



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
SALESPERSON LICENSING REGULATION B.C. REG. 241/2004**

RE:

SOUTHWEST RV AND SPORT LTD.
(Dealer Registration numbers 30606, 30672 and 30679)

AND:

TRUE NORTH RV LTD.
(Dealer Registration No. 30314)

AND:

KERSTI RITA CLARK
(Salesperson No. 106593)

AND:

KELLY RAE GRAINGER
(Salesperson No. 108943)

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Appearing for the Authority:	Denis Savidan, Manager of Compliance and Investigations Hong Wong, Manager of Licensing Anna Gershkovich, Compensation Fund Claims Manager Bruce Forbes, Senior Compliance Officer Holly Childs, Compliance Officer Larry Barteski, Compliance Officer Bill Jost, Compliance Officer Ross Cote, Compliance Officer Mike Dorran, Compliance Officer Ron Sharein, Compliance Officer Chris Hoy, Compliance Officer John McDonald, Compliance Officer (retired)
Appearing for Southwest RV and Sport Ltd. and True North RV Ltd.	No one
Appearing for Kersti Rita Clark	No one
Appearing for Kelly Rae Grainger	No one
Dates and Place of Hearing	August 25 and 27, 2009, at Surrey, British Columbia.

STATUTES AND REGULATIONS

Legislation

Abbreviation

<i>Business Practices and Consumer Protection Act</i> S.B.C. 2004 c. 2	BPCPA
<i>Motor Dealer Act</i> R.S.B.C. 1996 c. 316	MDA
<i>Motor Dealer Consignment Sales Regulation</i> B.C. Reg. 101/95	Consignment Regulation
<i>Motor Dealer Customer Compensation Fund Regulation</i> B.C. Reg. 102/95	Compensation Regulation
<i>Salesperson Licensing Regulation</i> B.C. Reg. 241/2004	SL-R

INTRODUCTION

1. This hearing involves various awards made by the Motor Dealer Customer Compensation Fund Board amounting to \$316,768.20, paid to date from the Motor Dealer Customer Compensation Fund, in compensation to 35 consumers. Those payments have been attributed to the conduct of Southwest RV and Sport Ltd., motor dealer registration numbers 30606, 30672 and 30679 – suspended (Southwest); and True North RV Ltd., motor dealer registration number 30314 - inactive (True North). Also associated with the conduct of Southwest and True North is \$467,100.00 paid from the Fund to cover legal costs and the costs of the court appointed receiver-manager to operate Southwest.

2. At the relevant times, Kersti Rita Clark was the owner and/or director of Southwest and of True North. Kelly Rae Grainger was both an employee and an officer of Southwest and/or True North. The consumers who were compensated provided evidence that they dealt with either Ms. Clark or Ms. Grainger, or both, during the transactions involving the above noted compensation payments.

3. There were 76 exhibits entered into evidence before me, most being affidavits from VSA compliance officers and Hong Wong, the Manager of Licensing. The affidavits provide the licensing history of these dealers as well as provide evidence of the investigations involving the 35 consumers. Other exhibits included the notices of award sent by the Board to the consumers; identifying the amount of their individual awards. While I may not comment on each piece of evidence, I have reviewed that evidence and given it all its due weight.

SERVICE OF THE NOTICES OF HEARING

(a) Southwest and True North

4. Marked as Exhibit 1 is the Canada Post registered mail tracking record of serving Southwest's legal counsel of record, Rory B. Morahan, with a Notice of Hearing on July 20, 2009. The Notice is also addressed to Kersti Rita Clark, who is the owner and/or director of Southwest and of True North during the material times. Denis Savidan stated he contacted Rory B. Morahan who acknowledge receipt of the Notice of Hearing, but stated he had no instructions to attend the hearing.

5. I find service of the Notice on Southwest and True North was made in accordance with sections 6 and 30 of the MDA. As such, I continued with the hearing regarding Southwest and True North in accordance with section 6(e) of the MDA.

(b) Kersti Rita Clark

6. Marked as Exhibit 2 at the hearing is a copy of the registered letter providing Kersti Rita Clark notice of this hearing. Attempts were also made using a courier to deliver the notice and the tracking details of those attempts form part of Exhibit 2.

7. I find service of the Notice on Kersti Rita Clark was made in accordance with section 7 of the SL-R and section 30 of the MDA. As such, I continued with the hearing regarding Ms. Clark in accordance with section 7(e) of the SL-R.

