



Vehicle Sales Authority  
of British Columbia

**Investigation File: 19-12-155**  
**Hearing File: 20-12-015**

**IN THE MATTER OF THE MOTOR DEALER ACT, R.S.B.C., 1996, c.216. and the  
BUSINESS PRACTICES AND CONSUMER PROTECTION ACT, S.B.C., 2004, c.2**

**HARWINDER KUMAR**

**Consumer Complainant**

**AND**

**LENUX AUTO SALES AND SERVICES LTD.**  
(Expired Motor Dealer Registration #40604)

**Respondent Dealer**

**AND**

**HASSAN (DARIO) DARIOSH ZAHEDIAN**  
(Salesperson Licence #204804)

**Respondent Licensed Salesperson**

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**Investigation File: 20-06-004**  
**Hearing File: 20-12-015**

**IN THE MATTER OF THE MOTOR DEALER ACT, R.S.B.C., 1996, c.216. and the  
BUSINESS PRACTICES AND CONSUMER PROTECTION ACT, S.B.C., 2004, c.2**

**GREG BYBEL**

**Consumer Complainant**

**AND**

**LENUX AUTO SALES AND SERVICES LTD.**  
(Expired Motor Dealer Registration #40604)

**Respondent Dealer**

**AND**

**HASSAN (DARIO) DARIOSH ZAHEDIAN**  
(Salesperson Licence #204804)

**Respondent Licensed Salesperson**

**Date and place of decision:** March 26, 2021 at Langley, British Columbia.

## **By way of written submissions**

### **I. Introduction**

[1] The Motor Vehicle Sales Authority of British Columbia (the "Authority") received two complaints involving the Respondent Dealer Lenux Auto Sales & Service Ltd. ("Lenux Auto"). Hassan (Dario) Dariosh Zahedian ("Hassan Zahedian") is a shareholder and an authorized spokesperson for Lenux Auto and was involved in each of the two transactions and/or with the investigation and is also a Respondent.

[2] The first consumer transaction involves Harwinder Kumar's purchase of a 2010 Mercedes ML350 from Lenux Auto on April 8, 2019 (the "Mercedes Transaction"). Harwinder Kumar filed their complaint with the Authority on December 20, 2019.

[3] The second consumer transaction involves Greg Bybel's purchase of a 2007 Volkswagen EOS Sport Convertible from Lenux Auto on May 11, 2019 (the "VW Transaction"). Greg Bybel filed their complaint with the Authority on June 16, 2020.

[4] As the alleged legal breaches are similar in both cases and involve the same dealer and salesperson, it appears the Authority is seeking to combine these two cases for efficiency and expediency purposes. The similarities in the cases are the similar legal issues and similar applications of the law. What is different is the facts of each case. The evidence in each case must be assessed separately, on their own merits against the advanced allegations. Findings of fact and a decision on one case does not and cannot influence the findings of fact on the other case.

[5] I now turn to the allegations in each of the two transactions.

### **II. Allegations**

#### **(a) Allegations – Mercedes Transaction**

[6] In Harwinder Kumar's complaint, they admit they knew the Mercedes was dirty, needed a service (engine oil change) and there were other deficiencies with the Mercedes. Harwinder Kumar's statement notes Lenux Auto and Hassan Zahedian initially agreed to service the Mercedes and clean it. However, that did not occur. Harwinder Kumar's statement also notes they were told the Mercedes had come from a junk yard. Harwinder Kumar decided to purchase the Mercedes anyways and have the oil change done themselves. Harwinder Kumar states they needed to buy the Mercedes as his family was arriving from India.

[7] When Harwinder Kumar took the Mercedes to be serviced, they were advised the Mercedes had several mechanical deficiencies. Also, it was at this time Harwinder Kumar also discovered these issues were not covered under the warranty attached to the Mercedes. Harwinder Kumar tried to address this issue with Lenux Auto. After a few phone calls, Harwinder Kumar noted the dealer's phone number no longer worked. Harwinder Kumar filed their complaint with the Authority.

[8] Harwinder Kumar's complaint was assigned to Investigator Bill Manhas. Bill Manhas completed his investigation and his investigation report dated October 16, 2020 is before me. That report along with the Hearing Notice was served on the Respondent dealer and salesperson.

[9] As a result of that investigation, the following allegations are advanced against Lenux Auto and Hassan Zahedian in relation to the Mercedes Transaction:

- (a) Advertised the Mercedes as having no accidents when it had 2 previous collision claims, both from 2017 totaling \$3,551.96, along with a glass claim from 2017 totaling \$1,004.15, which is a contravention of section 5(1) of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c.2 ("BPCPA"),
- (b) Sold the Mercedes to Mr. Kumar without providing him with a complete CarFax Report or with a Purchase Agreement, therefore not making the required statutory declarations regarding the previously sustained damage in excess of \$2,000, contrary to sections 21 and 23 of the *Motor Dealer Act Regulation*, BC. Reg. 447/78 ("MDA-Reg.") and of section 5(1) of the BPCPA,
- (c) Advertised the Mercedes as having a 2 Year Full Power Train Warranty, but when the sale was finalized only included a 1 Year or 20,000 km Mechanical Break Down Protection Warranty, contrary to section 5(1) of the "BPCPA", and
- (d) Advertised the Mercedes as having an odometer reading of 189,000 km, when the actual odometer reading was 196,000 km, contrary to section 5(1) of the "BPCPA".

