



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

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: July 27, 2021 at Langley, British Columbia.

By way of written submissions

I. Introduction

[1] The Authority brought several allegations against both Lenux Auto Sales and Services Ltd. ("Lenux Auto") and Hassan (Dario) Dariosh Zahedian involving two separate consumer transactions. On March 26, 2021, I rendered a decision on liability in this case with the following findings:

- (a) That in relation to the Mercedes Transaction involving consumer complainant Harwinder Kumar:
 - (i) Lenux Auto misrepresented the Mercedes as having no damage over \$2,000,
 - (ii) Lenux Auto failed to provide a purchase agreement to the consumer,
 - (iii) Lenux Auto misrepresented the odometer reading of the Mercedes in advertisements,
 - (iv) The consumer failed to prove any detrimental loss in the consumer transaction,
 - (v) There was no clear evidence to show how Hassan Dariosh Zahedian was personally liable for these transgressions, and
 - (vi) Lenux Auto was not a registered motor dealer at the time the complaint was filed, and I am without jurisdiction to take regulatory action as there is no licence to regulate.

- (b) That in relation to the Volkswagen (VW) Transaction involving consumer complainant Greg Bybel:
 - (i) Lenux Auto failed to declare damage over \$2,000,
 - (ii) Lenux Auto provided the Authority a falsified inspection report from CAS Automotive,
 - (iii) Hassan Dariosh Zahedian authorized, permitted, or acquiesced in providing the falsified inspection report from CAS Automotive, and did not act with honesty and integrity contrary to section 33(2)(a) of the Motor Dealer Act Regulation [Code of Conduct],
 - (iv) The consumer failed to prove any detrimental loss in the consumer transaction, and
 - (v) Lenux Auto was not a registered motor dealer at the time the complaint was filed, and I am without jurisdiction to take regulatory action as there is no licence to regulate.

- (c) Given the limited liability I found against Hassan Dariosh Zahedian, I ordered the exchange of submissions to address compliance selection and costs.

[2] The time required for the exchange of submissions on costs and compliance has expired. I have submissions from the Authority and an email with brief submissions from Hassan Dariosh Zahedian.

II. Position of the Parties

(a) Authority

[3] As to the appropriate compliance action against Hassan Dariosh Zahedian, the Authority submits the following:

- (a) Hassan Dariosh Zahedian entered an undertaking in November of 2018 with the Registrar and that he admitted to having manufactured a stock number for a vehicle that was not in stock. The Undertaking required Mr. Zahedian to retake and pass the Salesperson Certification Course and pay an administrative penalty of \$3,000 (the "2018 Undertaking"),
- (b) That less than five months after entering the 2018 Undertaking, Mr. Zahedian was involved in these two consumer transactions,
- (c) That the \$3,000 administrative penalty from the 2018 Undertaking has not deterred Mr. Zahedian from being non-compliant,
- (d) The Authority recommends:
 - (i) Hassan Dariosh Zahedian be suspended for 2-years,
 - (ii) That Hassan Dariosh Zahedian be issued a \$ 10,000 administrative penalty for breaching section 33(2)(a) of the Motor Dealer Act Regulation,
 - (iii) That Hassan Dariosh Zahedian be issued a \$6,000 administrative penalty for breaching the 2018 Undertaking,
 - (iv) Hassan Dariosh Zahedian take and pass an ethics course from a certified BC Post-Secondary institution within 12 months from the decision of the Registrar,
 - (v) That Hassan Dariosh Zahedian be prohibited from working in the business office of a dealership for 5 years, and
 - (vi) That Hassan Dariosh Zahedian be prohibited from being in a management position for at least 5 years.

[4] Regarding costs, the Authority states investigation costs are \$3,652.66. The Authority's submissions include details of how this amount was arrived at as well as

providing an invoice for consideration. The amount of costs reflects the investigation costs for both investigations.

(b) *Lenux Auto Sales and Services Ltd.*

[5] Hassan Dariosh Zahedian provided submissions in an email. However, it was not clear if they were in relation to him personally or on behalf of Lenux Auto to which he was a co-owner. As I noted that I cannot take regulatory action against Lenux Auto as they were not a registered dealer at the time of the complaints, I will consider those submissions in relation to Hassan Dariosh Zahedian below.

