

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



HAMEED AL-TAI o/a GMB AUTO SALE SHOPPE and HUSSEIN DABAJA

AN APPEAL FROM A PROPOSAL OF THE REGISTRAR UNDER
THE *MOTOR VEHICLE DEALERS ACT*, R.S.O. 1990, Chapter
M.42 AS AMENDED TO REVOKE REGISTRATION

TRIBUNAL: DOUGLAS R. WALLACE, VICE-CHAIR

APPEARANCES: AVIVA R. HARARI, representing the Registrar, *Motor Vehicle
Dealers Act*

DATE OF
HEARING: August 15, 2006

Windsor

REASONS FOR DECISION AND ORDER

BACKGROUND

This Hearing arises out of a Notice of Proposal issued by the Registrar on April 6, 2006 seeking to revoke the registrations of the Hameed Al-Tai o/a GMB Auto Sale Shoppe as a Dealer and the individual Applicant, Hussein Dabaja as a salesperson under Section 6 of the *Motor Vehicle Dealers Act*.

The reason for the Registrar's Proposal is that the past conduct of the Registrants is inconsistent with the intention and objective of the Act, namely that the business they are engaged in be carried on in accordance with the law and with integrity and honesty.

The Proposal sets out the particulars relied on as follows:

1. Hameed Al-Tai o/a GMB Auto Sale has been registered as a motor vehicle dealer since on or about August 22, 2005. The Dealer is registered on Terms and Conditions.
2. Hussein Dabaja, also known as Sam, at all material times was registered as a motor vehicle salesperson to Hameed At-Tai o/a GMB Auto Sale.

3. On or about January 7, 2006, Dabaja, on behalf of the dealer purchased motor vehicles from Guelph Toyota. A cheque drawn on an account in the dealer's name was given to Guelph Toyota as payment for the vehicles purchased, however the cheque was returned as non-negotiable.
4. A replacement cheque was provided to Guelph Toyota, drawn on the dealer's account. The second cheque was returned as non-negotiable.
5. On or about January 3, 2006, Dabaja, on behalf of the dealer, purchased motor vehicles from Leslie Motors Ltd.
6. Payment for the vehicles purchased by the dealer from Leslie Motors Inc. was made by cheque drawn on the dealer's account. The cheque was returned as non-negotiable. A replacement cheque drawn on the dealer's account was also returned as non-negotiable.

The Respondent provided Further Particulars of the reasons for his Proposal to revoke both registrations by Notice dated July 17, 2006 as follows:

1. On or about May 30, 2006 the Dealer purchased a 2004 Infinity FX45 from VJLRH London Inc. The cheque issued for payment of the vehicle did not clear the bank and was returned as non-negotiable.
2. On or about May 30, 2006 the Dealer purchased a 1998 BMW from Grand Touring Cars. The cheque issued for payment of the vehicle did not clear the bank and was returned as non-negotiable.
3. The Dealer has breached clauses 5,6, 7 and 16 of his terms and conditions.
4. Dabaja is operating as Windsor Auto Exchange without the benefit of registration.
5. The Dealer has failed to respond to inquiries from the Registrar's office.
6. The Dealer purchased vehicles from Windsor Chrysler. The cheque initially issued by the Dealer for payment of the vehicles did not clear the bank and was returned as non-negotiable.
7. The Dealer and Windsor Chrysler were ultimately able to resolve the issues with the intervention of the Registrar's office.

The Applicants filed a Notice of Appeal with the Tribunal on April 19, 2006 and submitted two filing fees. Counsel for the Applicant, Hameed Al-Tai, o/a GMB Auto Sale Shoppe faxed a letter to counsel for the Respondent on August 15, 2006 purporting to abandon the appeal by Mr. Al-Tai. There was apparently no communication concerning this purported abandonment with the Registrar of the Tribunal. Neither Applicant appeared at the Hearing by counsel or in person.

THE EVIDENCE

No evidence was adduced by the Applicants.

Counsel for the Registrar called six witnesses and tendered a Book of Documents which was filed as Exhibit 4.

Mark Leslie is a registered Dealer carrying on business as Leslie Motors Ltd. He was approached in January 2006 by Hussein (Sam) Dabaja who wished to purchase two vehicles on behalf of GMB Auto Sales. Agreement was reached for the sale of the vehicles for a total price of \$13,482.00. As payment Mr. Dabaja presented him with a cheque in that amount drawn on the account of GMB Auto Sale Shoppe and signed by Hameed Al-Tai. When the cheque was returned unpaid due to insufficient funds he contacted Mr. Dabaja on four occasions obtaining repeated promises of payment. No payment was ever received and the vehicles have not been recovered.

Tony Moon is a registered salesman with Guelph Toyota. He reached agreement with Sam Dabaja on January 7, 2006 for the sale of three vehicles to GMB Auto Sales for a total price of \$29,440.00. In return he received a cheque dated January 11, 2006 drawn on the account of GMB Auto Sale Shoppe and signed by Hameed Al-Tai. Both this cheque and a replacement cheque in the amount of \$28,355.00 were returned as non-negotiable. Contacts between Guelph Toyota and Mr. Dabaja resulted in apologies but no payment. The vehicles have not been recovered by Guelph Toyota.

