

Hearings of the Registrar of Motor Dealers

pursuant to

The Motor Dealer Act of British Columbia, and the Business Practices and Consumer Protection Act

George Mann

and

Ocean Park Ford – DL 8367

Final Decision

The facts at issue in this matter are fairly straightforward and for the most part, not in dispute. On December 26th, 2006, George Mann, with the assistance of his son, obtained a 2006 Ford Fusion motor vehicle through a purchase agreement negotiated with Ocean Park Ford. Mr. Mann was 92 years of age at the time and, most unfortunately, passed away on January 9th, 2008, before the second hearing in this matter could be heard. The third and final hearing was held on May 21st, 2008.

George Mann and his son were both in attendance at the first hearing in this matter on November 30, 2007, alleging that Ocean Park Ford either intentionally deceived George Mann, or committed an unconscionable act, pursuant to Sections 4 or 8 respectively of the Business Practices and Consumer Protection Act (BPCP Act).

What raises the issues herein is a second purchase agreement for a 2007 Ford Focus entered into by George Mann (without the assistance of his son). This agreement was completed on December 30th, 2006, and it cancelled and replaced the December 26th, 2007, agreement for the purchase of a new 2006 Ford Fusion motor vehicle. The purchase documents indicate that when Mr. Mann took delivery of the 2006 Ford Fusion (first vehicle) it had 60 kilometers on the odometer and that when he traded it in 4 days later, it showed a reading of 70 kilometers. The 2007 Ford Focus was also a new vehicle when Mr. Mann acquired it with an odometer reading of 42 kilometers.

In essence, there was a purchase of a new vehicle that was subsequently cancelled and replaced with another purchase for a different new vehicle 4 days later. The change was made because Mr. Mann was not satisfied with the first vehicle and asked to exchange it. He apparently had difficulties with his eyesight and needed a different vehicle.

The first purchase agreement was for \$23,000.00 which with taxes, an extended warranty and other charges totaled \$26,616.34. Mr. Mann paid \$6,500.00 in cash leaving \$21,142.95 which was financed over 60 months at 0% interest. When Mr. Mann returned the vehicle, the replacing agreement dated December 30, 2006, shows him purchasing a 2007 Ford Focus for \$28,174.00 and receiving a trade-in allowance of \$21,674.00 for the 2006 Ford Fusion, thus creating a net difference owed of \$6,500.00. Add to this amount the new taxes and other charges making the total then owed

\$7,815.94. The extended warranty from the first purchase was transferred across to the second purchase with no additional charge to Mr. Mann.

The new contract shows a lien payout of \$21,142.00 (amount financed on the first purchase) added to the \$7,815.94, making the new total owed as \$28,958.74, which was then financed over 60 months at 0% interest with no additional down payment. So for the first vehicle, Mr. Mann paid, all included, \$26,616.34 and for the second he paid, all included, \$28,985.35, for a net difference of \$2,369.01. The approximate difference in base price for a new 2006 Ford Fusion (first vehicle) and a new 2007 Ford Focus (second vehicle) is that the second vehicle is \$4,500.00 to \$5,500.00 less expensive than the first - based on the manufacturer's web site information.

Mr. Mann and his son were very concerned over the difference in pricing between the two transactions. When all is said and done, Mr. Mann was paying \$7,815.94 more for a vehicle that is arguably worth at a minimum, \$4,000 less - for a net to the dealer of approximately \$12,000. The monthly payments on the 60-month interest-free loan went from \$352.38 to \$483.09, and of course the first purchase included a \$6,500 down payment which seems to have disappeared in the calculations for the purchase of the second vehicle.

The dealer's response to these concerns was that the sale price of the second vehicle needed to be "grossed-up" to satisfy lending requirements of Ford Credit. Otherwise the actual purchase price on the new vehicle would have been less than the outstanding loan on the first vehicle. This "gross-up" was, according to the dealer, offset by giving Mr. Mann a trade-in value for the first vehicle equal to the full amount of his loan. The dealer also produced internal documents showing trade-in values for Mr. Mann's 2006 Ford Fusion at \$14,500 or \$15,674 depending on which document I choose to use. Using the higher of these two numbers, this means that Mr. Mann paid \$7,326.00 to drive the Fusion (first vehicle) for 10 kilometers. The dealer further argued that this discount was justified as the Fusion was now technically a "used vehicle" as it had been registered in Mr. Mann's name. The dealer also produced an internal document as evidence, showing that the Fusion (first vehicle) was subsequently sold on January 13th, 2007, for \$16,700.

