



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:

KELLY MILLAR

COMPLAINANT

AND:

HARE MOTORS LTD.
(Dealer License #11180)

MOTOR DEALER

AND:

VIJAYA NAIDU, also known as
FRANK NAIDU
(Salesperson License #103448)

SALESPERSON

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Appearing for the Authority:	Denis Savidan, Manager of Compliance and Investigations Holly Childs, Compliance Officer.
Appearing for Kelly Millar	Herself
Appearing for Hare Motors Ltd:	Ajit Hare, Manager and Director
Appearing for Vijaya Naidu	Himself
Date and Place of Hearing:	November 26, 2008, at Surrey, British Columbia.

INTRODUCTION

1. On November 26, 2008, a hearing was held before me where it was claimed that Hare Motors Ltd. (Dealer # 11180) (Hare Motors), and Vijaya Naidu also known as Frank Naidu (Salesperson # 103448), committed a deceptive act or practice between May 1st and 9th, 2008,

contrary to section 5(1) of the *Business Practices and Consumer Protection Act* S.B.C. 2004 c. 2 (the “BPCPA”). Specifically that in Surrey, British Columbia, Hare Motors and Mr. Naidu sold a 2004 Ford F150 with VIN 1FTPW14544KD62691 (the “Ford”) to Mrs. Millar misrepresenting it as a great truck and in great condition when it had a cracked frame, cracked and torn mounting bracket at the frame, unsafe lower control arm, and unsafe brakes and which subsequently failed a B.C. Provincial Private Vehicle Inspection (“PVI”) and a B.C Provincial Structural Integrity Assessment (“SIA”) and is not legally allowed on the road until repaired.

2. The Notices of Hearing dated October 29, 2008, and sent to Hare Motors and Mr. Naidu were entered as Exhibit 1. An Affidavit with attached exhibits sworn by Holly Childs on October 10, 2008, copies of which were also sent to Hare Motors and Mr. Naidu with the Notices, was entered as Exhibit 2.

3. Mr. Hare provided evidence on behalf of Hare Motors while Mr. Naidu provided evidence on his own behalf and that of Hare Motors. Mrs. Millar also gave testimony and Mrs. Childs answered questions and also provided additional evidence. While I may not comment on all the evidence that was placed before me, I have reviewed all the evidence and given it its due weight.

ISSUES

4. As a preliminary matter, Mrs. Millar confirmed that she was aware that the brakes on the Ford needed repair and that she was prepared to be responsible for those repairs. Mrs. Millar said the issue here is that the Ford failed the PVI and SIA due to the frame, cross-member, control arm and mounting bracket damage and is not allowed on the road - it is not the vehicle that was represented to her or contracted for. Hare Motors takes two basic positions: (1) that there is no damage to the Ford; or (2) the damage complained of occurred after it sold the Ford to Mrs. Millar.

FACTS

5. On May 1, 2008, Mrs. Millar made an initial offer to purchase the Ford leaving a \$1,500.00 deposit by VISA. Mrs. Millar acknowledged receiving a copy of Hare Motors’ inspection report for the Ford on May 6, 2008: page 9 of the Affidavit exhibits. A review of that report shows the frame cross-members as “no defect detected” and there are no remarks about cross members or the frame within the remarks section. On May 9, 2008, Mrs. Millar completed the transaction subject to the Ford’s windshield being replaced and some body work and painting

done to the customer's satisfaction. Mrs. Millar testified she signed off on these subject to clauses as the work to the windshield, body work and paint appeared to have been completed. She also testified that Hare Motors would not release the keys to the Ford until she had signed. Mr. Hare said he cannot believe she was told that, although he admitted he was not present when she picked up the Ford.

6. Mrs. Millar testified that during the negotiations, Mr. Naidu told her:

This is a great truck. It's in great condition All it was was some cosmetic issues, which again, is just the windshield, which was fixed, and some body work and paint.

7. Mrs. Millar stated that she drove the Ford away and immediately noted a problem with the speedometer and tachometer and after having a chance to look at the paint job, she was dissatisfied with the quality of the work. Mrs. Millar returned the Ford the next day. The paint was fixed and the speedometer/tachometer was apparently fixed and the Ford was picked up by Mrs. Millar on May 15, 2008. At that time it was noted that the speedometer/tachometer were still not working and Mr. Naidu apparently stated come back in a week for it to be repaired. Mrs. Millar and her family went to Kelowna for the long weekend and on May 22, 2008, and took the Ford to their mechanic to have the speedometer/tachometer looked at and an overall inspection done. Mrs. Millar says it was then that their mechanic informed them of the frame and cross-member damage to the Ford and that it should not be on the road.

8. Mrs. Millar says she tried to return the Ford and was told by the "owner" of Hare Motors that they do not refund money, but they would consider an exchange and told her "buyer-beware". Mrs. Millar considered another truck Hare Motors offered in exchange, had it inspected by Hallmark Ford, but ultimately, the second truck did not meet her specifications or price: see pages 50-52 for Mrs. Millar's specifications as provided by Mr. Hare to the VSA.

