



**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:**

**HAI CUI**

**COMPLAINANT**

**AND:**

**NORWEST AUTO SALES LTD.**  
**(Dealer No. 30261)**

**MOTOR DEALER**

**AND:**

**LUCKY 5 ENTERPRISES LTD.**  
**(Dealer No. 9780)**

**MOTOR DEALER**

**AND:**

**FOUR STAR AUTO LEASE LTD.**  
**(Dealer No. 8344)**

**MOTOR DEALER**

**AND:**

**WALTER PETER TRISKA**  
**(Salesperson No. 103749)**

**SALESPERSON**

**DECISION OF THE REGISTRAR OF MOTOR DEALERS**

**Date and Place of Hearing:** December 9, 2008, at Surrey, British Columbia.

**APPEARANCES:**

For the Authority: Denis Savidan, Manager of Compliance and Investigations  
Ross Cote, Compliance Officer.

For the Complainant: No One

For Norwest Auto Sales Ltd.: Walter Peter Triska, Dealer Principal

For Lucky 5 Enterprises Ltd.: Walter Peter Triska, Dealer Principal  
For Four Star Auto Leasing Ltd. Lorne Grimston, General Manager  
For Walter Peter Triska Himself

**INTRODUCTION**

1. A hearing was held before me where it was alleged that the following persons committed 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”) in relation to a consumer transaction with the Complainant Hai Cui on or about February 29, 2008 at Vancouver, British Columbia:

- (a) Norwest Auto Sales Ltd, Motor Dealer Registration No. 30261 (“Norwest”);
- (b) Lucky 5 Enterprises Ltd, Motor Dealer Registration No. 9780 (“Lucky 5”);
- (c) Four Star Auto Leasing Ltd., Motor Dealer Registration No. 8344 (“Four Star”); and
- (d) Walter Peter Triska, Salesperson License No. 103749.

2. It is also alleged that Four Star conducted the sale of a motor vehicle using a person who was not licensed for employment with them, contrary to a condition of its registration and section 4(2)(c) of the *Salesperson Licensing Regulation* B.C. Reg. 241/2004 (the “Salesperson Regulation”).

3. The bases of the allegations are that on February 29, 2008, Hai Cui contracted to purchase a 2003 Audi A4 VIN: WAULT68E13A256750 (the “Audi”) owned by Four Star. At that time, the Audi was being leased from Four Star by Hai Cui’s friend Ben Zhang, who wanted to end the lease. Ben Zhang had a balance owing to Four Star on the lease. Norwest had originally referred Ben Zhang to Four Star to obtain that lease. When Hai Cui contacted Four Star to purchase the Audi, they directed Hai Cui to deal with Norwest who would handle the deal, as it was customary to refer lease buy-outs back to the referring dealer. While at Norwest, Hai Cui states he dealt with Norwest’s dealer principal and representative, Peter Triska. Hai Cui paid \$19,000.40 inclusive of taxes for the Audi. On May 30, 2008, Hai Cui discovered the Audi missing from the University of the Fraser Valley’s Abbotsford parking lot where he studies. Four Star had repossessed the Audi in accordance with its security interest filed in the Personal Property Security Registry, as

Ben Zhang was in default of his lease payments in the amount of \$1222 (Transcript of Proceedings page 24, line 10). Four Star states that when it repossessed the Audi, it was unaware that Norwest had sold the Audi to Hai Cui. Norwest and/or Walter Peter Triska had apparently converted the proceeds of the sale for their own uses. Four Star states that in error, the Audi has since been sold to another party and they are currently unable to retrieve it.

4. The evidence that was entered at the hearing included an affidavit, with attached exhibits, of Ross Cote sworn October 29, 2008. The parties all acknowledge receiving the Affidavit prior to the hearing. Mr. Cote was available for questioning. Mr. Triska entered as exhibits, two emails and a fax cover sheet on Four Star letterhead. Lorne Grimston noted this was the first time he had seen the emails and the fax and wanted to make inquiries before commenting on them. He did not object to their entry as exhibits at the hearing. I provided Mr. Grimston until December 31, 2008, to make inquiries about the emails and to provide a written submission regarding the same. Mr. Triska was to be provided a copy of those submissions and given 14 days to respond. Four Star provided those submissions within the time frame and Mr. Triska provided none.

5. While I may not comment on all the evidence produced at this hearing, I have reviewed all that evidence and given it the appropriate due weight. For the reasons that follow, I find that Walter Peter Triska is directly liable for committing a deceptive act or practice, that Norwest is vicariously liable for the conduct of Walter Peter Triska, and that Four Star is also liable being bound by the actions of its agent; Norwest.

## **THE POSTIONS OF THE PARTIES**

### ***(a) Hai Cui***

6. While Mr. Cui's complaint was signed by him, the statement that was provided is from Brian Pan who said he is a friend of Mr. Cui (Jason). It appears Mr. Cui does not speak English well. That statement is Exhibit A to the Affidavit. Mr. Pan also noted that Mr. Cui does not know how to purchase cars in Canada. In considering that this statement was not contested by any of the other parties to this hearing and that it is corroborated by the documentary evidence, I can accept this statement into evidence.

7. Ben Zhang was leasing the Audi from Four Star and decided to end that lease. Hai Cui liked the Audi and wanted to purchase it and enlisted the assistance of Brian Pan and a friend

named Mark. They contacted Four Star to inquire about Hai Cui buying the Audi and Four Star informed them to go to Norwest Auto, where they would take care of everything.

8. Hai Cui purchased the Audi from Norwest on February 29, 2008 providing it with a bank draft for the full purchase price of \$19,000.40: see purchase agreement, Exhibit H of the Affidavit; and the bank draft and receipt for same, Exhibit K of the Affidavit. Throughout the statement it is clear Hai Cui was dealing with "Peter" at Norwest regarding this transaction.

9. On May 30, 2008 Hai Cui was attending classes at the Abbotsford campus of the University of the Fraser Valley. He parked the Audi in the parking lot and when he returned after classes, the Audi was missing. Hai Cui made a stolen auto report to the Abbotsford Police and a claim with ICBC. A few weeks passed by and Hai Cui was informed by ICBC that the vehicle was not stolen; but had been repossessed and refused to say by whom.

