

**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: Paolo Joseph Fasciani v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2019  
ONLAT MVDA 11524

Date: 2019-07-31  
File Number: 11524/MVDA

Appeal from a Notice of Proposal of the Registrar under the *Motor Vehicle Dealers Act, 2002* to Refuse Registration

**Between:**

Paolo Joseph Fasciani

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

**DECISION AND ORDER**

**Adjudicator:**

Asad Ali Moten, Member

**Appearances:**

For the Appellant:

Justin M. Jakubiak, Counsel

For the Respondent:

Bryant Greenbaum, Counsel

**Heard in Toronto:**

January 28, 2019

March 11 & 12, 2019

## REASONS FOR DECISION AND ORDER

### OVERVIEW

- [1] Paolo Fasciani used to be a motor vehicle salesperson. He was also an officer and director of two entities, Profile Fine Cars Inc. (PFC), and Profile Auto Group Ltd. (PAG), both of which used to be registered as motor vehicle dealers.
- [2] In 2007 and 2008 Mr. Fasciani was involved in an elaborate scheme wherein PFC would falsify paperwork, using inflated wholesale purchase amounts of vehicles or with fictitious purchasers, in order to receive artificially inflated financing from two automotive financing companies. In 2008, Mr. Fasciani and his companies' registrations were revoked, and in 2009 Mr. Fasciani declared bankruptcy.
- [3] Mr. Fasciani applied to be a motor vehicle salesperson again in 2010 and 2014. Each time the Registrar proposed to refuse Mr. Fasciani's registration, and each time this proposal was carried out. Mr. Fasciani became licensed as a real estate agent in 2009, and has maintained that licence to this day.
- [4] In September 2017, Mr. Fasciani again applied to be a motor vehicle salesperson. In July 2018, the Registrar issued a Notice of Proposal to refuse registration. The Registrar argues there has been no material change in Mr. Fasciani's circumstances since his last unsuccessful application that would entitle him to registration as a salesperson. Further, the Registrar argues, even if there had been a material change, Mr. Fasciani's past conduct, including the artificial inflation of invoice prices, his bankruptcy and financial troubles, and the lack of disclosure as to his actions in 2008 give rise to reasonable grounds to believe that he would not carry on business in accordance with the law and with integrity and honesty.
- [5] Mr. Fasciani argues that the discharge of his bankruptcy, resolution of related litigation, and licensure as a real estate agent constitute a material change in circumstance. Mr. Fasciani also argues that in the face of the totality of his conduct, the Registrar has not made out reasonable grounds for the Registrar's belief that he would not carry on business in accordance with the law and with integrity and honesty.
- [6] For the reasons below, the Tribunal finds that there have been material changes in Mr. Fasciani's circumstances. The Tribunal also finds that Mr. Fasciani's past conduct gives rise to reasonable grounds to believe that he would not carry on

business in accordance with the law, or with integrity and honesty, but that refusal of registration is not the appropriate result in this instance.

## ISSUES

- [7] The issues to be decided by the Tribunal are:
- A. Is it clear that Mr. Fasciani's material circumstances have changed?
  - B. Does the past conduct of Mr. Fasciani afford reasonable grounds to believe that Mr. Fasciani will not carry on business in accordance with law and with integrity and honesty?
  - C. Is refusal of registration the appropriate result?

## EVIDENCE

- [8] Mr. Fasciani was first registered as a motor vehicle salesperson in October 1999. PFC was registered as a motor vehicle dealer at the same time. Mr. Fasciani, with two other partners, started PAG in December 2007. All three remained licensed until the summer of 2008. At all material times Mr. Fasciani was a director and officer of PFC and PAG. There were other partners from time to time, but these were in large part Mr. Fasciani's companies, and the partners' role is not relevant to the issues before the Tribunal.
- [9] PFC's business was, essentially, identifying damaged cars at auctions, obtaining financing to purchase those cars and repair them, and then selling the repaired cars. From 1999 to 2007, PFC and Mr. Fasciani had no financial troubles. According to Mr. Fasciani, PAG never got off the ground and conducted no business in its short tenure.
- [10] Jim Dagleish testified with respect to Automotive Finance Canada's (AFC) interactions with PFC. He stated that AFC would provide inventory lines of credit for independent dealers to finance their inventory. PFC would come to AFC when PFC wanted to finance a car with the bill of sale in hand. AFC would use the purchase price on the bill of sale and the black book value of the car to complete a loan to value valuation and determine how much financing it would provide to PFC. Mr. Dagleish stated that the details on the bill of sale affect the financing amount in two ways: the financing amount is capped at the bill of sale purchase