(c) Kelly Rae Grainger

8. Marked Exhibit 3 at the hearing is the Notice of Hearing sent by registered mail to Kelly Rae Grainger, along with her response. On July 20, 2009, the Motor Vehicle Sales Authority of B.C. (the "VSA") received a letter from Ms. Grainger acknowledging receipt of the Notice and indicating that certain circumstances prevented her from attending the hearing. Ms. Grainger did not indicate a date she could be available; but only that if the venue location was changed, she might be able to attend. I do not find Ms. Grainger's listed circumstances to be compelling, and she provided no reasonable alternative that would ensure her attendance. This hearing could not be adjourned indefinitely until it suited Ms. Grainger, without her even indicating when that

might be. I find Ms. Grainger was given adequate notice to make the necessary arrangements to attend this hearing.

9. I find service of the Notice of Hearing on Kelly Rae Grainger was made in accordance with section 7 of the SL-R and section 30 of the MDA. As such, I continued with the hearing regarding Ms. Grainger in accordance with section 7(e) of the SL-R.

BACKGROUND FACTS

10. On October 5, 2006, Southwest was issued its first motor dealer registration; number 30606. That registration was conditional upon satisfying the Cowichan Valley Regional District's (CVRD) zoning requirements. Southwest had applied to have the location it wished to operate from rezoned. The conditional registration also specified "No Consignments Permitted".

11. Southwest challenged the Registrar of Motor Dealer's authority to restrict its registration from conducting consignment sales in the B.C. Supreme Court. Mister Justice Wong dismissed Southwest's challenge, finding the Registrar was empowered to restrict Southwest's registration in this way: *Southwest R.V. v. Motor Dealer Council of British Columbia* 2007 BCSC 1140. Southwest abandoned its appeal of Mister Justice Wong's decision (August 27, 2008, B.C. Court of Appeal, File CA35081).

12. Southwest did not get the zoning it desired from the CVRD and moved its location. Over the next 18 months or so, Southwest opened two more locations (registration numbers 30672 and 30679). Routine inspections of these sites and of Southwest's records showed the inventory in its possession was owned by Southwest or that any consumer vehicles in its possession were either in for repair or being stored by the motor dealer under a storage agreement.

13. True North was issued its first motor dealers license on February 10, 2005. Kersti Clark was not initially involved in the operations of True North. On February 20, 2007, the VSA received a change of address for True North with Kersti Clark declared as its new general manager. A search of the B.C. Corporate Registry on February 21, 2007 noted that Kersti Clark was now one of the directors of True North. True North renewed its registration on April 1, 2007 which was valid until April 1, 2008. On May 1, 2008, True North RV's spokesperson informed the VSA that True North would not be renewing their dealer license as the True North name had

been taken over by Kersti Clark. A B.C. Corporate Registry search conducted on October 10, 2008 showed Kersti Clark the sole director of the new True North. Kersti Clark had initially sought to register the new True North as a motor dealer, but when she was told this company would not be allowed to conduct consignment sales, she withdrew her application. This new True North was not registered as a motor dealer.

14. In the early part of 2008, a complainant came forward stating that Southwest had sold their motor vehicle on consignment and failed to pay them their money as required by the Consignment Regulation. The VSA commenced an investigation of this complaint. There was some delay in accessing Southwest's records as Southwest's lawyer made legal objections to the VSA's investigation. After dealing with these legal objections, reviewing Southwest's documents and nearing the conclusion of the first investigation; two other complainants came forward in late June 2008. More investigations ensued.

15. It quickly became apparent that many consumers were owed money by Southwest and the Registrar issued a Property Freeze Order on July 14, 2008, pursuant to section 159 of the BPCPA and section 27 of the MDA - ordering Southwest not to dispose of any property in its possession or control. The Property Freeze Orders were also served on Southwest's banks.

16. A hearing before the Registrar of Motor Dealers was then held on July 21, 2008. At that hearing, the motor dealer registration of Southwest was suspended for selling on consignment without authority to do so, as was the salesperson license of its principal, Kersti Clark. The Registrar also directed that an application to the B.C. Supreme Court should be made to place Southwest into the control of a receiver-manager. That order was made on July 31, 2008, (B.C. Supreme Court File No. S085212, Vancouver Registry).