(c) *Hassan (Dario) Dariosh Zahedian*

[6] On April 26, 2021, the Authority sent an email to Hassan Dariosh Zahedian enclosing the Authority's submissions on costs and compliance. On April 27, 2021 a response to that email was received and signed "With Love Dario". The email states – paraphrasing:

- (a) the accusations are not true, and they cannot understand how the decision was made,
- (b) a demand is made for a sit-down meeting with the decision maker to discuss the decision,
- (c) that they will not provide any further documents unless they get that meeting with the decision maker,
- (d) that they intend to go to the newspaper and then to a lawyer for compensation for ruining his dealerships name, and
- (e) that he apparently has voice recordings from the last meeting and the "Head of Chief" knows this and the Authority should prepare for great change in newspaper and a lawsuit.

[7] There are no substantive submissions regarding the Authority's suggested compliance action against Hassan Dariosh Zahedian or on costs.

III. Legal Principles

(a) *Honesty and integrity of a salesperson*

[8] Madame Justice Sharma of the BC Supreme Court agreed with the Registrar that the purpose of reviewing the conduct of a salesperson is focused on the protection of the public:

[23] The Registrar states that the requirement to examine a person's past conduct demonstrates an overarching concern with public safety. Past conduct is the statutory tool by which the Registrar can determine if applicants will be

governable, act in accordance with the law and conduct themselves with honesty and integrity. Salespersons are in a position of trust with the buying public who rely on them to give clear and honest information about buying motor vehicles. The public also expects safety to be a priority if taking a test drive with a salesperson. Lastly, integrity is important because salespersons may be privy to customer's confidential personal information including home address and financial information.

- *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279 (BC Supreme Court)

[9] Governability means the licensee will follow the laws and rules that are associated with their licence. It also includes a licensee responding to their regulator's lawful directions and to fully cooperate with an investigation, including into the licensee's own conduct: *Independent Investigations Office of British Columbia v Vancouver (City) Police Department*, 2018 BCSC 1804 (BC Supreme Court), affirmed by *Independent Investigations Office of British Columbia v. Vancouver (City) Police Department*, 2020 BCCA 4 (BC Court of Appeal)

[10] In balancing the interests of a person to be licensed in a given profession with the protection of the public and the public's interest, the public interest is paramount: *Pacific International et al v. B.C. Securities Commission* 2002 BCCA 421 (BC Court of Appeal) at paragraph 12.

[11] In deciding on the appropriate compliance action, I am mindful that I am not punishing past conduct but using legislative tools to deter future misconduct. If I am not satisfied that any of the legislative tools can deter future misconduct, my duty is to remove a licensee from the industry to protect the public.

[12] In considering any administrative penalty for deterrence purposes, the penalty must be proportionate to the transgression and the individual circumstances of the case. The penalty should not stray into the realm of punishment, but act as a deterrent of future misconduct of a similar nature. I am required to consider the legislative factors and also to consider the importance of both general and specific deterrence.

- *Guindon v. Canada*, 2015 SCC 41 (CanLII), [2015] 3 SCR 3 (Supreme Court of Canada)
- *Cartaway Resources Corp. (Re)*, 2004 SCC 26 (CanLII), [2004] 1 SCR 672 (Supreme Court of Canada)
- *Hogan v. British Columbia Securities Commission*, 2005 BCCA 53 (BC Court of Appeal)

(b) Administrative Penalty for breach of legislation and breach of an undertaking

[13] The Authority seeks an administrative penalty for the breach of section 33(2)(a) of the Motor Dealer Act Regulation [Code of Conduct] and a separate administrative penalty for a breach of the 2018 Undertaking. This would appear to be seeking two penalties for the same contravention, but that is not necessarily the case.

[14] As noted in a previous decision, administrative penalties for breaches of the legislation serve a different purpose than administrative penalties for a breach of a prior undertaking. The former requires adherence to the law and the penalties act as a deterrent to breaking the law. The latter is about a licensee complying with its promises (undertakings) including any term to obey the law in the future and holding a licensee accountable for breaking those prior promises. If there is no separate penalty to deter breaching an undertaking, obeying undertakings could become meaningless: *Webster et al. v. Pioneer Garage Ltd. et al* (April 27, 2018, File 17-07-002, Registrar) at paragraph 189.

IV. Discussion

(a) Compliance selection - Hassan (Dario) Dariosh Zahedian

[15] As noted, selecting the appropriate compliance response must be with a view to deterring future misconduct by the specific individual and general deterrence on the industry. In my opinion, none of those tools will adequately deter Hassan Dariosh Zahedian, then my duty is to remove him from the industry in order to protect the public.