price; and if a bill of sale is more than 30 days old, a 20 percent discount is applied in determining financing.

- [11] Wallace Purssord testified on behalf of Quick Credit. Between 2004 and 2008, the majority of business that Quick Credit did with PFC was through 'floor planning', similar to PFC's relationship with AFC.<sup>1</sup> PFC would bid and win at an auto auction. An auction bill of sale would then be generated. Mr. Fasciani would fax the auction bill of sale to Mr. Purssord. Mr. Purssord would look over the documentation to see if everything was in order. He would assign the purchase a value based in part on the scale in Quick Credit's books of value. He testified that he tried to finance as close to the wholesale price as possible. Usually several cars would be financed in the same transaction between Quick Credit and PFC.
- [12] Mr. Purssord would prepare a promissory note indicating how much financing was to be paid to PFC. He would also prepare an assignment document, indicating that title to the insurance claims for the damaged cars would be transferred to Quick Credit as security, and cheques for the financing amount minus commission. Liens would be registered against the financed cars in order to ensure that Quick Credit's share would be remitted when the cars were sold. All of these forms would be signed in person by Mr. Fasciani when the cheques from Quick Credit were delivered to PFC. The cheques were usually payable to PFC, though Mr. Purssord testified that in exceptional circumstances the cheques were made out to Mr. Fasciani.
- [13] According to Mr. Purssord, almost all of Quick Credit's interactions were with Mr. Fasciani. Mr. Fasciani's business partners had attended only on a couple of occasions.

### ***Falsifying Documents***

- [14] Starting in 2007, PFC, and Mr. Fasciani as its directing mind, began to run into financial trouble. PFC began finding sophisticated ways to manipulate the amount of financing it received from AFC and Quick Credit. In particular, PFC would either falsify bills of sale from auction houses, or use fake wholesale and consumer sellers to indicate a higher PFC purchase price.
- [15] Copart was one of the auction houses from which PFC purchased damaged cars. Anthony Monas, Regional Manager for Copart Auto Auctions (Copart), testified as to Copart's records of sales.

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<sup>1</sup> In the automotive financing world, floor planning involves financing a dealership's car purchases and receiving payment for that financing when the cars are sold.

- [16] Mr. Monas had been contacted by OMVIC, once in 2014 and once in 2019, and asked to compare Copart wholesale bills of sale that OMVIC had received from Quick Credit with the historical records of those sales in Copart's electronic database. The purchase price listed on the bill of sale given to the financing companies by PFC was different, always higher, than the purchase price listed on Copart's bill of sale.
- [17] For example, in March 2008, PFC purchased from Copart a 2006 Pontiac Torrent. The sale price for this transaction was \$4,600, plus fees and taxes, for a total of \$5,409.25. The wholesale bill of sale that PFC gave to AFC in order to receive financing for the vehicle showed a purchase price of \$9,200 plus fees and taxes for a total of \$10,170. Mr. Monas pointed out that the bill of sale provided to AFC did not conform with Copart's records, both in the elements contained on the bill of sale, and in the purchase price.
- [18] According to Mr. Monas, each of these records in Copart's electronic database would have a physical signed copy that was printed and executed at the time the vehicle was sold. Mr. Monas was not, however, able to advise where the physical signed copies, the original bills of sale, were. He did advise that the more recently retrieved electronic version would be the same as the original version, because the records are permanent, and any changes or amendments to a bill of sale would be reflected as such.
- [19] In another example, a wholesale bill of sale from December 14, 2007 showed that PFC purchased three vehicles from a seller called Feature Leasing Corporation for \$16,900 plus tax. Tim Hines, Director of Complaints and Inquiries for OMVIC testified that there is no such company as Feature Leasing Corporation, and that he searched every database available to OMVIC. Searching the VIN numbers he discovered that the seller was actually State Farm Mutual. The Feature Leasing Corporation bill of sale reflects amounts submitted by PFC to Quick Credit for financing.
- [20] Another variation would involve fake customers. A used car bill of sale from January 15, 2008 shows a car being traded in by a customer to PFC. The trade-in value on this bill of sale is inflated when compared to the Copart bill of sale from its actual purchase. In this instance the trade-in value is listed as \$11,000, whereas the Copart bill of sale lists PFC's purchase price as \$2,019.30. In this manner, PFC would inflate the value of vehicles using falsified bills of sale submitted to Quick Credit for higher levels of financing.
- [21] All in all, PFC repeated these or some variation of these processes nearly three dozen times between 2007 and 2008.