10. Hai Cui, Brian Pan and a friend named Steve set out to find Peter Triska at Norwest. They found Peter Triska at a new location on Hastings Street in Vancouver. They spoke to Peter Triska who informed them that Four Star had the Audi and he also apparently stated there was a problem with Norwest and Four Star – "money wise"; page 5 of the Affidavit Exhibits. Peter Triska apparently assured Hai Cui he would get the car back.

11. Hai Cui and his friends went to Four Star who informed them that there had been a fraud and they should go to the police and file a report. They went to the Abbotsford police who informed them that they needed to file the report with the Vancouver Police as Norwest is in Vancouver. The Vancouver Police said while it looks like it may be a fraud, it was really a civil matter and they should talk to a lawyer. The Vancouver Police provided them with information about the Motor Vehicle Sales Authority of B.C (the "MVSA"). The MVSA received Hai Cui's complaint on July 4, 2008 and started its investigation.

12. Hai Cui states that he did everything that was asked. He went to Norwest as directed by Four Star. He paid the agreed to purchase price in full. He registered the Audi in his own name. He is an innocent party to the "fraud" that Norwest has committed against Four Star and should either get the Audi back, or a refund of his money. Hai Cui believes that Four Star is equally responsible as it represented Norwest as its agent in this sale.

*(b) Norwest*

13. Mr. Triska did not deny that money was taken from Hai Cui and that Norwest failed to pay it to Four Star. During an interview conducted by Mr. Cote, Mr. Triska admitted to having money problems and that he was using the proceeds of vehicle sales, including the sale to Hai Cui, to pay other creditors: paragraphs 14-17 of the Affidavit. During this interview Mr. Triska voluntarily surrendered the dealer's registration for Norwest: paragraph 19. During oral submissions by Mr. Grimston, Mr. Triska also admitted to Norwest keeping the proceeds of this sale:

Mr. Grimston:

...

*I think what's happened with this is that 4 Star is a party to this action because Triska has not paid us for - -*

*Mr. Triska: Norwest Auto not Triska. Big Difference.*

Transcript of Proceedings, page 28, lines 5 to 8.

14. This is an admission against the interest of Norwest and I accept it as such.

15. Much of Mr. Triska's evidence focused on the type of business arrangement that existed between Norwest and Four Star. His evidence is that Norwest would refer customers who needed financing and wanted to lease vehicles to Four Star. If approved, Four Star would provide the necessary information regarding lease rate, payments, interest rate, balloon payments and so forth to Norwest. If the customer agreed, Norwest was authorized to finalize the deal with the customer on behalf of Four Star including signing the necessary registration papers transferring ownership of the vehicle into Four Star's name as lessor and the consumer's name as lessee: see page 21 of the Affidavit exhibits for an example.

16. Mr. Triska further stated that when a customer wanted to buy-out the lease and purchase the vehicle, Four Star would refer the customer back to Norwest. Norwest would obtain a pay-out statement from Four Star and then Norwest could consider any additional amount it wanted to charge for the vehicle in order to make a profit for itself. Mr. Triska stated that during such transactions, Norwest was authorized to finalize the agreement and transfer ownership of the

vehicle from Four Star to the consumer. This would also include accepting payment on behalf of Four Star.

17. Mr. Triska stated that the business arrangement described in paragraphs 15 and 16 was an oral agreement between Norwest and Four Star.

18. Much was made about who at Norwest had signed the ICBC transfer document (a.k.a. APV9T). Mr. Triska said it was often left for the Autoplan Agent at Sussex Insurance to fill out the form. Mr. Triska's evidence was clear that he did not sign the transfer documents regarding the Audi sale. He said it was maybe the Autoplan agent, maybe the salesperson or the girl working in Norwest's office. In the Affidavit, Mr. Cote says the Autoplan agent informed him that the APV9T was often pre-signed and the agent merely filled in the vehicle information. Whether signed by an employee of Norwest, or by the Autoplan agent, acting as agent for Norwest, the transfer forms were executed by Norwest.

19. Norwest put forward emails for my review showing Norwest and "Peter T" requesting buy-out statements regarding the Audi. It also provided a fax cover sheet on Four Star letterhead providing a buy-out statement regarding "6260 Ben Zhang"... "good for Feb/08." In providing these documents and the discussion surrounding them, it appears Norwest is trying to show that Four Star was aware of the sale of the Audi to Hai Cui.

***(c) Lucky 5 Enterprises***

20. Mr. Triska did not make any representations regarding Lucky 5 at this hearing. I note that the only evidence tying Lucky 5 to the issue before me is that it was the registered owner of the Audi before it was sold to Four Star as lessor and Liu Chao as lessee on January 24, 2007. This is before the sale in issue before me. Also, the emails that comprise Exhibit 4, originate from "Lucky5Ent."

***(d) Four Star***

21. Mr. Grimston confirmed that Four Star would conduct business with various dealers/agents (it prefers the word broker), including Norwest, as described in paragraph 15 above. Four Star categorically denies there was a business arrangement allowing brokers to transfer vehicles out of the Four Star name as described in paragraph 16. Mr. Grimston confirmed that it is normal Four Star and industry practice to refer customers wishing to buy-out a lease, transfer a lease or

purchase a leased vehicle, back to the original referring dealer, including Norwest. One purpose for doing so, he stated, was that the dealer may be able to put a new piece of business together: Transcript of Proceedings; page 7, line 24 to page 8, line 11; and page 25, line 23 to page 26, line 18.

22. Mr. Grimston also noted that Four Star took steps to place a lien on the condominium of Mr. Triska in the amount of \$46,000, for a Cadillac it says Mr. Triska sold and transferred out of the name of Four Star without Four Star's permission. Mr. Triska did not deny this.

23. Mr. Grimston did not deny that Hai Cui was sent to Norwest by Four Star for the purpose of the sale of the Audi. In fact, Mr. Grimston's evidence shows that would be the normal course of business for Four Star.

24. In his written submission, Mr. Grimston noted that the emails and the fax cover sheet are not evidence that Four Star was aware of the Audi being sold to Hai Cui. Mr. Grimston notes that the emails are a series of emails requesting buy-out statements for the Audi. One of those is dated as being sent on March 2, 2008, and requested the buy-out of Ben Zhang and it ends "thanks peter t." This email was sent two days after Hai Cui purchased the Audi. The fax notes that the buy-out is good for Feb/08 and is a general buy-out statement and does not indicate Four Star had knowledge of an actual sale.

