



**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:**

**JORDANI MOTORS LTD.**  
**(Dealer No. 30360)**

**COMPLAINANT**

**AND:**

**CAMILLE HUDON**

**COMPLAINANT/CONSUMER**

**AND:**

**PETER WALTER TRISKA**  
**(Salesperson Licence #103749)**

**SALESPERSON**

**DECISION OF THE REGISTRAR OF MOTOR DEALERS**

Appearing for the Authority:	Denis Savidan, Manager of Compliance and Investigations Larry Barteski, Compliance Officer.
Appearing for Jordani Motors Ltd:	Joe Markarian, Owner
Appearing for Camille Hudon	No one
Appearing for Peter Walter Triska	Himself
Date and Place of Hearing:	December 9, 2008, at Surrey, British Columbia.

1. This hearing relates to an allegation that Peter Walter Triska, salesperson licence number 103749, did commit a deceptive act or practice contrary to section 5(1) of the *Business Practices and Consumer Protection Act* S.B.C. 2004 c. 2 (the “BPCPA”). Specifically, that between September 16, 2008, and September 22, 2008, near the City of Burnaby, B.C. he did instruct a consumer, Camille Hudon, to pay to him directly \$300.00 in cash and make a cheque payable to Jordani Motors Ltd. for \$6,138.40 for the purchase of a 2003 Nissan Sentra; without authority to do so.

2. The Affidavit of Larry Barteski, sworn October 3, 2008, was entered as an exhibit at the hearing. Also entered was a letter from Peter Triska to the Motor Vehicle Sales Authority of B.C. (the “VSA”). While I may not comment on all the evidence placed before me, I have reviewed that evidence and given it its due weight.

### **FACTS**

3. Camille Hudon attended at Jordani Motors Ltd., dealing with Mr. Markarian, and agreed to purchase a 2003 Nissan Sentra. The agreed price was \$6,438.40. Mr. Markarian had to leave for Germany and instructed Peter Triska to provide the Nissan to Camille Hudon and obtain a cheque for \$6,438.40.

4. Peter Triska contacted Camille Hudon and explained that he should bring \$300.00 in cash and make a cheque payable to Jordani Motors Ltd. for \$6,138.40. Mr. Triska stated the \$300.00 was the commission he was owed for preparing and delivering the Nissan to Camille Hudon. Mr. Triska states it is industry practice that the salesperson who delivers the vehicle to the consumer gets the commission.

5. Mr. Markarian said Mr. Triska was not entitled to the commission for this sale and even if he was, the normal practice is for the dealer to be paid in full by the consumer, and the dealer would then provide the commissions to the salesperson. This seems reasonable as the dealer is liable for making the necessary statutory deductions before paying commissions to a salesperson. Under section 1(1) of the *Employment Standards Act* R.S.B.C 1996 c. 113 (the “ESA”), commissions are considered “wages” and “regular wages” as defined in that Act which are subject to various statutory withholding requirements. While section 37.14 of the *Employment Standards Regulation* B.C. Reg. 396/95 exempts commissioned salespersons from certain

provisions of the ESA, it does not exempt them from being paid wages or from employers making statutory deductions: see section 21 of the ESA.

6. The issue here is whether Peter Triska committed a deceptive act or practice by telling Camille Hudon to pay for the Nissan Sentra in the way that he did?

## **THE LAW**

7. 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 Peter Triska. The definition of a consumer transaction applies to the purchase and sale of the 2003 Nissan Sentra.

8. 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.

9. 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 section 4(3)(b)(v) which deems as a deceptive act or practice:

(b) a representation by a supplier (Peter Triska)

(v) about the authority of a representative, employee or agent to negotiate the final terms of a consumer transaction if the representation differs from the fact

10. 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.

11. *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).

12. A finding that a salesperson has committed a deceptive act or practice contrary to the BPCPA is grounds to consider whether to place a condition on, suspend, or cancel their licence under section 8.1(4)(b) of the *Motor Dealer Act* R.S.B.C. 1996 c. 316.

## **DISCUSSION**

13. I find that Camille Hudon and Mr. Markarian had fully negotiated the terms of this consumer transaction. I further find that Peter Triska subsequently changed one essential term of that agreement; the method of payment. I accept Mr. Markarian's evidence that Peter Triska did not have authority to renegotiate the terms of payment. By doing so, Peter Triska is deemed to have committed a deceptive act or practice during this consumer transaction: s. 4(3)(b)(v) of the BPCPA. However, the consumer paid the price as originally agreed and was not “misled into making an error of judgment”. There was no loss suffered by Camille Hudon and there is no need to issue a remedy under the BPCPA.

14. The dispute between Peter Triska and Jordani Motors Ltd. is whether Mr. Triska wrongfully received \$300 in wages (commission). The B.C. Legislature has not empowered me to adjudicate such disputes having instead empowered the Director, Employment Standards Act, or the courts to do so. I therefore find I do not have jurisdiction over the dispute between Peter Triska and Jordani Motors Ltd.

15. While I have found no reason to issue a remedy under the BPCPA, I have found Peter Triska has committed a deceptive act or practice. I may therefore consider whether or not to suspend, cancel or add conditions to his licence for his conduct either pursuant to section


8.1(4)(b) of the MDA or sections 6 and 7 of the *Salesperson Licensing Regulation* B.C. Reg. 241/2004.

16. For a salesperson to alter the terms of a contract between a dealer and consumer and ask the consumer to pay him directly is very concerning. Mr. Triska apparently could not wait to be paid his commission or dispute its non-payment until Mr. Markarian returned. It is clear to me that Mr. Triska has no problem in arranging transactions to suit his own needs and involving consumers in his plans. The conduct of Mr. Triska is certainly unprofessional. He placed a consumer in the middle of an employee-employer conflict. Mr. Triska's conduct satisfies me that he may cause future harm to consumers, by way of fraud. Safeguards must be put in place to try and ensure this does not occur.

17. I am mindful of the caution stated by the B.C. Court of Appeal that depriving a person from pursuing a livelihood in their chosen profession is a serious consideration. The facts of the individual case must be carefully considered, but ultimately the public interest must prevail: *Pacific International et al v. B.C. Securities Commission* 2002 BCCA 421. Mr. Justice Cory in *R v. Wholesale Travel Group Inc.* [1991] 3 S.C.R. 154 at 219 (Supreme Court of Canada), noted that the purpose of regulatory law was "the prevention of future harm through the enforcement of minimum standards of conduct and care".

18. Considering the facts of this case and the above cited law, I believe it necessary to suspend Mr. Triska's salesperson licence to protect the public interest. That suspension will remain until such time as he has, at his own cost, successfully completed the Level I Salesperson Certification course. Also, Mr. Triska must provide the VSA with the same information he would have provided if applying for a first time salesperson licence; be interviewed by a compliance officer about his past employment; and appear at a hearing before the Registrar of Motor Dealers. At that hearing, the Registrar will decide if it is in the public interest that Peter Triska's licence be reinstated and if so on what conditions, if any. If Mr. Triska's licence should expire in the interim, he will of course have to pay the usual renewal fee.

Date: March 26, 2009

  
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Ian Christman B.A., LL.B.