### ***The Fallout***

- [22] Mr. Dagleish stated that PFC's inflated bills of sale affected AFC when it tried to collect on collateral. When PFC did not meet payment terms, AFC had to collect vehicles, sell them, and realise a loss because the cars were overvalued. AFC ended up taking a loss on the PFC account. At the end of the day, some of the amount was paid off, some was recouped by selling off the collateral, and AFC was left with an outstanding \$20,000 as an unsecured creditor in Mr. Fasciani's bankruptcy proceedings. One of Mr. Fasciani's partners paid off \$18,000 of this debt for inflated transactions while he was a part of PFC.
- [23] At some point, though Mr. Purssord could not recall when, Quick Credit began to experience issues with PFC's repayment of financing. PFC was not able to make its obligated payments to Quick Credit on time, if at all.
- [24] Around the same time, Mr. Purssord went to see a car that PFC had purchased. It was a Mitsubishi Eclipse, and PFC had received between \$10,000 and \$15,000 of financing for it. When Mr. Purssord saw the car, it was not, in his opinion, worth that much. This began to raise questions in his mind.
- [25] Customers who had purchased cars from PFC began calling Quick Credit, complaining that there were liens on their cars. Quick Credit had not been removing liens from the cars it was financing for PFC because it was not being made aware that the cars were being sold, and was not receiving payment. Quick Credit took this concern to OMVIC in June 2008, and this initiated OMVIC's investigation into PFC and Mr. Fasciani.
- [26] Eventually, Quick Credit discharged the liens without receiving payment either from PFC or the customers, and ended its business relationship with PFC. Quick Credit later learned that PFC had been inflating the purchase price on bills of sale. They had no prior reason to suspect Mr. Fasciani's of this type of behaviour.
- [27] Mr. Fasciani declared bankruptcy in December 2009. He was discharged from bankruptcy, and all tax debts extinguished, by September 2010. Quick Credit sued Mr. Fasciani and the parties settled the action in 2016 for an undisclosed amount. All parties to this proceeding agree that Mr. Fasciani has paid all settlement debts.

### ***Subsequent Applications under the Act***

- [28] In June 2008, an inspector from the Registrar attended unannounced at the PFC dealership. It was abandoned but for a few unlicensed cars on its lot. The mailbox

was overflowing and all the furniture inside the office was gone. The Registrar proposed to revoke the registrations of Mr. Fasciani, PFC, and PAG, on several bases, including tax debts, breach of a security arrangement with Quick Credit, and PFC's debt to Quick Credit. The Registrar carried out the proposal unopposed in August 2008. This Tribunal has found, in another proceeding, that Mr. Fasciani was not served with the 2008 Notice of Proposal.