[16] I need not pick only one of the legislative tools over another. I can devise a compliance response that considers all the legislative tools and so long as it is connected with appropriate deterrence and education, I can combine several of the legislative tools into a single response.

[17] I note that the Hearing Notice specifically states that the Registrar is not bound to order any compliance action recommended by the Authority or by Mr. Zahedian. The Registrar must decide what is the best compliance approach that is in the public interest and for protection of the public.

(i) Factual considerations

[18] In fashioning the appropriate response, I note the following facts:

- (a) About five months prior to the transgression found in this case, Mr. Zahedian entered into an undertaking to obey the law he has now breached,
- (b) About five months prior to the transgression found in this case, Mr. Zahedian was ordered to pay a \$3,000 administrative penalty for breaching the *Business Practices and Consumer Protection Act* (BPCPA). The maximum amount that can be levied on an individual under that Act is \$5,000. Therefore, this was a significant administrative penalty,
- (c) About five months prior to the transgression found in this case, Mr. Zahedian was ordered to take and successfully pass the salesperson certification course, which educates individuals on their legal duties to consumers under the *Motor Dealer Act* and its regulations, and under the BPCPA,
- (d) The 2018 Undertaking was to address Mr. Zahedian creating a false stock number for a vehicle; five months later, Mr. Zahedian was found to have condoned, acquiesced in or participated in providing the Authority a false vehicle inspection report in this case,
- (e) Mr. Zahedian only participated superficially in this hearing process by providing two short emails. The last email effectively threatened going to the media or suing the Authority in court unless his demands were met.

[19] Based on the above factual findings, I have great concern that Hassan Dariosh Zahedian is ungovernable. Mr. Zahedian was required to re-educate himself on his legal obligations and within five months of that education, he breached the Code of Conduct. The significant \$3,000 administrative penalty has not had a deterring effect. Mr. Zahedian has shown a disregard for his own undertaking, which is his promise and commitment to obey the law. Finally, the tone of Mr. Zahedian's last email submission shows a disregard for his regulator and the licence he holds.

[20] I have considered the Authority's request for a two-year suspension. As earlier noted, that amounts to a cancellation of Mr. Zahedian's licence and prohibition on re-applying. A suspension is applied to not only deter, but also to protect the public while certain steps are taken by a licensee to come back into compliance. Normally in a case like this, there would be a suspension while the licensee would retake education. Clearly, education did not work with Mr. Zahedian under the 2018 Undertaking.

[21] I have considered the requested administrative penalties. However, Mr. Zahedian paid a significant administrative penalty and still breached the Code of Conduct only a few months later. Mr. Zahedian's conduct shows he is not easily deterred by financial penalties and is more interested in his own interests than for the rights of his customers.

[22] I have considered adding conditions on Mr. Zahedian's licence. However, a condition of retaking education did not work under the 2018 Undertaking. A condition

prohibiting Mr. Zahedian from being in a management position or in the business office at a dealership does not guarantee Mr. Zahedian's compliance and ensure he will not again manufacture a stock number, a false vehicle inspection report or anything similar in the future.

[23] I return back to the BC Supreme Court's passage in the *Fryer* decision, confirming the Registrar's views:

[23] The Registrar states that the requirement to examine a person's past conduct demonstrates an overarching concern with public safety. Past conduct is the statutory tool by which the Registrar can determine if applicants will be governable, act in accordance with the law and conduct themselves with honesty and integrity. Salespersons are in a position of trust with the buying public who rely on them to give clear and honest information about buying motor vehicles. The public also expects safety to be a priority if taking a test drive with a salesperson. Lastly, integrity is important because salespersons may be privy to customer's confidential personal information including home address and financial information.

[underlining added]

[24] Based on Mr. Zahedian's past conduct, I am not convinced any legislative tool can be used to deter Mr. Zahedian from future misconduct. Past compliance action did not work. This included education on the rights of Mr. Zahedian's customers and on Mr. Zahedian's legal duties. Mr. Zahedian broke his own promise to obey the law and he appears dismissive of his regulator and of the duties associated with his salesperson licence. Mr. Zahedian shows a disregard for the rights of his customers. There is simply a lack of trust that Mr. Zahedian will do the right thing regardless of the compliance action that could be taken. Therefore, I must weigh in favour of protecting the public from any potential future harm while interacting with Mr. Zahedian. This requires canceling his salesperson licence and that order is made effective as of this decision's date.