17. At the height of the ensuing VSA investigation, some 79 complainants came forward being owed money or seeking the return of their property under the control of the receiver-manager. The Canadian Revenue Agency (CRA) and the B.C. Ministry of Small Business and Economic Development also placed claims on Southwest for unpaid taxes and outstanding payroll deductions. After the receiver-manager took account of the liabilities and assets of Southwest, it was abundantly clear that Southwest had little in the way of assets in which to satisfy its liabilities. Those assets would not even satisfy the claims of the CRA who by law had a

"super-priority" claim to those assets. In agreement with the receiver-manager, the CRA allowed the return of consumers' property where they could show lawful ownership. This was accomplished by way of several B.C. Supreme Court orders supported by affidavits or statutory declarations. The remainder of the assets in Southwest's possession was surrendered to the CRA's bailiff.

18. In order to secure the services of a receiver-manager, it was necessary for the VSA to provide an indemnity agreement to that receiver-manager. Thus, the totality of the receiver-manager's bill was born by the VSA, as was the VSA's own legal costs and its time to investigate the various consumer compensation claims on behalf of the Board. Those costs amounted to \$467,100.00, which was paid from the Customer Compensation Fund.

19. Those consumers who did not secure the return of their property, applied to the Board for compensation payable from the Fund. As of August 27, 2009, 35 consumers have been approved for compensation while 11 have been denied. The denials were for various reasons relating to the statutory jurisdiction of the Board to make awards in the individual circumstances. There were still 5 pending cases to be considered by the Board. As of August 27, 2009, \$316,768.20 was paid to consumers. As of August 27, 2009, the total amount the Board has paid from the Fund in relation to the conduct of Southwest and True North was \$783,868.20.

THE COMPENSATION FUND & BOARD

20. The Motor Dealer Customer Compensation Fund ("Fund") is established under Part 2 of the MDA. The Motor Dealer Customer Compensation Fund Board ("Board") is also established under Part 2 of the MDA. The Board administers the Fund and is empowered to determine eligibility for compensation and their amounts. The Compensation Regulation limits the types of claims that may be compensated. Generally, the transaction must involve the "sale" of a "motor vehicle" (as those terms are defined in statute) primarily for personal or household use. Business purchases are not covered.

21. The types of conduct that are generally compensable are dishonest conduct by a motor dealer or their business failure resulting in a consumer loss related to: (a) a vehicle left on consignment; (b) the trade-in value, payment, deposit or other liquidated amount on a motor vehicle purchase; or (c) the lost benefit of a purchased extended warranty or service plan.

22. That same regulation prohibits compensation for issues related to: (a) the cost, quality or value of a purchased vehicle; (b) any portion of a warranty that is used or recoverable; and (c) for any business use the motor vehicle is occasionally put to as evidenced in income tax records. The Compensation Regulation also sets a \$20,000.00 maximum payout for any one claim.

THE CONSIGNMENT SALES REGULATION

23. The Consignment Regulation requires a motor dealer to enter into a consignment agreement with a consumer and specifies the terms that must be included in that agreement. That regulation also sets out certain requirements relating to the terms of a purchase agreement involving a consigned vehicle. As will be seen below, the following provisions of the Consignment Regulation were breached by Southwest:

Section 2(2)

(f) a statement that the consignor must not sign over vehicle ownership registration forms in blank to the motor dealer;

(g) a declaration of title from the consignor, including any outstanding liens, which must be discharged at the time of sale;

(j)

(i) the motor dealer must send or deliver to the consignor notification of the sale of the consigned vehicle within one day after the sale of the consigned vehicle, and

(ii) disbursement of the sale proceeds must take place within 14 days after the sale of the consigned vehicle unless the consignor specifically waives this right, in writing, after the sale.

Section 4(2)

(d) a statement that any cheque, bank draft or money order received from the purchaser in payment for the consigned motor vehicle must be made payable to the trust account of the motor dealer by identifying the trust account in the manner that the trust account is identified in the records of the savings institution.