- [29] In October 2010, Mr. Fasciani applied for registration as a salesperson, proposing to work at a dealership named Pacific and Vine Garage Ltd. The Registrar issued a Notice of Proposal in January 2011 to refuse registration based in part on Mr. Fasciani's bankruptcy, which was discharged in September 2010. Mr. Fasciani appealed this 2011 Notice of Proposal, and sought to extend time to appeal the 2008 Notice of Proposal.
- [30] In March 2012 the Registrar issued a Notice of Further and Other Particulars with respect to the 2011 Notice of Proposal. These further and other particulars included allegations that Mr. Fasciani, through PFC, had inflated vehicle purchase prices when obtaining financing for his dealership operations. In April 2012, Mr. Fasciani withdrew his appeal of the 2011 Notice of Proposal, and his motion for an extension of time.
- [31] In withdrawing the 2011 Notice of Proposal and the motion for an extension of time, Mr. Fasciani and the Registrar agreed that Mr. Fasciani was not admitting any of the allegations contained in any of the Notices of Proposal or further and other particulars.
- [32] In May 2014, Mr. Fasciani again applied to register as a salesperson with Pacific and Vine Garage Ltd. The Registrar again issued a Notice of Proposal to refuse registration, and in December 2014 and January 2015 issued three Notices of Further and Other Particulars. Mr. Fasciani appealed the Notice of Proposal in August 2014. In general, the 2014 Notice of Proposal and further and other particulars alleged that Mr. Fasciani had falsified documents in order to obtain financing, and had not disclosed pertinent information to his customers. Mr. Fasciani withdrew his appeal in February 2015, and the Notice of Proposal was carried out.
- [33] In addition, the Registrar maintained significant concerns about Mr. Fasciani's likelihood of committing similar frauds in the future because Mr. Fasciani had never provided an explanation in any application. Mr. Fasciani had also never entirely owned up to the conduct alleged against him. The Registrar points to Mr. Fasciani's 2017 application for registration as a salesperson as evidence of this fact. Section D of the application asks whether the applicant has ever had a

licence of any kind refused, suspended, revoked, cancelled or been subject to disciplinary action. Mr. Fasciani correctly checked 'yes' to this question, to which the application asks the applicant to provide details on a written statement.

- [34] Mr. Fasciani's explanation, attached to the application, states that Mr. Fasciani's registration was revoked in 2008. It further states that if he had been served with the Notice of Proposal in 2008 he would not have been deemed to admit the allegations contained therein. It makes no reference to the complex scheme that PFC was involved in, despite the fact that Mr. Fasciani would have known from his 2010 and 2014 applications that the Registrar knew about the price inflation scheme.
- [35] Nor does Mr. Fasciani explicitly discuss his actions in any other communication with OMVIC, either as part of previous applications or in relation to this most current application. At most he makes reference to 'making mistakes' and financial troubles, but provides no discussion with respect to what the mistakes were and what actions he took in the face of financial difficulty.
- [36] On September 11, 2017 Mr. Fasciani filed his 2017 application for registration as a salesperson. This is the application currently at issue. The Registrar issued its Notice of Proposal to refuse registration in July 2018. The Notice of Proposal incorporated the particulars and grounds from all the previous Notices of Proposal.
- [37] None of the allegations contained in the previous Notices of Proposal have been adjudicated because, as indicated above, the appeals were withdrawn prior to a hearing in every instance.

### ***Application for Real Estate Agent Licence***

- [38] In 2009 Mr. Fasciani registered successfully as a real estate agent. Since then, he has remained registered as a real estate agent, employed with the same realty. There are no allegations of any impropriety with consumers during Mr. Fasciani's time as a real estate agent.
- [39] In 2016 Mr. Fasciani applied to renew his registration as a real estate salesperson. The Registrar for the Real Estate Council of Ontario (RECO) issued a Notice of Proposal to deny renewal, alleging that Mr. Fasciani had made false statements about his bankruptcy, court proceedings and interactions with OMVIC. The Registrar for RECO argued that Mr. Fasciani was ungovernable. In a separate proceeding this Tribunal found that Mr. Fasciani had not intentionally made false statements or hid his interactions with OMVIC from RECO. The

Tribunal did not find that Mr. Fasciani was ungovernable. This finding of the Tribunal was acknowledged by Mr. Hines in this proceeding.

