

MOTOR VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA
(Previously known as the Motor Dealer Council of B.C.)

**IN THE MATTER OF THE *MOTOR DEALER ACT* R.S.B.C. 1996 C. 316 AND
THE *BUSINESS PRACTICES AND CONSUMER PROTECTION ACT* S.B.C. 2004 c. 2**

RE:

DENISE HURTUBISE

COMPLAINANT

AND:

MASSIVE TRUCK SALES LTD.
(Dealer No. 30294)

MOTOR DEALER

AND:

GURTEJ SIDHU
(Salesperson No. 101031)

SALESPERSON

AND:

JASTEJ SINGH SIDHU
(Salesperson No. 105126)

SALESPERSON

DECISION OF THE REGISTRAR OF MOTOR DEALERS

1. On July 3, 2008, a hearing was held before me whereby it was alleged that Massive Truck Sales Ltd., Dealer Number 30294 (“Massive Truck”), Gurtej Sidhu, salesperson No. 101031 and Jastej Singh Sidhu salesperson No. 105126 did commit a deceptive act or practice contrary to section 5(1) of the *Business Practices and Consumer Protection Act* S.B.C. 2004 c. 2 (the “BPCPA”) by:

- (a) failing to declare a material fact to Denise Hurtubise, specifically that a 1998 Dodge Durango with VIN 1B4H28ZWF158186 (the “Dodge”) was not suitable for transportation; and
- (b) representing the Dodge as having been driven by an old man and was well maintained when it was not.

2. A failure to declare a used vehicle as not suitable for transportation is also a breach of sections 21(f) and 22 of the *Motor Dealer Act Regulation* B.C. Reg. 447/78 (the “Regulation”). A

dealer is also obligated to declare that the vehicle meets the requirements of the *Motor Vehicle Act* per section 21(e) of the *Regulation*. Also, section 222 of the *Motor Vehicle Act* R.S.B.C. 1996 c. 318 (the “MVA”) prohibits a person, including a corporate person, from selling a motor vehicle which does meet the requirements of that Act or its regulations – including minimum safety requirements.

3. It was also alleged at the hearing that Massive Truck, Gurtej Sidhu and Jastej Singh Sidhu provided false and/or misleading information to Bruce Forbes, a Compliance Officer with the Authority while he was acting under the authority of the *Motor Dealer Act* R.S.B.C. 1996 c. 316 (the “MDA”), contrary to section 35(3)(a) of that Act by stating that the sale of the Dodge took place on a Native Reserve, when it did not.

4. Present at the hearing was Gurtej Sidhu, dealer principal for Massive Truck, and Jastej Singh Sidhu who were assisted by a friend Mr. Harjinder Chatchot. Denise and Don Hurtubise were present at the hearing. One witness was called, Robert Simonsen, a mechanic who completed some repairs to the Dodge shortly after it was purchased from Massive Truck.

5. Prior to the hearing, Massive Truck, Gurtej Sidhu and Jastej Singh Sidhu were served with a Notice of Hearing which was entered as Exhibit 1. The Affidavit of Bruce Forbes, with attached exhibits, and sworn on April 1, 2008, was entered as Exhibit 2. Massive Trucks, Gurtej Sidhu and Jastej Singh Sidhu acknowledged receiving the Affidavit prior to the hearing. Bruce Forbes was present at the hearing and questioned by Mr. Chatchot regarding the Affidavit.

6. While I may not comment on all the oral and written evidence provided during this hearing, I have reviewed all that evidence and given it all the appropriate consideration and weight.

FACTS

7. On March 13, 2008 Denise Hurtubise purchased the Dodge from Massive Truck. Ms. Hurtubise states that she dealt with both Gurtej Sidhu and Jastej Singh Sidhu during the transaction (Affidavit paragraph 5) and that they represented that the vehicle was driven by an old man and made sure it ran well and was taken care of. In the Affidavit, Mr. Daniel Roger states the same. Mr. Roger also states that Gurtej Sidhu and Jastej Singh Sidhu advised him and Ms. Hurtubise that the alignment was out on the vehicle and that if they agreed to cover the cost of that repair Massive Truck would give them a good price. Mr. Roger also states that Ms.