Section 6

- (1) Any payment received from a purchaser is deemed to be held in trust for the consignor and lien holder.
- (2) Money held by a motor dealer in trust under subsection (1)
 - (a) continues to be the beneficial property of the consignor and lien holder,
 - (b) must not be used as collateral by the motor dealer, and
 - (c) is not subject to attachment or execution against the motor dealer.
- (3) Within one day after payment is received from the purchaser, the payment must be deposited by the motor dealer in a trust account at a savings institution located in British Columbia, and the trust account must be designated as a trust account in the records of the savings institution and the motor dealer.
- (4) A motor dealer must not withdraw or authorize the withdrawal of any trust funds referred to in this section unless the funds are for the purpose of
 - (a) disbursing sale proceeds to a consignor or lien holder under a consignment agreement,
 - (b) correcting an error caused by money deposited in the trust account by mistake, or,
 - (c) making payments to the motor dealer as authorized in the consignment agreement after the payment of the disbursements described in paragraph (a).

SUMMARY OF CLAIMS

24. The following are summaries of the allegations and investigative findings of each of the consumer claims that went before the Board. These allegations were not contested and went unanswered by Southwest, True North, Kersti Clark and Kelly Grainger.

1) Investigation File: 08-70577 - Compensation Fund File: C08-C0063

25. Between July 3, 2006, and July 21, 2008, both dates inclusive at or near Cobble Hill and Sidney, in the Province of British Columbia, Southwest did sell on consignment a 1996 Ford Slumber Queen Motorhome, owned by D. D., to D. C. for approximately \$25,000.00. The Motorhome was original consigned with Arbutus RV, but Kersti Clark convinced D. D. to consign it with Southwest and a consignment agreement was entered into in October 2006. The investigation determined that the Motorhome was sold on October 9, 2007, but D. D. was not informed of the sale contrary to the Consignment Regulation. On December 7, 2007, D. D.

contacted Kersti Clark who informed her that Southwest had received a \$2,000.00 deposit on the Motorhome. Kersti Clark and Southwest did not make any payment on the sale until July 7, 2008, when it paid \$2,000.00 to D. D. There have been no further payments contrary the Consignment Regulation. The Board awarded \$17,911.50 to D. D. from the Fund.

2) Investigation File: 08-70558 - Compensation Fund File: C08-C0083

26. Between January 31, 2007, and July 21, 2008, both dates inclusive, at or near Sidney and Chemainus, in the province of British Columbia, Southwest did sell on consignment a 2007 Gulfstream Crescendo Motorhome, owned by M. B., to Mr. and Mrs. R for approximately \$159,000.00. The Gulfstream was initially to be consigned to another motor dealer, but needed warranty repairs and went to Southwest for those repairs and was then consigned with Southwest. The Gulfstream was purchased on August 2, 2007, and Southwest only remitted \$55,000.00 of the sales proceeds to M. B., contrary to the Consignment Regulation. The Board awarded \$20,000.00 to M. B. from the Fund; being the statutory maximum.

3) Investigation File: 08-70604 - Compensation Fund File: C08-C0050

27. Between May 23, 2008, and July 21, 2008, both dates inclusive, at or near Chemainus in the province of British Columbia, Southwest did sell on consignment a 1994 Avion 5th Wheel Trailer, owned by Mr. and Mrs. B, to G. W. for approximately \$26,500.00. Mr. and Mrs. B consigned their trailer with Southwest on May 23, 2008, agreeing to a minimum of \$25,000.00. The investigation revealed the trailer was sold on June 27, 2008, and Southwest received the full purchase price of \$26,500.00 at that time. On June 28, 2008, Kersti Clark informed Mr. and Mrs. B that only a \$3,000 deposit was received for the purchase of the trailer. None of the sales proceeds collected by Southwest was remitted to Mr. and Mrs. B contrary to the Consignment Regulation. The Board awarded \$20,000.00 to Mr. and Mrs. B from the Fund; being the statutory maximum.

4) Investigation File: 08-70612 - Compensation Fund File: C08-C0067

28. Between October 24, 2007, and July 24, 2008, both dates inclusive, at or near Cobble Hill in the province of British Columbia, Southwest did sell on consignment a 1988 Dodge Road Trek Camper Van, owned by E.G., to J.M. for approximately \$14,278.88 . Mr. G consigned his

camper with Southwest on October 24, 2007. Initially the agreement was that Mr. G would receive \$14,999.00 for the camper and Southwest would receive \$2,000.00 from that price. Later Mr. G agreed to lower that amount to \$12,999.00 with Southwest still keeping \$2,000.00. Mr. G later noted on the internet that the Camper was advertised as having a “pending sale”.