9. Hare Motors refused to take back the Ford and refund the money. Mrs. Millar attempted to resolve this issue through the Better Business Bureau (BBB), but no resolution was reached. On May 30, 2008, Hare Motors sent the Ford to Dams Lincoln Ford for an oil change and repair work because the speedometer/tachometer was not working, the check engine light was not working and the airbag light was on: invoices attached as pages 45-48 of the Affidavit exhibits. Included was a multi-point inspection of the Ford conducted the same day: page 44 of the Affidavit exhibits

10. A review of Dams' inspection report does not indicate that the frame and frame cross-members were part of the inspection. There is a section on the report to conduct an under vehicle visual inspection, which includes steering, suspension, exhaust, half shaft boots and checks for oil and fuel leaks. All these were checked as O.K. At paragraph 19 of Mrs. Child's Affidavit, she says she spoke with Mr. Dam at Dams' service department. He informed her that Dams did a basic inspection on the vehicle and they were not asked to check for frame damage. Mrs. Childs reiterated this in her testimony at the hearing. It appears Hare Motors relied on this Dams' report in response to Mrs. Millar's complaint to the BBB.

11. On July 4, 2008, Mr. Millar took the Ford to Hope Distribution and Sales Inc. (the Canadian Tire franchise store in Port Coquitlam) where a PVI was conducted costing \$89.95. The Ford failed the inspection because of frame and frame structural body problems: pages 31-32 of the Affidavit exhibits. The notes on the PVI state:

Left lower control arm to frame mount area bent.

Transmission cradle is twisted and mounting bracket at frame torn (left side).

Requires integrity test.

There was also a notation about the brakes and a noisy engine.

12. On July 8, 2008, Mrs. Millar took the Ford to Ritchey & Sons Collision Repairs Ltd. of Port Coquitlam for an SIA costing \$75.00. The Ford failed that test as well due to frame and structural component damage. The following notes are on the report:

Lt [left] lower control arm mount at frame damaged.

Transmission cross-member twisted, mnt [mount] bracket to frame torn.

"All damage must be repaired" to be roadworthy.

13. The reports from Canadian Tire and from Ritchey & Sons are the same regarding the frame and mount damage.

14. At the hearing, Mr. Hare stated he was not given an opportunity to have an independent shop inspect the Ford. He says Dams is independent too and their report indicates nothing about frame damage. Under questioning from Denis Savidan, Mr. Hare said he asked Dams to complete a 150-point inspection and he asked only for an overall inspection and did not specifically ask for

the frame to be checked. Mr. Hare also tried to infer that Mrs. Millar had the vehicle for a long time after its purchase and that the damage could have occurred after the sale. He relies on his inspection report and that of Dams to show there was no frame damage to the Ford. This seems the same basic position Hare Motors took with the BBB: pages 12-17 of the Affidavit exhibits.

THE LAW

(a) Deceptive acts

15. 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 in section 1(1) of the BPCPA applies to Hare Motors and to Mr. Naidu.

16. Section 4(1) of the BPCPA defines a deceptive act or practice and a representation as:

"deceptive act or practice" means, in relation to a consumer transaction,

- (a) an oral, written, visual, descriptive or other representation by a supplier, or
- (b) any conduct by a supplier

that has the capability, tendency or effect of deceiving or misleading a consumer or guarantor;

"representation" includes any term or form of a contract, notice or other document used or relied on by a supplier in connection with a consumer transaction.

17. 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 uses the language of sections 4(3)(a)(ii) and (b)(vi) of the BPCPA 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,
- (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 deceptive act or practice provisions. In *Rushak v. Henneken Auto Sales & Service* (1991), 59 B.C.L.R. (2d) 250, (B.C. 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).

20. 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 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...

(b) Burden of Proof

21. Under section 5(2) of the BPCPA, where a consumer (Mrs. Millar) provides some evidence sufficient to establish that a deceptive act could have occurred, the evidentiary burden then shifts to the supplier, Hare Motors and Mr. Naidu, to show that the alleged deceptive act or practice did not occur:

5(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.

22. This provision reduces the evidentiary burden that the general law places on a person advancing a claim. It should be noted that this shift of burden only relates to the deceptive act.

(c) Declaration as to fitness and meeting the requirements of the Motor Vehicle Act

23. Section 21(2)(e) of the *Motor Dealer Act Regulation* B.C. Reg. 447/78 (the “Regulation”) requires a motor dealer to declare that a used motor vehicle meets the requirements of the Motor Vehicle Act:

21(2) Where a motor dealer makes a written representation in the form of a sales or purchase agreement respecting the sale by him of a used motor vehicle, he shall include the particulars required for a new motor vehicle under subsection (1) and

(e) a statement that the motor vehicle complies with the requirements of the *Motor Vehicle Act*

24. It should also be noted that section 222 of the *Motor Vehicle Act* R.S.B.C. 1996 c. 318 (the “MVA”) prohibits a person from selling a motor vehicle that does not comply with that Act or its regulations. The *Motor Vehicle Act Regulation* sets the minimum safety requirements for motor vehicles and is the basis for the PVI and the SIA:

222 A person must not sell, offer for sale, expose or display for sale or deliver over to a purchaser for use a motor vehicle, trailer or equipment for them that is not in accordance with this Act and the regulations.

