

**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: 2289166 Ontario Inc. o/a Forest City Motors and Fuad Akkila v. Registrar,
Motor Vehicle Dealers Act, 2002, 2019 ONLAT-MVDA 11624

Date: 2019-03-05
File Number: 11624 MVDA

Appeal of Proposal to Revoke Licences issued by the Registrar, *Motor Vehicle Dealers Act, 2002*, pursuant to the provisions of the *Act*.

Between:

2289166 Ontario Inc. o/a Forest City Motors and Fuad Akkila

Appellants

-and-

Registrar, Motor Vehicle Dealers Act

Respondent

AMENDED DECISION AND REASONS

ADJUDICATOR: Dawn Kershaw, Vice-Chair

APPEARANCES:

**For the Appellants,
2289166 Ontario Inc. o/a
Forest City Motors and
Fuad Akkila**

Fuad Akkila for both appellants, Self-represented

**For the Respondent,
OMVIC**

Bryant Greenbaum, Counsel

Heard in person: February 25, 26 & 27, 2019

REASONS FOR DECISION AND ORDER

A. OVERVIEW:

- [1] The appellants, 2289166 Ontario Inc. o/a Forest City Motors (“FCM”) and Fuad Akkila, appeal the respondent’s September 13, 2018 Notice of Proposal to:
- a. revoke the registration of FCM as a motor vehicle dealer; and
 - b. to revoke the registration of Fuad Akkila as a motor vehicle salesperson (“NOP”) pursuant to section 9 of the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sched. B (the “Act”).
- [2] Mr. Akkila is the sole director and officer of FCM, as well as having been a registered salesperson for FCM since April 20, 2011.
- [3] FCM was registered as a motor vehicle dealer in the “wholesaler” class on June 6, 2012.
- [4] The Registrar takes the position that FCM’s and Mr. Akkila’s registrations as a motor vehicle dealer and a salesperson, respectively, should be revoked because:
- a. they will not carry on business in accordance with the law and with integrity and honesty based on their past conduct; and
 - b. having regard to their financial position, they cannot reasonably be expected to be financially responsible in the conduct of business.

B. RESULT:

- [5] For the reasons that follow, I find that Mr. Akkila’s conduct demonstrates reasonable grounds to believe that he, and therefore FCM, will not carry on business in accordance with the law and with integrity and honesty; and I find further that the appellants’ financial position is such that they cannot be expected to be financially responsible in the conduct of business.
- [6] I direct the Registrar to carry out the Proposal in respect of both appellants.

C. ISSUES:

- [7] Pursuant to section 6 of the Act, I must decide whether the respondent has shown that the appellants’ registrations should be revoked. To answer that question, I must determine whether:

- a. the appellants' past conduct shows there are reasonable grounds to believe they will not carry on business in accordance with law and with integrity and with honesty?
- b. having regard to their financial position, they cannot reasonably be expected to be financially responsible in the conduct of business.

D. THE LAW

- [8] Section 8 of the Act provides that the registrar may revoke a registration if, in his or her opinion, the applicant or registrant is not entitled to registration under section 6. The Registrar has to give notice of its intention to the applicant or registrant.
- [9] Section 6(1)(a)(ii) of the Act provides that an individual appellant is entitled to registration unless the appellant's past conduct provides reasonable grounds to believe he will not carry on business in accordance with law, integrity and honesty.
- [10] Similarly, section 6(1)(d)(iii) of the Act provides that a corporate appellant under the Act is entitled to registration unless the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with the law, with integrity and with honesty.
- [11] The Registrar has the burden to prove that the appellants are not entitled to registration. The standard of proof is "reasonable grounds for belief" which is a lower standard of proof than a balance of probabilities.
- [12] The Court of Appeal in the decision *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc. (Famous Flesh Gordon's)*, 2013 ONCA 157, ruled that there must be reasonable grounds for belief that the person will, in future, carry on activity in a way that is contrary to the public interest such that they will not act in accordance with the law, with honesty and with integrity. The Court of Appeal emphasized that any and all past or present conduct can and should be considered. Furthermore, the court said in *Nagy v. Registrar, Real Estate Business Brokers Act*, 2012 ONSC 325 (Div. Ct.) at paras. 58-61 that there should be a nexus between the appellant's overall conduct and the business.
- [13] I turn now to Mr. Akkila's conduct and whether the respondent has established that he, and therefore FCM, is not entitled to registration.

