

In the Matter of an Appeal pursuant to Section 179 of the *Consumer Protection Act*, RSA 2000, c C-26.3 Arising from a April 27, 2021 Decision of the Director of Fair Trading (as Delegated) to Refuse an Automotive Business Licence to Maxis Auto Sales Inc.

DECISION OF THE APPEAL BOARD

Appeal Board: Christopher Davison (Chair), Ellen Lesiuk, David Buzzeo

Counsel: Mohammed Othman Hassan: for the Appellant Maxis Auto Sales Inc.
Paula Hale: for the Respondent, the Director of Fair Trading (as delegated) ("the Director")

NATURE OF APPEAL

1. On April 27, 2021, the Registrar of Alberta Motor Vehicle Industry Council ("AMVIC"), acting as the Director, rendered a decision to refuse an automotive business licence to Maxis Auto Sales Inc. ("Maxis") pursuant to s. 127 of the *Consumer Protection Act*, RSA 2000, c C-26.3 ("CPA").
2. In brief summary, the Director found that one of the three Directors of Maxis, Mohammed Othman Hassan ("Mr. Hassan"), had not truthfully answered suitability questions in regard to pending criminal matters and whether he was subject to any outstanding court proceedings. Mr. Hassan, in fact, had outstanding criminal charges in British Columbia for [REDACTED]. The Director further found Mr. Hassan had difficulty answering basic questions posed to him. Given the findings, the Director refused Maxis' automotive business license pursuant to s. 127(b)(iii), s. 127(b)(vii), and s. 127(c) of the CPA.
3. Maxis appealed the Director's decision.

DECISION

4. For the following reasons, the Appeal Board ("Board") confirms the decision of the Director to refuse an automotive business licence to Maxis Auto Sales Inc.

JURISDICTION AND STANDARD OF REVIEW

5. On April 27, 2021, the Registrar of AMVIC acting as the Director rendered a decision to refuse an automotive business licence to Maxis pursuant to s. 127 of the *CPA*.
6. On May 25, 2021, Maxis appealed this decision pursuant to s. 135(a) and s. 179(1)(a) of the *CPA*. Maxis provided a notice of appeal as is required under s. 4 of the *Appeal Board Regulation*, Alta Reg 195/1999 ("*APR*").
7. On June 15, 2021, this Board was appointed pursuant to s. 179(2) of the *CPA*.
8. On September 3, 2021, the Board provided a Notice of Hearing to the parties, pursuant to s. 6 of the *APR*.
9. This appeal is a new trial of the issue of whether Maxis' application for an automotive business licence should be granted (s. 179(8) of the *CPA*). The Board must consider all of the evidence and decide whether the licence should be granted.
10. The Board may vary, quash, or confirm the Director's decision (s. 179(6) of the *CPA*).

THE PROCEEDINGS

11. On June 23, 2021, the Director made a prehearing application for Maxis to disclose Mr. Hassan's criminal record. On July 5, 2021, Maxis stated they would voluntarily provide that record. On July 6, 2021, the Board dismissed the Director's application in light of Maxis' voluntary compliance. On August 10, 2021 Maxis provided Mr. Hassan's criminal record.
12. A prehearing conference was set for October 4, 2021. The hearing date was set for October 5, 2021. Due to COVID-19 concerns, the prehearing and hearing dates were conducted virtually over Zoom videoconferencing.
13. The prehearing conference was a short meeting primarily to allow the Board members and parties an opportunity to become familiar with the technology and to ensure there were no difficulties on the full hearing day in regard to witnesses or documents.
14. During the prehearing conference, it was confirmed that one of the directors and president of Maxis, Mr. Hassan, would represent Maxis and conduct the hearing on behalf of Maxis. The other two directors, Maxmad Sheikh Isaaq and Isaac Ibrahim Muse, would observe the

hearing and be witnesses the following day. The Director had no objections to this arrangement. It was confirmed that Maxis would call five witnesses the next day and provide documentation later in the day. The Director had no objection. Mr. Hassan also confirmed that he understood Maxis could be represented by legal counsel, but wanted to proceed without legal counsel during the hearing.

