

**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: Igal Yagudaev v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2019 ONLAT  
MVDA 11754

Date: 2019-04-24  
File Number: 11754/MVDA

Motion for an Extension of Time to File an Appeal from the Notice of Proposal of the  
Registrar under the *Motor Vehicle Dealers Act, 2002* to Refuse Registration

**Between:**

Igal Yagudaev

Appellant

and

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

**MOTION DECISION AND ORDER**

**Adjudicator:** Avril A. Farlam, Vice-Chair

**Appearances:**

For the Appellant: Jerome H. Stanleigh, Counsel

For the Respondent: Thomas Felix, Counsel

**Heard by Teleconference:** April 4, 2019

## REASONS FOR DECISION AND ORDER:

### A. OVERVIEW

- [1] The appellant Igal Yagudaev brought a motion for an Order of the Licence Appeal Tribunal (the “Tribunal”) granting an extension of time to file his appeal under s. 9(2) of the *Motor Vehicle Dealers Act, 2002*, c. 30, Sched. B (the “Act”). Respondent issued a Notice of Proposal dated October 23, 2018 (“NOP”) proposing to refuse the registration of the appellant as a motor vehicle salesperson under the Act on the grounds that appellant’s past conduct disentitles him to registration, he breached conditions of registration and made false statements in application for registration.
- [2] Under the Act an appeal must be made to the Tribunal within 15 days after receipt of the NOP. The appellant did not file his appeal within 15 days after receipt of the NOP.

### B. ISSUE:

- [3] The issue to be determined is whether an extension of time to file an appeal should be granted to the appellant.

### C. CONCLUSION:

- [4] For the reasons that follow, the appellant’s motion is denied.

### D. LAW AND ANALYSIS:

*Should the Tribunal extend the time for the appellant to file his appeal?*

- [5] Section 9 (2) of the Act states that an applicant has 15 days after service of the notice of proposal to request a hearing.
- [6] The appellant’s motion to extend the time for filing his appeal is made under section 7 of the *Licence Appeal Tribunal Act, 1999*, S.O. 1999, c. 12, Sched. G, which provides:

7. Despite any limitation of time fixed by or under any Act for the giving of notice requiring a hearing by the Tribunal or an appeal from a decision or order of the Tribunal under section 11 or any other Act, if the Tribunal is satisfied that there are reasonable grounds for applying for the extension and for granting relief, it may,

- (a) extend the time for giving the notice either before or after the expiration of the limitation of time so limited; and
- (b) give the directions that it considers proper as a result of extending the time..

[7] To be successful on the motion the appellant must show that there are reasonable grounds for the Tribunal to grant the extension of time. The considerations that the Tribunal must have regard to in considering a motion to grant an extension of time for the filing of an appeal are set out in the case law. The Divisional Court in *Manuel v. Registrar, Motor Vehicle Dealers Act, 2002*, 2012 ONSC 1492 has considered and approved of the four part test applied by the Tribunal being:

1. The existence of a bona fide intention to appeal [within the appeal period];
2. The length of the delay;
3. Prejudice to the other party; and
4. The merits of the appeal.

[8] The Divisional Court determined that the factors set out above are simply a guide to assist in determining the justice of the case.

[9] The burden is on the appellant to demonstrate reasonable grounds to grant an extension of time.

[10] Appellant's motion for an extension of time to file the appeal and his Notice of Appeal were received by the Tribunal on December 6, 2018. The stated reason for the motion on Schedule A to the Notice of Motion is that appellant's counsel through inadvertence did not file the appeal in time and that as soon as he realized his error on December 5, 2018, his office contacted the Tribunal and was informed that a motion must be made to request an extension of time.

[11] Appellant's counsel did not initially submit any Affidavit evidence in support of the motion. Later, in response to affidavits filed by respondent's counsel, appellant's counsel submitted two affidavits signed by the appellant. The affidavits respond to the allegations set out in the NOP that the appellant's past conduct disentitles him to registration, he breached conditions of registration and made false statements in application for registration.

[12] In the first affidavit sworn February 4, 2019 appellant swears that when he received the NOP he attended at his counsel's office but because of his financial circumstances he was unable to retain Mr. Stanleigh to appeal this matter. After

borrowing funds he was able to retain Mr. Stanleigh and the Notice of Appeal and motion were sent December 6, 2018. Appellant swears in paragraph 5 “The only reason that I was unable to file the Notice of Appeal within the period of time legislated, was because I personally was not capable of processing such papers, and it took me some limited time to raise the funds to be able to retain Mr. Stanleigh.” Appellant also swears in this affidavit that he is in desperate need of obtaining a licence to sell motor vehicles in order to support his family as he has no other income or work.