### ***Mr. Fasciani's Testimony***

- [40] Mr. Fasciani testified on his own behalf, and was not cross-examined. Mr. Fasciani is 41 years old, and has been with his spouse for approximately 10 years. They have two children together, ages 8 and 5. He did not dispute any of the evidence of the other witnesses.
- [41] During his testimony, Mr. Fasciani admitted that the allegations with respect to falsifying documents and inflating bills of sale were true, and that he played a significant role in the scheme. The relationship with the financing companies was working well until the recession in 2008. Inventory was not moving as quickly. Mr. Fasciani testified that he did not think the downturn would last forever, so he started manipulating the relationship with the financing companies until the economy improved. He would inflate the bills of sale, as described above, and submit them to Quick Credit or AFC. He would try to inflate them to cover the purchase price of the vehicles, the cost of repair, and the cost of operating the dealership.
- [42] Times did not, however, get better for Mr. Fasciani and PFC. The scheme snowballed into what it is today. Mr. Fasciani testified that he did all of this to try and save the business, but despite his efforts the business was forced to close in the summer of 2008. He admitted, during his testimony, that he recognizes where he went wrong, and that he should not have engaged in this type of scheme.
- [43] He expressed to the Tribunal some insight into his choices, and remorse for the impact of his actions on himself and his business relationships.
- [44] Mr. Fasciani testified that in his 2010 and 2014 applications for registration as a vehicle salesperson he did not discuss with OMVIC the details of his price inflation scheme, or express any sentiments about it on the advice of counsel. He stated that because the civil action with Quick Credit was ongoing his lawyer did not want conflicting evidence to be available, and advised him each time to withdraw his appeals.

## **LAW AND ANALYSIS**

***Is it clear that Mr. Fasciani's material circumstances have changed?***

- [45] Section 12 of the *Motor Vehicle Dealers Act, 2002*, S.O. 2002 c.30, Sch. B (the Act) describes when a person can re-apply for registration after having been refused, revoked, or refused renewal. First, at least two years must pass since the person's last application (see: Ontario Regulation 333/08, section 15). Second, where "new or other evidence is available or it is clear that material circumstances have changed."
- [46] In this instance, there is no question that two years elapsed between when Mr. Fasciani's registration was last refused on February 25, 2015, and his current application dated September 2, 2017. In addition, neither party raised any argument with respect to "new or other evidence" being available.
- [47] This leaves the Tribunal to consider whether it is clear that there have been material changes in Mr. Fasciani's circumstances.
- [48] The Registrar argues that since Mr. Fasciani's last unsuccessful attempt at registration in 2015 there have not been any material changes in his circumstance. Mr. Fasciani argues that evidence of someone being in another regulated industry successfully for a period of time is relevant and cogent to the question of a material change in circumstances. The RECO decision and letter from the brokerage both indicate that Mr. Fasciani has done well as a regulated real estate salesperson for nearly a decade.
- [49] Mr. Fasciani presented a variety of case law in support of his argument that his material circumstances have changed. None of these cases are binding on this Tribunal, nor is any single case on point to the issues at play in this proceeding. However, analogous elements in some of these cases are persuasive with respect to Mr. Fasciani's factual matrix.
- [50] The Registrar submitted case law in support of an argument that Mr. Fasciani, as an officer and director of PFC and PAG, was accountable for actions taken by the corporate entities. However, Mr. Fasciani did not take the position that he was somehow not responsible for PFC's and PAG's actions and therefore could not be held accountable for corporate past conduct. In fact, both parties, throughout the proceeding, as in this decision, referred interchangeably to Mr. Fasciani and PFC. Therefore, the Registrar's case law adds little to the Tribunal's decision.
- [51] In *Asad A. Malik v. Registrar, Motor Vehicle Dealers Act, 2002* 2012 7033/MVDA (*Malik*) the Tribunal considered the question of whether there had been a material change in circumstances. In *Malik*, the appellant had previously been registered as a motor vehicle salesperson until 1999. In 2001 and 2002 he engaged in a complex credit card and identity theft scheme in a different,

unregulated industry. Over the next nine years, the appellant applied three times to be registered as a motor vehicle salesperson. He was refused twice on the basis of his prior conduct, continued minimization of the conduct, and misstatements about his level of involvement. Nonetheless, the Tribunal found that, by the time of his third application, the appellant had demonstrated four years of positive work experience in the automotive industry, handling credit information, and had taken steps to put his past conduct behind him.

