



Vehicle Sales Authority
of British Columbia

Investigation File No. 20-02-302
Hearing File No. 20-09-004

**IN THE MATTER OF THE *MOTOR DEALER ACT*, R.S.B.C. 1996, c. 316,
THE BUSINESS PRACTICES AND CONSUMER PROTECTION ACT, S.B.C.,
2004, c. 2, and
THE SALESPERSON LICENSING REGULATION, B.C. Reg. 202/2017**

RE:

BRIAN DAVID ROWE
(Cancelled Salesperson License No. 106494)

Salesperson

AND

THE MOTOR VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA

The "Authority"

**Decision of the Registrar of Motor Dealers
Application for Reconsideration**

Date and place of decision: April 29, 2021 at Langley, British Columbia

By way of written submissions

I. Introduction

[1] On December 22, 2020, I issued a decision to cancel the salesperson licence of Brian D Rowe, #106494. My decision also prohibited Mr. Rowe from re-applying for a salesperson licence until another active VSA investigation was concluded and the results known.

[2] The basis for my decision was a finding that Mr. Rowe did not act with honesty and integrity contrary to section 33(2)(a) of the *Motor Dealer Act Regulation*, B.C. Reg. 447/78 [the Code of Conduct] and misrepresented to a consumer that they were purchasing a vehicle from a registered motor dealer when they were not, contrary to section 5(1) of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 ("BPCPA"). The underlying factual findings were:

- (a) Mr. Rowe conducted 15 vehicle transactions representing himself as a representative of J & B Auto Brokers, which was a closed dealership. Mr. Rowe used his experience and knowledge as a former employee of that dealership to carry out those transactions,
- (b) Mr. Rowe represented himself as a representative of another dealership, Minit-Tune, and sold a Honda Odyssey to a consumer representing to the consumer they were purchasing from Minit-Tune. Mr. Rowe had no affiliation with Minit-Tune,

II. The Application for Reconsideration

[3] Brian D. Rowe either directly or through his father requested a reconsideration of my December decision. I received several requests. After some back and forth communications, Brian D. Rowe provided written submissions and additional evidence in support of his request for reconsideration. To summarize and paraphrase:

- (a) Brian D. Rowe was unable to participate in the original hearing process due to medical issues,
- (b) Brian D. Rowe submitted pictures regarding a 2000 Ford Mustang and written submissions about that transaction,
- (c) Brian D. Rowe believed J&B Auto was still an active dealer and continued to sell as the owner was still receiving money from the sales,
- (d) Brian D. Rowe never represented himself as Minit-Tune or sold the vehicle from the Minit-Tune lot, and the only issue is the name Minit-Tune appears on the purchase agreement, and
- (e) Brian D. Rowe provides a letter (email) from Ben Parker regarding the character of the owner of Minit-Tune.

[4] The Authority provided submissions in reply. Those submissions can be summarized as follows:

- (a) Brian D. Rowe was aware that J&B Auto was closed as he had conversations with Investigator Bryan Reid regarding the dealership's closer,
- (b) In Brian D. Rowe's submissions, he states he never represented to anyone that he was with J&B Auto after it closed, yet other parts of his submissions says they continued to buy and sell vehicles as J&B Auto,
- (c) Brian D. Rowe has admitted that he signed the ICBC Transfer/Tax Form as manager of Minit-Tune in relation to the Honda Odyssey,
- (d) Brian D. Rowe's complaints against Investigator Reid were never brought to the attention of the Manager of Licensing Hong Wong within whom Mr. Rowe had been communicating with, and
- (e) Brian D. Rowe's request does not meet the legislative requirements for a reconsideration.

