

File No's. 07-70900
08-70019
08-70020
08-70036
08-70162
08-70175

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

RE:

**ROBERT CARPENTER (07-70900);
LOUISA EWERT (08-70019);
KIM HOPE (08-70020);
JEANIE DWYER (08-70036);
JASON HORYCHUN (08-70162); and
ERIC AMUNDSEN (08-70175)**

COMPLAINANTS

AND:

**JDM WHOLESALE CANADA LTD.
(DL# 30512)**

MOTOR DEALER

DECISION OF THE REGISTRAR OF MOTOR DEALERS

INTRODUCTION

1. JDM Wholesale Canada Ltd. came under investigation by the Motor Vehicle Sales Authority of British Columbia (the "VSA") after it received a complaint from Robert Carpenter on November 2, 2007. Mr. Carpenter complained that he had pre-paid for a vehicle JDM had imported for him, but when he picked it up he could not register it in B.C. as it did not comply with B.C. regulations for registration. Mr. Carpenter requested a refund and JDM did not provide a refund. Subsequent to this complaint, numerous other complainants came forward. Holly Childs, a Compliance Officer with the VSA, led the investigations.

2. After Ms. Child's initial review of documents obtained from JDM in early January 2008, it became apparent that JDM had also sold extended warranties to consumers and not remitted funds to the warranty company and that it had failed to remit provincial sales tax to the Provincial Government. There was also evidence that JDM had replaced legal tires for non-legal tires on one consumer's vehicle. On January 11, 2008, the Registrar of Motor Dealers, Ken Smith, found sufficient grounds to issue a Freeze Order against JDM and served it on JDM, its principals, its bank and those others who were potentially debtors of JDM, or who possessed JDM property.

3. As way of background, there have been several hearings regarding JDM starting on February 6, 2008. At that hearing JDM requested an adjournment so that it may retain a lawyer, and it would have their lawyer contact the VSA. JDM's lawyer never contacted the VSA. The principals of JDM, James Robinson and Iain Robinson, are New Zealanders and the evidence indicates they returned to New Zealand at the end of February or early March 2008. No one has appeared on behalf of JDM at any of the hearings subsequent to February 6, 2008.

4. After the February 6, 2008 hearing it became apparent that JDM and its principals, James Robinson and/or Iain Robinson, were dealing with JDM assets contrary to the January 11, 2008 Freeze Order. On February 27, 2008 Mr. Justice McEwan of the B.C. Supreme Court ordered JDM, James Robinson and Iain Robinson to abide by the Motor Dealer Act, its regulation and the Business Practices and Consumer Protection Act and "every order made by the Registrar of the Plaintiff including, but not limited to, the Freeze Order...": (February 27, 2008 B.C.S.C. Action No. S081275, Vancouver Registry).

5. On February 29, 2008 Master Scarth of the B.C. Supreme Court ordered the appointment of David Gray as the Receiver-Manager of JDM: (February 29, 2008 B.C.S.C. Action No. S081275, Vancouver Registry). This was necessary as the principals for JDM left B.C. leaving behind assets and unsatisfied customers. It would also be necessary to obtain as much paperwork as possible in order to establish consumer claims to the compensation fund – such as documents from JDM's book keeper.

6. Filed in support of the application before Master Scarth was the Affidavit of Holly Childs sworn February 19, 2008. That Affidavit provides much of the evidence and details referred herein. The Affidavit of Holly Childs, the Order of Mr. Justice McEwan and the Order of Master

Scarth were entered as Exhibits 2, 3 and 4 respectively at the hearing held before me on March 19, 2008.

7. At a hearing held before me on June 26, 2008 the salesperson licenses of Iain Robinson and James Robinson were cancelled.

8. Investigations have been completed and the above noted complainants have applied to the Motor Dealer Customer Compensation Fund Board (the "Board") for compensation due to the conduct of JDM. The Board has granted compensation to those consumers for reasons that I summarize below.

THE CLAIMS

9. Ms. Holly Childs provided reports to the Board for each of the above consumer claims. Those reports are in the JDM hearing file.

Investigation # 07-70900, Compensation Claim # C08-C0039: John Carpenter

10. Mister Carpenter contracted with JDM for the purchase of 1991 Toyota Ace Camper from JDM which was to be imported. The transaction occurred through an eBay web site. The price agreed was \$14,500.00 USD which JDM required full payment upfront to secure the Toyota's delivery to Canada. JDM represented that a tow hitch could be installed on the Toyota for an additional \$400.00. It was later found that the tow hitch could not be installed without modification to the Toyota's suspension. Mister Carpenter paid an additional \$700.00 Cdn for the suspension modification. When Mr. and Mrs. Carpenter arrived from outside of Canada to pick-up the Toyota, they determined it was not as advertised. Missing were a wardrobe and shower that had been promised. Also, the Toyota had not yet cleared all necessary inspections in order to be registered in the Province of British Columbia. Mister Carpenter requested a refund and was refused. He has never received a refund.

11. On June 26, 2008 the Board met and determined Mr. Carpenter was entitled to compensation in the amount of \$14,500 USD and \$700.00 Cdn. In its decision letter of July 11, 2008 the Board stated that the loss was due to "the inability of the motor dealer to deliver the motor vehicle contracted for or to return the trade-in, full payment, deposit, down payment or

other liquidated amount due to the bankruptcy, insolvency, receivership or other failure of the motor dealer”. The Board further stated “[u]pon review of documents on file the Board determined that there is conclusive evidence to prove that you suffered an eligible loss by paying the agreed amount to the motor dealer and not receiving the vehicle contracted for.”