25. “Person” includes a corporation such as Hare Motors: Section 29 of the *Interpretation Act* R.S.B.C. 1996 c. 238.

(d) Witness Credibility

26. It is important to consider the various factors the courts have identified to assist in determining the credibility and reliability of the evidence being submitted – see for example: *R v. J.W.R.* 2007 BCCA 452 at paragraph 73 (B.C. Court of Appeal); *R. v. R.W.B.* [1993] B.C.J. No. 758 (Q.L.) at paragraph 29 (B.C. Court of Appeal); *R v. Essex* 2004 BCSC 445 paragraphs 9-11 (B.C. Supreme Court); and *R v. Kok* 2007 BCPC 0162 at paragraph 8 (B.C. Provincial Court).

DISCUSSION

27. First, I would note that Mrs. Millar’s testimony that Mr. Naidu told her the Ford was a “great truck” and in “great condition” was not contested. Second, Mr. Hare agreed that Mrs. Millar was shown the inspection done by Hare Motors showing a check mark beside the “frame

cross members” part of the inspection, which the report says and Mr. Hare’s testimony was, that there were no problems found.

28. Mr. Hare takes two positions here. First, that there is no frame damage and relies on the May 30, 2008, Dams’ report. By this time it was clear that Mrs. Millar was advancing the claim that the Ford had frame damage as the reason she wanted to return the Ford. However, by his own evidence, Mr. Hare did not ask Dams to specifically check for frame damage. The evidence from Dams itself was that they did a basic inspection and were not asked to check the frame. Finally, a review of the invoices from Dams does not note a request for a 150-point inspection as Mr. Hare stated was requested: pages 45-48. The only notation for an inspection of the vehicle is with the oil change where a 10-point inspection plus brake inspection was requested. It seems odd that Hare Motors would seek to have other things repaired, costing over \$1,000.00, but not have the frame checked; the major complaint of Mrs. Millar. There are two independent inspections identifying the frame damage. This argument has no merit.

29. Mr. Hare also infers the frame was damaged during the time Mrs. Millar was in possession of the Ford. Mrs. Millar provided details of the amount of time they had the Ford; which is very little. Mr. Hare would have me accept that Hare Motors’ report and the Dams’ report were correct and that there was no frame damage on May 30, 2008. I note specifically that Mrs. Millar had by May 25, 2008, made a complaint to the BBB about the Ford’s frame damage. It would seem odd that she would advance a claim of frame damage to the BBB and then somehow wait until after the May 30, 2008, repair work by Dams to cause the frame damage. I cannot accept this line of reasoning from Mr. Hare. I find that on the preponderance of the evidence placed before me, that the frame was damaged prior to it being sold to Mrs. Millar.

30. I find that Mr. Naidu represented the Ford as in great condition and a great truck. This is not contested. I also find that Mrs. Millar was shown the Hare Motors’ inspection which indicated no problems with the frame cross-member. This was confirmed by Mr. Hare. It is clear from Mrs. Millar that these verbal and written representations formed part of her decision to purchase the Ford, which has turned out to have been an error of judgment. The Ford is not roadworthy and Mrs. Millar’s purpose for buying the Ford was to drive it on the road.

31. Was this a deliberate deceptive act? From the evidence, I am satisfied that there was an intention to mislead Mrs. Millar. The report of Hare Motors shows no frame cross-member

problems. It must be taken as having looked at those components. I have found that the frame was damaged prior to sale, and thus this notation was either a deliberate attempt to deceive, or negligence on the part of Hare Motors. When other evidence is considered, I find it was part of a deliberate attempt to deceive.

32. For example, two independent garages who were specifically looking at the frame noted the same frame damage problems. Neither missed these problems. Second, when Hare Motors took the Ford into Dams for repair work and an inspection, it did not ask that the frame be inspected even though by then, Mrs. Millar had complained to them about the frame damage. It seems odd to ask for a vehicle to be repaired when there is evidence to suggest it is not roadworthy and cannot be sold to a consumer: s. 222 of the MVA. One would expect Hare Motors to ask for the frame to be specifically inspected; before it chose to spend over \$1,000 on repairs to a vehicle it may not be able to sell. I find Hare Motors knew of the frame damage and was having repairs done to make the Ford more saleable.

33. Third, Hare Motors made all its declarations on the purchase agreement, except the one requiring it to declare the vehicle as meeting the requirements of the MVA. Why go to the effort of making the other five declarations and not this one? I find Hare Motors deliberately did not make this declaration because it knew of the frame damage. Finally, none of the declarations were made on the APV9T transfer tax form: Exhibit I of the Affidavit exhibits. For instance Hare Motors declared the Ford as an ex- lease/rental on the purchase agreement, but not on the APV9T. While this may just be laziness, I must consider it in relation to the whole of the evidence. On the whole of the evidence, I find it more likely than not that Hare Motors deliberately misled Mrs. Millar into purchasing the Ford.