25. Mr. Grimston did agree that the business arrangement Four Star had with Norwest, and other brokers, was an oral agreement. He also agreed that Four Star did not send out a notification to its brokers that they were not authorized to sign on behalf of Four Star, documents transferring vehicles out of its name, but that it was a policy they would want: Transcript of Proceedings, page 19, line 12 to page 21, line 1.

***(e) Walter Peter Triska***

26. Walter Peter Triska's evidence in his own capacity amounted to him stating that he personally did not sign the ICBC transfer documents for the Audi sale and that it was Norwest that kept the money. The balance of his evidence focused on the above described business arrangements and dealings between Norwest and Four Star.

## THE LAW

### *(a) Deceptive acts*

27. Section 5(1) of the BPCPA prohibits a supplier of goods conducting a consumer transaction from committing a deceptive act or practice. There is no doubt that the definition of consumer transaction is applicable to the case before me.

28. 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.

29. 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)(iv) and (b)(v) 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

- (iv) are available for a reason that differs from the fact,

- (b) a representation by a supplier

- (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,

30. Based on the facts, section 4(3)(b)(iv) may also be relevant:

4(3) Without limiting subsection (1), one or more of the following constitutes a deceptive act or practice:

- (b) a representation by a supplier



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

31. 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.

32. *Henneken* was 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).

33. 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***

34. Under section 5(2) of the BPCPA, where a consumer (Hai Cui) provides some evidence sufficient to establish that a deceptive act could have occurred, the evidentiary burden then shifts to the supplier 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.

35. 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.

36. The civil burden of proof for a deliberate deceptive act is on a balance of probabilities: *F.H. v. McDougall* 2008 SCC 53 (Supreme Court of Canada).

***(c) Witness Credibility***

37. Where witness credibility may be in issue, it is important to consider the various factors and principles 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).

***(d) Liability of the Principal for the conduct of its Agent***

38. Mr. Cui claims that Four Star is liable for this situation claiming Norwest was acting as its agent: Exhibit A of the Affidavit. Based on the evidence, it will be necessary to apply the law of agency to this matter. Justice Bastarache writing for the unanimous Court in *Friedmann Equity Developments Inc. v. Final Note Ltd.*, [2000] 1 S.C.R. 842 noted at paragraph 15:

15 When a third party contracts with an agent and the contract is not under seal, the principal has the same rights and liabilities under the contract whether he or she was disclosed to the third party and despite the fact that his or her name did not appear on the face of the contract. Therefore, undisclosed principals can sue and be sued in their own name on any simple contracts made on their behalf by their agents as long as those agents have acted within the scope of their delegated authority in so doing.

39. In *Saquet v. ADM Agri-Industries Ltd.* 2007 FC 667 (F.C.T.D.), Madam Justice Heneghan was conducting a judicial review of a decision of the Canadian Grain Commission where it made a finding of an agency relationship. Her Ladyship noted that an agency relationship may be found where the principal gives an agent general authority to act on its behalf:

[33] The scope of an agent's apparent authority with respect to third parties was discussed in *Scherer v. Paletta* (1966), 57 D.L.R. (2d) 532 (Ont. C.A.) where the Court said the following at page 534:

Where a principal gives an agent general authority to conduct any business on his behalf, he is bound as regards third persons by every act done by the agent which is

incidental to the ordinary course of such business or which falls within the apparent scope of the agent's authority. As between principal and agent, the authority may be limited by agreement or special instructions but as regards third parties the authority which the agent has is that which he is reasonably believed to have, having regard to all the circumstances and which is reasonably to be gathered from the nature of his employment and duties. The scope of authority is, therefore, largely governed by the class of agent employed provided that he is acting within the limit of his ordinary avocation or by relation of the agent to the principal or by the customs of the particular trade or profession.

[34] I am satisfied that the Commission's finding that Mr. Hodgson was an agent for the Appellants, with apparent authority to request payment from the Respondent, was reasonable having regard to the evidence before the Commission. It was open to the Commission to find that Mr. Hodgson had acted within his authority as an agent given that the Appellants acknowledged that they had granted him some degree of authority and had not advised the Respondent that he had exceeded his authority in issuing a post-dated Crop-Tech cheque. Indeed, the Appellants raised no complaint about the delivery of payment to Mr. Hodgson and their receipt of a cheque from him until the cheque was refused payment on the basis of insufficient funds to cover payment. Further, the Appellants did not submit evidence regarding any particular characteristics of agency relationships in the grain industry that would render the Commission's finding unreasonable. [underlining mine]

40. *Dams Ford Sales v. Moghtader* 2008 BCSC 204; cost reasons 2008 BCSC 518 applied these principles in the context of a B.C. motor dealership. In *Dams*, Moghtader had purchased a vehicle from Dams Ford and its sales agent had requested Moghtader to make the cheque payable to a bogus company controlled by the sales agent. The sales agent subsequently disappeared with the money. Dams sued Moghtader for payment. The Court recognized that the sales agent was acting outside his scope of authority. However, the Court also recognized that if Moghtader proved that the conduct of the sale was "usual" in the business, such that Moghtader was not placed on notice, Dams could not succeed against Moghtader:

[4] As is set out subsequently in more detail, the ultimate issue in this case is whether the Defendant is able to prove his defence, on the balance of probabilities, that the manner in which the Sales Agent conducted this transaction was not of such an unusual nature that any reasonable person would have been put on inquiry.

[5] If the Defendant is successful in discharging this onus, the Plaintiff will be bound by the conduct of the Sales Agent and will not be entitled to recover the purchase monies from the Defendant, even though the Sales Agent was not authorized to carry out this transaction in such a manner.

....

[16] Although the Sales Agent did not have the actual authority to complete this transaction, the Plaintiff may nevertheless be bound by it if the Defendant is able to prove that the Sales Agent had the "apparent" or "ostensible" authority to do so: *Rockland Industries Inc. v. Amerada Minerals Corporation of Canada Ltd.*, [1980] 2 S.C.R. 2.

41. The Court in *Dams* found the transaction was unusual given the history between Dams Ford and Moghtader, and that Moghtader would have recognized it as such. The fact that Moghtader was an auto broker for some 13 years no doubt influenced this conclusion. The Court awarded judgment in favour of Dams Ford.