**(b) Allegations – VW Transaction**

[10] In Greg Bybel's complaint form, he states that the airbag light was on and he requested that the airbag be serviced, as well as the oil changed prior to purchasing the VW EOS. Lenux Auto's shop tried to address the airbag light issue but was unable to do so. Lenux Auto recommended that Greg Bybel take the VW EOS to

another repair shop. That repair shop was unable to repair the airbag light issue. About one-year after purchase, Greg Bybel took the VW EOS to Perform-X who repaired the airbag light issue at a cost of \$1,142.80. Mr. Bybel complained to the Authority when Lenux Auto would not pay that amount.

[11] Greg Bybel's complaint was assigned to Investigator Bill Manhas. Bill Manhas completed his investigation and his investigation report dated October 16, 2020 is before me. That report along with the Hearing Notice was served on the Respondent dealer and salesperson.

[12] As a result of that investigation, the following allegations are advanced against Lenux Auto and Hassan Zahedian in relation to the VW Transaction:

- (a) Sold the Volkswagen to Mr. Bybel and failed to provide him with a CarFax report and failed to declare on the Purchase Agreement that there had been previous damage in the amount of \$4,479.82, and that the VW EOS had been previously registered outside of the province, therefore failing to make the required statutory declarations, contrary to sections 21 and 23 of the MDA-Reg and breached section 5(1) of the BPCPA; and
- (b) Provided the VSA with an inspection report from CAS Automotive, which Investigator Manhas discovered had been falsified after investigating its origin with CAS Automotive, contrary to section 33(2)(a) of the MDA-Reg [Code of Conduct].

**(c) Proposed remedies and compliance action**

[13] Due to the alleged legislative breaches, the Authority's Notice of Hearing recommends the following consumer remedies and compliance actions:

- (a) Order Lenux Auto to pay for the pending repairs to Harwinder Kumar's Mercedes,
- (b) Order Lenux Auto to reimburse Greg Bybel \$1,142.80 for the repairs to the VW EOS,
- (c) Cancel the salesperson licence of Hassan Zahedian,
- (d) Impose an administrative penalty on Hassan Zahedian,
- (e) Award the Authority investigation and hearing costs, and
- (f) Any other such order the Registrar deems just and proper.

### **III. Position of and Participation by Lenux Auto and Hassan Zahedian**

[14] On November 22, 2019, Lenux Auto filed the requisite paperwork requesting that their motor dealer registration be cancelled: Exhibit 13 of the Manhas Investigation Report. Section 10 of the *Motor Dealer Act* requires a registered motor dealer who ceases operations to immediately advise the Registrar and request cancellation of the registration. On that day, Lenux Auto ceased to be registered/licensed as a motor dealer under the *Motor Dealer Act*.

[15] Hassan Zahedian is a licensed salesperson working at another dealership. There is no evidence he is a declared owner or shareholder in that other dealership.

[16] Lenux Auto and Hassan Zahedian provided a short response once served with the Hearing Notice and the Investigation Report of Bill Manhas. That response is in the form of an email trail with a last date of December 12, 2020. That email does have a response from the Authority that Lenux Auto and Hassan Zahedian should file any further responses to the Registrar's office. I am not aware of any further submissions being filed as of the date of this decision.

[17] Lenux Auto and Hassan Zahedian's submissions focus on the Mercedes Transaction. They note that if there is anything missing from the CarFax report it was an error on the part of the salesperson noted on the purchase agreement. Regarding the incorrect odometer advertising on the website, they note the advertising was done by Lenux Auto's then business manager with correct odometer reading and advertising a one-year warranty.

[18] Lenux Auto and Hassan Zahedian made no submissions regarding the VW Transaction.

[19] Lenux Auto and Hassan Zahedian provided no submissions regarding the recommended consumer remedies or recommended compliance action and costs.

[20] I turn now to a summary of the legal principles to be applied in these cases and the regulatory role of the Registrar.

### **IV. Legal Principles**

#### **(a) Purpose of the Authority and the Registrar**

[21] The Authority in general and the Registrar in specific are regulators. Their role is to regulate conduct in the motor dealer industry as it relates to consumer sales of motor vehicles. The type of conduct that is regulated is set in legislation by the B.C. Legislature (statutes) and by the Lieutenant-Governor-in-Council (regulations). If after determining that there is a breach of the legislation

administered by the Registrar, the Registrar has some powers to address consumer harm.

[22] The types of consumer remedies the Registrar can provide are limited and only in relation to the legislation the Registrar is empowered to administer. The Registrar is not a substitution for the Civil Resolution Tribunal or for the courts. The courts have a greater jurisdiction to provide consumers with remedies than the Authority or the Registrar. For instance, the Registrar cannot enforce a contract or declare there has been a breach of a contract. The Registrar also cannot adjudicate a claim of a breach of the *Sale of Goods Act* and provide a remedy if there is such a breach. A consumer needs the assistance of a court in those circumstances.

[23] Finally, as a regulator, the Registrar regulates conduct within the industry. The Registrar does not punish past conduct. Punishment for past conduct is through the courts following the criminal law process.

### **(b) MDA-Reg Declarations**

[24] Sections 21(1) and (2) of the MDA-Reg. set out the minimum information that must be in a purchase agreement. Section 21(3) of the MDA-Reg. states that a duplicate of the purchase agreement must be provided to the consumer. For the purpose of this decision, the following provisions are salient:

#### **Content of sale or purchase agreement (used vehicles)**

(2) If a motor dealer makes a written representation in the form of a sales or purchase agreement respecting the motor dealer's sale of a used motor vehicle, the motor dealer must include the particulars required for a new motor vehicle under subsection (1) and

(b) the recorded odometer reading at the time of sale,

(c) the name of any jurisdiction known to the motor dealer other than British Columbia in which the motor vehicle has previously been registered,

(3) A motor dealer must give a duplicate copy of the sales or purchase agreement to the purchaser or seller, as the case may be, at the time it is accepted by the motor dealer.

