

**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:**

**ROBERT CAR**

**COMPLAINANT**

**AND:**

**VANCOUVER AUTO LEASING LTD.**  
**(Dealer No. 30407)**

**MOTOR DEALER**

**AND:**

**SHAHRAM MOGHADDAM**  
**(Salesperons License No. 101801)**

**SALESPERSON**

**DECISION OF THE REGISTRAR OF MOTOR DEALERS**

1. On July 23, 2008 and August 20, 2008 a hearing was held before me whereby it was alleged that Vancouver Auto Leasing Ltd. Dealer Number 30407 (“Vancouver Auto”), and Shahram Moghaddam, Salesperson Licence Number 101801, committed a deceptive act or practice between November 15, 2007 and November 19, 2007, at or near Vancouver, British Columbia, by failing to declare a material fact to Robert Car contrary to section 5(1) of the *Business Practices and Consumer Protection Act* S.B.C. 2004 c. 2 (the “BPCPA”). Specifically that a 2006 Toyota Tacoma with VIN 5TEUU42N76Z160827 (the “Toyota”) which Mr. Car purchased, had sustained prior damage of approximately \$28,000.00.

**FACTS**

2. Mr. Car and Mr. Moghaddam both gave testimony at the hearing. The Affidavit of Ross Cote, compliance officer with the Motor Vehicle Sales Authority of B.C. (the “VSA”) was entered as Exhibit 3. Mr. Moghaddam was provided a copy of that Affidavit well before the July 23, 2008 hearing date. 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.

3. Mr. Car's written statement and testimony provide the following facts:

- (i) He purchased the Toyota from Vancouver Auto and dealt with Mr. Shahram Moghaddam. This was not contested.
- (ii) He entered into an agreement to purchase the Toyota. On the purchase agreement he initialed the motor dealer's declaration of damage over \$2,000.00 and a hand written declaration made by Vancouver Auto and by Mr. Moghaddam that the Toyota was a stolen recovery. This was not contested.
- (iii) He asked Mr. Moghaddam three times to provide details of the damage to the vehicle and Mr. Car testified:

You [Mr. Moghaddam] were extremely vague about it...[y]ou said that there was some damage to the back end of the truck, that it had been stolen, and some minor damage done to the back end.

This was not directly contested by Mr. Moghaddam although in his questioning of Mr. Car he attempted to infer more was declared about the damage to the Toyota.

- (iv) After the sale, he became suspicious when an invoice for a movie company came to light regarding the Toyota and started making inquiries with the Insurance Corporation of British Columbia about the history of the Toyota. Mr. Car was able to obtain volumes of documents from I.C.B.C., including pictures of the Toyota, identifying its damage at about \$28,000.00: Exhibit A of the Affidavit.
- (v) Mr. Car spoke with Doug Donaldson of Langley Toyotatown who provided a letter dated December 12, 2007 stating (page 83 of the Affidavit Exhibits):

It is my opinion as the sales manager of Langley Toyotatown that a 2006 Toyota Tacoma 4x4 with 26,000 kms, and one small \$3-5,000 collision claim incurred, would be worth approximately \$8,000.00 more in today's market than the same truck with a \$28,000 collision claim against it...

4. Mr. Car claims that had he known the true extent of the damage he would have negotiated a lesser price for the Toyota as in his opinion, its resale value will be less than if it had a minor

accident. Mr. Car testified that he is generally happy with the Toyota and has no major complaints.

5. Apart from his written statement (Exhibit G of the Affidavit) explaining the chronology of events, Mr. Moghaddam did not present much direct evidence but focused on questioning Mr. Car and Mr. Cote. From this questioning he inferred that:

- (i) Mr. Car only checked into the Toyota after he purchased it and should have investigated the Toyota prior to sale.
- (ii) Mr. Car is genuinely happy with the Toyota and it is running and operating fine.
- (iii) Mr. Car researched the price of comparable Toyota's prior to purchase and that it was comparably priced. Mr. Car countered that it was comparable but not necessarily for a vehicle with \$28,000.00 in repaired damages.
- (iv) Mr. Moghaddam declared the vehicle as a stolen recovery as that is the I.C.B.C. website from which he bought it, and that he does not have access to the repair website. Mr. Cote testified (and at paragraph 12 of his Affidavit) that he spoke with Brendan Lally, I.C.B.C. Manager, Provincial Salvage Operations & Systems who informed Mr. Cote that the Toyota was not bought from the stolen recovery website but from the repaired website and that Vancouver Auto and Mr. Moghaddam have access to both the stolen recovery and repair websites.
- (v) In questioning Mr. Car, Mr. Moghaddam inferred that he explained the extent of the damage to the Toyota by discussions of paint overspray on doors and other parts of the vehicle. Mr. Car denied there was such a discussion.