34. Mr. Hare inferred that Mrs. Millar should have had the Ford inspected before purchasing it – “buyer-beware”. I have two comments regarding this. First in *Rushak*, the Court of Appeal specifically addressed the failure of the consumer to have the dealer inspect the motor vehicle in that case and 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. [underlining added]

35. In this case, the statement of Mr. Naidu that the Ford was a great truck and in great condition, together with the written representation in the form of the Hare Motors' inspection report showing no problems with the frame cross-members, certainly downplayed the need for Mrs. Millar to have the Ford inspected. It formed part of her decision to purchase the Ford, which has turned out to be an error of judgment as the Ford is not allowed to be on the road until repaired. Mrs. Millar is not responsible for this situation. Hare Motors is responsible to stand behind what it sold and what it represented to Mrs. Millar.

36. Second, the term "buyer-beware" (*caveat emptor*) has long since ceased to be of significance in the sale of goods, including motor vehicles.

37. For example, various statutes in Canadian law and British Columbia law compel disclosure of certain information to defeat the common law doctrine of "buyer-beware" such as the various securities acts in Canada: *Kerr v. Danier Leather Inc.*, [2007] 3 S.C.R. 331 (Supreme Court of Canada). Another example relevant to motor vehicle sales in B.C. is section 23 of the *Motor Dealer Act Regulation* which compels motor dealers to make various declarations, such as damage over \$2,000, which the courts have stated places a positive duty on a motor dealer to do so:

The regulation placed a positive duty on the defendant to make its own assessment of prior damage, not simply to accept the word of a prior owner. That duty is one tested on reasonableness and, where extensive prior damage is apparent to an experienced automotive repair person as it was here but has not been noted and disclosed to a prospective purchaser, then that duty is not met. It is a material requirement that ought to have been met both as to observation and as to its disclosure. There was negligence in not doing so...

Motley v. Regency Chrysler 2002 BCSC 1885 (B.C. Supreme Court), citing *Clark V. Abbotsford Imports* (1983) Ltd., [1992] B.C.J. No. 471 (B.C. Supreme Court.).

38. In more general terms, the *Sale of Goods Act* R.S.B.C. 1996 c. 410 s. 18(c) also defeats "buyer-beware" to some degree. It states that there is an implied condition of durability in all goods sold to consumers for a reasonable period of time:

18(c) there is an implied condition that the goods will be durable for a reasonable period of time having regard to the use to which they would normally be put and to all the surrounding circumstances of the sale or lease;

39. A final example is section 222 of the MVA. That section makes it clear that a person must not sell a motor vehicle unless it meets the requirements of that Act and the regulations – it must be capable of passing a PVI and a SIA; it must be roadworthy. This also defeats buyer-beware to some degree, and a motor dealer is obligated to declare to a consumer whether or not the motor vehicle meets those requirements: section 21(2)(e) of the Regulation.

40. Due to these various pieces of consumer protection legislation, the doctrine of *caveat emptor* – buyer-beware, plays only a small role in the law regarding the sale of goods in Canada. It does continue to be viable regarding the sale of land:

Although the common law doctrine of *caveat emptor* has long since ceased to play any significant part in the sale of goods, it has lost little of its pristine force in the sale of land.

Fraser-Reid v. Droumtsekas, [1980] 1 S.C.R. 720 (Supreme Court of Canada)

41. My decision in this matter is not influenced by paragraphs 36 to 40 above as, for example, I do not have jurisdiction over the *Sale of Goods Act*. It is part of this decision to inform Hare Motors that it may run into difficulty if it continues to operate believing that *caveat emptor* “buyer-beware” will always be available to defend its sales of motor vehicles.

COMPLIANCE ORDER

42. I have found that Hare Motors and Mr. Naidu have deliberately committed a deceptive act or practice in its sale of the Ford to Mrs. Millar. In order to rectify a deceptive act, section 155(4) of the BPCPA provides that I may make a compliance order on any or all of the following terms:

155(4) The director may include one or more of the following orders in a compliance order:

(a) that a person reimburse any money or return any other property or thing received to a consumer or a class of consumers;

(b) that a person compensate other persons or a class of persons who have suffered loss or damage as a result of a contravention of this Act or the regulations;

(c) that a person take specified action to remedy an act or practice by which the person is contravening, is about to contravene or has contravened this Act or the regulations;

(d) that a person reimburse to the director all or a portion of the actual costs of any inspection, including actual legal costs, incurred by the director for the inspection of that person in respect of the contravention referred to in the compliance order.

43. In this case it would be appropriate that Hare Motors and Mr. Naidu, jointly and severally, take back the Ford and refund Mrs. Millar the total purchase price. The Ford cannot be driven on the road until repaired and that obligation should be Hare Motors'. The purchase agreement (Exhibit 4) shows Mrs. Hare paid \$16,918.40 on May 9, 2008, plus she provided a \$1,500 payment by Visa on May 1, 2008, for a total of \$18,418.40 owing to her for the purchase of the Ford. It will be Hare Motors' responsibility to retrieve the Ford.