29. In February 2008, Mr. G contacted Kersti Clark who said there was a pending purchase. Over the next few months Kersti Clark stated things were still pending due to financing issues, snow storms and her sick parents. It was not until July 24, 2008, that Mr. G received \$3,000.00 directly deposited into his account. Documents show the camper was in fact purchased on February 3, 2008 for \$12,250.00 plus taxes and Southwest received payment by bank draft on February 20, 2008. Southwest failed to inform Mr. G of the sale and remit his money within the required time set by the Consignment Regulation. Mr. G received no further payments from Southwest and the Board awarded \$7,250.00 to Mr. G from the Fund.

5) Investigation File: 08-70643 - Compensation Fund File: C08-C0087

30. Between June 12, 2008, and July 21, 2008, both dates inclusive, at or near Chemainus in the province of British Columbia, Southwest did sell on consignment a 1988 Yukon 15’ Wilderness Travel Trailer, owned by Mr. and Mrs. H, to T.D. for approximately \$6,500.00. Mr. and Mrs. H consigned the trailer to Southwest on June 12, 2008. The investigation revealed that the trailer was sold on June 22, 2008. Mr. H was only told the trailer was sold on or about July 16, 2008, when he noticed the trailer missing from Southwest’s lot. Kersti Clark, on behalf of Southwest, agreed to remit the sales proceeds of \$4,500.00 but never did. The Board awarded \$4,000.00 to Mr. and Mrs. H from the Fund.

6) Investigation File: 08-70619 - Compensation Fund File: and C08-C0052

31. Between June 22, 2008, and July 21, 2008, both dates inclusive, at or near Chemainus in the province of British Columbia, Southwest did sell a 1988 Yukon 15’ Wilderness Travel Trailer to T.M.D. for approximately \$6,500.00. T.M.D. specifically sought assurances from Southwest that the trailer did not have wood rot before he purchased it. Southwest made that assurance. After purchase and upon a more complete inspection, it was found that the trailer did suffer from

wood rot and was unusable. Kersti Clark, on behalf of Southwest, agreed to provide a full refund which was never remitted to T.M.D. The Board awarded \$6,000.00 to T.M.D. from the Fund.

7) Investigation File: 08-70623 - Compensation Fund File: C08-C0051

32. Between September 5, 2007, and July 21, 2008, both dates inclusive, at or near Sidney in the province of British Columbia, Southwest did sell on consignment a 2001 Vanguard W249 5th Wheel Travel Trailer, owned by Mr. and Mrs. E, to Mr. and Mrs. L for approximately \$16,500.00. On September 5, 2007, Mr. and Mrs. E entered into a consignment agreement with Southwest. They initially verbally agreed to list their trailer for \$19,900.00 but later reduced it to \$16,900.00. At all times Southwest was to keep \$1,000.00 of the sale proceeds. There is a written consignment agreement with Southwest. Mr. and Mrs. E do not recall signing a transfer form for this vehicle, but did provide their copy of the registration to Southwest. On July 25, 2006, Mr. and Mrs. E heard that there were locks on Southwest's gates. They contacted their Autoplan agent who told them their trailer had been transferred to Mr. and Mrs. L on July 9, 2008. Mr. and Mrs. E contacted Kersti Clark about the sale and she informed them they would receive payment by July 29 or 30, 2008.

33. Documents show that Mr. and Mrs. L paid \$16,900 plus taxes and fees, less a trade-in, for the trailer. The purchase was financed and the bank documents show True North as the selling dealer with payment going to True North and not to Southwest in trust, contrary to the Consignment Regulation. Kelly Grainger completed these finance documents. The transfer documents transferring ownership to Mr. and Mrs. L show Kelly Grainger signing on behalf of Southwest as business manager. Mr. and Mrs. L took possession of the trailer on July 11, 2008, with Kersti Clark attending their residence to have the purchase agreement signed. The purchase agreement shows True North as the selling dealer and not Southwest, contrary to the Consignment Regulation. Mr. and Mrs. E received no money from this sale and the Board awarded them \$15,210.00 from the Fund.

