



Vehicle Sales Authority
of British Columbia

Investigation File No. 20-01-173
Hearing File No. 20-11-012

Neutral Citation:

**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:

THE MOTOR VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA

The “Authority”

AND

TYMOORE FARID SALAME
(Salesperson License No. 210114)

Respondent Salesperson

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

Date and place of decision: August 25, 2021 at Langley, British Columbia

By way of written submissions

I. Introduction

[1] On April 1, 2021, I rendered a decision canceling the salesperson licence of Tymoore Salame and issuing an eight-year prohibition on him re-applying for a licence. By email dated May 3, 2021, Tymoore Salame requested I reconsider that decision and provided an “appeal package” for that purpose. The package contained a new criminal record search and letters in support of Tymoore Salame. Mr. Salame asked for an extension of time to provide a further affidavit in support of his application. The Authority did not object to an extension of time and Mr. Tymoore was given until May 20, 2021 to file the remaining evidence he wished to rely on.

They Authority would have 21 days after the filing of that evidence to provide any submissions.

[2] On May 31, 2021, legal counsel for Mr. Salame wrote asking for a further extension to file the affidavit and to allow legal counsel to file new submissions. By letter dated June 10, 2021, I denied Mr. Salame the opportunity to file new submissions. I noted Mr. Salame had stated he had legal advice in responding to the allegations in the main hearing and he could have availed himself of legal counsel for making the submissions he filed May 3, 2021 by email.

[3] In that same letter of June 10, 2021, I asked that the Authority provide any submissions regarding the further extension of time to file the Affidavit. On June 21, 2021, the Authority advised they did not object to that further extension of time. Mr. Salame was given until July 6, 2021 to file his further affidavit. Mr. Salame did file that further affidavit. The Authority had 21 days from when that affidavit was filed to file any submissions on Mr. Salame's request for reconsideration. That time has passed, and the Authority has not provided any submissions.

II. Tymoore Salame's Position

[4] Tymoore Salame has provided evidence in the form of an updated criminal record search, an affidavit from his brother, letters of support from various persons and an email with a job offer from a dealership.

[5] Tymore Salame provided various submissions on each of my findings in my April 1, 2021 decision. I will discuss each in turn below.

III. General Legal Principles

[6] The principle of *functus officio* applies to statutory decision makers such as the Registrar. That principle says that once a statutory decision maker has made a decision, it is considered final and conclusive and may not be revisited, re-opened or reconsidered except by a review or appeal established by law.

[7] Generally, a Registrar's decision may be reviewed by petitioning the B.C. Supreme Court for judicial review. This was noted in the case of *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279 (BC Supreme Court):

[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. [underlining added]

See also:

- *Chandler v. Alberta Association of Architects*, 1989 CanLII 41 (SCC), [1989] 2 SCR 848 (Supreme Court of Canada)

[8] The *functus officio* principle is a common law principle which may be modified by legislation. Since the *Fryer* decision, the Legislature has provided for a right to reconsider the revocation of a salesperson's licence: sections 26.11 and 26.12 of the *Motor Dealer Act* ("MDA").

[9] A reconsideration of Mr. Salame's salesperson licence must follow the process prescribed by those sections. Importantly, the Registrar may not cancel or vary a prior decision unless there is new evidence which is substantial and material and may alter the original decision. Sub-section 26.12(2) of the MDA states:

(2) The registrar may vary or cancel a determination only if the registrar is satisfied that new evidence has become available or has been discovered that

(a) is substantial and material to the determination, and

(b) did not exist at the time of the review or did exist at the time but was not discovered and could not through the exercise of reasonable diligence have been discovered.

[10] Therefore, the process adopted has been for the Registrar to review submissions and the evidence provided to see if they meet this statutory requirement for new evidence. If it does not, then proceeding with a reconsideration hearing is moot as the Registrar would be without legal authority to cancel or vary the original decision.

[11] I now turn to discuss each of Mr. Salame's points, and the associated evidence provided.

IV. Discussion

(a) Provided false information on his salesperson application and to the Authority

[12] In my original decision I found Mr. Salame failed to provide the Authority truthful answers to its inquiries about the disciplinary case in Alberta. On reconsideration, Mr. Salame says he made an honest mistake in responding to question 3 on the salesperson application form and he says question 3 is somewhat contradictory to question 7 on that form.

[13] Question 3 and question 7 on the salesperson application form clearly ask two different things. Question 7 even provides an example of "another regulated industry" of real estate, that question 3 does not. Importantly, Mr. Salame is not providing new evidence that did not exist at the time of the original hearing. Mr. Salame is now providing argument and evidence he could have provided at the original hearing.

[14] Mr. Salame also takes issue with the Alberta Motor Vehicle Industry Council's (AMVIC) findings against him. Mr. Salame calls it slanderous that AMVIC said he had a scheme of taking trade-ins with liens and not paying them out. Mr. Salame speaks about how he botched the AMVIC hearing and emphasizes his licence history in Alberta. In this regard, Mr. Salame is asking me to accept his version of events over the findings made by AMVIC. The problem with this is two-fold.