42. My authority to apply the law of agency to this matter may be found by reviewing the definition of "supplier" in section 1(1) of the BPCPA; by specific reference to agents in section 4(3)(b)(v) of the BPCPA; and by the decision of the Supreme Court of Canada where it states that "[s]tatutory tribunals empowered to decide questions of law are presumed to have the power to look beyond their enabling statutes in order to apply the whole law to a matter properly before them.": *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006] 1 S.C.R. 513, headnote.

## **DICUSSION**

### ***(a) Deceptive Act or Practice***

43. I am satisfied this transaction is a consumer transaction as defined by the BPCPA. There is also no question that this is a deceptive act or practice. Taking money and representing to a consumer by words or conduct that they will be the owner of a vehicle free and clear of any other encumbrances or another person's right to ownership, is a deceptive act either under the general definition of such found in section 4(1) of the BPCPA or specifically under section 4(3)(b)(iv) of that Act.

44. The evidence is clear that Mr. Cui wished to purchase the Audi. The Purchase Agreement (Exhibit H of the Affidavit) does nothing to indicate Mr. Cui was getting anything else but title to the Audi. The presentation of APV9T's (Transfer Forms) to Mr. Cui indicated that he would be receiving ownership of the Audi – free of anyone else's interest: pages 18-19 of the Affidavit exhibits. In comparison, where two persons are on title, both their names appear on the APV9T and both would show on the registration: see for example page 21 of the Affidavit exhibits.

45. I am satisfied that the conduct in this case “has the capability, tendency or effect of deceiving or misleading a consumer” contrary to the BPCPA and that Mr. Cui made an error of judgment in purchasing the Audi: *Rushak*. This point was really not contested. The question to determine is who is liable for this deceptive act? Using the language of the BPCPA, who was a supplier in this consumer transaction?

***(b) Who was a Supplier?***

***(i) Lucky 5 Enterprises***

46. The evidence of Lucky 5 Enterprises’ involvement in this matter is its prior ownership of the Audi; that Walter Peter Triska is its dealer principal; and that emails from Lucky 5 Enterprises were sent to Four Star requesting buy-out statements for the Audi. I find this evidence is insufficient to say that Lucky 5 Enterprises was a supplier in this transaction.

***(ii) Walter Peter Triska***

47. I am satisfied when reading the BPCPA as a whole that individuals may be held liable for deceptive acts or practices, regardless if they do so within the ambit of their employment or as an agent for another. The definition of “supplier” under the BPCPA certainly encompasses such individual persons. The BPCPA also makes clear that individual persons who are employees, officers, directors or agents of a corporation may be held liable for an offence under the BPCPA even where the corporation is not prosecuted: section 189(8) of the BPCPA. Section 189(2) of the BPCPA identifies the commission of a deceptive act or practice as an offence. I am not considering if an offence under section 189 of the BPCPA has occurred, however referral to this section assists in my analysis.

48. I find there is overwhelming evidence to support Walter Peter Triska as being a supplier in this consumer transaction, and is liable for having committed a deceptive act or practice contrary to the BPCPA.

49. First, is the evidence in the Affidavit of Ross Cote. At paragraphs 14 to 17 of that Affidavit, the evidence attributed to Mr. Triska is that he was experiencing money problems and had taken money from at least four transactions to pay other debts, instead of remitting the money to the rightful owners. The Audi sale is one of those transactions. At the hearing, Mr. Triska did not deny he sold vehicles and converted the proceeds to his own use to payoff debts. He only denied

owing Mr. Lanzell money during submissions from Mr. Grimston. Mr. Triska did try to say it was Norwest that took the money.

50. Second, is the evidence from the Complainant's written statement: Exhibit A of the Affidavit. It is clear from that statement that Mr. Cui was dealing with Peter Triska. When the Audi was repossessed, Mr. Cui went looking for Peter Triska. I would note that at the hearing, Mr. Triska did not deny he was the one dealing with Mr. Cui during this transaction. He merely denies being the one signing the transfer forms or the documentation for the sale, attributing those signatures to others.

51. Third, is the evidence produced by Mr. Triska himself and specifically, the emails found in Exhibit 4. On one of those emails dated March 2, 2008 is the following request to Linda Timms (a Four Star employee): "Hey! while I am waiting for the final payout figure for the lexus can you also get me the payout for Ben Zhang thanks peter t." I note it was sent from a Lucky 5 Enterprises email account and not a Norwest email account, making it harder to accept that an employee from Norwest could have sent this email. I would note that the Audi was sold to Mr. Cui on February 29, 2008. I note the bank draft for the \$19,000 is dated February 28, 2008. Thus Mr. Cui must have negotiated the price for the Audi at least by then. This is three days before the email was sent on March 2, 2008 and the email would be consistent with Mr. Triska continuing with the deception against Four Star, so they would not repossess the Audi. This combined with the evidence in paragraph 17 of the Affidavit that Mr. Triska was hoping to straighten out the problems before the vehicles were repossessed supports the view that the email was most likely written by him.

*(iii) Norwest*

52. I am satisfied on the evidence that Norwest was a supplier in this consumer transaction. Norwest negotiated the price and took payment for the Audi from Mr. Cui; it executed transfer forms to place the Audi in Mr. Cui's name; and after the vehicle was repossessed, through its dealer principal Mr. Triska, it continued with the deception that things would be fixed. Norwest certainly solicited and offered a price for the Audi to Mr. Cui.

53. I note that the definition of supplier is not premised on privity of contract and if Norwest is found to be an agent of Four Star, Norwest's liability as a supplier remains. Finally, Norwest is liable for the conduct of its employee, and dealer principal, Walter Peter Triska. Certainly to Mr.

Cui, there was nothing unusual about this transaction as will be discussed below: *Dams Ford, supra.*

**(iv) Four Star**

54. I am satisfied that Four Star, as principal, is liable for the deceptive act or practice committed by its agent Norwest.

55. I am satisfied that an agency relationship existed between Four Star and Norwest. First, Mr. Cui's complaint stated he contacted Four Star for the purpose of purchasing the Audi. That statement says Four Star referred Mr. Cui to Norwest who would take care of everything. In his evidence, Mr. Grimston confirmed it was normal practice for Four Star, and the industry, to refer lease buy-outs to the dealer that initially referred the business to the lease company. He called them agents or brokers and Four Star preferred the term broker: page 7, line 24 to page 8 line 11. Mr. Cui's assertion that he was referred to Norwest by Four Star to buy the Audi was not disputed and is consistent with Mr. Grimston's testimony about Four Star's ordinary practice in this regard. I am satisfied that to Mr. Cui, or another third party, Four Star represented that Norwest had actual authority to act as its agent. Norwest was certainly represented by Four Star as having the apparent and general authority to do so.

