



MOTOR VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA
(Previously known as the Motor Dealer Council of B.C.)

IN THE MATTER OF THE *MOTOR DEALER ACT* R.S.B.C. 1996 C. 316

RE:

SAFE AUTO SALES LTD.

APPLICANT

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Appearances

For the Authority:

Hong Wong, Manager of Licensing
Denis Savidan, Manager of Compliance and Investigations
Kim Murphy, Licensing Officer

For Safe Auto Sales Ltd.

Safiollah Youssefi

Date and Place of Hearing:

November 3, 2009, at Surrey, British Columbia.

1. In accordance with sections 5 and 6 of the *Motor Dealer Act* R.S.B.C. 1996 c. 316 (the “Act”), this hearing was to review the application of Safe Auto Sales Ltd. (Safe) for registration as a motor dealer. The staff of the Motor Vehicle Sales Authority (the “Authority”) have concerns about Safe being registered due to the past financial history and conduct of Safe’s sole declared shareholder and its declared president and secretary, Safiollah Youssefi.

BACKGROUND FACTS

2. The following facts are not in dispute.

3. Mr. Youssefi was once the sole shareholder and dealer principal of Saman Auto Sales Ltd. (Saman) between February 12, 2001 and December 20, 2005. In December of 2005 Mr. Youssefi declared personal bankruptcy and Saman Auto Sales Ltd. declared bankruptcy in early 2006.

4. In August 2006 the Authority investigated a consumer complaint regarding a consignment sale conducted by Saman in September 2005. A second similar complaint then came to light. Both consumers claimed Saman failed to pay them money from the sale of their respective motor vehicles. As Saman was out of business by August 2006, both consumers made a claim for compensation from the Motor Dealer Customer Compensation Fund (the "Fund").

5. The Fund is created by Part 2 of the Act and is administered by an independent Board who adjudicates eligibility for compensation. What claims are eligible and the maximum award allowed, are set by the *Motor Dealer Customer Compensation Fund Regulation* B.C. Reg. 102/95 (Compensation Regulation).

6. The Board heard the two consumer claims on November 15, 2006. It initially denied one claim: C06-C0006. The other claim was accepted and the consumer received \$10,000 in compensation on December 8, 2006: C06-C0045.

7. The consumer in claim C06-C0006 asked for a reconsideration of the Board's decision based on new evidence he advanced. The Board agreed to reconsider its previous decision, conducted an oral hearing and based on the new evidence, found Saman had sold the consumer's vehicle on consignment and failed to pay the consumer the full amount owing. Compensation in the amount of \$19,500 was paid to the consumer on July 11, 2008. During the hearing on reconsideration, Mr. Youssefi, on behalf of Saman, admitted it was not licensed to sell motor vehicles on consignment.

8. In both cases Saman and Mr. Youssefi were sent letters by registered mail indicating the awards made and noted the impact those awards had on Saman's, or its principals', ability to qualify for re-registration as a motor dealer. Those letters stated in part:

November 21, 2006 letter:

Please be advised that should your Corporation or its principals wish to reinstate their license or reapply for a new motor dealer registration, the application may be refused until such time that the paid amount (\$10000) has been reimbursed to the compensation fund.

July 21, 2008 letter:

Section 24(1) of the Motor Dealer Act states that if a claim is paid out of the Motor Dealer Customer Compensation Fund (the "Fund"), the Registrar may cancel the registration of the motor dealer who caused the claim. The Board has agreed to give you a period of **one**

month from the date of this letter to **repay \$19,500.00** to the Fund, before referring this matter to the Registrar's attention. [emphasis is in the original letter]

9. Finally, I was informed at the hearing that there is a third Compensation Fund claim pending before the Board involving Saman: C06-C0094.

THE LAW

(a) Hearing to review financial responsibility

10. Section 5 of the Act specifically anticipates reviewing an applicant for financial responsibility:

5 If the financial responsibility or past conduct of an applicant or person registered, or its officers or directors if the applicant or person registered is a corporation, is, in the opinion of the registrar, such that it would not be in the public interest for the applicant or person to be registered or continue to be registered, the registrar may,

(a) if the application is made under section 4, refuse to register, or refuse to renew registration, or

(b) if a person is registered,

(i) cancel the registration, or

(ii) suspend the registration for a period of time and subject to conditions the registrar considers necessary.