The General Manager for the dealership, Mike Purdy, and the business office manager, Roberta Orth, went to considerable lengths to show that both Mr. Mann and his son fully understood the "gross-up" and overpayment for the trade-in arrangements on the second agreement before signing the agreement. They also explained that subsequent to the sale, Mr. Mann and his son attended the dealership to completely go over the transactions and the calculations again. I believe this evidence is important, as following this meeting, which occurred a few days after the second sale, Mr. Mann and his son left the dealership and again seemed to indicate to the dealer representatives that they (Mr. Mann and his son) were both satisfied with the explanations received.

I can only conclude however that all these discussions between Mr. Mann and his son and with several representatives from the dealership, before, during and after the second sale, were not successful at satisfying the Manns in regards to the arrangements on the second sale – as demonstrated by their filing of this complaint with our office.

Mr. Mann and his son allege that Ocean Park Ford took advantage of Mr. Mann's trusting nature and his inability, at 92 years of age, to understand a complex transaction (i.e. the second sale).

Having Mr. Mann pay \$7,326.00 more for a vehicle that is one model year newer, but a model type worth significantly less than his trade-in (see above) is, in my view, an unconscionable act contrary to Sections 8 and 9 of the BPCP Act. The terms of the second agreement were so adverse to Mr. Mann's interests that that it would be inequitable for me to allow this agreement to stand [s. 8(3)(e)].

I accept the dealer's evidence that Mr. Mann and his son were given clear explanations of what the second transaction involved. However, both Mr. Mann and his son made it very clear in their evidence that, if they had known there was over \$7,000 of margin for the dealer between the first and second transaction, then neither of them would have ever agreed to the purchase of the 2007 Ford Focus (second transaction).

Pursuant to Section 155 of the BPCP Act, I have authority to make an order to remedy a breach of the Act. I therefore make the following:

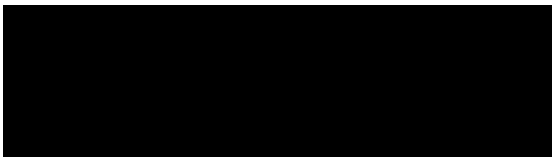
Compliance Order:

- (1) Ocean Park Ford, within 45 days of this decision, is to pay to Mr. Mann's estate \$6,500.00, being the amount Mr. Mann and his son felt was equitable in the circumstances.
- (2) Ocean Park Ford shall reimburse the Vehicle Sales Authority of British Columbia (VSA) for the investigation and hearing costs related to this matter. An invoice of those costs will be provided.

In accordance with Section 157 of the BPCP Act, this Compliance Order may be filed in the B.C. Supreme Court and if so filed, is an enforceable order of that Court.

Under Sections 164 and 165 of the BPCP Act, I have considered the various factors found in Section 164(2) of the BPCP Act and have determined that an administrative penalty of \$2,000.00 is appropriate. Section 167 of the BPCP Act requires the administrative penalty be paid within 30 days of service of a Notice of Penalty and payment is to be remitted to the office of the VSA at # 150 – 6400 Roberts Street, Burnaby, B.C. V5G 4C9.

Pursuant to Sections 155(7), 166(2) and 181 of the BPCP Act, a request can be made for this determination to be reconsidered. This can be done by writing the VSA office at #150 - 6400 Roberts Street, Burnaby, B.C. V5G 4C9, attn: Denis Savidan, Manager of Compliance and Investigations, requesting reconsideration of the determination and outlining the error or mistake that is believed to have been made, and/or, indicating what new and previously unavailable evidence is to be provided.



Ken Smith – Registrar of Motor Dealers for the
Province of British Columbia

July 14, 2008
Date