56. Second, Mr. Grimston noted that broker's with whom they dealt, were authorized to sign on behalf of Four Star to transfer vehicles into Four Star's name. Mr. Grimston then stated that while there was no written agreement between Four Star and its brokers, the brokers were not authorized to transfer vehicles out of Four Star's name without a letter of authorization. Mr. Grimston also admitted that no written notice was given to its brokers to that effect: page 20 line 5 to page 21 line 1 of the Transcript of Proceedings. I would note there is no evidence to suggest Mr. Cui would have been aware of these unwritten conditions and was not on notice about these conditions.

57. Third, I would note from Mr. Grimston's evidence that it was usual for their brokers to accept payment for the vehicles on their behalf: see for example page 24 lines 8 to lines 22, and page 25 lines 3 to 18 of the Transcript of Proceedings. I would note that Mr. Grimston acknowledged that Norwest in specific was authorized in the past to conduct business in this fashion on Four Star's behalf:

*And we have done that in the past with Norwest, Lucky 5, but always was on the basis that a payout is obtained, a bill of sale is made out for that amount and presented to Norwest or Lucky 5 or to any of the brokers we deal with prior to the actual sale taking place.*

*In this particular case, this vehicle was sold obviously without our knowledge. Had we known that Mr. Tsai or whatever his name is - - Jason, I think he's referred to in the affidavit, was in fact the owner, I doubt very much that 4 Star would have taken the steps to seize it since - - because strictly speaking in accordance with law, he is an innocent third party. We were not aware of that.*

Page 26 lines 13 to page 27 line 1 of the Transcript of Proceedings

58. Generally, where an agent has actual or apparent authority to accept payment, and payment is made to the agent, it is deemed to have been made to the principal: see *Dams Ford, supra*. Four Star's pay-out statement (Exhibit 5) good for the month of February 08, shows Four Star wanted \$18,149.73 inclusive of taxes for the Audi. The \$19,000.40 paid by Mr. Cui would fully cover that amount. I find on the evidence that Norwest had authority to accept payment for the Audi on behalf of Four Star, that Mr. Cui paid enough to pay Four Star's total amount owing, and that Four Star must be deemed to have received payment in full for the Audi.

59. I would also note Mr. Grimston's testimony that Four Star was aware Walter Peter Triska had sold Four Star vehicles without paying Four Star for them. Four Star had placed a \$46,000 mortgage on Mr. Triska's condominium for this reason. Four Star referred Mr. Cui to Norwest for the purpose of buying the Audi. Four Star was also aware that Walter Peter Triska and Norwest were asking for pay-out figures for the Audi in the months of February and March 2008: Exhibits 4 and 5. It appears Four Star had sufficient information that the Audi may have been sold without Four Star's knowledge and there is no evidence that Four Star tried to determine if that was the case before seizing the Audi. As Mr. Grimston testified; had Four Star known it had been sold, they would not have seized the Audi.

***(c) Conclusion on Deceptive Act or Practice***

60. On the evidence before me, I find Walter Peter Triska committed a deceptive act or practice. Carefully considering the evidence, I also find that it was a deliberate deceptive act. I find Mr. Cui was led into making an error of judgment and has been deprived of the Audi and of his \$19,000.40. Norwest was part of the commission of this deliberate deceptive act and is liable for the conduct of Walter Peter Triska. The bank draft for \$19,000.40 was made out to Norwest



and I am satisfied it subsequently gave that money to Mr. Triska for his own purposes, knowing a significant portion of it belonged to Four Star. I am also satisfied that this was a deliberate deceptive act on the part of Norwest.

61. Finally, I find that Four Star is liable for the above deceptive act or practice by Norwest and its employee Walter Peter Triska, as it is liable for the conduct of its chosen agent, Norwest. Norwest was paid for the Audi and as such Four Star is deemed to have been paid for the Audi. Having been paid for the Audi, Four Star no longer had a legal interest in the Audi and had no right to seize it: section 4(3)(b)(iv) of the BPCPA. The fact that Norwest failed to remit the money to Four Star, as it was required to do, is a matter between Norwest and Four Star and Mr. Cui is an innocent party in this transaction.

***(d) Breach of Four Star's Condition of Registration and section 4(2)(c) of the Salesperson Licensing Regulation B.C. Reg. 241/2004***

62. Four Star is in the business of leasing motor vehicles to consumers for purposes that are primarily household or family. Under the definition of "sale" found in section 1(1) of the *Motor Dealer Act* R.S.B.C. 1996 c. 316, (the "MDA") a sale includes a lease. Thus Four Star must be registered as a motor dealer.

63. Under the legislative scheme covered by the MDA, a motor dealer must carry on business only from their business premise:

3 (1) A person must not carry on business as a motor dealer

(b) other than in the person's registered name or elsewhere than at or from the person's business premises.

64. The allegation made against Four Star is that Four Star engaged in an "offsite sale", without the Registrar's authorization, and did so with a salesperson not employed with Four Star, contrary to section 3(1)(b) of the MDA, a condition of its registration, and the Salesperson Licensing Regulation. Four Star submits that this is a common industry practice among leasing companies, such as WS Leasing, and that it should not be singled out for compliance activity on this point.

65. The question for me on this point is what is captured by "carry on business" under section 3(1) of the MDA. This requires a statutory interpretation of that section. One must interpret any

part of the MDA following the principles of statutory interpretation and bearing in mind section 8 of the *Interpretation Act* R.S.B.C. 1996 c. 238:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament...[and] that every act must be construed as being remedial and must receive such fair, large and liberal construction and interpretation as best assures the attainment of its object.”

*Yeung (Guardian ad litem of) v. Au* 2006 BCCA 217 at paragraph 32 (unanimous 5 panel court); aff'd Supreme Court of Canada (October 16, 2007 SCC File No. 31549).

66. Reviewing the MDA one notes the ability of motor dealers to advertise in newspapers, on radio and television. The actual advertising takes place away from the business premises. I note that sub-section (c) of the definition of a motor dealer states a person that advertises the disposition of a motor vehicle is a motor dealer. Section 1(2) of the MDA would deem any person that advertises the disposition of a motor vehicle five times within a 12-month period a motor dealer, subject to the exemptions found in section 14 of the *Motor Dealer Act Regulation* B.C. Reg. 447/78 (the “Regulation”). Clearly, the “carrying on business” stated in section 3(1) of the MDA was not meant to capture every aspect of a motor dealers business; otherwise advertising would also be so restricted.