Hurtubise took the vehicle for a test drive, heard a noise when the brakes were applied and the vehicle pulled when the brakes were applied. Mr. Roger states Gurtej Sidhu and Jastej Singh Sidhu advised this would be corrected when the alignment was completed. Mr. Roger, a Status Native, finally says that the salesperson agreed to exempt the taxes so long as Mr. Roger would say the vehicle was delivered to band land. Mr. Roger's evidence is that sometime later, Jastej Singh Sidhu contacted him to confirm he would say the vehicle was delivered to a band land (Affidavit paragraph 15).

8. The purchase agreement (Exhibit G to the Affidavit) shows the vehicle was sold to Devin Daniel Roger. Ms. Hurtubise explained that Daniel was her then boyfriend and that it was purchased in his name for tax purposes as he is a Status Native (pages 30 and 31 of the Affidavit Exhibits). The purchase agreement states: "Vehicle is sold at Seabird Band Office no taxes collected..." the rest cannot be seen as a stamp has been placed over this comment saying; "Due to price consideration vehicle sold as displayed".

9. The purchase agreement also shows the dealer has not declared whether the Dodge meets the requirements of the *Motor Vehicle Act*, or that the vehicle is not suitable for transportation. The signatures of Mr. Roger and Jastej Singh Sidhu appear on the purchase agreement.

10. On March 29, 2008 Ms. Hurtubise was driving the Dodge when she lost her brakes. She managed to get the Dodge to the Canadian Tire in Mission, where they inspected her brakes and found the rear brakes to be "metal on metal", meaning there were no brake linings left and that the rear brake wheel cylinders were leaking. Ms. Hurtubise could not afford the repairs as estimated and the vehicle was towed to Mr. Robert Simonsen's garage.

11. Mr. Simonsen testified that he is a certified mechanic with 18 years experience. From 1990 until about 2002 Mr. Simonsen had worked at various Canadian Tire stores before working for himself out of his home garage. While at Canadian Tire Mr. Simonsen was licensed to conduct Provincial Private Vehicle Inspections, but is no longer so licensed. These are B.C. Government inspections that determine the roadworthiness of motor vehicles. Mr. Simonsen testified that the rear brakes were over 100% worn as the brake shoes had gone into the brake drums. All the rear springs that hold down the brake shoes had broken, the park brake cable was seized, the wheel cylinders were leaking and "on one front wheel there were three studs missing out of the six, which is dangerous". Mr. Simonsen said that the vehicle was unsafe for the road.

12. Mr. Hurtubise paid Mr. Simonsen to do the repair work and also included some work to be done to the front end of the vehicle. This front end work had in fact been done by a previous mechanic named George, but was included in the invoice for repairs Mr. Simonsen provided. That invoice, parts and labour included amounted to \$650.00 (page 7 of the Affidavit Exhibits). The invoices from Lordco for the parts were also provided in the Affidavit.

13. After Mr. Simonsen's repairs were completed Ms. Hurtubise had a Private Vehicle Inspection conducted at Helmut's Service Center on May 21, 2008. The Dodge failed that inspection for yet other reasons, making the vehicle unsuitable for transportation and it cannot be legally driven on B.C. roads until repaired (pages 35-37 of the Affidavit Exhibits). I note from the comments on the invoice that the left front brake rotor (the rear brakes are drum brakes) is cracked. This is an important fact. I had asked Massive Truck if they had inspected the vehicle before selling it. They said they had and pointed out invoice 030549 dated February 15, 2008. That invoice shows Massive truck inspected for a front end noise and that they replaced the front left brake caliper bracket with a used part. It is understood in the industry that the brake caliper bracket straddles the brake rotor and any crack to the rotor would be self evident if properly inspected.

14. Gurtej Sidhu and Jastej Singh Sidhu state that they dealt with Devin Daniel Roger, and sold the vehicle at a reduced rate to cover future repairs. Mr. Harjinder Chatchot did most of the questioning and focused most of his time on cross examining the witnesses. Jastej Singh Sidhu provided a written statement which is page 37 of the Affidavit Exhibits. They also discussed the fact that Ms. Hurtubise should take the Dodge to be inspected by a mechanic prior to purchase.