[52] In this instance the Tribunal finds that there have been material changes to Mr. Fasciani's circumstances. The facts supporting this finding include:

- The impugned actions of fraudulently inflating vehicle purchase prices occurred more than ten years ago;
- Mr. Fasciani has discharged his bankruptcy and settled his debt with Quick Credit;
- PFC's debt to AFC has been settled, though not by Mr. Fasciani;
- There is no evidence that Mr. Fasciani is currently in any financial difficulty or has any outstanding debts or judgments;
- Mr. Fasciani has been registered since 2009 as a real estate salesperson, a highly regulated industry, and there is no evidence of any non-compliance or other issues;
- Mr. Fasciani is no longer an owner, director, or shareholder of a any corporate entities involved in the buying and selling of vehicles;
- Mr. Fasciani is now married, with two young children.
- Mr. Fasciani has taken responsibility for his actions in 2007 and 2008, and described to the Tribunal and Registrar, during the hearing, the methods and motives behind PFC's price inflation scheme.

[53] The Registrar argues that Mr. Fasciani has not demonstrated an acknowledgement of wrongdoing sufficient to indicate a material change in circumstances. In the Registrar's opinion, Mr. Fasciani's admissions during testimony, the first time Mr. Fasciani has made any such admissions, do not rise to the level of acknowledgement because he did not discuss the impact on lien holders, the public, and the people in the industry. Admitting to facts at the 11<sup>th</sup>

hour does not, in the Registrar's opinion, constitute accepting responsibility so as to demonstrate a change in circumstances.

- [54] The Tribunal disagrees. There is no requirement at law that an applicant demonstrate a certain level of contrition, or any remorse at all, in determining whether there has been a material change in circumstances. In *Malik*, the Tribunal found that despite the appellant's inability or unwillingness to take full responsibility for his actions, contrition to a level acceptable to the Registrar is not required to demonstrate a material change in circumstances. That is not to say, however, that remorse, acknowledgment, accountability, or contrition cannot play a role in such a determination. That is but one factor to be weighed in the larger context of the applicant's circumstances, the passage of time, and the significance of the applicant's actions.
- [55] In this instance, the Tribunal accepts Mr. Fasciani's explanation for the late timing of his acknowledgment, namely that he did not provide the Registrar with an explanation on the advice of counsel and in the face of ongoing litigation. During the hearing Mr. Fasciani did not shy away from acknowledging his role and did not try to pin the price inflation scheme on anyone else.
- [56] The Tribunal's finding of material changes relies upon a comparison between Mr. Fasciani's circumstances now versus those that existed at the time or shortly after PFC fell apart. This comparison is, in the Tribunal's opinion, the relevant one to make given that the last unsuccessful registration attempt by Mr. Fasciani relied on allegations from between 2007 and 2010.
- [57] However, even if the Tribunal is incorrect in examining that time period to determine whether there is a material change, the facts still support a conclusion that Mr. Fasciani's circumstances since his last unsuccessful registration in February 2015 have changed. In the intervening period Mr. Fasciani has demonstrated nearly four years of licensed employment in a highly regulated field, settled the civil action brought against him by Quick Credit, and paid his settlement debt.
- [58] In sum, The Tribunal concludes that Mr. Fasciani's circumstances have materially changed, both from the 2007-2010 period, and since his last unsuccessful registration in 2015.

