



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:

SUKH SADHRE

COMPLAINANT

AND:

PARK SHORE MOTORS LTD.
(Dealer License #7632)

MOTOR DEALER

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Appearing for the Authority: Anna Gershkovich, Compensation Fund Manager
Denis Savidan, Manager of Compliance and Investigations
Larry Barteski, Compliance Officer

Appearing for Park Shore Motors Ltd.: James Duess, General Manager
David Hogg, Sales Manager

No one appearing for Sukh Sadhre

Date and Place of Hearing: December 17, 2009 at Surrey, British Columbia.

1. At the conclusion of this hearing and having reviewed the Affidavit of Anna Gershkovich which contains the complainant's evidence, I dismissed this complaint with reasons to follow. I would note that the Authority placed the evidence of Sukh Sadhre before me.

2. The complainant, Sukh Sadhre, makes this complaint on behalf of Mr. Sohan Sangra, and states that on or about June 9, 2008, Mr. Sangra left a \$5,000.00 deposit with Park Shore Motors Ltd. Dealer License # 7632 (Park Shore) to hold a 2006 BMW 525XI which Park Shore would sell to him for about \$45,000 before taxes and levies. The \$5,000 constitutes more than 10% of the before-tax purchase price. Mr. Sangra had conducted the negotiations and transaction over the

phone as he was from Edmonton, AB. Mr. Sathre claims it was represented to Mr. Sangra that if for any reason he did not go through with the deal, he could receive a full refund: written complaint dated June 28, 2008, (Exhibit C). He received only \$4,200.00 from Park Shore.

3. A phone entry by Larry Barteski indicates that he spoke with Mr. Hogg who claims the \$5,000.00 was a non-refundable down payment for the BMW and that Mr. Sangra had agreed to this: Exhibit D of the Affidavit. Even so, Mr. Hogg stated that Park Shore refunded \$4,200.00 to Mr. Sangra and kept \$800.00 for its internal costs to prepare the BMW for delivery. Park Shore states that both it and Mr. Sangra agreed that Park Shore could keep the \$800.00.

4. Exhibit C, Page 4 of the Affidavit is the offer to purchase the BMW. On that form it notes a \$5,000.00 deposit and a term of the contract stating deposits are "non-refundable". It does not note that the \$5,000 was a down payment. Noted on that document are additional charges for options such as Premium Package, Sport Package and adaptive headlamps. There is no indication that this document was received by Mr. Sangra at the time he agreed to the deposit as this particular transaction was conducted by phone.

THE LAW

5. Pursuant to section 8.1 of the *Motor Dealer Act* R.S.B.C. 1996 c. 316, section 29 of the *Motor Dealer Act Regulation* B.C. Reg. 447/78, I have been delegated the authority to adjudicate claims that motor dealers have committed deceptive or unconscionable acts or practices under the *Business Practices and Consumer Protection Act* S.B.C. 2004 c.2. (BPCPA) and if a valid claim is found, make a compliance order to remedy any consumer losses. I do not have jurisdiction to adjudicate a contract dispute absent a deceptive or unconscionable act or practice.

6. The claim before me is that Park Shore committed a deceptive act or practice contrary to section 5(1) of the BPCPA, specifically that this was a fully refundable deposit, then later claiming it was a non-refundable down payment. The B.C. Legislature has deemed certain conduct to be a deceptive act or practice. Pertinent here is sections 4(3)(b)(iv) and (vi):

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

(iv) that a consumer transaction involves or does not involve rights, remedies or obligations that differs from the fact,

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

DISCUSSION

7. There are a few reasons why I dismissed this claim.

8. First, and importantly, there is no evidence from Mr. Sangra that indicates a deceptive act or practice occurred. Mr. Sadhre has provided all the evidence in this case and there is no evidence that Mr. Sadhre was privy to the initial phone conversation, the subject of the alleged deceptive act. In law, the person who must bring a claim is the person affected by some unlawful conduct. That would be Mr. Sangra and not his son-in-law, Mr. Sadhre. The complaint letter of June 28, 2008, was written by Mr. Sadhre. There is no complaint from Mr. Sangra, the person apparently aggrieved. In law this is called a “lack of standing” to bring a claim.

9. Second, I am not satisfied on the evidence that Park Shore said it was a refundable deposit versus a non-refundable down payment. I am getting only hearsay evidence from Mr. Sadhre and as noted, there is no indication that he was privy to the conversation between Mr. Sangra and Park Shore.

10. Third, there is evidence that when Mr. Sangra went to collect the \$5,000 that he had left with Park Shore, the two parties entered into a new verbal agreement allowing Park Shore to keep the \$800.00. If this is so, then the first agreement regarding the deposit is a nullity and the agreement to be enforced is this new agreement. Mr. Sangra has not provided evidence contradicting the existence of this new agreement. Whether such an agreement was reached, or not, is a matter of contractual interpretation based on the evidence of the parties. Absent some evidence of a deceptive or unconscionable act or practice regarding this new agreement, it is outside my jurisdiction to adjudicate this new agreement.

11. I would note that in law, a deposit is an earnest to carry out the terms of the contract and the person receiving the deposit may keep it in its entirety if the other party fails to perform their part of the contract: *Coal Harbour Properties Partnership v. Liu* 2006 BCCA 385 (B.C. Court of Appeal) and *Bradley Brothers (Oshawa) Ltd. v. A to Z Rental Canada Ltd.* 1973 CarswellOnt 398 (Ont. H.C.J.) In this situation, had the \$5,000.00 been a deposit, Park Shore could have kept it in its entirety as Mr. Sangra failed to complete his part of the agreement. Whether this amount was

in fact a penalty as opposed to a pre-estimate of damages is a matter for the court to decide: *Coal Harbour Properties Ltd.* and does not fall within my jurisdiction. Even so, Park Shore only kept \$800.00.

12. Also, had this been a down payment, the law is that where the agreement is not executed, the person defaulting and having made a down payment, is entitled to a refund, less the reasonable costs incurred by the non-defaulting party: *Bradley Brothers (Oshawa) Ltd.* In this case, Park Shore did return \$4,200.00 keeping \$800.00 for its costs to prepare the BMW. Whether the \$800.00 is a reasonable sum is a matter for a court to decide and is outside my jurisdiction.

13. For these reasons, the claim of Sukh Sadhre is dismissed.

Date: February 9, 2008

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

Ian Christman
Ian Christman B.A., LL.B