[underlining is added]

(b) Reviewing a motor dealer's financial responsibility is in the public interest

11. In applying the law regarding interpreting a B.C. statute¹; the legislative intent is clear that as Registrar, I must consider the future risk an applicant poses to the public interest and that risk assessment includes reviewing an applicant's past financial conduct. See for example:

(a) Section 5 of the Act as noted above;

(b) Section 32 of the Act – production of financial statements;

(c) Section 3(1)(a)(ii) of the Act – provide security to the Registrar;

(d) Section 4(5) of the Act – provide a letter of credit as proof of financial responsibility; and

¹ *Yeung (Guardian ad litem of) v. Au* 2006 BCCA 217 at paragraph 32 (5 panel Court of Appeal), aff'd 2007 SCC 45 (Supreme Court of Canada).

(e) Section 7 of the *Motor Dealer Act Regulation* B.C. Reg. 447/78 – ongoing review of a motor dealer’s financial responsibility.

12. This concern is also apparent when reviewing the legislative scheme involving the Fund. It is clear that the public interest includes the interest of current registered motor dealers who must contribute to the Fund, and who may be liable for a special assessment if the Fund is depleted to an unacceptable level:

- (a) The Fund obtains its revenues directly from motor dealers by annual payments: section 14 of the Act, and sections 2 and 3 of the Compensation Regulation.
- (b) The cost to administer the Fund, including investigative time, is paid out of the Fund: section 22 of the Act.
- (c) A consumer loss associated with the bankruptcy of a motor dealer has specifically been made an eligible claim for compensation: sections 5(1)(a)(ii) and 5(1)(c)(ii) of the Compensation Regulation.

13. Through the above noted provisions, the Legislature and Lieutenant-Governor-in-Council have made it clear that the public interest includes managing risks associated with the financial viability and responsibility of motor dealers. One way to manage that risk is to review an applicant’s relevant past history and consider whether or not it is in the public interest to grant them a registration. The inherent purpose of licensing is to try and ensure minimum standards of conduct and care are met in order to protect the public interest: *R. v. Wholesale Travel Group Inc.* [1991] 3 S.C.R. 154 at 219 (Supreme Court of Canada); and *Zenner v. Prince Edward Island College of Optometrists* [2005] 3 S.C.R. 645 at paragraph 23 (Supreme Court of Canada).

(c) Legislative intent where compensation is paid out

14. Section 24 of the Act states:

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

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

15. Section 24 shows a legislative intent that a motor dealer whose conduct has caused a payment out from the Fund should be held accountable to repay the Fund. To accomplish this, the Legislature has provided the Registrar discretion to cancel a motor dealer’s registration for such

conduct. I would note that this section assumes a motor dealer is still registered and operating. In some cases, it may be advisable to allow a currently registered motor dealer to continue in business in order to make money and repay the Fund. On the other hand, if it is clear that the motor dealer will not be able to repay the Fund then cancellation may be in order. Further, if a motor dealer goes out of business before any payment from the Fund is made, cancellation of its registration is ineffective. In such a circumstance, what is important to consider on a re-application is whether the Registrar would have canceled the motor dealer's registration at the time compensation was paid. This later circumstance applies to Saman and by extension to Mr. Youssefi.

(d) Balancing the public interest with the individual interests of the applicant

16. I must also make sure that I review the individual circumstances of this applicant in deciding whether or not to allow registration, and if allowed, on what conditions if any: *Maple Lodge Farms v. Government of Canada* [1982] 2 S.C.R. 2 (Supreme Court of Canada). The desire of an applicant to be registered as a motor dealer must be balanced with protecting the public interest - with the public interest being paramount: *R. v. Wholesale Travel Group Inc.* [1991] 3 S.C.R. 154 at 219 (Supreme Court of Canada) and *Pacific International et al v. B.C. Securities Commission* 2002 BCCA 421 (B.C. Court of Appeal).

DISCUSSION

17. Two compensation claims amounting to \$29,500 were paid from the Fund; which is significant. It is significant not only because of the amount of the claims, but also because of the impact Saman's conduct had on two consumers. The fact that Saman sold vehicles on consignment when not licensed to do so is also an important consideration. Mr. Youssefi admitted at the hearing before the Board on June 26, 2008 in claim C06-C0006, that Saman was not authorized to sell on consignment.