[25] Before Mr. Zahedian can be considered to be relicensed as a salesperson, some time must pass and some verifiable evidence provided that Mr. Zahedian can again be trusted with customers. Further, under the legislative scheme, Mr. Zahedian could reapply for a salesperson licence the day after it is cancelled. In order to protect the Registrar's process, I may order a prohibition on Mr. Zahedian applying to be licensed: *Best Import Auto Ltd. v Motor Dealer Council of British Columbia*, 2018 BCSC 834 (BC Supreme Court) at paragraph 60.

[26] In determining the correct prohibition period, I have reviewed the below cases and find that Mr. Zahedian's circumstances suggest a two-year prohibition on reapplying for a licence is appropriate. Mr. Zahedian's conduct is not to the same

concerning level as most of those cases cited below; and is more in line with *Shahram Moghaddam's, infra*, conduct. A two-year prohibition from re-applying for a licence is ordered effective the date of this decision. This will provide sufficient time for Mr. Zahedian to build some history of good conduct that can be assessed if he should re-apply for a licence. Whether or not Mr. Zahedian would be granted a licence in the future, should he apply, will depend on the facts that exist at the time he re-applies.

- *Re: Justin Plosz* (October 22, 2019, File 19-05-004, Registrar); 3-year prohibition
- *Re: Bob Shokohi & Best Import Auto Ltd.* (October 12, 2018, File 18-06-005, Registrar); 10-year prohibition
- *Partin et al v. Carmel Custom Contracting Ltd. & Jason Coburn* (July 6, 2018, File 18-03-001, Registrar); 5-year prohibition
- *Re: Elisabeth Kovacs* (October 25, 2017, File 17-09-001, Registrar); 4-year prohibition
- *Re: A Vancouver Auto Ltd. & Shahram Moghaddam* (April 3, 2017, File 17-02-002, Registrar); 2-year prohibition

(b) Costs

[27] I may make a compliance order that a person found to have breached the legislation be responsible for costs. The purposes of an award for costs serves important public policy purposes as noted recently in *Pham et al v. Super Sale Auto Ltd. et. al* (August 12, 2020, File 19-07-002, Registrar):

[3] When considering costs, their amount should reasonably reflect the time to conduct the inspection/investigation. An order of costs on the non-compliant person serves two important public policy considerations. First, the costs to investigate and ameliorate any non-compliance should be borne by the non-compliant person and not from the general industry through licensing fees. The vast majority of the industry that is compliant, should not be burdened with the extra costs of non-compliant persons. Second, costs can also act as a deterrent on the specific individual and the industry generally.

[28] The costs requested in this case are \$3,652.66 and are in relation to both investigations and complaints. I have found Hassan Dariosh Zahedian breached the Code of Conduct in relation to only one of those investigations – the Bybel complaint. Therefore, the cost liability to Mr. Zahedian should at most only be 50% of the \$3,652.66, or \$1,826.33. The amount of \$1,826.33 seems close to other decisions on costs involving similar investigations. See for example:

- *Re: Pham et al, supra.*
- *Re: Anita L. Prince* (unlicensed) (June 4, 2020, File Number 20-02-11, Registrar)

- *Re: Barnes Wheaton (North Surrey) Chevrolet Buick GMC Ltd. et al* (April 16, 2020, File 19-07-004, Registrar)

[29] There will be a compliance order requiring Hassan (Dario) Dariosh Zahedian pay investigation costs in the amount of \$1,826.33 payable to the Motor Vehicle Sales Authority of British Columbia within 30 days of this decisions date.

V. Decision - Summary

[30] I have made the following orders:

- (a) The salesperson licence of Hassan (Dario) Dariosh Zahedian is cancelled effective of this decisions date,
- (b) Hassan (Dario) Dariosh Zahedian is prohibited from re-applying for a licence under the *Motor Dealer Act* for a period of two years starting as of this decisions date, and
- (c) Hassan (Dario) Dariosh Zahedian must pay \$1,826.33 in investigation costs payable to the Motor Vehicle Sales Authority of British Columbia within 30 days of this decisions date.

VI. Review of this decision

[31] If there is disagreement with the cancellation of the licence and/or order of costs, a request for reconsideration may be made in accordance with sections 26.11 and 26.12 of the *Motor Dealer Act*. A request for reconsideration must be made within 30 days of receiving this decision. The request must be in writing, must identify the reasons for the reconsideration and must be accompanied with the newly discovered evidence as defined in those legislative sections.

[32] If there is disagreement with this decision, it may also be reviewed by petitioning the BC 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"

Ian Christman, J.D.
Registrar of Motor Dealers