15. On October 5, 2021, both parties stated they had no objections to the composition of the Board and the hearing was held. One of the directors of Maxis, Isaac Ibrahim Muse, was not available to attend the majority of hearing due to a family medical emergency. Maxis ended up calling only three witnesses due to the unavailability of their other anticipated witnesses. Maxis stated they were willing to proceed despite the absence of two anticipated witnesses. The Director did not object.
16. All witnesses were affirmed prior to giving evidence.

ISSUES

17. Issue (1) Should the Board grant Maxis' application for an automotive business licence?

ANALYSIS

- Issue (1) Should the Board grant Maxis' application for an automotive business licence?**

Relevant Legislation

18. *CPA 127* The Director may refuse to issue or renew a licence, may cancel or suspend a licence and may impose terms and conditions on a licence for the following reasons: (b) the applicant or licensee or any of its officers or employees (iii) furnishes false information or misrepresents any fact or circumstance to an inspector or to the Director, (vii) is convicted of an offence referred to in section 125 or is serving a sentence imposed under a conviction, or (c) in the opinion of the Director, it is in the public interest to do so.
19. *CPA 125* In this Part, "conviction" means a conviction for an offence under any criminal or other law in force in Alberta or elsewhere that, in the Director's opinion, indicates that the person convicted is unsuitable to be licensed under [the CPA].

Director's Evidence

20. The Director entered the following documentary evidence in regard to this issue:

- a. Government of Alberta corporate search, dated March 9, 2021, showing that Maxis Auto Sale Inc. has 3 directors: Mr. Hassan, Isaac Ibrahim Muse and Maxmad Sheikh Isaaq.
- b. The application form of Mr. Hassan, director of Maxis Auto Sales Inc., signed March 7, 2021. In particular:
 - i. This form is signed by Mr. Hassan.
 - ii. Under suitability question 1. "Do you have any charges pending or outstanding warrants under any law in force in Canada or any other jurisdiction?" Mr. Hassan answered "No."
 - iii. Under suitability question 9. "To your knowledge, are you or any business you have been associated with involved in any lawsuits or other proceedings before any court or tribunal that are in process, settled or otherwise concluded?" Mr. Hassan did not answer.
 - iv. Mr. Hassan did not provide any further details in regard to suitability questions.
- c. A criminal record check for Mr. Hassan, dated July 30, 2021 identified that Mr. Hassan had two convictions [REDACTED] and [REDACTED]. Mr. Hassan was sentenced to a suspended sentence and twelve months of probation.

21. The Director called one witness – AMVIC manager of licensing Yoneke A [REDACTED] ("YA").

She provided the following evidence in regard to this issue:

- a. YA has been in this role at AMVIC for 3 years. Prior to that, she was a licensing supervisor for approximately 4 years.
- b. AMVIC processes 70-90 business licences a month. There are currently approximately 7700 businesses licensed. 1-2 (or less) business licences are denied per month.
- c. To obtain a licence, an applicant must log in to the AMVIC website and provide various information, including answering suitability questions.
- d. Suitability questions are asked of each applicant and of each corporate director of the business.
- e. The boxes are labelled yes or no. If an applicant or company director answers yes to any questions, they are asked to provide details.
- f. Applicants are not automatically declined if an application or company director has a criminal record.
- g. For a criminal record, licensing will consider (1) the seriousness of the charges, (2) the recency of the charges, and (3) the frequency of the charges. Seriousness refers to the objective seriousness of the charge. Recency is important to determine if the individual has had an opportunity to be rehabilitated, or has had further run-ins with

the law. Frequency is the number of charges pending or the length of the prior record; this speaks to governability.