44. Mrs. Millar's evidence also shows they purchased an extended warranty from Hare Motors for the Ford for \$609.00. Hare Motors and Mr. Naidu, jointly and severally, are to also refund this amount to Mrs. Hare. It would also be appropriate for Hare Motors and Mr. Naidu, jointly and severally, to refund Mrs. Millar the \$89.95 for the Private Vehicle Inspection done by Canadian Tire and the \$75.00 for the Structural Integrity Assessment done by Ritchey & Sons Collision Repairs Ltd. The evidence before me does not show that this is inclusive or exclusive of taxes and I can therefore only order these amounts returned.

45. I am not going to require Hare Motors pay for the inspection by Hallmark Ford on the second vehicle offered in trade to Mrs. Millar. It was her decision to consider a trade instead of insisting on a refund. She was being prudent in having the second vehicle inspected, but that was her decision.

46. I would also order Hare Motors and Mr. Naidu to abide by the *Business Practices and Consumer Protection Act* S.B.C. 2004 c. 2.

47. Finally, the Motor Vehicle Sales Authority of B.C. has incurred costs to inspect/investigate this matter and bring it to a hearing before me. Pursuant to section 155(d) of the BPCPA, Hare Motors and Mr. Naidu, jointly and severally, are to refund the VSA the amount of \$682.05 for those costs. An invoice will be forwarded to them.

ADMINISTRATIVE PENALTY

48. 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) Hare Motors

49. I note the following factors regarding Hare Motors and this particular case:

(a) Section 164(2)(a): Hare Motors was first registered as a motor dealer in April 2001. Since that time there have been 21 investigations and four compensation fund claims involving Hare Motors. While some of the investigations ended as being unfounded or the consumer did not continue with their complaint, I take into consideration the following investigations and compensation fund claims that went forward:

- (i) July 27, 2001, Investigation 22932: Consumer purchased a vehicle from Hare Motors and asked that they sell his other vehicle on consignment. Without the consumer's permission, the consumer's vehicle was instead used as collateral on the purchase agreement and then transferred into Hare Motors' name. There was also no buyer's name and address on the purchase agreement contrary to section 21(1)(a) of the MDA Regulation. After the authority instigated its investigation, Hare Motors reversed the transaction and the dealer was reprimanded.
- (ii) December 6, 2001, Investigation 23319: Hare Motors sold a vehicle to a consumer that was determined to be a stolen vehicle. The Motor Dealer Customer Compensation Fund Board (the "Board") awarded the consumer \$15,127.80 and gave Hare Motors one month to reimburse the fund.
- (iii) April 22, 2002, Investigation 23497: Hare Motors sold a consumer a 1995 BMW 325. It is later determined that the "True V.I.N." of the vehicle matched a 1995 BMW 320i sold in Quebec and the RCMP seized the vehicle. The consumer makes a claim to the Board which awards the consumer \$19,500.00.
- (iv) September 26, 2002, Investigation 23697: An inspection notes that over 50% of the vehicles on Hare Motors' property do not have price stickers contrary to the MDA. Hare Motors is issued a violation ticket for \$58.00.
- (v) April 19, 2004, Investigation 24305: Consumer complains that Hare Motors failed to return a deposit. Hare Motors returns the deposit after the authority begins its investigation. Investigations 24334 (May 4, 2004), 24366 (May 17, 2004), and 25051 (June 22, 2006) also regard the failure of Hare Motors to return deposits.
- (vi) August 24, 2006, Investigation 06-70155: Consumer complains that Hare Motors sold him an unsafe vehicle and that it failed two independent safety inspections. Hare Motors claimed it did a 150 point inspection prior to sale. The VSA investigation finds that Hare Motors' inspection did not identify whether the vehicle sold met the requirements of the Motor Vehicle Act. A warning letter was sent to Hare Motors regarding its inadequate vehicle inspections and placed a copy in the dealer's file.

- (vii) May 16, 2007, Investigation 07-70313: Consumer complained that Hare Motors supplied a vehicle that was unsafe. The vehicle was leased with another motor dealer providing the financing, although Hare Motors supplied the vehicle. On February 4, 2009 the VSA was informed that this matter was settled in Small Claims Court.
- (viii) This matter before me is a complaint of the sale of an unsafe motor vehicle.
- (b) Section 164(2)(b): This is a serious matter involving the consumer's safety and the safety of the general public.
- (c) Section 164(2)(c): The extent of the harm seems to have been confined to the complainants and thankfully, is monetary in nature.
- (d) Section 164(2)(d): Hare Motors refused to acknowledge the two independent safety inspections showing the Ford was unsafe for the road. Hare Motors continued to insist that the Dams' inspection showed nothing wrong, even though Hare Motors' own evidence was they did not ask that the frame be inspected.
- (e) Section 164(2)(e): I have found Hare Motors' conduct was a deliberate deceptive act.
- (f) Section 164(2)(f): Hare Motors purchased the Ford through the Adesa auction for \$12,500.00 before taxes: page 43 of the Affidavit exhibits. The selling price to Mrs. Millar was \$16,195.00 before taxes: Exhibit 4. This amount includes the \$395.00 documentation fee which is an amount set by dealers and is part of their profit. Hare Motors stood to profit \$3,695.00 from this deal, not taking into consideration the money it spent on repairs.
- (g) Section 164(2)(g): Hare Motors attempted to resolve this matter by offering other vehicles to Mrs. Millar, none of which met her specifications or price. Hare Motors has not attempted to address the issue at hand; that they sold Mrs. Millar a vehicle that is not roadworthy and have failed to take responsibility for doing so.