III. Legal Principles

[5] Once the Registrar has issued a decision, the legal principle of *functus officio* applies. That principle means that the decision is final and conclusive unless set aside by the legal avenue to have the Registrar's decision reviewed. That avenue is the B.C. Supreme Court by petitioning that court to conduct a judicial review. As noted in the following BC Supreme Court decision:

[46] Lastly, Mr. Fryer complained that the respondent would not "let him appeal" and he had no option but to come to court. He thinks this is unconstitutional. There is certainly no basis for me to consider such a constitutional challenge but more to the point, the issue does not arise. The statute does not provide for an appeal and so the respondent has no ability to perform one. **Once a decision is made, the Registrar is functus and the recourse for someone wanting to challenge the decision is, as stated in the decision itself, an application for judicial review.**

- *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279

[6] An exception to this rule is where legislation authorizes the Registrar to reconsider a prior decision. If so, the ability to reconsider extends only as far as the legislation allows. In this case my decision to revoke Brian D. Rowe's salesperson licence can be reconsidered under sections 26.11 and 26.12 of the *Motor Dealer Act*, R.S.B.C. 1996, c. 316. In order for me to cancel or vary that previous decision, the following legislative requirements must be met:

- (a) The request for reconsideration must be filed within 30 days of receiving the original decision, with the Registrar having some discretion to extend that time,
- (b) The requesting party must provide evidence,
 - (i) that did not exist at the time of the first hearing, or
 - (ii) that did exist at the time of the first hearing but was recently discovered and could not have been discovered by applying a due diligent search, and
 - (iii) the evidence must be substantial and material that it could alter the first decision.

[7] The Registrar has established a two-step process when reviewing requests for reconsideration. First, is to examine the evidence that was submitted to determine if it is "new evidence" as defined in the legislation? If the answer to that question is yes, then the next consideration is, if the evidence is accepted as being true, is the evidence substantial and material that it could alter the first decision? If the answer to that question is yes, then a reconsideration hearing is held. If the answer to either of those questions is no, then the Registrar legally cannot cancel or vary the original decision and proceeding to a reconsideration hearing is moot.

IV. Discussion

(a) Brian D. Rowe's evidence regarding J&B Auto

[8] The evidence provided by Brian D. Rowe regarding J&B Auto is not new evidence or newly discovered evidence. The evidence is in the form of Brian D. Rowe's submissions about the dealership's operations when it was closed and his beliefs around that time. This was evidence that was available at the time of the original hearing and evidence in the possession of Brian D. Rowe.

[9] I also agree with the Authority that Brian D. Rowe's submissions on J&B Auto's operations at this time are inconsistent. Brian D. Rowe acknowledges the dealer was not operating as a normal dealer, and admits "we" continued to source vehicles using the J&B Auto name:

"JB did not continue operating as the same business however We continued to source cars and in exchange for the use of the business and dealer license the owner of JB continued to receive a % of the fees."

(b) The new evidence regarding the Odyssey sale & Statement of Ben Parker

[10] The evidence submitted by Brian D. Rowe on this point is two-fold. First, are his own submissions regarding the Odyssey sale. Second, is the email statement of Ben Parker. None of this evidence is new evidence as defined by the legislation. Brian D. Rowe had possession of this evidence at the time of the original hearing. Ben Parker could have provided his statement at the time of the original hearing.

[11] I would note that the submissions of Brian D. Rowe and of Ben Parker are confirmatory of Brian D. Rowe selling the Odyssey to the consumer and not Minit-Tune, as noted on the transfer form. Ben Parker's email speaks of how Minit-Tune was going to purchase the Odyssey for resale, but that deal fell apart and Brian D. Rowe purchased the Odyssey instead. Brian D. Rowe's submissions about the Odyssey state:

...I had the vehicle advertised for \$1995 and did not tell the Daughter that I sold it for \$1995 as she stated...

[12] In his submissions, Brian D. Rowe admits he signed the Transfer/Tax Form regarding the Odyssey as manager of Minit-Tune. Brian D. Rowe also talks about difficulty in providing the consumer a refund as requested. Brian D. Rowe also admits the name Minit-Tune appears on that form as seller. As noted in my December 22, 2020 decision, the consumer did not receive a purchase agreement and the Transfer/Tax Form is the only written representation of who the seller was. Also, Brian D. Rowe has not claimed that he was in fact an employee of Minit-Tune.