15. Ms. Hurtubise is unable to drive the Dodge until she makes further repairs to it so as to bring it in compliance with the Motor Vehicle Act and its regulations. Ms. Hurtubise wants to return the Dodge for a refund and to be reimbursed for the repairs made to the Dodge.

THE LAW

(i) Deceptive Act or Practice

16. Section 5(1) of the BPCPA prohibits a supplier of goods conducting a consumer transaction from committing a deceptive act or practice. The definition of supplier applies to Massive Truck, Gurtej Sidhu and Jastej Singh Sidhu. Under Section 4(3) of the BPCPA, the B.C. Legislature has

deemed certain conduct to be deceptive acts or practices. The Notice of Hearing identifies two such sections in issue here which state:

4(3) Without limiting subsection (1), one or more of the following constitutes a deceptive act or practice:

- (a) a representation by a supplier that goods or services
 - (ii) are of a particular standard, quality, grade, style or model if they are not,
 - (iii) have a particular prior history or usage that they do not have, including a representation that they are new if they are not,

17. I would add that section 4(3)(b)(vi) may be appropriate in this case which states:

- (b) a representation by a supplier
 - (vi) that uses exaggeration, innuendo or ambiguity about a material fact or that fails to state a material fact, if the effect is misleading,

18. The case law provides guidance in the application of these provisions. In *Rushak v. Henneken Auto Sales & Service* (1991), 59 B.C.L.R. (2d) 250, (C.A.), (BC Court of Appeal) the following principles emerge:

- a. a deceptive act or practice need not be intentional, may be inadvertent and may arise even if the supplier has an honest belief in the accuracy of the information it relays;
- b. a deceptive act is one “that tends to lead a person astray into making an error of judgment;”
- c. the Act must be construed so as to protect not only alert potential customers, but also those who are not alert, are unsuspecting and are credulous; and
- d. the Act imposes a high standard of candour on a supplier of goods.

19. *Henneken* was recently applied in *The Consumers' Association of Canada et al. v. Coca-Cola Bottling Company et al* 2006 BCSC 863; additional reasons 2006 BCSC 1233 (B.C. Supreme Court); affirmed by 2007 BCCA 356 (B.C. Court of Appeal); leave to appeal to the Supreme Court of Canada refused (December 20, 2007, S.C.C. File No. 32248, 2007 CanLII 66731).

(ii) Onus of Proof

20. Under Section 5(2) of the BPCPA, the onus is placed on the dealer to show that the alleged deceptive act or practice did not occur:

(2) If it is alleged that a supplier committed or engaged in a deceptive act or practice, the burden of proof that the deceptive act or practice was not committed or engaged in is on the supplier.

DISCUSSION

(A) The allegations under the BPCPA

21. It is clear from the evidence that the Dodge does not meet the requirements of the Motor Vehicle Act and its regulations. The Dodge is unsuitable for transportation. I also find that the Dodge did not meet those requirements at the time Massive Truck sold the vehicle to Ms. Hurtubise. Massive Truck was aware of a noise in the front of the truck and attempted to repair it by replacing front brake components prior to that sale. Their evidence is also that they inspected the Dodge prior to its sale and that they inspect the brakes of all their vehicles (Affidavit paragraph 13). When Ms. Hurtubise test drove the Dodge and complained of the same type of noise and vehicle pull when the brakes were applied, Massive Truck downplayed the issue as an alignment problem.

22. I find that Massive Truck, Gurtej Sidhu and Jastej Singh Sidhu made representations to Ms. Hurtubise that the vehicle was driven by an old man and gave the impression the vehicle was well maintained. The purchase history of the Dodge shows Massive Truck purchased it from the Adesa Auto Auction and the seller was Fraser City Motors Ltd. dba Langley Chrysler (page 32 of the Affidavit Exhibits). The Adesa document shows it was signed by Jastej Singh Sidhu. Going even further back, the Dodge was apparently taken in on trade by Langley Chrysler from a Ms. Tania Dawn Kozsan (pages 16-17 of the Affidavit Exhibits) before Langley Chrysler sold it to Massive Truck through the Adesa Auction (page 18 of the Affidavit Exhibits). There is no indication that an old man ever owned the Dodge. When the above breaches are coupled with the representations made by Massive Truck, Gurtej Sidhu and Jastej Singh Sidhu about the Dodge's condition, which I find were not true, I find Massive Truck has committed a deceptive act or practice as defined by the BPCPA and applied by the courts.