E. APPELLANTS' PAST CONDUCT – TRADING OUTSIDE CLASS

- [14] In this case, the main reason that the Registrar proposes to revoke the appellants' registrations is because FCM was registered only as a wholesale dealer. As a result, FCM and Mr. Akkila, whose registration as a salesperson was linked to FCM as a wholesale dealer, could only buy from, and sell to, other wholesale dealers. Instead, Mr. Akkila admits that he sold cars to individual customers. He did so despite the fact that on his registration, Mr. Akkila signed Terms and Conditions on behalf of FCM on June 3, 2012, that included a term that he would "not conduct business with the public".
- [15] Mr. Akkila and FCM wanted to sell retail. However, the respondent had concerns and only approved a wholesaler registration. Despite signing the Terms and Conditions on June 3, 2012, Mr. Akkila sent the Registrar a letter just over three weeks later, on June 26, 2012, in which he told the Registrar to disregard their earlier agreement and further that they would be selling retail as of June 28, 2012.
- [16] The same day, the Registrar advised Mr. Akkila that he could not sell retail without receiving prior approval from the Registrar. An inspector visited FCM on July 10, 2012 and did not note any problems. Mr. Akkila in fact did submit a dealership classification change notice to the Registrar on July 9, 2013, but for various reasons, including missing information, his application was not approved.
- [17] The next inspection took place in January 2017. The inspector, Gaylyne Cini, discovered that FCM had sold two cars on a retail basis through Trend Financial, a financial company that provides financing to high risk individuals. Mr. Akkila testified that he thought that he was not selling to an individual because he transferred the vehicles to Trend who in turn put them in the customers' names. However, the MTO records show that two of the vehicles were transferred from FCM to the customers directly. In addition, Mr. Akkila admitted that all the customers came to FCM and he in turn sent them to Trend. Because he is not able to deal with the public, this violates his conditions.
- [18] Ms. Cini left a copy of her findings with Mr. Akkila, which he signed on January 27, 2017, in which she reminded him and FCM that they were only a wholesale dealer and could only sell within the wholesaler class. She explained in the notes she left for Mr. Akkila that dealing with Trend and an individual customer meant he was not acting as a wholesale dealer.
- [19] A few months later, between June and December 2017, the Registrar received customer complaints from four separate individuals to whom Mr. Akkila and FCM

had sold cars, despite the January 2017 reminder of their wholesale classification. Mr. Akkila denied the allegations. The allegations included failing to disclose required information to the customers. However, FCM and Mr. Akkila were not to deal with the public in any event. As such, these complaints spurred the Registrar to further investigate.

- [20] The Registrar found Ministry of Transportation records that showed that from 2016 to 2018 FCM sold approximately 70 cars to individuals, not registered dealers, in violation of the terms of its wholesale registration. Many of these took place after Ms. Cini's inspection and reminder in January 2017.
- [21] In the course of investigating the complaints, the complaint handlers also raised in e-mails with Mr. Akkila in October 2017 why he was selling vehicles to retail consumers. Mr. Akkila again offered as an excuse the fact that he was dealing with Trend, not an individual. However, Mr. Akkila had already been warned in January 2017 that dealing with Trend was not considered a wholesale deal. Mr. Akkila also stated in an email to the Registrar in October 2017 that he was told in January, 2017 that he might get charged because of the retail deals. Yet he continued to sell retail.
- [22] Mr. Akkila admitted he sold these vehicles and said he was guilty. He testified that he could not make money as a wholesale dealer and did what he had to do in order to provide for his family financially and to try and keep his business afloat. However, he also continued to maintain that dealing with Trend was a grey area, calling it a 50% retail, 50% wholesale deal.
- [23] When I asked Mr. Akkila what he had to say about the Registrar's allegation that he continued to sell retail despite being warned two or three times that he could not do so, he stated he had to do it for financial reasons.
- [24] I find that the past conduct of Mr. Akkila as the sole officer and director of FCM, and in his capacity as a salesperson, establishes reasonable grounds for belief that the appellants will not act in accordance with the law and with honesty and integrity. Mr. Akkila was given more than one chance to comply with the law and to deal honestly and with integrity within his dealership class, but he failed to do so. While I am sympathetic to some extent with his financial reasons for doing so, he fails to realize that by engaging in this conduct he put the buying public at risk.

F. CUSTOMER COMPLAINTS

- [25] The customer complaints led to the investigation that led to the discovery of the fact that Mr. Akkila and FCM were routinely engaging in retail sales.

[26] The customer complaints dealt with issues including the fact that they were dealing outside their class, and that they failed to disclose certain required information to customers. However, I have not addressed this given the fact that the appellants should not have been dealing with customers in any event.

G. FINANCIAL POSITION

[27] The evidence with respect to the appellants' financial position was ancillary to the main reason for the proposal to revoke. However, it lends support to my decision because Mr. Akkila disclosed in his application for a change in class that his finances included only \$3000, and he also testified that the reason for his behaviour was his tight financial circumstances. As a result, I find that the Registrar has also proved that appellants' financial position is such that they cannot be expected to be financially responsible in the conduct of business

H. ARE THERE APPROPRIATE CONDITIONS THAT COULD FACILITATE A REGISTRATION?

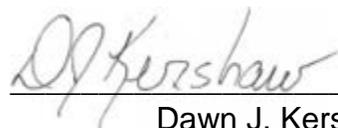
[28] Mr. Akkila on his own behalf as salesperson and on behalf of FCM as a motor vehicle dealer blatantly ignored his class restrictions and the subsequent warnings he was given. I agree with the Registrar that he and FCM are therefore ungovernable and that there are no terms that could ensure that the appellants would act honestly and with integrity in the future.

[29] I find that the respondent should carry out the proposal to revoke the appellants' registrations as a motor vehicle dealer and a motor vehicle salesperson, respectively.

I. ORDER:

[30] The Tribunal directs the Registrar to carry out the proposal to:

- a. revoke the registration of the Mr. Akkila as a motor vehicle salesperson;
and
- b. revoke the registration of FCM as a motor vehicle dealer.



Dawn J. Kershaw

Released: March 05, 2019