Mr. Rob Weber is registered and employed with Windsor Chrysler. He testified that Windsor Chrysler sold eight vehicles to GMB Auto Sales through its General Manager, Sam Dabaja in March 2006. Windsor Chrysler received payment of \$16,700 leaving a balance of approximately \$72,000.00 covered by dishonoured cheques.

Armand Cavacas is a registered salesperson with Volvo Jaguar Land Rover of London. He testified that Sam Dabaja, acting on behalf of GMB Auto Sales, purchased and took delivery of a 2004 Infiniti motor vehicle from VJLRH London Inc. on May 30, 2006 for the total price of \$44,940.00. The purchase was paid for by a cheque in this amount drawn on the account of Windsor Auto Exchange and signed by Mr. Hameed Al-Tai. The cheque was returned as non-negotiable. Although Sam Dabaja promised to make payment, no payment was ever received.

Tim Houson is a registered salesperson with Grand Touring Cars in London. Sam Dabaja purchased a BMW for GMB Auto Sales from him in May, 2006 for \$13,910.00. The cheque drawn on the account of Windsor Auto Exchange and signed by Hussein Al-Tai was not honoured by his bank. Grand Touring Cars was able to recover possession of the vehicle from the auto auction before it could be resold by GBM.

The final witness testifying on behalf of the Respondent was Yvonne Hallitt. Ms. Hallitt has been employed by the Ontario Motor Vehicle Industry Council (OMVIC) for ten years. She is currently the Administrator of the OMVIC compensation fund and Team Leader of the Complaints Department. She testified that OMVIC was created in 1997 to administer the *Ontario Motor Vehicle Dealers Act* with the primary purpose of protecting the public.

It is her evidence that Hameed Al-Tai is currently registered as a dealer under the Motor Vehicle Dealers Act operating as GMB Auto Sale Shoppe. His registration is subject to terms and conditions entered into on August 22, 2005. In clause 31 of these terms and conditions Mr. Al-Tai acknowledges that "the Registrar may take further administrative action, including a proposal to revoke its registration, arising from any matters that have occurred or may occur related to honesty and integrity or financial position."

Ms. Hallitt spoke to both Hameed Al-Tai and Hussein Dabaja in February 2006 concerning the complaints by Guelph Toyota and Leslie Motors. Mr. Al-Tai indicated he knew nothing about their complaints and that it was his usual practice to give Mr. Dabaja signed blank cheques to cover purchases. Once aware of the complaints Mr. Al-Tai failed to advise OMVIC of any steps taken to resolve them.

Documents identified by Ms. Hallitt indicate that Mr. Dabaja is the sole proprietor of Windsor Auto Exchange Neither Mr. Dabaja nor Windsor Auto Exchange are registered as dealers under the *Motor Vehicle Dealers Act*.

Based on this evidence the Tribunal finds as follows:

1. Mr. Hussein (Sam) Dabaja made a practice of purchasing vehicles on behalf of GMB Auto Sale Shoppe by providing vendors with cheques which he knew or ought to have known would not be honoured.
2. Mr. Hameed Al-Tai, operating as GMB Auto Sale Shoppe facilitated this practice by providing Mr. Dabaja with blank cheques and failed to take reasonable steps to stop the practice when he knew or should have known about it.
3. Neither Mr. Dabaja nor Mr. Al-Tai took any steps to reimburse honest dealers for the losses they incurred as a result of relying on their good faith.
4. The acts of Mr. Dabaja and Mr. Al-Tai were dishonest and showed a complete lack of integrity.
5. The evidence presented on behalf of the Registrar fully supports the reasons given by the Registrar for proposing to revoke the registrations of both Hameed Al-Tai, operating as GMB Auto Sale Shoppe and Hussein Dabaja.

THE LAW

Subsection 6(2) of the Act authorizes the Registrar to revoke the registration of a dealer or salesperson for any reason that would disentitle the registrant to registration under section 5 of the Act. Paragraph (b) of subsection 5(1) of the Act allows the Registrar to refuse registration where he finds that the past conduct of an individual applicant affords reasonable grounds to believe that the applicant will not carry on the business in accordance with laws and with integrity and honesty.

APPLICATION OF THE LAW TO THE FACTS

The Tribunal finds that the acts of the Applicants set out above constitute reasonable grounds for the Registrar to believe that the Applicants will not carry on their business under the Act in accordance with law, and with honesty and integrity.

DECISION

In accordance with the authority vested in it by subsection 7(4) of the *Motor Vehicle Dealers Act* the Tribunal directs the Registrar to carry out his proposal of April 6, 2006 to revoke the registrations of Hameed Al-Tai, operating as GMB Auto Sale Shoppe and Hussein Dabaja.

Counsel for the Registrar and most of the six witnesses called to give evidence incurred significant out-of-pocket expenses in attending the Hearing from out of-town. In light of the failure of either Applicant to attend the Hearing or to send a representative when proper notice of the Hearing was given, and in the absence of any notice prior to the opening of the Hearing that the Applicants would not be attending, the Tribunal exercising its discretion under Rule 14 assesses costs in the fixed amount of \$800.00 against each Applicant.

LICENCE APPEAL TRIBUNAL

Douglas R. Wallace, Vice-Chair

Released August 30, 2006

Filename: 3525.mvda.Hameed Al-Tai o/a GMB AUTO Sale Shoppe and Hussein Dabaja

The decision will also be available on Quicklaw at a later date.