23. Massive Truck, Gurtej Sidhu and Jastej Singh Sidhu raise in their defence the fact that Ms. Hurtubise should have had the Dodge inspected. However, I find that Massive Truck represented to Ms. Hurtubise that there was no need for an inspection as an alignment would correct the noise and vehicle pull while braking. This is similar to the case in *Rushak* where the dealer recommended the consumer take the Mercedes to an authorized dealer to have a rust inspection done before the consumer purchased the vehicle. The B.C. Court of Appeal stated:

That the purchaser had the vehicle inspected by others, who could not see the latent defect, and that she failed to have it inspected by the dealer, as suggested by the defendant, cannot, in my view, change the character of the statement made. It was a statement which necessarily 'downplayed' the need for such examination, and tended to lead to an error of judgment.

24. Based on the evidence presented, I find that Massive Truck, Gurtej Sidhu and Jastej Singh Sidhu have deliberately committed a deceptive act or practice contrary to the BPCPA.

(B) The allegations under the Regulation

25. I also find Massive Truck did not make its statutory declaration that the Dodge either conformed to the Motor Vehicle Act or it was unsuitable for transportation. Massive Truck has breached sections 21 and 22 of the *Regulation*. I further note that this is the only statutory declaration not made on the purchase agreement and draw an inference that it was intentionally left blank.

(C) The allegation that Jastej Singh Sidhu and Gurtej Sidhu gave false statements

26. The evidence of Ms. Hurtubise and the statement of Devin Roger show that the sale of the Dodge took place at Massive Truck and not on Native Reserve land. The purchase agreement shows the sale took place at the Seabird Band Office and no taxes were collected. That agreement was signed by Jastej Singh Sidhu. This is contrary to the Federal Indian and Excise Tax Acts and the B.C. Social Services Tax Act and its regulation.

27. At paragraph 13 of the Affidavit, Mr. Forbes stated that he interviewed Gurtej Sidhu who initially stated he delivered the vehicle to the Native Reserve, but when warned of his need to tell the truth, Mr. Gurtej Sidhu stated he in fact did not deliver the vehicle to Native Reserve – he did not want to lie. I accept this evidence. It was not challenged at the hearing.

28. I also accept the evidence of Bruce Forbes as set out in paragraph 9 of his Affidavit that Jastej Singh Sidhu gave a false statement to him while acting in his capacity as a Compliance Officer under the MDA. Jastej Singh Sidhu stated that the Dodge was delivered to the Native Reserve by his brother Gurtej Sidhu. This evidence was not challenged at the hearing and is contrary to the statement of Gurtej Sidhu. I am satisfied that Jastej Singh Sidhu gave a false statement contrary to section 35(3)(a) of the MDA.

REMEDY

(A) Breach of the BPCPA

(1) Compliance Order

29. Under section 155 of the BPCPA, I may make a compliance order to remedy a breach of that Act. I find that in this case, requiring Ms. Hurtubise to keep the Dodge would be unjust; it is unsuitable for transportation. I also believe that if the Dodge is returned to Massive Truck, they should be responsible for the repairs/improvements made to the Dodge as they will benefit from those in the future. It was only because of their representations that Ms. Hurtubise undertook to conduct the alignment repairs and the need to fix the rear brakes. I make the following compliance order:

- (a) Massive Truck, Gurtej Sidhu and Jastej Singh Sidhu are to abide by the *Business Practices and Consumer Protection Act*, and specifically to refrain from deceptive acts and practices;
- (b) Massive Truck, Gurtej Sidhu and Jastej Singh Sidhu are to properly and fully disclose the nature and condition of any motor vehicle they offer for sale – a material fact;
- (c) Within 45 days of this decision, Massive Truck, Gurtej Sidhu and Jastej Singh Sidhu are to take back the Dodge and refund the entire purchase price of \$4780.00 to Ms. Hurtubise. Massive Truck, Gurtej Sidhu and Jastej Singh Sidhu will be responsible for the cost of retrieving the Dodge from Ms. Hurtubise. Ms. Hurtubise will be required to sign over ownership of the Dodge at the time she receives the refund;
- (d) Massive Truck, Gurtej Sidhu and Jastej Singh Sidhu are to refund the cost of repairs to Ms. Hurtubise which I set at \$650.00 based on the evidence at the hearing and the invoice from Bob's Automotive; and
- (e) Massive Truck, Gurtej Sidhu and Jastej Singh Sidhu are responsible to reimburse the VSA \$1149.58 for its investigation and hearing costs. An invoice detailing this amount will be supplied.

(2) Administrative Penalties

30. Under section 164 of the BPCPA I may apply an Administrative Penalty for an infraction of that Act. In doing so I must take into consideration the factors set out in section 164(2) of the BPCPA and consider the whole of the case. The maximum administrative penalty that may be applied to a corporation is \$50,000.00 and \$5,000.00 to an individual.

(a) Massive Truck

31. I note the following factors regarding Massive Truck:

- (a) There has been past enforcement action against Massive Truck for selling an unsafe vehicle - VSA Case No. 06-70484. After the VSA commenced an investigation in that case, Massive Truck took back the vehicle and refunded the money to the consumer.
- (b) This contravention was very serious as it had the potential of causing bodily harm or death to Ms. Hurtubise, her family and others of the general public, if the Dodge was in an accident.
- (c) The actual harm to the consumers was, luckily, monetary and lost time and inconvenience.
- (d) This is a repeat of a past similar act by Massive Truck.
- (e) This was a deliberate deceptive act.
- (f) Massive Truck benefited from the sale of the Dodge.
- (g) Massive Truck has taken no steps to rectify this problem.

32. I believe this case is without precedent as to the severity of the potential harm from the deception. It surpassed mere monetary damages. Through a deceptive act, Massive Truck placed a consumer and the general public in danger for the sake of selling the Dodge for under \$5,000.00. In the Registrar decisions of Bay City Kia, Maple Ridge Chrysler Jeep Dodge and Vancouver Chrysler, all on November 30, 2007, Registrar Smith imposed a \$10,000.00 Administrative Penalty for deceptive advertising. In Lucky Eight Enterprises Ltd., hearing held November 15 and 22, 2006 with VSA Investigation No. 06-70031, Registrar Smith imposed a \$20,000.00 penalty for that dealer's deceptive acts of forging false accident reports and misrepresenting prior damage histories to consumers on the vehicles it sold. Lucky Eight has paid that assessment. Considering the above factors, the need for progressive enforcement, the need to

protect the public and deter similar very serious breaches of the BPCPA, I believe an administrative penalty in the amount of \$20,000.00 against Massive Truck is warranted.

(b) Gurtej Sidhu

33. I note that all the factors set out in paragraph 31 apply to Mr. Gurtej Sidhu except that there has been no past enforcement action against him and no indication he has been involved in a similar situation. I also acknowledge that Mr. Gurtej Sidhu did cooperate with this investigation, although only after Mr. Forbes informed him of his obligations. In considering the above and the past decisions of the Registrar where a salesperson has received an administrative penalty, I believe an administrative penalty against Mr. Gurtej Sidhu in the amount of \$1000.00 is warranted.

(c) Jastej Singh Sidhu

34. The factors set out in paragraph 31 apply to Mr. Jastej Singh Sidhu except that there has been no past enforcement action against him and no indication he has been involved in a similar situation. I note that Jastej Singh Sidhu did not cooperate with this investigation and that he appeared to be the primary sales person dealing with Ms. Hurtubise. In considering the above and the past decisions of the Registrar where a salesperson has received an administrative penalty, I believe an administrative penalty in the amount of \$1,250.00 is warranted.