6. Mr. Car also noted that Mr. Moghaddam agreed to take his 1993 Chevrolet pick-up in trade. After the deal was done, Mr. Moghaddam said the Chevrolet was originally from out-of-province and that Mr. Car would have to repay Mr. Moghaddam \$500.00 for the trade-in. Mr. Car did and with taxes paid \$568.74 by VISA.

7. Mr. Car notes that from his investigation, he determined the Toyota was originally from Alberta and he too should receive a \$500.00 reduction for the Toyota being out-of-province. I note that there are no out-of-province declarations on the purchase agreement. Also, the I.C.B.C.

Vehicle Damage Inquiry report dated April 25, 2008 indicates the vehicle was never imported from outside B.C.

8. Finally, Mr. Car provided the ad run by Vancouver Auto Leasing on the Buysell.com (page 2 of the Affidavit exhibits) showing the Toyota coming with the following options which Mr. Car determined are not on the Toyota:

- (i) Rear Defroster
- (ii) Side Impact Air Bag
- (iii) Plow Package
- (iv) Block Heater

The ad also states “one owner, bc vancouver truck.” Mr. Moghaddam did not deny these facts.

9. A review of the I.C.B.C. documents shows that the accident occurred on Highway 43 near Little Smoky Alberta, northwest of Edmonton (pages 28-30 and 45-46 of the Affidavit Exhibits) and was repaired mostly by Russ’s Body Shop of Dawson Creek B.C. with the Private Vehicle Inspection after repair being conducted in Prince George, B.C.

10. A review of the repair work orders, I.C.B.C. log entries and the pictures of the Toyota show it had damage to its front, sides, hood, roof, rear, fenders, truck box, windshields and to the suspension of the vehicle. There was interior damage and some minor electrical problems. Adding up the two I.C.B.C. invoices (pages 57-60 and 79-81) shows I.C.B.C. paid \$27,064.34 in repairs. It was Mr. Car who obtained this information and there appears to be no evidence that Vancouver Auto or Mr. Moghaddam took the time to research the damage on the Toyota. The only information they had about the damage over \$2,000.00 appears to be the invoice from I.C.B.C. at the time it sold the Toyota to Vancouver Auto (page 92 of the Affidavit Exhibits). That invoice only states “prior damage over \$2000.”

## **THE LAW**

11. 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 both Vancouver Auto and Shahram Moghaddam. Under section 4(3) of the BPCPA, the B.C. Legislature has

deemed certain conduct to be deceptive acts or practices. The Notices of Hearing identify the following section:

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

(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,

12. Also relevant would appear to be sections 4(3)(a)(i) and (iii):

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

(i) have sponsorship, approval, performance characteristics, accessories, ingredients, quantities, components, uses or benefits that they do not have,

(iii) have a particular prior history or usage that they do not have, including a representation that they are new if they are not,

13. 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:

(i) 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;

(ii) a deceptive act is one “that tends to lead a person astray into making an error of judgment;”

(iii) 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

(iv) the Act imposes a high standard of candour on a supplier of goods.

14. *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).

15. Under section 5(2) of the BPCPA, the onus is placed on Vancouver Auto and Mr. Moghaddam 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.

16. The statutory declarations of material facts a motor dealer must make under section 23 of the *Motor Dealer Act Regulation* B.C. Reg. 447/78, such as damage over \$2,000.00, has been found to place a positive duty on a motor dealer to make its own inquiries about those facts, and not rely on others to provide that information. There is a corresponding positive duty to disclose “extensive prior damage...to a prospective purchaser”: *Motley v. Regency Chrysler* 2002 BCSC 1885 at paragraphs 6-8 (B.C. Supreme Court).

17. A finding that a dealer has committed a deceptive act or practice contrary to the BPCPA is grounds to consider whether to place a condition on, suspend, or cancel a motor dealers registration or a salesperson licence under section 8.1(4)(b) of the MDA:

(b) contravention of a prescribed provision of Part 2 or 5 of the *Business Practices and Consumer Protection Act* by a person is grounds for the registrar or director, as the case may be, to determine that it is not in the public interest for the person to be registered or to continue to be registered under this Act and, without limiting paragraph (a) of this subsection, the registrar or director, as the case may be, may exercise the rights and powers of the registrar under Part 1 of this Act that may be exercised in the event of that determination...