[13] In the second affidavit sworn March 22, 2019 appellant swears that he always provided a Car Proof report to each and every customer before they purchased a vehicle from him. He also testifies that “There is no doubt I did not follow proper procedures as I should have. I let each and every customer know about the exact history of each vehicle, but I was sloppy in making sure these particulars were indicated on the Conditional Sales Contract. I had no idea that I was supposed to advise of a change on Odometer when changed...I have learned my lesson in that I must be very detailed and particular when it comes to disclosing all information about the car being sold...I was extremely sloppy in my detailing of sales of cars I sold. I relied on proof on the history of the vehicle and did not follow it up in writing which I should have done...I did not know of my suspension when I applied under the Dani Group Application for a license. I had never received a Notice of the same. That is why I answered in the negative when applying under the Dani Group...There has been a substantial period of time since my license was suspended and have matured...learned from my mistakes and how not to repeat them...I am asking to be forgiven for past transgressions and allowed to rehabilitate myself through a salesmanship decision. I do not think that the decision to not allow me a salesman’s license without a full hearing is proper and just...”

[14] In the Notice of Appeal, the appellant disagrees with the NOP; says he was not given a fair hearing, says his favourable conduct since the LAT Order of 2011, marital and parental status, experience and knowledge have not been considered. Appellant admits he made mistakes in the past, had a sloppiness and disregard for particularity that he should have understood was required of him when he entered into the consent Order in 2011. The Consent Order dated April 19, 2011 disposed of a proceeding involving the appellant and other parties by imposing conditions on the appellant’s registration and those of other parties, specifically that there must be disclosure on bills of sale of all material facts about the vehicle, customers must be provided with a Car Proof vehicle history report, the Registrar must be notified within 10 business days of receiving a consumer complaint and Ontario Regulations 333/08 and 333/02 must be complied with.

- [15] Appellant states he did not consciously subject a customer to misinformation about automobiles he sold; erred in not ensuring that all representations were clearly spelled out in the Bill of Sale; these were unfortunate errors on his part and sloppiness; was careless but without malice in not ensuring that his brother in law was registered as a car salesperson. The appellant states that he needs to earn a living and asks to be given a hearing by LAT to explain himself and his past conduct, all of which was a result of technical errors, sloppiness and misunderstanding of the importance of being precise and meticulous as to details in Bills of Sale.
- [16] Respondent's counsel filed Affidavits of Bheng Punzalan sworn January 24, 2019 and Maria Ramirez sworn January 30, 2019, both employees of the respondent . In their affidavits it is stated that the appellant's counsel Mr. Stanleigh held himself out as appellant's counsel in a letter sent April 27, 2018 asking for confirmation of the status of the appellant's application for registration. On November 5, 2018 the respondent sent the NOP to Mr. Stanleigh's office with a covering letter that stated the appellant had 15 days to appeal and gave the Tribunal's contact information. The NOP itself included a statement that the appellant had 15 days to appeal and gave the Tribunal's contact information. On November 6, 2018 the respondent notified Mr. Stanleigh by telephone and by email of the service of the NOP on his office. Mr. Stanleigh's office signed for the FedEx package containing the NOP on November 6, 2019.
- [17] On November 9, 2018, Mr. Stanleigh sent a letter to the respondent stating that he was no longer retained to represent the appellant on this matter. The letter shows that it was copied to the appellant. On November 9, 2018 the respondent sent the NOP and covering letter to the appellant. Both the NOP and the letter included a statement that the appellant had 15 days to appeal and gave the Tribunal's contact information.
- [18] On November 14, 2018 the appellant sent emails to respondent's counsel confirming that he had received the NOP, demanding further particulars and stating "...I am filing for the appeal..." Respondent's counsel responded with an email which stated that any questions about how to file an appeal should be taken up with the Safety, Licencing Appeals and Standards Tribunals Ontario (SLASTO).
- [19] On December 3, 2018 the respondent issued notice to the appellant that the NOP had been carried out. Respondent's counsel was advised by the Tribunal later in December that appellant's counsel Mr. Stanleigh had filed a Notice of

Appeal and the motion to extend time for an appeal on December 6, 2018. Mr. Stanleigh did not serve the respondent until December 12, 2018, some 36 days after service of the NOP on Mr. Stanleigh and some 21 days in excess of the statutory deadline.