(B) Breach of the MDA and the Regulation

35. Under sections 4(6) and 5(b)(ii) of the MDA, I may place a condition on, suspend or cancel a motor dealer's registration for a breach of the MDA and its regulations where I deem it would be in the public interest to do so. Under sections 4(3) and 6(b) of the *Salesperson Licensing Regulation* I may place a condition on, suspend or cancel a salespersons license for a breach of the MDA and its regulations where I deem it would be in the public interest to do so.

(a) Massive Truck

36. The major concern for the general public is that there is a history of Massive Truck selling vehicles unsuitable for transportation and without informing consumers of that fact. In order to protect consumers in this regard I believe it is necessary to place a condition on the Registration of Massive Truck requiring all vehicles sold by them to pass the Provincial Private Vehicle Inspection prior to sale. That inspection may not be conducted by Massive Truck or anyone who

is associated with Massive Truck, its directors, officers or employees. A copy of the inspection must be provided to the consumer prior to any purchase. This condition may be reviewed in one year's time from the date of this decision.

(b) Gurtej Sidhu

37. I again, acknowledge that Mr. Gurtej Sidhu cooperated with Mr. Forbes during this investigation. I also find that Gurtej Sidhu has shown a lack of knowledge or concern as to his legal obligations when selling vehicles to consumers. I also note that he last took the Salesperson Certification Course in 2004. The law and course has changed since then. I place a condition on Gurtej Sidhu's license requiring him to retake and pass the Salesperson Certification Course at his own cost within 90 days of this decision. A failure to do so will result in the suspension of his salesperson license until he has passed that course.

(c) Jastej Singh Sidhu

38. I also find Jastej Singh Sidhu has shown a lack of knowledge or concern as to his legal obligations when selling vehicles to consumers. I also note that he last took the Salesperson Certification Course in 2004. The law and course has changed since then. I place a condition on Mr. Jastej Singh Sidhu's license requiring him to retake and pass the Salesperson Certification Course at his own cost within 90 days of this decision. A failure to do so will result in the suspension of his salesperson license until he has passed that course.

39. For making a false statement to Mr. Bruce Forbes, I find there to be no condition that could be placed on Mr. Jastej Singh Sidhu's license other than to not make false statements. That is the law and automatically a requirement of his license. In order to deter this conduct in the future, I find that it would be in the public interest to suspend Jastej Singh Sidhu's license for a period of three (3) days. For certainty that suspension will take place from 12:01 a.m. on Friday September 5, 2008 and end at 11:59 p.m. on Sunday September 7, 2008. Jastej Singh Sidhu may not engage in the sale of motor vehicles to the general public for purposes that are primarily family or personal on Friday September 5, Saturday September 6 and Sunday September 7, 2008.

SPECIAL NOTE

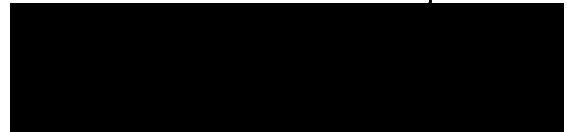
40. Selling vehicles unsuitable for transportation to consumers and especially without informing them of that fact is intolerable and unacceptable within the industry and with the

general public. Massive Truck, Gurtej Sidhu and Jastej Singh Sidhu have been levied monetary penalties and conditions have been placed on their licenses to give them an opportunity to rectify this type of conduct. If any of these three are brought before the Registrar again for similar conduct, monetary sanctions and conditions on licenses will be insufficient to deal with that conduct. They will face significant suspensions and or cancellation of their licenses depending on the facts.

RECONSIDERATION

41. Pursuant to sections 155(7), 166(2), 181 and 182 of the BPCPA, an application for reconsideration of the determination on the compliance order and notice of penalty may be made within 30 days of receiving a copy of them. Such an application must be in writing and there must be new previously unavailable evidence provided. The written request must identify any errors or other grounds for the reconsideration. The application is to be directed to Denis Savidan, Manager of Compliance and Investigations, Motor Vehicle Sales Authority of B.C., #150 – 6400 Roberts Street, Burnaby, B.C., V5G 4C9.

Date: August 18, 2008

A large black rectangular redaction box covers the signature area of the document.

Ian Christman B.A., LL.B.