***Does the past conduct of Mr. Fasciani afford reasonable grounds to believe that Mr. Fasciani will not carry on business in accordance with law and with integrity and honesty?***

- [59] Pursuant to section 6(1)(a)(ii) of the Act, Mr. Fasciani is entitled to registration as a motor vehicle salesperson unless Mr. Fasciani's past conduct affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty. Registration is, therefore, a qualified right to be balanced against consumer protection.
- [60] The requirement for reasonable grounds for belief is a standard of proof that is lower than a 'balance of probabilities.' It requires "something more than mere suspicion", and an "objective basis for the belief which is based on compelling and credible information" (see: *Ontario (Alcohol and Gaming Commission, Registrar) v. 751809 Ontario Inc. (c.o.b. Famous Flesh Gordon's)*, 2013 ONCA 157 (*Famous Flesh Gordon's*)). Applying the principles identified in *Famous Flesh Gordon's*, I must consider all of Mr. Fasciani's past conduct – the good and the bad – in determining whether there are reasonable grounds to believe that Mr. Fasciani would not carry on business in accordance with the law or with integrity and honesty.
- [61] The Registrar argues that Mr. Fasciani's past conduct, namely the scheme of fraudulently inflating vehicle prices, his bankruptcy and debts, and issues of non-disclosure in previous applications are all individually and collectively sufficient grounds for the Registrar's belief. More specifically, with respect to the price inflation scheme, the Registrar points to the aggravating factor that this is industry specific conduct.
- [62] Mr. Fasciani argues that since the price inflation scheme and ensuing bankruptcy and legal troubles there has been no new conduct that could be the basis for the Registrar's belief. And, since the Registrar was willing, as recently as 2014, with some knowledge of Mr. Fasciani's past actions to register Mr. Fasciani subject to terms and conditions, the passage of time only further mitigates any reasonable grounds for the Registrar's belief.
- [63] Case law put forward by Mr. Fasciani indicated that while it is context dependent, the Tribunal has generally looked favourably upon the passage of more than a few years of positive conduct (see: *Frederik (Erik) D. Meeder v. Registrar, Motor Vehicle Dealers Act, 2002*; and *Astra Motors Inc. and Paul Zbigniew Jadwidzic v. Registrar, Motor Vehicle Dealers Act, 2002*). Time spent in another regulated industry is an additional mitigating factor (see: *8162 v. Registrar, Motor Vehicle Dealers Act, 2002*, 2014 CanLII 2446 (ONLAT)).
- [64] In this instance, there has been a considerable passage of time – over a decade – and nearly all of that time has been spent in another highly regulated industry. Mr. Fasciani's employer speaks highly of his work ethic and considers him a

valuable part of his brokerage. There is no evidence of Mr. Fasciani being in poor financial health, and there are no apparent motivating factors to engage in similar fraudulent behaviour again. This is good past conduct that mitigates against the Registrar's concerns.

- [65] On the other hand, Mr. Fasciani's past bad conduct is significant. He executed a very sophisticated, long-term scheme in which he defrauded financing companies and violated security agreements. This was done in the very industry in which he seeks to be registered as a salesperson today. It took years for the scheme to be fully uncovered by Quick Credit and OMVIC. Mr. Fasciani knows the tools of the trade and has shown creativity in executing the scheme. He would know how to manipulate the industry again in the future should he face a financial hurdle. This is bad past conduct, an aggravating factor, weighed against the good past conduct.
- [66] In addition, until Mr. Fasciani's testimony, the Registrar had no explanation from Mr. Fasciani about what happened, or how, or why. The Registrar did not even know whether Mr. Fasciani would take responsibility. It is not unreasonable, in this kind of informational vacuum, for the Registrar to form a reasonable grounds to believe that Mr. Fasciani would not carry on business in accordance with law and with integrity and honesty. An applicant who is less than forthcoming about his conduct cannot be trusted to self-govern in an industry where the Registrar relies upon the good faith of registrants. OMVIC does not have the capacity to investigate and enforce every dealership and salesperson, especially when, as in this case, the impugned actions require an extraordinary attention to detail.
- [67] Mr. Fasciani did explain his reason for not being candid in the past. But unlike the previous issue in which this explanation helped the Tribunal understand how things have changed for Mr. Fasciani in the past, The Tribunal still shares the Registrar's concerns about how Mr. Fasciani may interact with OMVIC in the future. Even though the Registrar never explicitly asked Mr. Fasciani to explain his conduct, Mr. Fasciani did have the opportunity, since at least the settlement of litigation in 2016, to be forthcoming.
- [68] In sum, weighing the good past conduct against the bad, the Tribunal finds that there are reasonable grounds to believe that Mr. Fasciani will not carry on business in accordance with law and with integrity and honesty.

