy of the audio recording and/or transcript of the hearing. The requesting party will be responsible for the costs of obtaining a copy of the audio recording and/or a transcript of the hearing.
- c. The parties and Tribunal may use the audio recording for judicial review and appeal purposes, subject to the requirements of the *Statutory Powers and Procedures Act* and *Rules of Civil Procedure*, as they apply to appeals or judicial review.

- [39] The parties shall be prepared to present their evidence and submissions to the hearing member on the next scheduled hearing dates.
- [40] If the parties reach an agreement on the issues in dispute prior to the next scheduled hearing date, they shall immediately advise the Tribunal. If the appellants decide to withdraw their appeal, they shall serve the respondent and file with the Tribunal a copy of the Notice of Withdrawal. The Tribunal will thereafter cancel the hearing. The Tribunal's Notice of Withdrawal is available at <https://slasto-tsapno.gov.on.ca/lat-tamp/en/general-service/forms/>.
- [41] The case management process set out in this Order may be modified subject to the submissions from the parties as deemed fit.

**Further to the hearing held on October 2, 2018, I order the following:**

- [42] Pursuant to subsection 10(3)(b) of the Act, the expiration of the Order to immediately suspend the appellants' dealer licence and salesperson licence is extended until the hearing is concluded.
- [43] The hearing is adjourned.
- [44] Nothing in this Order affects any requirement under the Act.

LICENCE APPEAL TRIBUNAL



---

Jeanie Theoharis, Vice-Chair

*Released: October 12, 2018*