50. In my decision in *Hurtubise v. Massive Truck and Sidhu and Sidhu* File 08-70288 (August 18, 2008) I considered various decisions where an administrative penalty was issued against motor dealers. In *Hurtubise*, I found that Massive Truck and the salespersons had deliberately sold an unsafe vehicle to Ms. Hurtubise and I ordered an administrative penalty for \$20,000.00. In my decision of *Kuzmova v. Eagle Ridge Pontiac Buick GMC Ltd.* File 06-70726 (May 5,

2008), I found Eagle Ridge had committed a deceptive act, but it did not do so deliberately. However, when the problem with the car (missing air conditioning) was brought to Eagle Ridge's attention, they did not take steps to rectify the issue. Eagle Ridge also had a prior history of enforcement activity (a factor that must be considered under section 164(2)(a) of the BPCPA), but there was no complaints of selling unsafe vehicles. In that case I deemed a \$3,000.00 administrative penalty as being appropriate.

51. In considering all of the above factors of this particular case, the evidence placed before me, the compliance order that is to be issued and I specifically note the serious concern for the safety of consumers and the general public (accidents and potential carnage on the road), I believe an administrative penalty in the amount of \$20,000 is appropriate. This amount is in-line with *Hurtubise*. It is proportionate to the sum of money Hare Motors would profit; it recognizes the seriousness of selling unsafe motor vehicles to consumers and will act as a deterrent to Hare Motors from doing so, and it is ordered in the public interest: *Cartaway Resources Corp. (Re)*, [2004] 1 S.C.R. 672 (Supreme Court of Canada); *Hogan v. British Columbia Securities Commission* 2005 BCCA 53 (B.C. Court of Appeal); and *The British Columbia College of Teachers v. P.E.M.* 2005 BCCA 76 (B.C. Court of Appeal).

(b) Vijaya Naidu

52. I note the following factors regarding Vijaya Naidu and this particular case under the BPCPA:

- (a) Section 164(2)(a): I note no past enforcement action against Vijaya Naidu.
- (b) Section 164(2)(b): This is a serious matter involving the consumer's and the general public's safety.
- (c) Section 164(2)(c): The extent of the harm of this particular case seems to be confined to the complainants and is, thankfully, monetary in nature.
- (d) Section 164(2)(d): Mr. Naidu seems to have had little involvement regarding the refusal to take back the Ford.
- (e) Section 164(2)(e): There is insufficient evidence to show Mr. Naidu's conduct was a deliberate deceptive act.

- (f) Section 164(2)(f): There is no evidence of the benefit Mr. Naidu would have received from the sale of the Ford.
- (g) Section 164(2)(g): Mr. Naidu does not appear to have assisted in resolving this issue, however, I recognize he is the salesperson and Mr. Hare and others have dealt with this matter post-sale.

53. 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 (*Hurtubise v. Massive Truck and Sidhu and Sidhu*). Again, the later decision involved a deliberate deceptive act causing a consumer to purchase an unsafe vehicle. Mr. Naidu did make the representations which caused Mrs. Millar to purchase the Ford, which were subsequently determined to be false. I therefore believe an administrative penalty is warranted, and order Mr. Naidu to pay a \$750.00 administrative penalty. This amount is less than the salesperson's penalty in *Hurtubise* as there were other factors in that case militating in favour of the larger penalty. This amount should serve as a deterrent to Mr. Naidu making representations which he has not or cannot verify as being true or which are untrue and it is ordered in the public interest: *Cartaway Resources Corp. (Re)*, [2004] 1 S.C.R. 672 (Supreme Court of Canada); *Hogan v. British Columbia Securities Commission* 2005 BCCA 53 (B.C. Court of Appeal); and *The British Columbia College of Teachers v. P.E.M.* 2005 BCCA 76 (B.C. Court of Appeal).

SUSPENSION, CANCELLATION OR CONDITIONS ON LICENSING

54. Pursuant to section 8.1(4)(b) of the MDA, a finding of a deceptive act is grounds for me to consider cancelling, suspending or adding conditions on a motor dealer's registration or a salesperson license. Under section 5 of the MDA and section 6 of the *Salesperson Licensing Regulation* B.C. Reg. 241/2004, I may review the past conduct of a motor dealer or a salesperson to consider whether it is in the public interest to cancel, suspend or add conditions to their registration/license. I note from the Notice's of Hearing, that Hare Motors and Mr. Naidu were on notice that the Registrar would be considering these options.