[25] Section 23 MDA-Reg. requires a dealer, to the best of their information and belief, make disclosures regarding the prior history of the motor vehicle being sold. The salient provisions of that section for this decision are as follows:

**Material facts**

**23** A motor dealer must ensure that in every written representation in the form of a sale or purchase agreement respecting the motor dealer's offering to sell or selling a motor vehicle the motor dealer discloses, to the best of that motor dealer's knowledge and belief, the following

- (b) whether the motor vehicle has
  - (ii) in the case of a used motor vehicle, sustained damages requiring repairs costing more than \$2 000;
- (d) whether a used motor vehicle has been brought into the Province specifically for the purpose of sale;

[26] The disclosures required by sections 21 and 23 of the MDA-Reg are legally required and considered to be material facts for a consumer to know. Several court cases have stated a motor dealer must make duly diligent inquiries in order to make these statutory declarations. See a summary of those cases in *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894 (BC Supreme Court) at paragraphs 37 to 52.

**(c) Section 5(1) BPCPA – deceptive act a.k.a misrepresentations**

[27] Section 5(1) of the BPCPA prohibits a supplier (motor dealer and salesperson here) from committing a deceptive act or practice (the law of misrepresentation). A deceptive act or practice can occur, innocently, negligently, or deliberately, which includes being reckless. The representation can occur before, during or after the consumer transaction. A deceptive act or practice can also occur by failing to state a material fact. If it is shown that the deceptive act or practice was made innocently, then no enforcement action is taken as a mistake occurred. However, the consumer may still be entitled to a remedy.

- *Knapp v. Crown Autobody & Auto Sales Ltd et. al* (September 21, 2009, File 08-70578, Registrar) affirmed by *Crown Autobody and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894 (BC Supreme Court)
- *Harris & Harris v. Windmill Auto Sales & Detailing Ltd. et al.* (April 10, 2013, File 12-030, Registrar), affirmed by *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers*, 2014 BCSC 903 (BC Supreme Court)

- *Re: Best Import Auto Ltd. et al.* (November 28, 2017, Hearing File 17-08-002, Registrar), varied but not on these points in *Best Import Auto Ltd. et al. v. Motor Dealer Council of British Columbia*, 2018 BCSC 834 (BC Supreme Court)
- *Webster v. Pioneer Garage Ltd. dba Fraser Valley Pre-Owned* (April 27, 2018, File 17-07-002, Registrar)
- *Bunyak v. Darryl's Best Buys Auto Sales Ltd.* (October 5, 2015, File 14-12-002, Registrar)
- Section 10 of the *Business Practices and Consumer Protection Act Regulation*

[28] The common law elements to prove a misrepresentation continue for a consumer to obtain a remedy for a breach of the deceptive act or practice provisions of the BPCPA. They are:

- (a) A representation is made that is untrue or is otherwise misleading, or there has been a failure to state a fact,
- (b) The consumer reasonably relied on the representation, or if the claim was a failure to state a fact, the fact would be a material fact within the transaction, which is assessed objectively,
- (c) There is a connection between the proven misrepresentation and the harm or damage the consumer experienced and is claiming, and
- (d) There is evidence of the quantum/amount of that harm or damage.

[29] The BPCPA modifies the common law element noted in paragraph (a) above. It does so by defining what constitutes a deceptive act or practice and deeming specific conduct to be a deceptive act or practice. The BPCPA also provides for a reverse onus of proof on this element of the claim. Once some evidence is provided that a misrepresentation (deceptive act) occurred, including a failure to state a material fact, the onus shifts to the supplier to show the misrepresentation did not occur, was true or was otherwise not misleading: section 5(2) of the BPCPA. The stronger the evidence of a misrepresentation, the more evidence the supplier must provide to meet its case. The opposite is also true. The onus remains on the consumer to provide evidence proving on a balance of probabilities, elements (b), (c) and (d).

- *Bunyak v. Darryl's Best Buys Auto Sales Ltd. et al, supra*
- *Vavra v. Victoria Ford Alliance Ltd. et al.* 2003 BCSC 1297 (BC Supreme Court)
- *Crown Auto Body and Auto Sales Ltd., supra*, (BC Supreme Court)
- *Re: Best Import Auto Ltd. et al., supra*

[30] What is a material fact? Generally, a material fact:

- (a) Can be deemed by legislation, such as the disclosures in section 23 of the *Motor Dealer Act Regulation: Webster, supra*,



- (b) Can be communicated by a consumer as a key term for purchasing a motor vehicle. For example, requiring a pick-up truck that can tow a certain weight as was the case in *Vavra, supra*, or
- (c) Is recognized at common law as any fact that a reasonable person would find important to consider in making a decision, given all the circumstances of the transaction. The fact need not be one that would change someone's mind but would be important to their decision making: *Shabern Holding Inc. v. Vancouver Airport Centre Ltd.* 2011 SCC 23, [2011] 2 S.C.R. 175 (Supreme Court of Canada).