[15] First, AMVIC's factual findings are considered valid and are to be respected unless or until overturned on appeal by the appropriate appellate body. Mr. Salame may not now ask me to make a different finding as that is inappropriate and considered an abuse of process: *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 (CanLII), [2003] 3 SCR 77 (Supreme Court of Canada). Second, Mr. Salame is not advancing any new evidence that did not exist at the time of the first hearing. Mr. Salame is making argument and provided additional information that he could have made at the time of the original hearing before me.

(b) Active warrant for Mr. Salame's arrest regarding fraud in Alberta

[16] In my original decision, I noted having an active warrant for one's arrest, would disqualify someone from receiving a licence. Mr. Salame provides a new criminal record search showing the fraud charges were dropped. Mr. Salame also provides an affidavit from his brother admitting to being the one involved in the conduct that was complained of by the bank.

[17] The new criminal record search showing charges being dropped would constitute new evidence. The Affidavit of Mr. Salame's brother would not be new evidence as it is an affidavit of facts that existed at the time of the original hearing. There is no indication that the evidence in the affidavit could not have been provided at the initial hearing before me.

[18] The fact that the warrant for Mr. Salame's arrest has been dropped would not substantially or materially alter my original decision. When read together, my decision to refuse Mr. Salame a licence and impose the eight-year ban was based on the proven misconduct. The outstanding warrant was considered in relation to when that eight-year ban commenced as noted in paragraph 55 of the original decision:

[55] That 8 years commences only after the outstanding criminal charges are resolved and the outcome known. Given Mr. Salame's proven past misconduct, and harm to consumers and motor dealers, sufficient time needs to pass to allow Mr. Salame time to build evidence of consistent good behaviour to demonstrate that he can be trusted in this industry with no risk to the public or to prospective employers.

[underlining added]

(c) *Committed a deceptive act or practice in respect of a consumer transaction*

[19] I found that Mr. Salame had committed a deceptive act or practice in respect of a consumer transaction. In the original hearing and on reconsideration, Mr. Salame does not refute that finding. Mr. Salame provides additional evidence of how he learned from that experience. That additional evidence is not new evidence or new evidence that was recently discovered. It is evidence that could have been provided at the time of the original hearing.

(d) *Industry Complaint against Tymoore Salame*

[20] In my original decision I found Mr. Salame acted as a salesperson without being licensed. On his request for reconsideration, Mr. Salame provides an explanation of having filled out the salesperson application and left it with the dealer. Mr. Salame also provides evidence of his discussions with the licensing department of the VSA. Mr. Salame also provides his version of events in relation to the cash-back cheque complaint.

[21] What Mr. Salame advances is not new evidence that did not exist at the time of the hearing or was not discoverable. This evidence resided with Mr. Salame himself. Mr. Salame is providing evidence and argument he could have provided at the original hearing.

(e) *Using a dealer's credit card for personal use*

[22] In my original decision, I found Mr. Salame did use a dealer's credit card for unauthorized purposes which is contrary to the Code of Conduct – not acting with honesty and integrity. On his application for reconsideration, Mr. Salame provides his version of events and argument on how that allegation is incorrect. Mr. Salame is not providing new evidence that did not exist at the time of the hearing or was not discoverable. This evidence also resided with Mr. Salame. Mr. Salame is now providing evidence and argument that he could have made at the original hearing.

(f) *General comments by Mr. Salame*

[23] In his request for reconsideration, Mr. Salame also questions the integrity of the investigation, without much detail. Mr. Salame also speaks about the protection of consumers, salespersons, and the industry. Mr. Salame speaks of dealers "skimming off the top" and not paying salespersons properly and not being able to complain about that to the VSA. Mr. Salame also provides character references and an offer of employment. Mr. Salame appeals to have his licence restored with other options and conditions such as random audits.

[24] The time to have raised the above arguments and supporting evidence was at the original hearing. As for the job offer, while new, it does not change my duty to protect the public interest and is not material enough to address the concerning conduct I found in my original decision. As noted in my original decision at paragraph

12, my duty is to protect the public and not to ensure Mr. Salame has employment: *Pacific International et al v. B.C. Securities Commission* 2002 BCCA 421 (B.C. Court of Appeal) at paragraph 12.

[25] As noted earlier, the legal principle of *functus officio* applies to the Registrar. Once I have rendered my decision, it cannot be changed unless the legislative requirements are met. In reviewing Mr. Salame's submissions and new evidence, apart from the new criminal record search, he is providing evidence that already existed at the original hearing and making submissions he could have made at the original hearing. My original decision accounted for the outstanding warrant, in that it had to be dealt with before the eight-year ban started to run. With Mr. Salame providing a new criminal record search dated April 27, 2021, showing there are no longer outstanding criminal charges, the eight-year ban commences from that date.

V. Decision

[26] Tymoore Salame's request for reconsideration is denied. I do not have any legal authority to alter or cancel the original decision.

VI. Review of This Decision

[27] No further reconsideration of this decision is available as per section 26.12(4) of the *Motor Dealer Act*.

[28] 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