- h. If licensing identifies an issue with an application, they conduct an investigation which includes contacting the applicant. Licensing sends their findings to the Registrar. The Registrar contacts the applicant and provides an opportunity to respond. The Registrar (acting as with the delegated powers of the Director) then renders a decision on licensing.
- i. In Maxis' case, there were no issues with the application other than Mr. Hassan's answers to suitability questions and his pending criminal matters.
- j. When Mr. Hassan filled out the application form, the criminal matters were still outstanding. He misled the Director by answering "No" to question 1 and by not answering question 9. Furthermore Mr. Hassan provided no details in regard to these questions.
- k. The Director held an administrative review on April 27, 2021 where all three directors of Maxis attended. YA was present and watched the proceedings. Mr. Hassan was evasive in his answers at the administrative review. He was equivocal about his role in his criminal matters, essentially stating that he had [REDACTED]
- l. During questioning from the Board, YA advised that Mr. Hassan had stated at the Administrative review that he had plead guilty to some of the charges, been sentenced, and had to pay back \$47,000 in restitution to the insurance company.

Maxis' Evidence

22. Maxis entered the following documentary evidence in regard to this issue:

- a. A verification of employment letter confirming Mr. Hassan has worked as a school bus driver since September 2018 in Edmonton, AB.
- b. Incorporation documents shows that Mr. Hassan, since May 31, 2021, has been the president of the Somali Bantu/Jareer Weyne Society of Alberta.

23. Maxis called three witnesses – Mr. Hassan, Mohamed Osman, and Maxmad Sheikh Isaaq.

24. Mr. Hassan provided the following evidence in regard to this issue:

- a. Mr. Hassan agreed with everything YA testified to.
- b. Mr. Hassan immigrated to Canada in 2009. He used to work installing hardwood floors, however business became slow. In 2015, he left Edmonton to work in BC.
- c. While in BC he became employed by a trucking company. Their arrangement was that he would have to buy the truck and pay for all expenses, however they would provide him with more than enough work to cover his expenses and a reasonable wage.
- d. Mr. Hassan separately purchased a \$50,000 car via a car loan that provided him with \$15,000 cash back which he used to move his family to BC. Mohamed Osman, Mr. Hassan's cousin, co-signed for the loan.

- e. The amount of work the trucking company actually gave Mr. Hassan was substantially less than they had promised him. As a result, Mr. Hassan was unable to pay all of his work and living expenses. Mr. Hassan failed to pay his rent for three months.
- f. Mr. Hassan asked BC for income support however they would not provide him any since his income was, at least on paper, too high.
- g. At this point, on April 3, 2018, Mr. Hassan decided to "take care" of his vehicle so that he would not have to carry the burden of the \$887 monthly payment. HE also stated he [REDACTED] so his co-signer would no longer be liable for the loan.
- h. He purposely [REDACTED] and told police someone else [REDACTED] Insurance paid off the remainder of his loan.
- i. As of May 11, 2018, he and his family were eventually [REDACTED] from their rental property. He obtained \$450 of government support to move his family back to Edmonton in a U-Haul.
- j. Once in Edmonton, Mr. Hasan enrolled [REDACTED] with \$250 per month tuition.
- k. Mr. Hassan also applied for and obtained a position as a school bus driver at his [REDACTED] Not only is he paid for this but this job pays for [REDACTED]
- l. He, along with several partners, have also opened a car detailing business. They also wanted to buy and sell cars so "they may have a better life." That is also why Mr. Hassan filled out the application to AMVIC for an automotive business licence.
- m. When filling out the application, Mr. Hassan stated "there were so many questions." MR. Hassan testified he did not fill out question 9 because he did not understand it or he forgot to fill it out. He was not sure which.
- n. With respect to question 1, he asked his criminal lawyer in BC and was told he did not have to tell AMVIC that he had been to court.
- o. When in Edmonton, Mr. Hassan was arrested and held in remand 1 day because police thought he had fled from BC to Edmonton. Mr. Hassan stated he did not flee.
- p. Mr. Hassan plead guilty to two of the three charges and the third was dropped. Mr. Hassan stated he made a mistake and he will make sure it doesn't happen again. He plead guilty and was placed on probation though he is not entirely sure of conditions. He also stated he was also ordered to pay \$47,000 in restitution.
- q. In response to questions from the Board, Mr. Hassan testified that he has until May 2024 to pay back the restitution order. He has yet to pay anything towards the order.
- r. Mr. Hassan stated since he moved back to Edmonton, life is getting better and better.
- s. He knows now that mistakes have consequences but he asks for forgiveness. He stated he has shamed himself, and what he did was not correct at all.
- t. Mr. Hassan testified that he is currently the president of the Somali Bantu Society. The Society helps immigrants with various programs such as learning to read English.