[31] It is important to remember that the BPCPA is consumer protection legislation and its interpretation is to be made generously in favour of promoting consumer protection: *Seidel v. TELUS Communications Inc.*, 2011 SCC 15 (CanLII), [2011] 1 SCR 531 (Supreme Court of Canada) at paragraph 37. Even so, the BPCPA is not available to alleviate errors made by consumers. The BPCPA exists to alleviate harm to consumers due to the conduct by suppliers (merchants such as motor dealers) that is prohibited by the BPCPA:

[88] In *Miller v. Lavoie* (1966), 1966 CanLII 426 (BC SC), 60 D.L.R. (2d) 495 (B.C.S.C.), Wilson C.J.S.C. made the following observation about predecessor legislation dealing with unconscionable transactions:

This Court exists for many purposes and one of these purposes is the protection of unsophisticated and defenceless persons against the exactions of conscienceless persons who seek to take advantage of them. The legislation provides one method of exercising that benevolent authority. But the Courts are not empowered to relieve a man of the burden of a contract he has made under no pressure and with his eyes open, merely because his contract is an act of folly. (p. 501)

[Underlining added]

- *Bain v. The Empire Life Insurance Company*, 2004 BCSC 1577 (BC Supreme Court) applying the BPCPA

#### **(d) The burden of proof in civil matters**

[32] This is a civil proceeding and the burden of proof is on the balance of probabilities. That burden is often reframed as: it is more likely than not that the alleged conduct happened, or the alleged fact is true. That balancing is based on the existence of sufficiently "clear, cogent and convincing" evidence: *F.H. v. McDougall*, 2008 SCC 53 (CanLII), [2008] 3 SCR 41 (Supreme Court of Canada) at paragraphs 46 and 49.

## V. Discussion

[33] I will discuss the evidence and the law in relation to each individual case.

### (A) Mercedes Transaction – Kumar complaint

[34] Harwinder Kumar's Mercedes transaction occurred on April 8, 2019 and his complaint was filed on December 20, 2019. Lenux Auto ceased to be a registered motor dealer on November 22, 2019. Currently, Lenux Auto is not regulated and there is no registration/licence that I may act against.

[35] Generally, a regulator loses jurisdiction to address a licensee's misconduct when a licensee ceases to be licensed. This makes pragmatic and legal sense as there is no licence to regulate and no risk to manage. The person is no longer in the industry. However, there is an exception to this. Where a regulator has commenced an investigation of a licensee, it retains jurisdiction even if the licensee cancels or otherwise does not renew their licence. The important public policy reason for this is that a licensee under investigation cannot circumvent their responsibilities to their regulator by cancelling their licence.

- *Abouabdallah v College of Dental Surgeons of Saskatchewan*, 2011 SKCA 99 (Saskatchewan Court of Appeal), leave to appeal refused *Raymond Abouabdallah v. College of Dental Surgeons of Saskatchewan*, 2012 CanLII 18864 (Supreme Court of Canada)
- Applied in *Bolger & Vehicle Sales Authority of B.C. v. Carkraft Trading Ltd. et al* (February 15, 2018, Hearing File 18-01-003, Registrar)

[36] In the case of the Mercedes Transaction, Lenux Auto ceased to be registered as a motor dealer before Mr. Kumar filed his complaint and an investigation commenced. The public policy exception under *Abouabdallah v College of Dental Surgeons of Saskatchewan* does not apply in this case. I am without jurisdiction to take any regulatory action against Lenux Auto as a registered motor dealer. Hassan Zahedian is and was at all material times a licensed salesperson. I maintain jurisdiction to review his conduct.

[37] At the time of the Mercedes Transaction, Lenux Auto was a registered motor dealer. I can review if Lenux Auto breached any legislation the Registrar administers and determine if there was consumer harm in doing so as a result of that breach. I now turn to each alleged breach.

**(i) Failure to declare damage over \$2,000**

[38] The legal requirement is for a motor dealer to declare on a purchase or sale agreement, whether a used motor vehicle has sustained damage over \$2,000. The damaged declaration over \$2,000 is not per incident, but cumulative damage. Once a vehicle has sustained damages over \$2,000, it is deemed to be a material fact that a consumer must be made aware of so they can make due diligent inquiries about that damage and any effect on the value of the vehicle: *Brook v. Wheaton Pacific Pontiac Buick GMC Ltd.* 2000 BCCA 332 (BC Court of Appeal)

[39] The bill of sale provided by Lenux Auto has “no” beside this declaration. A CARFAX Report obtained on December 31, 2019 for the Mercedes shows prior damage as follows:

- (a) Damage of \$1,619.03 dated February 13, 2017,
- (b) Damage of \$1,932.93 dated November 16, 2017, and
- (c) A glass claim of \$1,004.15 dated May 15, 2017.

I note that all the above damage adds up to over \$2,000 in damage and occurred before the Mercedes was sold to Mr. Kumar.

[40] Lenux Auto provided to the Authority the first page of a CARFAX report #22834360 in relation to the Mercedes which they had in their possession and is dated February 28, 2019. This is before the sale of the Mercedes to Mr. Kumar. Investigator Manhas contacted CARFAX who confirmed that the three above noted accidents were on record by February 28, 2019 and would have appeared on CARFAX Report #22834360.

[41] In Lenux Auto’s response, the failure to provide a full CARFAX report was due to an error by Hassan Zahedian’s wife: Email response of December 14, 2020 @3:48pm. Lenux Auto also noted that Mr. Kumar’s initials do appear on the first page of that CARFAX report beside the general declaration that accident/damage records were found. This was not disputed by Mr. Kumar.

[42] On the evidence before me, Lenux Auto has failed to make the required statutory declarations and is in breach of section 23(b)(ii) of the MDA-Reg. Lenux Auto also breached section 5(1) of the BPCPA by misrepresenting the Mercedes history. No evidence was advanced of Hassan Zahedian’s involvement with the declaration. In fact, in the above noted December 14, 2020 email, the noted salesperson on the purchase agreement is someone else. The Authority has also not advanced any principled reason why the corporate veil of Lenux Auto should be pierced and liability placed on Hassan Zahedian for failing to declare damage over \$2,000.

