

**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:**

**ELLEN COLEEN HOBBS, by way of  
SHEILA LLOYD AND BARBARA PAYNE (POWER OF ATTORNEY) and  
KATHY AND RICHARD HOBBS**

**COMPLAINANTS**

**AND:**

**321438 B.C. LTD. dba  
MIDWAY MAZDA  
(Dealer No. 8333)**

**MOTOR DEALER**

**AND:**

**KEN MOSS  
(Salesperson No. 108655)**

**SALESPERSON**

**AND:**

**KATHY MCINNES  
(Salesperson No. 100200)**

**SALESPERSON**

**DECISION OF THE REGISTRAR OF MOTOR DEALERS**

1. On September 3 and October 21, 2008, a hearing was held before me whereby it was alleged that 321438 B.C. Ltd. doing business as Midway Mazda, dealer no. 8333 (“Midway”); Ken Moss, Salesperson No. 108655, a salesperson at Midway and Kathy McInness, Salesperson No. 100200, the business manager at Midway, committed an unconscionable act or practice contrary to section 9(1) of the *Business Practices and Consumer Protection Act* S.B.C. 2004 c. 2 (the “BPCPA”), specifically that on or about July 2, 2008, they sold a 2004 Mazda MPV Van with VIN JM3LW28A840530542 (the “MPV”) to Ellen Collen Hobbs when her ability to understand the nature of the transaction was impaired by a mental or physical infirmity, as she was suffering from dementia.

2. Briefly, Mr. and Mrs. Hobbis attended Midway on July 2, 2008, to purchase a vehicle. Their stated intention was to replace the vehicle they said had been stolen and I.C.B.C. had paid them out. In fact, the children of Mrs. Hobbis had earlier taken away their van by exercising their power of attorney. The children's reasons for doing so was that Mr. Hobbis continued to drive when he did not have a valid driver's license and was unfit to drive. Mrs. Hobbis was also unfit to drive though she still possessed a valid B.C. driver's license. The children were attempting to have Mrs. Hobbis's driver's licence revoked. As Mr. Hobbis did not have a valid driver's license, the sale agreement for the MPV was made out in Mrs. Hobbis's name exclusively.

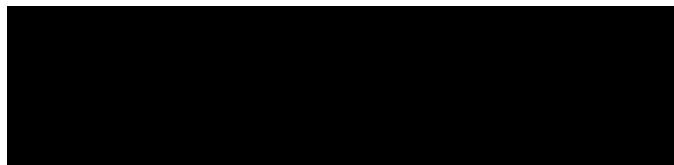
3. The evidence led was that Mr. Hobbis was very dominating within the relationship and that Mrs. Hobbis would not contradict him. On June 4, 2008, Dr. David Gayton, Mrs. Hobbis's specialist in geriatric medicine, penned a letter stating Mrs. Hobbis "has a moderate severity dementing illness and this is progressing. She is now clearly incapable of making financial and important personal decisions." Dr. Gayton recommended that the children start exercising their power of attorney. Evidence was called, including that of the Autoplan agent, to suggest that Mrs. Hobbis may have been a very disinterested person in this sale. At the September 3 hearing she gave little evidence and clearly did not recall much of the sale.

4. On October 21 I recalled the hearing for two reasons. First, Mr. Hobbis was unavailable September 3 and Midway rightly noted he should be questioned. The second reason was to deal with new information regarding a letter from Dr. Levin provided by Midway at the September 3, 2008 hearing.

5. Mr. Hobbis's testimony was sparse and he too did not recall much and did not recall the purchase of the MPV in question. It was clear by his demeanour that he is very dominating and easily agitated. After his evidence was given, there was discussion of Dr. Levin's letter. At the conclusion of the hearing, the Dealer Principal for Midway reconsidered his position on this matter. He concluded that now having seen Mr. Hobbis, that it may have been possible that his staff members made an honest error in judgment. He conceded that he should unwind the transaction and return the money to the family. I am informed that this occurred on Sunday October 27, 2008. He also asked for some guidance to assist him in training his staff to better recognize consumers who may not be capable of entering into contracts.

6. I have considered the unique facts of this case and the conduct of the Dealer and Salespersons in this matter. I especially recognize the steps taken by the Dealer at the conclusion of the October 21, 2008 hearing, to quickly unwind this transaction. The Dealer and Salespeople involved in this matter have been sufficiently warned of their legal obligations in this regard and I believe will take prudent steps to better protect the interests of their consumers - which by necessity coincide with their own. I believe it would not be in the public interest to levy any fines in this matter or take any further enforcement action. This matter is concluded.

October 28, 2008



Ian Christman B.A., M.B.