8) Investigation File: 08-70623 - Compensation Fund File: C08-C0073

34. See paragraphs 32 and 33 for the basic facts of this case. When Southwest (True North) sold the trailer to Mr. and Mrs. L it also sold them an extended warranty and life insurance policy

totaling \$4,331.00 (GST included). Kelly Grainger sold them that policy. The insurer informed compliance officers that they never received any premiums or any policies from Southwest including a policy for Mr. and Mrs. L. The Board awarded Mr. and Mrs. L \$4,331.00 from the Fund.

9) Investigation File: 08-70624 - Compensation Fund File: C08-C0054

35. Between May 22, 2008, and July 21, 2008, both dates inclusive, at or near Chemainus in the province of British Columbia, Southwest did sell on consignment a 2006 Palomino Travel Trailer, owned by G. J. and N.A., to C. H. for approximately \$15,500.00. Kelly Grainger was Southwest's representative who executed the consignment agreement with G. J. and sought his agreement to reduce the selling price on one occasion. After the sale, Kersti Clark provided various reasons to G. J. why he was not receiving payment of the sale proceeds. G. J. never received payment contrary to the Consignment Regulation. The Board awarded \$10,700.00 to G. J. and N. A. from the Fund.

10) Investigation File: 08-70625 - Compensation Fund File: C08-C0056

36. Between February 2, 2008, and July 21, 2008, both dates inclusive, at or near Cobble Hill in the province of British Columbia, Southwest did sell on consignment a 1988 Toyota Slumber Queen Motor Home, owned by G. C., to J. S. for approximately \$15,118.88. Mr. C signed a consignment agreement with Kersti Clark on February 2, 2008. After the sale, Kersti Clark provided various reasons why Mr. C was not receiving his money. Mr. C received no payments from Southwest contrary to the Consignment Regulation. The Board awarded \$11,500.00 to Mr. C from the Fund.

11) Investigation File: 08-70632 - Compensation Fund File: C08-C0089

37. Between July 1, 2007, and July 21, 2008, both dates inclusive, at or near Cobble Hill in the province of British Columbia, Southwest did sell on consignment a 1999 Komfort 5th Wheel Travel Trailer, owned by J. D., to C. S. for approximately \$29,900.00. Mr. D consigned the Trailer to Southwest in July 2007. Southwest sold the trailer to Ms. S on September 11, 2007. Mr. D was not informed that the trailer had been sold until January 2008, contrary to the Consignment Regulation. Southwest eventually paid Mr. D \$8,208.48, but Southwest failed to

have an outstanding lien of \$23,524.00 discharged. The Board awarded \$20,000.00 to Mr. D payable to the bank towards the payout of the lien. This award combined with the award to Ms. S (Claim C08-C0098 below), discharged the lien.

12) Investigation File: 08-70632 - Compensation Fund File: C08-C0098

38. See paragraph 37 for the basic facts of this case. There was an outstanding lien of \$23,524.00 on the trailer which Southwest failed to have discharged, contrary to the Consignment Regulation. Southwest also failed to inform Ms. C.S. about the lien. The Board awarded \$3,524.00 to Ms. C. S. jointly with the bank. This amount combined with the award to Mr. J. D. (C08-C0089) discharged the lien, giving Ms. C. S. clear title.

13) Investigation File: 08-70638 - Compensation Fund File: C08-C0097

39. Between October 2, 2007, and July 21, 2008, both dates inclusive, at or near Cobble Hill in the province of British Columbia, Southwest did sell on consignment a 1981 CMC Citation 20 Foot Motor Home, owned by J. T., to R. P. for approximately \$7,200.00. Ms. T entered into a consignment agreement with Southwest on October 2, 2007. The investigation concluded that the Citation was sold on January 12, 2008, for \$7,200.00. In February or March 2008, Kersti Clark asked Ms. T to reduce her asking price to \$5,000.00 and did not indicate the Citation was sold. Only after Ms. T's persistent calls about the Citation did Kersti Clark pay \$2,000 in July 2008, with a promise to pay the balance in one week's time. No further payments were received. The Board awarded \$3,000.00 to Ms. T from the Fund.

14) Investigation File: 08-70648 - Compensation Fund File: C08-C0060

40. Between June 11, 2008, and July 21, 2008, both dates inclusive, at or near Chemainus in the province of British Columbia, Southwest did sell on consignment a 2007 Forest River Wildwood Travel Trailer, owned by Mr. and Mrs. H, to Mr. and Mrs. W for approximately \$16,595.08. Mr. and Mrs. H consigned their trailer with Southwest on June 11, 2008. The consignment agreement prepared by Southwest and entered into before the trailer was sold purports to waive the consumers' rights to have funds paid to the motor dealer in trust and waiving the prohibition against signing a blank transfer form; both of which are contrary to the Consignment Regulation.