**(ii) Failure to provide a complete CARFAX report**

[43] The legislation does not require a motor dealer to provide a consumer a CARFAX report. It is an industry best practice.

[44] During the Investigation of Bill Manhas, the dealer provided to the Authority the first page of CARFAX report #22834360 dated February 28, 2019. Lenux Auto notes the failure to provide all pages was an error. There is no evidence to support that the failure to provide the Authority a full CARFAX report was not an error.

[45] The Investigation Report does not indicate that Mr. Kumar was asked if he was provided a copy of the CARFAX report to review.

[46] I would dismiss this allegation as there is no clear, convincing, and cogent evidence that Lenux Auto somehow inappropriately withheld portions of the CARFAX report from Mr. Kumar or from the Authority.

**(iii) Failure to provide a purchase agreement**

[47] Lenux Auto produced a copy of the purchase agreement when they received the Authority's demand to do so. In his Investigation Report, Investigator Manhas states that Mr. Kumar did not provide a copy of the purchase agreement (a.k.a the bill of sale). In his Investigation Report, Investigator Bill Manhas reports on a conversation with Mr. Kumar on October 13, 2020. In that conversation, Mr. Kumar states that he never received a bill of sale. This was not denied in Lenux Auto's submissions.

[48] Based on the evidence before me, I find Lenux Auto did not provide Mr. Kumar with a copy of the bill of sale, which is contrary to section 21(3) of the MDA-Reg. There is no evidence to support that Hassan Zahedian should be personally held liable for the dealer's failure.

**(iv) Advertised a two-year power train warranty and only provided a one-year warranty**

[49] The offer of a two-year power train warranty is in the Car Gurus advertisement for the Mercedes. I would note that an advertisement is made to the "world" and does not contemplate all of the specific terms and conditions of a particular transaction. In contract law, an advertisement is considered as an "invitation to treat". That is, a merchant is inviting prospective purchasers to consider their goods and make an offer to purchase those goods based on the advertisement. Of course, negotiations can occur, and counteroffers made that can nullify an advertisement's promises. Where this occurs, the existence of the

advertisement must be considered in relation to the whole of the negotiations and the ultimate deal made.

[50] In Lenux Auto's responses, while a bit disjointed, there is a clear indication that there were negotiations regarding the purchase of the Mercedes. There is also discussions about Mr. Kumar owing some money to Lenux Auto. I don't see anything in the Investigation Report that contradicts this. Mr. Kumar's complaint also notes that Mr. Kumar requested additional servicing on the Mercedes prior to sale. This shows there were additional negotiations about the terms and conditions for the purchase and sale of the Mercedes, beyond the CarGurus advertisement.

[51] The purchase agreement clearly notes a one-year warranty. Mr. Kumar's initials are beside that notation. Mr. Kumar's signature appears on the warranty itself which clearly states it is a one-year warranty. Finally, in his complaint to the Authority, Mr. Kumar's statement is that he was aware there was only a one-year warranty and that an additional second year warranty would be extra. Therefore, by his own admission Mr. Kumar was aware there was only a one-year warranty and purchased the Mercedes anyway.

[52] I do not find sufficiently clear, convincing, and cogent evidence that Lenux Auto provided only a one-year warranty when it advertised a two-year warranty. There is evidence to suggest the terms and conditions of purchasing the Mercedes were negotiated. Mr. Kumar asked for additional work to be done on the Mercedes before the purchase which, means Mr. Kumar legally made a counteroffer to the one advertised, and ultimately the deal landed with a one-year warranty. The documentary evidence and Mr. Kumar's statement in his complaint form supports that Mr. Kumar was aware he was only receiving a one-year warranty.

[53] This is not like the case of *Casillan v. 565204 B.C. Ltd. dba Daewoo Richmond*, 2009 BCSC 1335 (BC Supreme Court). In that case, the dealer's website stated all vehicles receive a 7-month 11,000 km powertrain warranty. The vehicle Mr. Casillan purchased had a powertrain issue and he sought the dealer's assistance under the warranty. The dealer said there was no such warranty. The B.C. Supreme Court found that the dealer represented in general terms, that all vehicles sold by the dealer received such a warranty and there was no evidence that the warranty promise changed during the transaction. In the case of the Mercedes, the Car Gurus advertisement says there was a two-year powertrain warranty offered with the Mercedes. That would be subject to any negotiations and changes in any of the terms and conditions for the purchase of the Mercedes that occurred.

**(v) Misrepresented the Mercedes odometer reading in advertisements**

[54] The CarGurus advertisement notes the Mercedes has 189,000 km's, even. I would note Mr. Kumar provided this information by way of screenshots that are dated March 31, 2019 – about 9 days before the purchase of the Mercedes. On the ICBC Transfer/Tax Form (Form APV9T), the recording is 195,000 km, even. The purchase agreement has 194,645 kms recorded. I would note the difference in kilometers between the advertisement and the recorded kilometers on the purchase agreement is 5,645km.

[55] In the submissions of Lenux Auto, they note the advertisement was placed by the business manager and was most likely an error. No evidence was provided by the Authority that this was deliberate on the part of Lenux Auto. Using my experience in the industry, a discrepancy of 5,645 km generally does not alter the market value of a motor vehicle. Further, the discrepancy would be noticed by the prospective purchaser upon inspection.

[56] Based on the evidence before me, I find that Lenux Auto did misrepresent the odometer reading in its advertisement. The evidence before me suggests the representation was legally known as an innocent misrepresentation – an error – versus deliberate conduct.

**(vi) Consumer requested remedy**

[57] Mr. Kumar is seeking that Lenux Auto pay for the needed repairs or to take back the Mercedes for a refund. The warranty company is stating the repairs are not covered by the warranty. In order for Mr. Kumar to be successful, he must satisfy all four requirements noted at paragraph 28 above.