## DISCUSSION

18. In considering the evidence of Mr. Car and Mr. Moghaddam I prefer that of Mr. Car. Mr. Car’s evidence was clear and consistent throughout and he was able to provide detailed answers. Mr. Car’s evidence was also consistent with the documentary evidence. Mr. Moghaddam was vague and did not answer questions directly but instead attempted to infer the answers. He did not directly challenge Mr. Car’s evidence. For example, Mr. Moghaddam was elusive and did not provide a clear answer when Mr. Car asked about the fact that the Toyota was advertised for \$1,000.00 less on the internet (buysell.com) then the sticker price shown on the Toyota on Vancouver Auto’s lot.

19. I find from the evidence that Vancouver Auto and Mr. Moghaddam made the following misrepresentations:

- (i) The Toyota only had damage to the rear end of the vehicle. The evidence is clear this is not true and the damage was much more extensive. This is deemed a deceptive act pursuant to section 4(3)(b)(vi) of the BPCPA.
- (ii) The Toyota was a stolen recovery. The evidence shows this is not true. Even if Mr. Moghaddam believed it to be true, it can still be a misrepresentation and a deceptive act: *Rushak*. This is deemed a deceptive act pursuant to section 4(3)(a)(iii) of the BPCPA.
- (iii) The Toyota was a Vancouver, B.C. truck. The inference that can be drawn is that it was driven only in Vancouver. The evidence is clear the Toyota was involved in an accident in Alberta. This is deemed a deceptive act pursuant to section 4(3)(a)(iii) of the BPCPA.
- (iv) The Toyota had (a) a rear defroster; (b) side impact air bag; (c) a plow package; and (d) a block heater when it did not. This is deemed a deceptive act pursuant to section 4(3)(a)(i) of the BPCPA.

20. I also find that Vancouver Auto and Mr. Moghaddam were deliberately vague about the extent of the Toyota's damage as well as being a Vancouver, B.C. truck. These are deemed deceptive acts pursuant to section 4(3)(b)(vi) of the BPCPA.

21. I also note that Vancouver Auto failed to discharge the positive duty imposed on it under section 23 of the Motor Dealer Act Regulation. There is no evidence it tried to determine the extent of the Toyota's damage in order to properly make its statutory declaration: *Motley*. That information was clearly available as Mr. Car was able to obtain it.

22. As to Mr. Mogahddam's inference that Mr. Car should have made his own inquiries prior to purchasing the Toyota, the B.C. Court of Appeal addressed this in *Rushak* thusly:

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.

The fact that Mr. Car did not have the Toyota independently inspected does not change the nature of the misrepresentations made by Vancouver Auto and Mr. Mogahddam, nor their liability under the BPCPA.

23. I find that both Vancouver Auto and Mr. Mogahddam have committed deceptive acts or practices as defined by the BPCPA and applied by the courts. I further find that the misrepresentations led Mr. Car into making an error of judgment in purchasing the Toyota.

## **REMEDY**

### ***A. Compliance Order***

24. A finding that a deceptive act or practice has occurred does not automatically void a transaction. The transaction must be looked at as a whole, along with the misconduct, to determine the appropriate remedy.

25. Mr. Car provides the letter of Mr. Doug Donaldson of Langley Toyotatown, stating that the same Toyota with 26,000 kms and a \$3-5000.00 accident repair is worth about \$8,000.00 more than the Toyota in question. This of course is an opinion of one dealer which is frozen in time. The fact that the Toyota may be worth \$8,000.00 less as of the date of the letter, is not necessarily the case several years from now – or even today.

26. In *Parsons v. Zagrodzki* 2005 BCPC 384, Judge Tweedale was considering the expert evidence from a professional car evaluator in a case where the dealer had failed to declare damage to the consumer. Judge Tweedale cited various court decisions and noted the following problems with that experts report:

- (i) There must be evidence of damage and a reduction in value of the vehicle – the expert relied on assumptions;
- (ii) The expert relied on estimates of repairs and did not review the Structural Assessment Integrity Report of I.C.B.C. which confirms whether there has been “structural damage”, such as frame damage;
- (iii) The expert relied too heavily on the notion of a “stigma” attached to vehicles damaged in car accidents; and
- (iv) The expert relied too heavily on a survey of dealers who provided a mere opinion on the value of the car. This is not evidence. In the words of Judge Tweedale: “Many people sharing an opinion, which is wrong in fact and law, does not make the opinion accurate.”