- u. He stated since the crime he has become a school bus driver and supervisor, for the past 3 years. He owns a car detailing business. He is the president of a community organization. He states he is now a trustworthy person.
- v. He stated he committed mistakes because he was trying to survive.
- w. In cross examination, Mr. Hassan stated he wishes no more bad things in his life.

25. Mohamed Osman provided the following evidence in regard to this issue:

- a. He stated he was the co-signer for the car that Mr. Hassan [REDACTED]
- b. He stated he knows Mr. Hassan personally, and Mr. Hassan is trying to move forward with his life. Mr. Hassan moved back to Alberta and is looking to move forward and better his life.
- c. He stated Mr. Hassan is of good character, is reliable and is very responsible.
- d. He verified that Mr. Hassan is now the president of a Somali Society in Alberta.

26. Maxmad Sheikh Isaaq provided the following evidence in regard to this issue:

- a. He stated he has known Mr. Hassan for more than 15 years. Mr. Hassan is a hard worker. We should give him a chance to prove himself.
- b. He stated he and Mr. Hassan own a car detailing business for the past couple of months.
- c. During questioning from the Board, he stated that the auto detailing business is properly licensed with the city. This is not an AMVIC licence.

Director's and Maxis' Argument

27. The Director argued that there are few of facts in dispute. The sections of the CPA that come into play are s. 127(b)(iii)/(vii) and s. 127(c). It is undisputed that Mr. Hassan was not forthcoming in his application. He, at best, misrepresented and was not forthcoming at the administrative review. The Director argued it would be highly unlikely for a member of the law society advised Mr. Hassan to not tell the truth. The Director argued that Mr. Hassan can read, and understood the questions before answering them. The Director argued the conviction is very recent, and at the moment makes him unsuitable to be a licensee. The fraudulent nature of the conviction is of great concern. He is a high risk for being dishonest with consumers. The Director also provided several AMVIC Appeal cases, in particular:

- a. *Alpha Kustoms* (June 3, 2021): failure to answer the suitability questions honestly and outstanding criminal charges were sufficient for an Appeal Board to confirm the Director's refusal of an automotive business license;

- b. *Ritchie Mijares* (February 25, 2021): failure to disclose his criminal record and his recent convictions for fraud and theft were sufficient for an Appeal Committee to confirm the Director's refusal of an automotive salesperson's licence; and
- c. *John Politylo* (March 13, 2018): the applicant's misleading answers to suitability questions and his outstanding criminal charges were sufficient for an Appeal Committee to confirm the Director's refusal of an automotive salesperson's licence.

28. Maxis argued there were no other reasons to deny a licence other than Mr. Hassan's mistakes. However, Mr. Hassan was now owning up to his mistakes. Maxis also re-iterated that Mr. Hassan had been given the incorrect information on how to answer suitability questions by his lawyer.