**(a) misrepresentation**

[58] I have found that Lenux Auto did make the following misrepresentations, contrary to the BPCPA:

- (a) Failed to advise of a material fact by not disclosing damage over \$2,000,
- (b) Misrepresented the odometer reading by 5,645 kilometers.

**(b) The consumer reasonably relied on the misrepresentations**

[59] There is no evidence that Mr. Kumar relied on these representations or a failure to state a material fact to his detriment. I would note that in his complaint form, Mr. Kumar admits the dealer said the Mercedes was from a junk yard, which

should have alerted Mr. Kumar to the fact that the Mercedes was not necessarily in perfect or even good condition.

**(c) *There is a link between the misrepresentations and the claimed harm***

[60] The harm focused on by Mr. Kumar in his complaint, are the repairs that the Mercedes needs, and which are not covered by the warranty. I would note that there was no allegation in the Notice of Hearing that the dealer misrepresented the extent of coverage by the warranty. The allegation is that only a one-year warranty was provided instead of a two-year warranty.

[61] Even so, the warranty signed by Mr. Kumar clearly states it is a power-train warranty and the warranty itself has limitations. It is not alleged, that the dealer sold the Mercedes in this condition and knowing of its condition. If the claim is that the Mercedes was not reasonably fit at the time of sale and the dealer should be responsible for the repairs, that is a *Sale of Goods Act* claim that I am without authority to consider.

[62] I do not find sufficiently clear, convincing, and cogent evidence that links the misrepresentations that I have found in this case to the claimed harm regarding the vehicle repairs. With elements (b) and (c) not proven, Mr. Kumar's request for a remedy must be denied.

[63] I would note a similar result in the B.C. Supreme Court case of *Motley v. Regency Plymouth Chrysler Inc.*, 2002 BCSC 1885. In that case the court noted the dealer had made misrepresentations by making incorrect declarations under section 23 of the MDA-Reg, specifically by failing to declare ex-lease. However, the consumer failed to prove detrimental reliance on that breach of the legislation and the court dismissed their claim against the dealer. The consumer was also ordered to pay the dealer's costs in the court action. As stated by Mister Justice Parret:

[24] In the present case, what is wholly lacking is any evidence of detrimental reliance. There is no evidence of damage resulting from this transaction. The significance of this aspect of the case can be found in the fact that in his closing submissions Mr. Charles urged this court to award his client exemplary and punitive damages, but was wholly unable to articulate a basis, on the evidence, for concluding that there were actual damages flowing from the defendant's failure to reveal the fact that the motor vehicle was previously leased.

[25] The same fatal flaw affects the plaintiff's claim for breach of contract.

[26] I am also unable to conclude on the evidence that the plaintiff relied on the representation that the vehicle had not been leased.

[27] In all of the circumstances, the plaintiff has failed to meet the burden of proof to establish his claim. The action is dismissed.

[underlining added]

**(vii) Summary of findings on the Mercedes Transaction**

[64] I have found that in relation to the Mercedes Transaction:

- (a) Lenux Auto misrepresented the Mercedes as having no damage over \$2,000.
- (b) Lenux Auto failed to provide a purchase agreement to the consumer,
- (c) Lenux Auto misrepresented the odometer reading of the Mercedes in an advertisement, and
- (d) The consumer has failed to prove detrimental reliance on the above misrepresentations.

[65] I would note that the breaches noted in paragraphs (a) to (c) above are duties imposed on the registered motor dealer, Lenux Auto. There was no clear, convincing and cogent evidence provided to establish why the corporate veil of Lenux Auto should be pierced and liability placed personally on Hassan Zahedian as a declared shareholder, but not sole owner: see section 26.04(5) and 35(5) of the *Motor Dealer Act*.

[66] As earlier noted, I am without jurisdiction to take regulatory action against Lenux Auto as there is no licence to regulate or risk of harm to mitigate.

**(B) VW Transaction – Bybel complaint**

[67] Greg Bybel purchased the VSA on May 11, 2019. Greg Bybel filed the complaint with the Authority on June 16, 2020. As earlier noted, Lenux Auto ceased to be a registered motor dealer on February 4, 2020. At the time Greg Bybel filed their complaint and the VSA commenced their investigation, there was no registration/licence of Lenux Auto to regulate. As Lenux Auto was not under investigation while it was still registered/licensed, the noted exception to continue with a regulatory review of Lenux Auto's registration does not apply. I find I am without jurisdiction to take any regulatory action against Lenux Auto as there is no registration/licence to act against: *Abouabdallah v College of Dental Surgeons of Saskatchewan*.

[68] At the time of the VW Transaction, Lenux Auto was a registered motor dealer. I can review if there has been consumer harm during the transaction due to a breach of the legislation the Registrar administers and determine what, if any, remedy I may be empowered to provide.



**(i) Failure to provide a CARFAX report**

[69] As earlier noted, there is no legal requirement on a motor dealer to provide a consumer a CARFAX report. I note that Greg Bybel does not raise this as a concern in their complaint form.

**(ii) Failure to declare damage over \$2,000**

[70] The duty to declare damage over \$2,000 is a duty on Lenux Auto. The duty is to make that disclosure on a purchase agreement, a.k.a a bill of sale. The purchase agreement in evidence shows the dealer declared "no" to the VW having prior damage over \$2,000. Lenux Auto's submissions do not dispute this.