67. Guidance in interpreting section 3(1) of the MDA can be obtained by reviewing the exemption found in section 6 of the Regulation:

6 On application to the registrar a registrant may be exempted from section 3 (1) (b) of the Act for the purpose of selling or offering for sale motor vehicles at a place other than the registrant's usual business premises for the purposes of

- (a) a motor show, recreational vehicle show or exhibition, or
- (b) an auction sale at which members of the public other than motor dealers may purchase motor vehicles, or
- (c) for a purpose acceptable to the registrar.

68. The operative words in the exemption are “for the purpose of selling or offering for sale.” This informs me that the “carry on business” contemplated by section 3(1) is the sale, as defined in the MDA, of motor vehicles. The sales contemplated by section 6 of the Regulation, which the MVSA call “off-site sales”, and those the Registrar has discretion to grant under section 6(c) of

the Regulation, are for temporary sales events and not as a general and continuing exception to section 3(1)(b) of the MDA. This interpretation can be supported by reading the types of sales enumerated under subsections 6(a) and (b) of the Regulation and having regard to section 4(2) of the MDA which addresses a motor dealer's requirement to register each location it wishes to, on a more permanent basis, carry on business from:

(2) If an applicant [motor dealer] carries on business at more than one location in British Columbia, the applicant must apply for registration for each location.

69. I therefore find that section 3(1)(b) of the MDA requires motor dealers to carry on the sale of motor vehicles only from their business premises, unless temporarily authorized by the Registrar under section 6 of the Regulation to do so from another location.

70. At this junction, I would note it is well accepted that the MDA and many of its regulations are some 30 years old. In many respects the MDA is in dire need of modernizing to reflect, among other things, how modern financing, including leasing, has changed in past years. Some leasing companies only provide financing and do not carry inventory. For example General Motors Acceptance Corporation (GMAC) and Ford Canada Credit, generally do not maintain inventory as part of their normal business and only provide financing, including through leasing. For this reason, they are exempted from being a registered motor dealer by virtue of section 14(d) of the *Motor Dealer Act Regulation* B.C. Reg. 447/78.

71. When a leasing company wishes to sell off its motor vehicles, it generally enters into an agreement with another motor dealer for a fee. That fee may be determined by agreement or the leasing company sets a price it requires and the motor dealer can keep whatever profit it can obtain above that price. The nature of the agreement is akin to a business-to-business consignment agreement and a principal-agent relationship is created. In order to appear "on the books" that the sale was flowing from the second motor dealer to the consumer, a "double-transfer" is made where the ownership of the motor vehicle is transferred from the lease company to the second motor dealer and then the second motor dealer immediately, or within a day or so, transfers ownership to the consumer. This occurred in this case with ownership first going from Four Star to Norwest and then from Norwest to Mr. Cui: the two transfer documents dated February 29, 2008 at pages 18 and 19 of the Affidavit exhibits.

72. For the purpose of leasing companies, which do not carry their own inventory, and when they are selling motor vehicles that are coming off-lease, the MVSA accepts this “double-transfer”, and the use of an agency relationship, as a way to deal with an antiquated MDA in our modern financing world. For this reason, using the salesperson of the second motor dealer is permissible under such an arrangement. The MVSA does hold such leasing companies, as motor dealers, liable for the conduct of its agents and the agent’s employees, including, but not limited to, making the necessary statutory declarations and dealing with consumer complaints as if they were complaints against themselves. Leasing companies cannot take the benefits of such an arrangement and not also accept the liabilities and responsibilities that may flow from those arrangements – such as being responsible for any deceptive and unconscionable acts of its agents.

73. I would note that leasing companies entering such arrangements would be better protected if they had written agreements with their agents. Terms of these agreements could include setting out the agent’s authority, how the principal will monitor its agent, provisions to enforce the terms of the agency agreement and should include indemnity clauses. One would expect that a motor dealer who has legal responsibilities to its consumers, and considering the sum of money usually being transferred, would also properly “qualify” prospective agents before accepting them as such.

74. I would further note that a leasing company wishing to sell-off inventory may also do so by selling motor vehicles to other motor dealers or other businesses; as business-to-business sales are not within the jurisdiction of the MVSA and section 3(1) of the MDA would then not apply. Leasing companies could also use auto auctions which are not open to the general public for the same reason. Four Star sold the Audi through an auction.

75. The evidence is clear, and I find as a fact, that Four Star did not take reasonable steps to supervise its agent Norwest, nor provide its agent proper instructions as to the parameters of its authority. Four Star has admitted that the arrangement between itself and Norwest was verbal and that it did not formally notify Norwest that it did not have authority to transfer vehicles out of Four Stars name. However, I also find that Norwest and Mr. Triska would have committed the deliberate deceptive act regardless of any efforts by Four Star to monitor Norwest.

76. The MVSA will continue to monitor Four Star and would expect Four Star to put in place a policy and protocol: (1) to properly qualify persons to act as its agents; (2) to properly monitor

the conduct of its agents and ensure they abide by the law; (3) to properly ensure agents understand the extent of their authority; and (4) mechanisms to enforce the agreement against an agent. It is my opinion that these would be minimum requirements necessary to protect consumers in transactions such as outlined in this decision. Four Star's failure to take such steps may be grounds to consider whether it is in the public interest that Four Star continues to be registered as a motor dealer: section 5 of the MDA.

### **COMPLIANCE ORDER**

77. I have found a deliberate deceptive act was committed by Walter Peter Triska and by Norwest. I find Four Star to be liable for those deceptive acts as it is liable for the conduct of its agent, Norwest. 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 enumerated terms in that sub-section.

78. There is no question Mr. Cui is the innocent party here. In this case the Audi was sold to another party after being seized and cannot be returned to Mr. Cui. This leaves refunding Mr. Cui the \$19,000.40 he paid for the Audi the only available remedy, placing him in the position that he was prior to the sale. Walter Peter Triska, Norwest and Four Star are jointly and severally liable to refund Mr. Cui the \$19,000.40. I recognize that Mr. Cui had use and enjoyment of the Audi for some three months, but others have had the use of his money for longer. There will be no deduction for Mr. Cui's use of the Audi: *Lasby v. Royal City Chrysler Plymouth*. (1987), 59 O.R. (2d) 323 (H.C.J.).