[13] These submissions of Brian D Rowe and Ben Parker help bolster my finding that the consumer believed they were purchasing the Odyssey from Minit-Tune as clearly represented on the Transfer/Tax Form signed by Brian D. Rowe.

[14] Further, Brian D Rowe's submissions on reconsideration and that of Ben Parker, confirm the primary evidence of the owner of Minit-Tune. That Minit-Tune never sold the Odyssey to the consumer and that Brian D. Rowe was not an authorized representative of Minit-Tune.

[15] Regarding Ben Parker's evidence about the character of the owner of Minit-Tune, this falls into the category of similar fact evidence and its use is limited. Ben Parker speaks to the character of the owner of Minit-Tune and then compares that to the character of Brian D. Rowe, effectively stating Mr. Rowe is more trustworthy in comparison.

[16] There needs to be additional evidence to show how that character evidence of the owner of Minit-Tune relates to the Odyssey transaction, as well as, the owner of Minit-Tune is entitled to comment before the evidence is considered. Also, to compare the conduct of two persons to show one is preferable to the other does not mean a person is of good character or did not breach the law.

[17] Absent additional evidence, I cannot consider the character evidence Ben Parker provides. Even if I had that additional evidence, I must still weigh whether the probative value of the evidence outweighs its prejudicial effects: *R v. Handy* 2002 SCC 56 (Supreme Court of Canada); and see also *Northmark Mechanical Systems Inc. v. Watson (Estate)*, 2009 BCSC 1237 (BC Supreme Court) at paragraphs 41 to 44.

[18] The character evidence regarding the owner of Minit-Tune legally cannot be accepted as presented. Even if it was accepted, Brian D. Rowe and Ben Parker have confirmed the primary evidence of the owner of Minit-Tune and that evidence would not be impeached by the evidence of bad character.

(c) The evidence of the 2000 Mustang

[19] The evidence of the 2000 Mustang along with the supporting submissions of Brian D. Rowe is not new evidence or newly discovered evidence. It existed at the time of the original hearing and was in the possession of Brian D. Rowe.

(d) Brian D. Rowe's allegations against Investigator Reid

[20] The allegations Brian D. Rowe makes against Investigator Reid is not new evidence or newly discovered evidence. It existed at the time of the original hearing. Importantly, the Affidavit of Bryan Reid that was before me includes emails from Brian D. Rowe highlighting some of these same allegations: see for example Exhibit O being Brian Rowe's email to Bryan Reid of April 8, 2020, page 28 of the Affidavit Exhibits.

(e) Inability to participate in the original hearing

[21] An inability to participate in the original hearing is not a ground for reconsideration under the legislation. Further, the only evidence provided on this is Mr. Rowe's statement. There is no other evidence, such as a doctor's note, to corroborate Mr. Rowe's statement. My decision of December 22, 2020 details the legal process of serving Mr. Rowe and the legal effect that had.

[22] Further, despite not participating in the original hearing, Mr. Rowe has now had an opportunity to submit any new evidence and make submissions to address the original allegations.

V. Decision

[23] I have reviewed the request for reconsideration of Brian D. Rowe. None of the evidence advanced on the request for reconsideration is new evidence as that term is defined in the legislation. Some of the evidence that was provided, confirms some of the original decision's findings.

[24] There being no new evidence as legally defined in the legislation, I am without legal authority to cancel or vary my prior decision. The request for reconsideration is therefore, denied.

VI. Review of Decision

[25] This decision may not be reconsidered: section 26.12(4) of the *Motor Dealer Act*.

[26] This decision may be reviewed by petitioning the B.C. Supreme Court for judicial review pursuant to the *Judicial Review Procedure Act*. Such a petition is to be filed with that Court within 60 days of this decisions date: section 7.1(t) of the *Motor Dealer Act*.

"Original is signed"

Ian Christman, J.D.
Registrar of Motor Dealers