[71] The Authority obtained a CARFAX report which showed damage over \$2,000 prior to the sale of the VW to Bybel. Also, in evidence is the bill of sale from the Adesa Auto Auction showing Lenux Auto purchasing the VW. On that bill of sale is a declaration of prior damage of \$4,479.82. Therefore, Lenux Auto was aware of prior damage over \$2,000.

[72] On the evidence before me, I find that Lenux Auto did not properly declare damage over \$2,000 on the purchase agreement, contrary to section 23(b)(ii) of the MDA-Reg. Further, Lenux Auto misrepresented the VW's prior damage history contrary to section 5(1) of the BPCPA as deemed by section 4(3)(a)(iii) of that Act.

**(iii) Failure to declare the VW EOS was previously registered out of province**

[73] The purchase agreement in this case has a check box stating the vehicle has not been registered outside of British Columbia. However, in the line below that check box it states, if "Yes" in what jurisdiction was the vehicle registered and there it is written "USA" and "BC". Greg Bybel's initials are beside this declaration. In the investigation report of Bill Manhas, the claim of failing to disclose the out of province history of the VW is in relation to the check box on the APV9T ICBC Transfer/Tax Form. As earlier noted, that form is not a bill of sale and the legal duty is for a dealer to make this declaration on the bill of sale.

[74] While the check box is checked no, the representation below that indicates yes with USA and BC specifically identified. This is consistent with the CARFAX report and the Adesa Auto Auction bill of sale.

[75] I do not find sufficiently clear, convincing, and cogent evidence to say Lenux Auto failed to make the out of province statutory declaration on the bill of sale. I also do not find there was a misrepresentation of that fact as it is clearly noted on

the purchase agreement and initialed by Greg Bybel. Importantly, Mr. Bybel's complaint form does not make a complaint of this issue.

**(iv) Providing a false vehicle inspection report during the investigation**

[76] As part of their disclosure of records to the Authority, Lenux Auto provided a vehicle inspection report for the VW EOS from CAS Automotive. Investigator Manhas made inquiries with CAS Automotive who advised that they do vehicle repairs and not inspections. The purported inspector of the VW EOS reviewed the report and stated it is not a CAS Automotive form, it is not the inspector's writing and not the inspector's signature. This evidence was not disputed by Lenux Auto.

[77] Based on the evidence before me there is sufficiently clear, cogent, and convincing evidence that the CAS inspection report provided by Lenux Auto is falsified. I find that this is a breach of section 33(2)(a) of the MDA-Reg in that Lenux Auto did not act with honesty and integrity.

[78] It was Hassan Zahedian who provided the Authority a copy of the CAS inspection report on behalf of Lenux Auto. I am satisfied that there is sufficient evidence that Hassan Zahedian "authorized, permitted or acquiesced" in the provision of the falsified CAS Inspection Report. I find that this is a breach of section 33(2)(a) of the MDA-Reg in that Hassan Zahedian did not act with honesty and integrity.

**(v) Consumer's requested remedy**

[79] In the Notice of Hearing it says Greg Bybel is seeking reimbursement of \$1,142.80 which is the cost of repairs to the VW EOS related to the airbag issue. In Mr. Bybel's complaint he says he is requesting reimbursement for \$1,392.80. The difference in price relates to the \$150 cost to replace a battery and \$100 for an instrument cluster. I am confined to the Notice of Hearing claimed amount.

[80] Based on the complaint by Greg Bybel, the sequence of negotiations and representations regarding the airbag issue is as follows:

- (a) Greg Bybel expresses interest in purchasing the VW EOS,
- (b) Greg Bybel notices a few concerns about the VW EOS which he wants addressed before he will purchase the VW EOS:
  - (i) The VW EOS airbag light was on and needed to be serviced,
  - (ii) An oil change be done, and
  - (iii) The VW EOS be detailed.

- (c) Lenux Auto attempted to have their mechanic repair the airbag issue. They were unable to do so and reported that to Greg Bybel. Lenux Auto recommended Satnam Auto Service to carry out the repair.
- (d) Greg Bybel purchases the VW EOS on May 11, 2019.
- (e) Satnam Auto Service is not able to repair the air bag issue.
- (f) Greg Bybel takes the VW EOS to Perform-X Automotive on May 22, 2020 (one-year after purchase) where they were able to repair the airbag issue. The invoice is for \$1142.83 for the airbag repairs.

[81] Mr. Bybel states the airbag issue had to be repaired as it is a safety issue.

[82] In order for Mr. Bybel to obtain the requested remedy, the elements for a misrepresentation noted at paragraph 28 need to be satisfied.

**(a) A misrepresentation**

[83] I have found that Lenux Auto misrepresented to Mr. Bybel the VW EOS's damage history.

**(b) Mr. Bybel reasonably relied on the misrepresentation**

[84] There is no evidence that Mr. Bybel relied on the incorrect damage declaration made by Lenux Auto.

**(c) Connection between the misrepresentation and the claimed harm**

[85] There is no evidence that the airbag issue is related to the misrepresentation by Lenux Auto regarding the VW EOS's prior damage history. There is also no evidence of detrimental reliance on that misrepresentation. Without proof of detrimental reliance linked to the claimed harm, no remedy can be issued under a claim of misrepresentation a.k.a a deceptive act or practice under the BPCPA: *Motley v. Regency Plymouth Chrysler Inc.*

[86] As earlier noted, the Registrar is a regulator and not a court. The authority that I have to grant a remedy is limited.