79. The VSA conducted an inspection/investigation and incurred legal costs in conducting the hearing. Walter Peter Triska, Norwest and Four Star are jointly and severally liable to reimburse the VSA for these costs which are \$1,039.14. An invoice detailing this amount will be provided.

80. Walter Peter Triska, Norwest and Four Star are also ordered to comply with the *Business Practices and Consumer Protection Act*, and to refrain from committing deceptive acts or practices and specifically failing to inform consumers that vehicles they are purchasing are not clear of any liens or other encumbrances.

### **ADMINISTRATIVE PENALTY**

81. 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.

82. I recognize that issuing an administrative penalty is discretionary and that I must also consider if there are other alternatives which would adequately address the deceptive act or practice committed here. For instance, section 8.1(4)(b) of the MDA states I may suspend, cancel or add conditions to a motor dealer's registration upon a finding of a deceptive act or practice. When considering the appropriate disciplinary approach, its deterrent effect can be a factor for consideration: *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).

83. I will consider the unique facts regarding each of Mr. Triska, Norwest and Four Star in turn.

**(a) *Walter Peter Triska***

84. First, I will consider those factors set out in section 164(2) of the BPCPA in relation to Walter Peter Triska:

(a). Section 164(2)(a): I note that enforcement action was taken against Mr. Triska on March 26, 2009 in *Jordani Motors Ltd. & Camille Hudon v. Triska* (MVSA File No. 08-70847). In that case I suspended Mr. Triska's salesperson license for having instructed a consumer to pay directly to him \$300 on a car sale which was owed to his employer without Mr. Triska having authority to do so. In file no. 07-70262 Mr. Triska, as dealer principal, approved a sale of a motor vehicle where Norwest failed to declare to the purchasing consumer that the vehicle had damage over \$2000 and the fact that the odometer reading was incorrect. Registrar Smith conducted a hearing and on December 11, 2007 ordered Norwest to pay a \$1,000 administrative penalty and reimburse the authority for its investigation costs.

(b). Section 164(2)(b): This is a serious matter involving \$19,000.40 of a consumer's money.

- (c). Section 164(2)(c): While there is one complainant before me, there is evidence that this deceptive act was committed on at least three other occasions and that fact was not challenged by Mr. Triska. The conduct of Mr. Triska has not only affected Mr. Cui, but Norwest and Four Star.
- (d). Section 164(2)(d): There is evidence that Mr. Triska has repeated this conduct on at least three other persons. I also note from the evidence that Mr. Triska tried to assure Mr. Cui that everything would be fixed and continued the deception for some time.
- (e). Section 164(2)(e): I am satisfied the deceptive act by Walter Peter Triska was deliberate.
- (f). Section 164(2)(f): Mr. Triska's evidence and the evidence of others is that the entire \$19,000.40 was converted to Mr. Triska's use.
- (g). Section 164(2)(g): Mr. Triska has not attempted to resolve this issue. In his oral testimony he tried to place all the liability on Norwest.

85. I have considered the following past Registrar decisions and the facts contained within them:

- (a). *Maliwiya v. Victoria Drive Auto Sales Ltd. & Mortaza Darvazehban* (MVSA File No. 08-70380, February 12, 2009) where I ordered a \$750.00 administrative penalty against Mr. Darvazehban for his deliberate deceptive act in representing that a vehicle had no prior damage when it did. Mr. Darvazehban had no prior enforcement action.
- (b). *Car v. Vancouver Auto Leasing Ltd. & Moghaddam* (MVSA File No. 08-70094, October 15, 2008) where I ordered a \$750.00 administrative penalty against Mr. Moghaddam for a deliberate deceptive act of down playing damage on vehicle sold to a consumer. Mr. Moghaddam had no prior enforcement action.
- (c). *Hurtubise v. Massive Truck Sales Ltd. & Gurtej Sidhu & Jastej Singh Sidhu* (MVSA File No. 08-70288, August 18, 2008) where I ordered an administrative penalty against Mr. Sidhu in the amount of \$1,000.00 for deliberately selling an unsafe vehicle to a consumer and downplaying the vehicles mechanical problems. There was no prior enforcement action against him. I ordered an administrative penalty of \$1,250.00 against Jastej Singh Sidhu for the same reason and for failing to cooperate with the investigation. There was no prior enforcement action against him.

86. *Victoria Drive* and *Vancouver Auto* are distinguishable to some extent from the present case as the consumers in those cases retained possession of the motor vehicles; but had received something less than contracted for. In the current case, a deliberate deceptive act was committed against Mr. Cui causing him to lose both the \$19,000.00 and the Audi; a more severe result than in *Victoria Drive* and *Vancouver Auto*.

87. Whether a short suspension of Mr. Triska's license is warranted is really a moot point as his license is already suspended. In light of all the above enumerated factors, the past Registrar decisions cited, the need to deter any further similar conduct, and that this is the third compliance action involving Mr. Triska, I believe an administrative penalty in the amount of \$1,500.00 is warranted and is so ordered.

88. Considering the nature of the conduct in question, I must also consider whether it is in the public interest that Walter Peter Triska continues to be licensed as a salesperson: sections 6 & 7 of the Salesperson Regulation. Taking away someone's ability to pursue a livelihood in their chosen profession is a serious consideration that must be reviewed on an individual basis; but the protection of the public interest is paramount: *Pacific International et al v. B.C. Securities Commission* 2002 BCCA 421 (B.C. Court of Appeal) and *Dunsmuir v. New Brunswick*, 2008 SCC 9 (Supreme Court of Canada).

89. Mr. Triska has shown a propensity to manipulate consumers for his own gain. He did so in *Jordani*, and in this case. Mr. Triska was defiant at this hearing trying to put the sole blame of this matter on Norwest, a company he controlled and was the controlling mind of. I am satisfied from the evidence in this case, and Mr. Triska's past conduct that it would not be in the public interest for Mr. Triska to continue to be licensed as a salesperson and I hereby cancel his license. To allow Mr. Triska to continue to be licensed would be to expose consumers to potential fraud, which I am satisfied Mr. Triska is highly likely to perpetuate in the future.