(a) Hare Motors

55. I am very concerned about Hare Motors' past conduct as noted above and the facts of this particular case. I recognize that the number of complaints against a motor dealer may be due to

the volume of its sales as well as the type of product it sells. What is concerning me is that Hare Motors appears to have sold three unsafe vehicles to consumers in the past three years, contrary to section 222 of the MVA, and failed to make its proper declarations to that effect as required by section 21(2)(e) of the Regulation. In this case, I have found that conduct was deliberate.

56. In Investigation 06-70155, the VSA (then using the name the Motor Dealer Council), conducted an investigation of Hare Motors selling an unsafe vehicle. A warning letter (copy attached) dated August 10, 2006, was sent by registered mail to Hare Motors and the VSA's electronic dealer file notes it was received. In that letter, Compliance Officer Bruce Forbes noted:

All vehicles sold/leased to consumers are required to comply with the Motor Vehicle Act. This will ensure the purchase or lease of a safe vehicle...

The Motor Dealer Council appreciates and anticipates your full cooperation to ensure full compliance with the legislation and MDC standards. It is important for your dealership to review your procedures for mechanical inspections of vehicles sold/leased to consumers. A procedure to ensure proper mechanical inspections needs to be implemented by your dealership.

57. Since that investigation, there have been two more allegations including my finding here, of Hare Motors selling an unsafe vehicle. From Hare Motors' past conduct, I find sufficient evidence that the safety of consumers and of the general public is potentially in jeopardy regarding Hare Motors' future conduct. This is a concern I must consider and address. As stated by Mr. Justice Cory:

The objective of regulatory legislation is to protect the public or broad segments of the public (such as employees, consumers and motorists, to name but a few) from the potentially adverse effects of otherwise lawful activity. Regulatory legislation involves a shift of emphasis from the protection of individual interests and the deterrence and punishment of acts involving moral fault to the protection of public and societal interests. While criminal offences are usually designed to condemn and punish past, inherently wrongful conduct, regulatory measures are generally directed to the prevention of future harm through the enforcement of minimum standards of conduct and care. [underlining is added]

R v. Wholesale Travel Group Inc. [1991] 3 S.C.R. 154 at 219 (Supreme Court of Canada)

See also *Pacific International et al v. B.C. Securities Commission* 2002 BCCA 421 (B.C. Court of Appeal)

58. As a minimum standard, the B.C. Legislature has prohibited anyone from selling a motor vehicle that does not comply with the MVA and its regulations: section 222 of the MVA. As a minimum standard, the Lieutenant-Governor-in-Council requires motor dealers declare to a purchaser that the motor vehicle being sold meets the requirements of the MVA: section 21(2)(e) of the Regulation. My review of Hare Motors' conduct in this case and in the past, shows it is not meeting those minimum standards as required by law. I therefore, find that it is necessary in order to protect the public interest that Hare Motors take positive steps to comply with the law and pursuant to section 4(6) of the MDA, the following condition shall be placed on the Registration of Hare Motors:

All vehicles sold to consumers by Hare Motors must have recently passed a Province of British Columbia Private Vehicle Inspection conducted at a Designated Inspection Facility and completed by an Authorized Inspector pursuant to the Motor Vehicle Act and who has no ties to Hare Motors, its directors, shareholders, executives, management or employees. Consumers must be shown and provided a copy of the resulting Private Vehicle Inspection Report prior to any sale being agreed to.

59. The above condition is effective immediately. I had considered cancelling Hare Motors' registration. However, doing so would have interfered with Hare Motors and its employees' ability to earn a livelihood. When considering such a step I must be mindful of this fact which must be weighed against protecting the public interest; with the public interest being paramount: *Pacific International et al v. B.C. Securities Commission* 2002 BCCA 421 at paragraph 10-13.

60. The selling of an unsafe vehicle is very serious. Hare Motors is being given this one last opportunity to correct its conduct. If Hare Motors does not comply with this condition or if there is another complaint of Hare Motors selling an unsafe vehicle, that will be grounds for the Registrar of Motors Dealers to cancel Hare Motors' registration in order to protect the public. Given its past conduct, Hare Motors is on notice that their registration is at risk of being canceled should it be found to have sold another unsafe vehicle, or some other serious complaint is substantiated, unless some extraordinary circumstance is found to exist.

(b) Vijaya Naidu

61. I note that Mr. Naidu completed the salesperson certification course in November 2004. At that time, the course did not focus too much on a salesperson's legal obligations under the MDA and did not discuss the *Business Practices and Consumer Protection Act*. I find it

necessary in order to protect the public interest that a condition be placed on Vujaya Naidu's salesperson license requiring him, at his own cost, to successfully complete the new Level I Salesperson Certification Course, as soon as it is offered in the Metro Vancouver area. A failure to do so will be grounds to suspend his salesperson license until he has successfully completed the course.