**(d) Comments on the condition that the airbag be repaired**

[87] I would also comment on the law of contract regarding the sequence of events noted at paragraph 80:

- (a) Greg Bybel identified three things he wanted addressed before he would purchase the VW EOS. In law, these are called conditions precedent. That is, they need to be satisfied before the purchaser, Greg Bybel, will purchase the VW EOS.
- (b) Lenux Auto advised Greg Bybel that they could not repair the airbag issue. At this point the condition precedent was not met. Greg Bybel's legal options were (1) to reject the purchase, (2) waive the condition which can occur expressly or implicitly, or (3) renegotiate the purchase.
- (c) In this case, the evidence shows Greg Bybel elected to purchase the VW EOS knowing the airbag issue was not resolved. To use the words of the BC Supreme Court, he made that decision with his eyes wide open. Based on the evidence before me, it appears Greg Bybel's election is an implicit waiver.

[88] Under the facts as stated by Greg Bybel in his complaint, Lenux Auto did not make a misrepresentation or hide any facts regarding the airbag repairs. Lenux Auto stated it could not meet that one condition precedent. On the facts before me there is no claim of a misrepresentation about the airbag, just that Lenux Auto was unable to meet that condition precedent. If Greg Bybel believes Lenux Auto is responsible for the airbag repairs, that is a contract dispute and I have no authority to settle a contract dispute. Greg Bybel needs the assistance of the courts. I would also note that the Notice of Hearing did not allege a misrepresentation in relation to the airbags. Therefore, I would not be able to make a ruling on that in any regard.

#### **(vi) Summary of findings VW Transaction**

[89] In relation to the VW Transaction, I have found that:

- (a) Lenux Auto failed to declare damage over \$2,000 on the bill of sale,
- (b) Lenux Auto provided to the Authority a falsified inspection report from CAS Automotive,
- (c) Hassan Zahedian authorized, permitted, or acquiesced in providing the falsified inspection report from CAS Automotive, and
- (d) Greg Bybel has failed to prove any detrimental reliance on Lenux Auto's failure to disclosure damage over \$2,000 is linked to the \$1,192.80 in repairs for the airbag he claims.

#### **VI. Compliance selection**

[90] As noted earlier, Lenux Auto is not a registered/licensed motor dealer. Therefore, there is no licence in which to act against and to regulate.

[91] I have found Hassan Zahedian breached section 33(2)(a) of the MDA-Reg. Given the limited liability found against Hassan Zahedian, I believe I should receive

additional submissions from the Authority and Mr. Zahedian on the appropriate compliance response. The following process is directed for that purpose:

- (a) Within 30 days of this decisions date, the Authority can file written submissions and any legal authorities regarding an appropriate compliance response in relation to Hassan Zahedian’s breach of section 33(2)(a) of the MDA-Reg. with a copy to Hassan Zahedian,
- (b) After Hassan Zahedian receives any submissions from the Authority, he will have 30 days to file a written response with a copy to the Authority, and
- (c) After Hassan Zahedian files any written response, the Authority will have 14 days to file any written reply.

[92] Written submissions for my attention can be sent electronically to [hearings@mvsabc.com](mailto:hearings@mvsabc.com).

[93] The Authority requested costs for this investigation and hearing. They can make those submissions with the required evidence at the same time.

## **VII. Decision summary**

[94] The following summarizes my decisions:

- (a) In relation to the Mercedes Transaction, Lenux Auto Sales & Service Ltd. did:
  - (i) breach section 23(b)(ii) of the *Motor Dealer Act Regulation* and section 5(1) of the *Business Practices and Consumer Protection Act* by misrepresenting the Mercedes as having no accidents,
  - (ii) breach section 21(3) of the *Motor Dealer Act Regulation* by failing to provide Mr. Kumar with a duplicate copy of the purchase agreement, and
  - (iii) breach section 5(1) of the *Business Practices and Consumer Protection Act*, by advertising the incorrect odometer reading in the advertisement for the Mercedes.
- (b) In relation to the VW Transaction, Lenux Auto Sales & Service Ltd. did:
  - (i) breach section 23(b)(ii) of the *Motor Dealer Act Regulation* and section 5(1) of the *Business Practices and Consumer Protection Act* by misrepresenting the VW EOS as having no accidents, and

- (ii) breach section 33(2)(a) of the *Motor Dealer Act Regulation* by not acting with honesty and integrity when it provided a false inspection report to the Authority.
- (c) Hassan (Dario) Dariosh Zahedian breached section 33(2)(a) of the *Motor Dealer Act Regulation* by not acting with honesty and integrity when he permitted, authorized, or acquiesced in Lenux Auto providing a false inspection report to the Authority.
- (d) I have found that Harwinder Kumar has failed to prove detrimental reliance on the misrepresentations that were found to occur in the Mercedes Transaction, as related to his claimed remedy. As such, I am without legal authority to provide a remedy to Harwinder Kumar. I make no comment on any other remedy Harwinder Kumar may be able to seek. Harwinder Kumar should seek independent legal advice.
- (e) I have found that Greg Bybel has failed to prove detrimental reliance on the misrepresentation that was found to occur in the VW Transaction, as related to his claimed remedy. As such, I am without legal authority to provide a remedy to Greg Bybel. I make no comment on any other remedy Greg Bybel may be able to seek. Greg Bybel should seek independent legal advice.

### **VIII. Review of this decision**

[95] As I have not made any “determination” as that term is legally defined in the *Motor Dealer Act* and the *Business Practices and Consumer Protection Act*, this decision cannot be reviewed by requesting a reconsideration.

[96] If there is disagreement with this decision, it may be reviewed by petitioning the B.C. Supreme Court for judicial review pursuant to the *Judicial Review Procedure Act*. Such a petition must be filed with that court within 60 days of this decision’s date: section 7.1(t) of the *Motor Dealer Act*.

“Original is Signed”

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Ian Christman, J.D.  
Registrar of Motor Dealers