***Is refusal of registration the appropriate result?***

- [69] Despite finding that there are reasonable grounds to believe that Mr. Fasciani will not carry on business in accordance with the law and with integrity and honesty,

the Tribunal finds that refusal of registration is not the appropriate result. The nature of the reasonable grounds are such that the concerns can be mitigated through the appropriate use of terms and conditions.

- [70] Mr. Fasciani proposes to be a salesperson with Pacific and Vine Garage Ltd. This dealership is fairly small and, according to Mr. Hines, does not do a significant amount of business. It is not clear, however, how much business they actually do, or how much business would placate the Registrar. This is the same sponsoring dealership that has been listed on every one of Mr. Fasciani's applications since 2010.
- [71] The Registrar's primary concern is that at a small dealership there are not multiple redundant layers of oversight, and that salespeople may be involved in financing or credit paperwork, putting Mr. Fasciani right back in a position to commit a similar fraud. At this particular dealership it is unclear how involved the owner would be in supervising employees, or what processes are in place to prevent any abuse.
- [72] During the hearing Mr. Fasciani testified that he would be agreeable to terms and conditions that limit his ability to handle funds, financing, or credit, and ensure that he is not a signing authority. This indicates some willingness to be accountable to OMVIC and an ability to be governed.
- [73] In addition, the terms and conditions that were proposed by the Registrar in the past largely address the Registrar's concerns about putting Mr. Fasciani in a position of control. A condition that remains a significant bone of contention is whether or not Mr. Fasciani should be required to be a salesperson at a franchise dealership instead of a smaller outfit such as Pacific and Vine.
- [74] Mr. Fasciani testified that part of the reason he wants to work at a smaller dealership is that it permits him the flexibility to still be a real estate salesperson. The Tribunal finds that prohibiting Mr. Fasciani from working for his sponsoring dealership would render the Tribunal's decision to register him on terms and conditions ineffective because of the difficulty of finding another sponsoring dealership.
- [75] What can be done, however, is to create the same result at Pacific and Vine Garage Ltd. as would exist at a franchise dealership. Terms and conditions that place a supervisory layer over Mr. Fasciani's work and give OMVIC unencumbered access are appropriate.

[76] Therefore, the Tribunal finds that Mr. Fasciani may be registered as a motor vehicle salesperson subject to the terms and conditions below.

## **CONCLUSION AND ORDER**

[77] Pursuant to section 9(5) of the Act, the Tribunal orders the Registrar to not carry out its proposal to refuse registration. The Tribunal further orders that Paolo Fasciani be registered as a motor vehicle salesperson subject to the following conditions:

1. For a period of four years, the applicant will not be a partner, shareholder, officer, director, or controlling mind of a motor vehicle dealership;
2. For a period of two years, the applicant will not be in a management or supervisory position at a motor vehicle dealership;
3. For a period of two years, the applicant will not be a final signatory on the bill of sale or sales contract or lease contract for any vehicle the applicant will be selling or leasing, nor will he be a final signatory on the bill of sale for any vehicles purchased for resale;
4. The applicant will advise the Registrar and the sponsoring dealer in writing, within five business days, of any findings of guilt, convictions, or pending charges under any law. The applicant will provide the Registrar with a copy of the notification acknowledged by the signature of the sponsoring dealer;
5. The applicant will advise the Registrar, in writing, as soon as reasonably practicable, of any statements of claim, judgments, bankruptcy, liens, or changes in financial status that might be reasonably anticipated to affect the applicant's ability to comply with any requirement under the Act or Regulations;
6. The applicant will provide the Registrar will full and complete disclosure in all future correspondence and on all future applications, regardless of whether or not disclosure has been made previously to the Registrar; and,

7. The applicant shall not transfer his registration as a salesperson under this Act to another dealer without prior written consent from the Registrar.

LICENCE APPEAL TRIBUNAL



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Asad Ali Moten, Member

*Released: July 31, 2019*