18. At the relevant times Mr. Youssefi declared personal bankruptcy which was closely followed by the bankruptcy of Saman. Personal bankruptcy of a corporation's officer or director, in-and-of-itself, does not bar that corporation from being registered as a motor dealer. However, where one of those individuals is also the sole shareholder and will be responsible for the operation of a motor dealership, it becomes a concern and a factor to consider. It is a factor in assessing a person's ability to manage debt and financial liabilities. If a person is unsuccessful in

managing their personal financial responsibilities; that can translate into an inability to financially manage the responsibilities of a business. Such a concern and connection is strengthened when there is a history of a personal bankruptcy being closely followed by the bankruptcy of a closely held business, as is the case here.

19. I also note the similarities in the control of the two businesses. Mr. Youssefi was the sole shareholder and directing mind of Saman and is to be the sole shareholder and directing mind of Safe. The concern here is whether history will repeat itself considering the management structures are the same. Mr. Savidan noted Saman had poor record keeping (ex. sales files were missing) and asked Mr. Youssefi what he has learned about record keeping. Mr. Youssefi's simple answer was you keep everything.

20. Mr. Youssefi was asked where the funds for starting Safe were coming from. He responded by saying from people whom he knows. No elaboration was made on who these people were. He did not indicate he had the backing of any financial institute. I note that Safe has provided a \$10,000 letter of credit to the Authority as part of the application requirements.

21. Another concern in this case is that there is another claim yet to be adjudicated by the Board regarding Saman. It is still unclear what the full impact of Saman's conduct is on the Fund. If I were to allow registration, with or without conditions, would I have to re-evaluate that decision and any conditions in short-order because of a new decision of the Board? Mr. Youssefi, and by extension Safe, may be making its application prematurely.

22. Would I have cancelled Saman's registration for its two claims against the Fund had it been an active motor dealer? The answer is yes. Saman not only caused damage to two consumers amounting to \$29,500, it did so by acting contrary to its registration restrictions – it sold two consumers' motor vehicles on consignment. It was also clear that at the time, Saman's economic viability was very questionable. Under these circumstances, it would have been in the public interest that Saman be de-registered as a motor dealer; at least until the Fund was repaid.

23. I note a further public policy concern if I were to grant Safe a motor dealer registration. Doing so would set a precedent whereby a motor dealer can cause a claim against the Fund, then shut down and reinvent itself as another company and seek registration. In my opinion, that would void the utility and intention of sections 5 and 24 of the Act and potentially allow motor dealers to escape responsibility for their past conduct. Section 5 makes it clear that I am not to

blind myself to the underlying realities of a company's purpose and structure, even though in law it is a separate legal entity. In fact, it may be a reversible error if I do not make myself aware of those underlying purposes and structure: *Villetard's Eggs Ltd. v. Canada (Egg Marketing Agency)*, [1995] 2 F.C. 581 (Federal Court of Appeal).

24. A licensing body is entitled to refuse to issue a license where the underlying realities of a new corporate applicant for a license (or registration in this case), is contrary to the public interest. This is so even without express legislative direction to conduct such a review of applicants. This includes perceived attempts to circumvent the legislation: *Villetard's Eggs Ltd.*

25. In making a decision in this matter, I have considered that Mr. Youssefi would prefer to be running a motor dealership instead of being a salesperson employed by one. Mr. Youssefi has admitted to me that he wants to repay the Fund. I accept his sincerity in wanting to make this right and to repay the Fund.

26. I also note Mr. Youssefi is employed and if I were to deny Safe's application for registration, it would not affect his current employment. Safe is not an operating motor dealership. Thus, denying it registration would have no significant adverse affect on its operations.

27. In considering the above factors and my above noted public policy concern, I believe it would be in the public interest to refuse to registrar Safe as a motor dealer at this time. Mr. Youssefi is free to reapply to be registered as a motor dealer once the Fund is repaid. This includes repaying any future claims that are paid from the Compensation Fund. Mr. Youssefi and his company will be assessed on the individual circumstances that exist at the time of any future application along with a review of the relevant history of both. Until repayment to the Fund is made, section 24(2) of the Act applies to Mr. Youssefi's circumstances and there is no discretion to waive that sub-section.

Date: November 19, 2009


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