***(b) Norwest***

90. Next, I will consider those factors in section 164(2) of the BPCPA regarding Norwest:

- (a) Section 164(2)(a): In MVSA File No. 07-70262, December 11, 2007, Registrar Smith ordered a \$1,000 administrative penalty against Norwest for failing to declare that the vehicle in question had damage over \$2000 and the fact that the odometer reading was incorrect. In MVSA File No. 08-70183 a consumer complained that Norwest was



refusing to refund a deposit. After the MVSA commenced an investigation, Norwest refunded the money.

- (b) Section 164(2)(b): This is a serious matter involving a deliberate deceptive act against a consumer in the amount of \$19,000.40.
- (c) Section 164(2)(c): While there is one complainant before me, there is evidence that this deceptive act was committed on at least three other occasions involving Norwest. That fact was not challenged by Mr. Triska, representative and dealer principal for Norwest. Norwest's conduct has affected Mr. Cui and Four Star.
- (d) Section 164(2)(d): There is evidence that Norwest has repeated this conduct on at least three other occasions. I also note from the evidence that Norwest tried to assure Mr. Cui that everything would be fixed and continued the deception for some time.
- (e) Section 164(2)(e): I am satisfied the deceptive act by Norwest of giving Mr. Triska the \$19,000.40 for his own use, was deliberate.
- (f) Section 164(2)(f): Mr. Triska's evidence and the evidence of others is that the entire \$19,000.40 given by Norwest to Mr. Triska was converted to his own use.
- (g) Section 164(2)(g): Norwest has not attempted to resolve this issue.

91. I have considered the same decisions noted in paragraph 85 above for the conduct and administrative penalties levied against those motor dealers. In summary:

- (a) *Maliwiya v. Victoria Drive Auto Sales Ltd. & Mortaza Darvazehban* (MVSA File No. 08-70380, February 12, 2009); where Victoria Drive was ordered to pay \$7,500. The MVSA had conducted four prior investigations regarding Victoria Drive, but no compliance action was taken. The amount it profited was about \$5000.00.
- (b) *Car v. Vancouver Auto Leasing Ltd. & Moghaddam* (MVSA File No. 08-70094, October 15, 2008); where Vancouver Auto was assessed \$7,500 for its conduct. It had no prior compliance activity taken against it. The amount it profited was about \$6,900.
- (c) *Hurtubise v. Massive Truck Sales Ltd. & Gurtej Sidhu & Jastej Singh Sidhu* (MVSA File No. 08-70288, August 18, 2008); where Massive Truck was assessed a \$20,000 administrative penalty due to the serious nature (safety) of the deception. There had been

one investigation of a similar nature by the MVSA, but no compliance action. The amount of the profit was under \$5,000.

92. I have also considered the decision of Registrar Smith in *Re: Lucky Eight Enterprises Ltd.* (MVSA File No. 06-70031, November 15 and 22, 2006) where Lucky Eight was assessed a \$20,000.00 administrative penalty for forging I.C.B.C. vehicle damage history reports and using them to induce consumers to purchase motor vehicles.

93. Again, *Victoria Drive* and *Vancouver Auto* are distinguishable from the present case as stated above in paragraph 86. I especially note that Norwest stood to profit all of the \$19,000.40 setting this case apart from those noted in paragraph 85 and 91.

94. I have also considered whether a suspension or cancelation of Norwest's motor dealer's registration would be a more appropriate sanction. However, Norwest has surrendered its registration in accordance with section 10 of the MDA and section 8 of the Regulation. These options as sanctions are no longer available and, of course, adding conditions to Norwest's registration is also not available.

95. I also take into consideration the administrative penalty levied against Mr. Triska. He is to pay \$1,500 out of the maximum allowable against an individual of \$5,000 - 30% of the maximum allowable. While determining the appropriate administrative penalty is not about applying math; for purposes of fairness and consistency, Norwest's administrative penalty should reflect that of Mr. Triska's for deterrent purposes and the 30% provides some guidance in that regard. In light of all the above enumerated factors, the past Registrar decisions cited, the need to deter any further similar conduct, and that this is the third compliance action involving Norwest, I believe an administrative penalty in the amount of \$20,000.00 is warranted and is so ordered.

***(c) Four Star***

96. Four Star has been found liable for the conduct of its agent, Norwest. As such it is jointly and severally liable to make Mr. Cui whole by refunding him the \$19,000.40 he paid for the Audi. Four Star is also being held jointly and severally liable for the investigation and hearing costs incurred by the MVSA in investigating its agent, Norwest. I accept Four Star's evidence, as it is not contested, that they are victims in this transactions as well. I believe recognizing Four Star as being a victim of its agent's conduct can be achieved by not ordering it to pay an

administrative penalty. I do not believe doing so would serve any purpose nor be in the public interest.

## **DISPOSITION**

97. A Compliance Order shall issue on the following terms:

Walter Peter Triska, Norwest Auto Sales Ltd. and Four Star Auto Lease Ltd. shall:

- (a) Abide by the *Business Practices and Consumer Protection Act* of B.C.; and
- (b) Refrain from committing deceptive acts or practices contrary to section 5(1) of the *Business Practices and Consumer Protection Act* of B.C, and specifically misrepresenting to consumers: that a consumer transaction involves rights and obligations that it does not; about the authority of an employee, representative or agent to finalize the final terms of an agreement; and shall inform consumers about all material facts regarding a consumer transaction.

Walter Peter Triska, Norwest Auto Sales Ltd and Four Star Auto Lease Ltd, jointly and severally, are liable to:

- (a) Refund Hai Cui \$19,000.40 that he paid for the Audi; and
- (b) Reimburse the Motor Vehicle Sales Authority \$1,039.14 for its inspection/investigation and hearing costs.

98. An Administrative Penalty is ordered against Walter Peter Triska in the amount of \$1,500.00.

99. An Administrative Penalty is ordered against Norwest Auto Sales Ltd in the amount of \$20,000.00.

100. Salesperson license number 103749 belonging to Walter Peter Triska is cancelled.

## **RECONSIDERATION**

101. 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 notice of 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. 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 152<sup>nd</sup> Street, Surrey, B.C. V3S 5A5.

102. The cancellation of Walter Peter Triska's salesperson license is reviewable upon application to the B.C. Supreme Court pursuant to the *Judicial Review Procedure Act*.

Date: May 1, 2009.

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

  
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Ian Christman B.A., LL.B.