Board's Decision

29. The Board finds that the evidence raises two issues regarding Maxis' suitability to be licensed: (1) Mr. Hassan's criminal record (s. 127(b)(vii) of the *CPA*), and (2) Mr. Hassan's misleading answers to suitability questions (s. 127(b)(iii) of the *CPA*).
30. In regard to (1), Mr. Hassan's criminal record, the Board finds his April 2021 conviction for arson for a fraudulent purpose (contrary to s. 435(1) of the *Criminal Code*) meets the *CPA* statutory definition of "conviction" per s. 125 of the *CPA*. On its face, it raises concerns about Maxis' suitability to be licenced. Also of concern is that Mr. Hassan is currently serving a probation order for this offence.
31. However, the Board finds that Mr. Hassan was straightforward and honest about what took place in 2018 that lead him to [REDACTED] We accept Mr. Hassan's evidence that he was in a very difficult and desperate financial circumstance. We also accept that since 2018, Mr. Hassan has made efforts to demonstrate he is a trustworthy member of society. We note that Mr. Hassan's work driving a school bus (then becoming a supervisor) and his charitable work is evidence that he believes he made a mistake and is committed to not making further mistakes in the future. We accept Mr. Hassan's evidence that he is attempting to make a better life for himself and his children, hence the desire to operate a sales business in the automotive sector.

32. In regard to (2), Mr. Hassan's answers to suitability questions raise further concerns. It is uncontroverted that Mr. Hassan misrepresented facts and circumstances to the Director by his answers to suitability questions. In regard to the question 1 "Do you have any charges pending... under any law in Canada?" Mr. Hassan incorrectly answered "No." In regard to the question 9 "to your knowledge, are you...involved in an ...proceedings before any court?" Mr. Hassan failed to put any answer down. Both of these answers are false, the former directly and the latter by omission.
33. Mr. Hassan testifies that for question 1, he had received incorrect legal advice from his criminal lawyer. For question 9, Mr. Hassan testifies that he did not understand the question or simply forgot to answer it. In effect, Mr. Hassan testifies and argues that he did not deliberately mislead the Director in his application.
34. The Board finds that, on a balance of probabilities, Mr. Hassan deliberately provided misleading answers. Given the evidence submitted, the Board finds Mr. Hassan's explanations for providing misleading information to be implausible. Based on his conduct at the hearing, the Board finds Mr. Hassan is able to read to comprehend English language, written and spoken; therefore the Board also finds Mr. Hassan read and understood the suitability questions on his application. The Board does not find it plausible that a member of the law society of any jurisdiction of Canada would advise Mr. Hassan to provide incorrect information on a business application. We also find his explanations implausible in light of the fact that the only two questions Mr. Hassan managed to provide incorrect answers to were the only two that, were he to answer them accurately, would have been damning to Maxis' application. If either question were answered correctly, the Director would have been lead to Mr. Hassan's unresolved criminal matters. Therefore, given the totality of the evidence, the Board finds that Mr. Hassan deliberately provided misleading answers on his application in an attempt to obscure the fact that he had outstanding criminal matters.
35. Looking at both (1) Mr. Hassan's criminal record and (2) Mr. Hassan's misleading answers to suitability questions together, the Board finds that Maxis should not be granted an automotive business licence. Not only did Mr. Hassan engage in significant deceptive and

criminal acts in 2018, but despite his rehabilitation efforts he was also deceptive to the Director in 2021. This raises issues about his trustworthiness which are significant enough to deny Maxis' licence.

36. The purpose of the *CPA*, as described in its preamble, is to protect consumers and to give them confidence they will be treated fairly and ethically by members of an industry. To provide Maxis with a licence at this time and in light of Mr. Hassan's actions would undermine public confidence in the industry and not properly discharge the Board's duty to actively protect the public. The Board also finds our decision is commensurate with the principles described in the licensing precedents provided by the Director: *Alpha Kustoms*, *Ritchie Mijares*, and *John Politylo*.
37. The Board notes that our decision does not preclude Maxis from entering the automotive industry forever, and can make another licensing application to AMVIC in the future at the appropriate time.

CONCLUSION AND ORDER

38. In accordance with the reasons above, the Appeal Board confirms the decision of the Director to refuse an automotive business licence to Maxis Auto Sales Inc.
39. No decision is made as to costs.

ISSUED AND DATED in the Province of Alberta this 20 day of October, 2021

"original signed by" _____

Christopher Davison, Chair

"original signed by" _____

Ellen Lesiuk, Member

"original signed by" _____

David Buzzeo, Member