27. In *Miles v. Mendoza* 1994 CanLII 419 (B.C. Supreme Court), Justice Newbury (now of the Court of Appeal) stated the following about proof of accelerated depreciation of a vehicle due to an accident:

...But where a sale (at arm's length) does not take place immediately or even soon after that date [of the accident], difficulties of proof arise because, as even Mr. Weir



acknowledged, the depreciating effect of the accident declines over time. The difficulty may not be so great where the chattel is a "luxury" car, as occurred in *Turnbull v. Gammie et al.* (Vancouver Registry No. B830533, dated February 21, 1985). In that case, the plaintiff adduced very specific and persuasive expert evidence showing that a purchaser with knowledge of extensive repairs (amounting to some \$18,000) to a six-week old Mercedes Benz would pay \$8,000 less for it than for the same car without an accident in its history. There being no evidence to the contrary, Legg, J. (as he then was) awarded \$8,000 for accelerated depreciation. But usually such persuasive evidence does not exist in the absence of a sale: see e.g., *Gunn, supra*, and *Lee v. Hawkins* (Vancouver Registry No. B895355, dated October 22, 1990)...

In the case at bar, Mr. Weir's opinion that a decline in the value of the Miles' car had occurred, was based on the "simple" proposition that any car that has been in an accident necessitating major repairs carries a "stigma". This may make common sense, but in my view it does not amount to proof, in the sense required by the courts in *Gunn*, *Turnbull*, *Lee v. Hawkins*, and *Payton v. Brooks, supra*, of accelerated depreciation. Those cases make it clear that it cannot be "assumed", by virtue of the occurrence of an accident requiring extensive repairs, that a properly repaired vehicle has suffered accelerated depreciation.

In the case at bar, the only "evidence" of depreciation is really an assumption that every car that has been in an accident involving damage in excess of \$2,000 carries a stigma that depreciates its value. There is no arms-length sale from which such depreciation of the Honda Prelude can be inferred, nor is there the kind of evidence that often exists with luxury automobiles which trade to a particular clientele that may be more concerned with investment or resale value than with operation and reliability. In the result, I find that the corporate plaintiff's claim for accelerated depreciation of the vehicle has not been proven.

28. The same problem holds true in this case. Until there is a sale, or an expert evaluation of the Toyota, determining what loss Mr. Car has incurred is impossible. If he holds on to the Toyota for a number of years, then as the B.C. Supreme Court has said, the depreciating effect of the accident, if any, will be less than it is today.

29. In considering the above law as applied to the facts of this case, I cannot arrive at a specific number to compensate Mr. Car – there is no evidence of actual loss as yet. However, I find it would be unjust to make Mr. Car wait and see what his actual loss, if any, would be. He was deceived, causing him to make an error of judgment and he should not bear the risk of that deception. The best that can be achieved is to put Mr. Car back in the position he was in prior to his purchase of the Toyota. Therefore, pursuant to section 155 of the BPCPA, I make the following Compliance Order:

- (i) Vancouver Auto Leasing Ltd. and Shahram Moghaddam are to abide by the *Business Practices and Consumer Protection Act*, and specifically from committing deceptive acts or practices;
- (ii) Vancouver Auto Leasing Ltd. and Shahram Moghaddam are to properly and fully disclose the nature and condition of any motor vehicle they offer for sale – a material fact;
- (iii) Within 30 days of this decision, Vancouver Auto Leasing Ltd. and Shahram Moghaddam, jointly or individually, are to take back the Toyota Tacoma VIN 5TEUU42N76Z160827 and refund Mr. Car the full purchase price of \$28,473.74 – which includes the \$568.74 paid by VISA. Upon receiving his refund, Mr. Car will have to sign over ownership to either Vancouver Auto Leasing Ltd. or Shahram Moghaddam.
- (iv) Within 30 days of this decision, Vancouver Auto Leasing Ltd. and Shahram Moghaddam, jointly or individually, are to refund Mr. Car \$3,800.00 for his trade-in, in lieu of returning the actual trade-in.
- (v) Vancouver Auto Leasing Ltd. and Shahram Moghaddam, jointly or individually, are to reimburse the Motor Vehicle Sales Authority of British Columbia \$946.19 for its investigation and hearing costs. An invoice detailing this amount will be provided.