- [20] The Appellant's counsel submitted that the appeal was not filed in time due to a miscommunication between himself and the appellant, that the appellant intended to appeal within the legislated time frame but did not have the funds to retain him to file the appeal within the time, the delay is not long, there is no prejudice to any other party if the time is extended but prejudice to the appellant if denied because he needs to work, and that the appellant has a meritorious appeal.
- [21] The Respondent's counsel submitted that the appellant has not demonstrated a bona fide or good faith intention to appeal during the appeal period because he took no action to appeal, the appeal was 36 days late which is a significant delay, there is institutional or general prejudice to the respondent if the time to file the appeal is extended and the appellant has admitted facts that make success on the merits of the appeal unlikely.
- [22] With respect to intention to appeal, I find that the appellant has not demonstrated that he had bona fide intention to appeal within the 15 day appeal period. Although Mr. Stanleigh had corresponded with the respondent as the appellant's counsel on April 27, 2018, when the NOP was served on Mr. Stanleigh on November 6, 2018, he withdrew as appellant's counsel with respect to this matter and confirmed this in his letter to the respondent dated November 9, 2018. The appellant was copied with Mr. Stanleigh's letter of withdrawal.
- [23] Given that he was copied with Mr. Stanleigh's letter of withdrawal, the appellant was aware of the existence of the NOP on or about November 9, 2019. On November 9, 2018 the respondent sent the NOP directly to the appellant who then corresponded with the respondent on November 14, 2018 by confirming his receipt of the NOP and confirming that "...I am filing for the appeal." However, other than stating that he would do so, the appellant did not file an appeal within the fifteen day period. Although Schedule A to the motion states that this was because of his counsel's inadvertence, this is not supported by the affidavits of the appellant who swears that "The only reason that I was unable to file the Notice of Appeal within the period of time legislated, was because I personally was not capable of processing such papers, and it took me some limited time to raise the funds to be able to retain Mr. Stanleigh."

- [24] It is clear to me that the appellant was capable of corresponding with respondent's counsel regarding the matter after Mr. Stanleigh withdrew. The appellant was aware of the 15 day time limit to appeal in the NOP as set out in the covering letter. The appellant was also given information on how to contact the Tribunal's office in the NOP, the covering letter that was sent with the NOP to him on November 9, 2018 and in the November 14, 2018 email to the appellant from respondent's counsel. It was up to the appellant to file his Notice of Appeal as he said he would on November 14, 2018 or to obtain whatever assistance he needed to do so within the 15 day time limit. It is not enough to simply state that he will do so. There is an obligation on the appellant to do so.
- [25] I also note that the appellant has some familiarity with the process and the deadlines involved independent of the information sent to him by the respondent for this matter because he was involved in another proceeding before the Tribunal in 2010 and 2011 according to his Notice of Appeal. Lack of funds to hire counsel is not an excuse for not filing an appeal on time given that the appellant was referred to publicly available and accessible appeal materials on the internet.
- [26] With respect to the length of delay, the affidavit filed by the respondent shows that the NOP was received by appellant's counsel on November 6, 2018. The appellant is likely to have known of the existence of the NOP by November 9, 2018 when he was copied with Mr. Stanleigh's letter of withdrawal but even assuming he did not receive the NOP until November 13, 2018 or November 14 when he acknowledged receipt in writing, the appeal should have been served on the respondent and filed no later than November 29, 2018.
- [27] Neither the appellant nor Mr. Stanleigh filed the appeal until after the respondent sent notice on December 3, 2018 to the appellant that the respondent had carried out the NOP. The Tribunal received Mr. Stanleigh's Notice of Appeal and motion on December 6, 2018 but this was not served on the respondent until December 12, 2018 and so not fully filed until December 12, 2018.
- [28] I accept the respondent's submission that the respondent received the appeal and the motion some 36 days after the NOP had been received by appellant's then counsel Mr. Stanleigh on November 6, 2018 and seven days after the appellant's 15 day deadline for filing the appeal after he had been served with the NOP. This is a significant delay given that the 15 day deadline for appeal is a legislated time frame in a highly regulated industry concerned with the protection of the public in motor vehicle sales.

[29] With respect to prejudice, the appellant did not demonstrate that he would be prejudiced if the time to appeal is not extended. Although the appellant says he needs to work, the appellant has not been registered as a motor vehicle salesperson since 2012. The denial of a full hearing on the merits is the result of appellant's own failure to appeal in the time period established in the legislation.

[30] The merits of the appellant's appeal would not appear to be strong given that the appellant has admitted many of the allegations made in the NOP including technical errors, sloppiness and misunderstanding of the importance of being precise and meticulous as to details in Bills of Sale.

[31] I conclude:

- 1) The appellant has not demonstrated that he had a good faith or bona fide intention to appeal within the appeal period;
- 2) The delay in submitting the Notice of Appeal and Motion to extend the time for appeal is significant;
- 3) The appellant has not demonstrated prejudice;
- 4) The merits of the appeal are relatively weak.

[32] Having carefully considered the evidence and submissions of the appellant and the respondent and in the particular circumstances of this case, I find that the appellant has not established reasonable grounds for an extension of time to file his appeal. The appellant's motion is denied.

**ORDER:**

[33] The appellant's motion is denied.

LICENCE APPEAL TRIBUNAL



Avril A. Farlam, Vice-Chair

*Released: April 24, 2019*