Investigation # 08-70019, Compensation Claim # C08-C0033: Louisa Ewert

12. Ms. Louisa Ewert purchased a 1992 Mitsubishi Delica from JDM on August 18, 2007 and finally received it on January 24, 2008. Shortly after taking the vehicle to her home in Nelson, B.C. she brought the Delica in for some repair work on the headlights where she was advised that the tires on the vehicle did not meet Department of Transport (DOT) requirements and were in fact illegal for the road. She contacted JDM who advised her to obtain new tires and they would cover the cost. Ms. Ewert did not receive those funds. Ms. Childs interviewed the facility that inspected the tires on the Delica prior to delivery to Ms. Ewert. That facility provided pictures showing that at the time it was inspected, the tires were DOT compliant. Sometime between inspection and delivery to Ms. Ewert, the DOT compliant tires were switched.

13. On June 26, 2008 the Board heard Ms. Ewert’s claim and by letter dated July 11, 2008 approved Ms. Ewert’s claim for \$753.65 due to the dealer’s inability to deliver the vehicle contracted for.

Investigation # 08-70020; Compensation Claim # C08-C0031: Kim Hope

14. Ms. Hope agreed to purchase a Delica vehicle from JDM which was to be imported. JDM required full payment in the amount of \$12,204.00 upfront in order to secure the Delica’s delivery. The vehicle arrived in Canada and was at the docks awaiting Canada Customs’ release when it became subject to the Registrar’s Freeze Order. The Receiver-Manager ultimately determined that the cost to release the Delica from Canada Customs and the cost of inspections and modifications to bring the vehicle into compliance with Federal and Provincial laws was more than the amount of funds available from JDM’s assets.

15. On June 26, 2008 the Board heard Ms. Hope’s claim and by letter dated July 11, 2008 approved Ms. Hope’s claim for \$12,204.00 due to the dealer’s inability to deliver the vehicle contracted for.

Investigation # 08-70036; Compensation Claim # C08-C0047: Jeanie Dwyer

16. As part of her agreement with JDM to purchase a 1992 Delica that was imported into Canada, JDM agreed to provide four DOT compliant all season tires and do a oil and lube on the Delica. JDM also agreed to replace the battery and provide a manual for the Delica. To date, JDM has not done so and Ms. Dwyer paid for the noted repairs and tires and made a claim to the Board.

17. On June 26, 2008 the Board heard Ms. Dwyer's claim and by letter dated July 11, 2008 approved Ms. Dwyer's claim for \$1,146.20 due to the dealer's inability to deliver the vehicle contracted for.

Investigation # 08-70162; Compensation Claim # C08-C0045: Jason Horychun

18. On June 2, 2007 Mr. Horychun placed a \$2,500 deposit on a 1991 Delica vehicle which was imported and arrived in Canada on or around August 20, 2007. Upon inspection, the Delica, was not to Mr. Horychun's satisfaction. JDM agreed to order another Delica which never arrived and JDM has not refunded Mr. Horychun's deposit.

19. On June 26, 2008 the Board heard Mr. Horychun's claim and by letter dated July 11, 2008 approved that claim for \$2,500.00 due to the dealer's inability to return the deposit.

Investigation # 08-70175; Compensation Claim # C08-C0042: Eric Amundsen

20. On November 13, 2007 Mr. Amundsen purchased a 1982 Toyota Land Cruiser from JDM through an eBay advertisement. On November 17, 2007 Mr. Amundsen paid the total cost, inclusive of shipping and taxes, upfront of \$10,700.00 by wire transfer directly to JDM's bank account. On February 27, 2008, the date of Mr. Justice McEwan's Order, Mr. Amundsen was contacted by the shipping company that JDM had transferred all documents into his name and that he now had to pay for the shipping costs and any costs to have the vehicle clear customs. Mr. Amundsen was never provided any documentation and could not register the Toyota in B.C. The Receiver-Manger determined that there were insufficient assets of JDM to pay for the release of the Toyota.

21. On June 26, 2008 the Board heard Mr. Amundsen's claim and by letter dated July 11, 2008 approved that claim for \$10,700.00 due to the dealer's inability to deliver the vehicle contracted for.

Costs of all Investigations

22. Evidence was placed before me that the costs of investigations and the receiver-manager which was necessary to deal with all these compensation fund claims, amounted to \$43,651.09 which by section 22 of the Motor Dealer Act are payable from the fund.

THE LAW

23. Section 24 of the Motor Dealer Act states:

24 (1) If a claim is paid out of the fund, the registrar may cancel the registration of the motor dealer who caused the claim.

(2) If the registration of a motor dealer is cancelled under subsection (1), the motor dealer may not be registered again until the motor dealer has paid to the fund the amount paid out for the claim.

DISPOSITION

24. Pursuant to section 24 of the Motor Dealer Act, I hereby cancel the registration of JDM Wholesale Canada Ltd. Dealer Registration # 30512. It may not be re-registered until the compensation fund has been re-paid for the above noted claims, or any other claims that may come to light and have not as yet been adjudicated by the Board. JDM Wholesale Canada Ltd. is also responsible to reimburse the fund for the investigation and hearing costs and the receiver-manager noted in paragraph 22 as they are directly related to the costs of investigating and processing the above noted consumer compensation fund claims.

Dated: December 15, 2008

A large black rectangular redaction box covering the signature of Ian Christman.

Ian Christman B.A., LL.B.