***B. Administrative Assessment***

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.

***(i) Vancouver Auto Leasing Ltd.***

31. I note the following factors regarding Vancouver Auto Leasing Ltd.:

- (a) There has been no enforcement activity against Vancouver Auto of a similar nature as here.
- (b) This contravention involved deceptive acts that have the potential of adversely affecting the financial interests of a consumer.
- (c) The actual harm to the consumer was monetary, lost time and inconvenience.
- (d) This was a continuous deception from advertising through to and including the sale of the Toyota.
- (e) I find these were all deliberate deceptive acts.
- (f) Vancouver Auto benefited from the sale of the Toyota in the amount of \$6,910.00 (\$28,800 [selling price without trade] – \$21,890.00 [purchase price paid to I.C.B.C.]). Vancouver Auto may also have benefited from the sale of the traded-in Chevy pick-up.

(g) Vancouver Auto has taken no steps to try and resolve this matter.

32. In the Registrar's 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. Vancouver Auto Leasing has been found to have deceptively advertised the Toyota which led Mr. Car to that dealer.

33. In past decisions, such as Barnes Wheaton hearing date December 20, 2007, Registrar Smith imposed an administrative penalty of \$2,000.00 for a misrepresentation that was found to be inadvertent. Where a motor dealer has been found to have deliberately made a misrepresentation, the motor dealer has been assessed as much as \$20,000.00 for forging I.C.B.C. vehicle damage history reports: Registrar Smith in Lucky Eight Enterprises Ltd., hearing held November 15 and 22, 2006, VSA Investigation No. 06-70031; and for misrepresenting a vehicle as safe when it was not: Massive Truck decision of August 18, 2008, Investigation No. 08-70288.

34. In considering the factors set out in paragraph 31 above, all of the facts of this case and previous decisions of the Registrar, an administrative assessment against Vancouver Auto in the amount of \$ 7,500.00 is warranted.

***(ii) Shahram Moghaddam***

35. I note the following factors regarding Shahram Moghaddam:

- (a) I note there is no past enforcement action against Mr. Moghaddam.
- (b) This contravention involved deceptive acts that have the potential of adversely affecting the financial interests of a consumer.
- (c) The actual harm to the consumer was monetary, lost time and inconvenience.
- (d) This was a continuous deception from advertising through to and including the sale of the Toyota. Mr. Moghaddam was asked on three occasions for details of the Toyota's damage and provided vague and misleading representations on each occasion.
- (e) I find these were all deliberate deceptive acts.
- (f) Mr. Moghaddam would have benefited from this sale, although the amount of that benefit is unknown. For this reason I will place little weight on this factor.

(g) Shahram Moghaddam appears to not have taken any steps to assist in resolving this matter.

36. In past decisions, the Registrar has imposed administrative assessments on salespersons for deceptive acts or practices in amounts ranging from \$500.00 (Registrar Smith's decision on January 30, 2008 Glynn Gary Davies) to \$1,250.00 (Massive Truck and Jastej Singh Sidhu and Gurtej Sidhu, August 18, 2008). The later decision involved a deceptive act causing a consumer to purchase an unsafe vehicle.

37. In considering the factors in paragraph 35 and considering the whole of this case, an administrative penalty in the amount of \$750.00 against Shahram Moghaddam is warranted.

38. I also note that Shahram Moghaddam last took the Salesperson Certification course in October 2004. It is clear he does not understand his legal obligations in conducting motor vehicle transactions. In accordance with sub-sections 4(1) and (3) of the *Salesperson Licensing Regulation* B.C. Reg. 241/2004, a condition will be placed on Shahram Moghaddam license's that he must successfully complete the salesperson certification course prior to his license being reinstated.

39. I also order that the motor dealer registration of Vancouver Auto Leasing Ltd. No. 30407 and the salesperson license of Shahram Moghaddam No. 101801 remain suspended and if either wish to be reinstated, that a hearing first be called before the Registrar of Motor Dealers.

#### **RECONSIDERATION**

40. 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., #208 – 5455 152<sup>nd</sup> Street, Surrey B.C. V3S 5A5.

Date: October 15, 2008



Ian Christman B.A., LL.B.