DISPOSITION

62. A Compliance Order shall be issued on the following terms:

Hare Motors and Vijaya Naidu, jointly and severally, shall:

- (a) Abide by the *Business Practices and Consumer Protection Act* S.B.C. 2004 c. 2;
- (b) Refrain from making misrepresentations about the motor vehicles they sell to consumers;
- (c) Take back the 2004 Ford F150 with VIN 1FTPW14544KD62691 and refund to Mrs. Millar the full purchase price of \$18,418.40. Mrs. Millar will have to sign over the transfer documents to Hare Motors upon receiving her refund;
- (d) Reimburse Mrs. Millar the cost of \$773.95 being the sum total of the now useless extended warranty she purchased, the cost of the inspection from Canadian Tire, and the cost of the inspection by Ritchey & Sons Collision Repairs Ltd; and
- (e) Reimburse the VSA the sum of \$682.05 for its investigation/inspection and hearing costs.

63. An Administrative Penalty is ordered against Hare Motors Ltd. in the amount of \$20,000.00.

64. An Administrative Penalty is ordered against Vijaya Naidu also known as Frank Naidu in the amount of \$750.00.

65. A condition shall be placed on the registration of Hare Motors Ltd. on the following terms:

All vehicles sold to consumers by Hare Motors must have recently passed a Province of British Columbia Private Vehicle Inspection conducted at a Designated Inspection Facility and completed by an Authorized Inspector pursuant to the Motor Vehicle Act and who has no ties to Hare Motors, its directors, shareholders, executives,

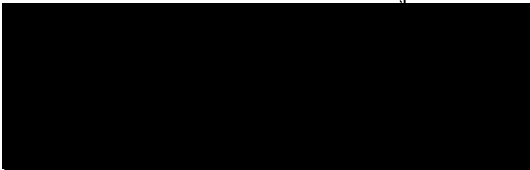
management or employees. Consumers must be shown and provided a copy of the resulting Private Vehicle Inspection Report prior to any sale being agreed to.

66. A condition is to be placed on the salesperson license of Vijaya Naidu, also known as Frank Naidu, requiring him to successfully complete, at his own cost, the Level I Salesperson Certification Course as soon as it is offered in the Metro Vancouver area.

RECONSIDERATION

67. 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 Administrative 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 in support of that application. 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 152nd Street, Surrey B.C. V3S 5A5. The conditions placed on the registration of Hare Motors Ltd. and the salesperson license of Vijaya Naidu do not form part of the compliance order and administrative penalty and may not be reconsidered.

Date: March 2, 2009



Ian Christman B.A., LL.B.



August 10th, 2006

REGISTERED MAIL

Motor Dealer Council British Columbia
Suite 150 6400 Roberts Street
Burnaby, BC
V5G 4C9

06-70155

Hare Motors
12375 King George Hwy
Surrey, BC
V3V 3K2

Attn: Mr. Ajit Singh Hare

Re: [REDACTED] – Lease of Vehicle
2001 Dodge Ram 1500, Registration # 1607007

A complaint was received by the Motor Dealer Council from Mr. Sarazin, concerning the mechanical fitness of the vehicle leased to him by your dealership on or about February 28th, 2006. The vehicle transaction was financed by Four Star Auto Leasing.

Mr. Sarazin had the vehicle inspected on March 11/06 at Jim Patterson Chrysler Jeep Dodge, Surrey, and a number of defects were identified. A copy of the inspection report is attached. Mr. Sarazin also had the vehicle inspected on July 06, 2006 as a result of continued mechanical problems with the vehicle. This second inspection was conducted by a BC Provincial Licensed Inspection facility. The vehicle failed this second inspection in a number of areas, including some problems that were identified in the first inspection of March 11. A copy of the inspection report is attached.

The Motor Dealer Act Regulations, Section 21(2) – Content of sale or purchase agreement (used vehicles), states “the motor vehicle complies with the requirements of the Motor Vehicle Act”. It is clear, from the two inspection reports, the vehicle leased to Mr. Sarazin did not comply with the requirements of the Motor Vehicle Act. A number of safety related defects were identified in both inspections reports.


The "150 Point Complete Inspection" conducted by your dealership on the 2001 Dodge was clearly not sufficient to identify mechanical problems with the vehicle prior to a sale/lease to a consumer. Copy of this inspection report is attached.

All vehicles sold/leased to consumers are required to comply with the Motor Vehicle Act. This will ensure the purchase or lease of a safe vehicle. The 2001 Dodge leased to Mr. Sarazin did not meet the requirements under current legislation. The actions by the dealership do not meet the professional and ethical standard expected of dealers by the Motor Dealer Council.

The Motor Dealer Council appreciates and anticipates your full cooperation to ensure full compliance with the legislation and MDC standards. It is important for your dealership to review your procedures for mechanical inspections of vehicles sold/leased to consumers. A procedure to ensure proper mechanical inspections needs to be implemented by your dealership.

This correspondence should be considered as a warning letter for the above noted non compliance issues. A copy of this letter will be placed in your dealer file.

Feel free to contact this writer if you have any questions or concerns.


Bruce Forbes
Investigator

Cc Dealer File, Registration # 11180