41. Documents show the trailer was sold on June 18, 2008. The purchase was financed through the RBC Bank and the finance documents show payment to the benefit of True North as the selling dealer, and not to Southwest in trust, contrary to the Consignment Regulation. Those bank documents were sent to the attention of Kirsti [sic] Clark and Kelly Grainger. On August 16, 2008, Mr. and Mrs. H went to the Southwest lot to check on the status of the trailer only to find the court order appointing the receiver-manager posted and noted their trailer was missing. They reported the missing trailer to the RCMP as a theft, and the RCMP later informed them that it was registered in another person's name.

42. Southwest never informed Mr. and Mrs. H of the sale and did not remit to them any money from the sale contrary to the Consignment Regulation. The Board awarded \$12,286.71 to Mr. and Mrs. H from the Fund.

15) Investigation File: 08-70661 - Compensation Fund File: C08-C0055

43. Between April 20, 2008, and July 21, 2008, both dates inclusive, at or near Chemainus in the province of British Columbia, Southwest and True North did sell a 1998 Kit Companion Travel Trailer, owned Mr. and Mrs. G, to T. B. for approximately \$15,500.00. Kersti Clark, acting on behalf of Southwest, entered into the consignment agreement with Mr. and Mrs. G. Documents show that the sale agreement to Ms. B was executed on June 2, 2008, by Kersti Clark, acting on behalf of True North, as the selling dealer. There are loan approval documents from RBC Bank indicating the seller was True North with Kelly Grainger being the contact person for True North. Sale proceeds went to True North and not to Southwest in trust contrary to the Consignment Regulation. Mr. and Mrs. G were never informed that their vehicle had been sold and never received any money from the sale. The Board awarded \$13,950.00 to Mr. and Mrs. G from the Fund.

16) Investigation File: 08-70663 - Compensation Fund File: C08-C0058

44. Between May 22, 2008, and July 21, 2008, both dates inclusive, at or near Chemainus in the province of British Columbia, Southwest did sell a 2004 27' Komfort Trailblazer Travel Trailer, owned by Mr. and Mrs. W, to G. G. for approximately \$17,000.00. Documents show the sale took place on July 21, 2008. Kersti Clark represented to Mr. and Mrs. W that their money

was in a special account with her lawyer, but that they would get their money. Mr. and Mrs. W never received payment. The Board awarded \$15,075.00 to Mr. and Mrs. W from the Fund.

17) Investigation File: 08-70677 - Compensation Fund File: C08-C0075

45. Between November 3, 2007, and July 22, 2008, both dates inclusive, at or near Chemainus in the province of British Columbia, Southwest did sell a 1989 Ford Motor Home, owned by Mr. O, to D.A. for approximately \$16,500.00. On November 3, 2007, Mr. O consigned his Motor Home with Southwest, agreeing to receive \$10,000 with Southwest retaining anything over that amount. Mr. O was asked to lower his asking price by Southwest but refused. In around April 2008, Southwest contacted Mr. O asking if he'd accept an offer for \$16,500.00 and he said yes. He never heard from Southwest again. Documents show the motor home was sold on August 11, 2008, by Southwest. This was after the Court had appointed a receiver-manager to operate Southwest and the Registrar's Property Freeze Orders were issued. The receiver-manager did not authorize this sale. The new owner could not be contacted or located as he moved shortly after the purchase. There is no record of the actual amount paid for the motor home. Using its expertise in the valuation of motor vehicles, the Board awarded \$7,628.34 to Mr. O from the Fund.

18) Investigation File: 08-70682 - Compensation Fund File: C08-C0078

46. On September 12, 2007, at or near Cobble Hill in the province of British Columbia, Southwest entered into a consignment agreement to sell a 1992 Salem Cobra 26 Foot Travel Trailer owned by C. S. The price Ms. S wanted to receive was a \$5,000.00 net pay-out. She later agreed to reduce that amount to \$3,000.00. On February 23, 2008, the Salem Cobra was sold by Southwest to K. M. for approximately \$4,000.00 plus taxes as noted on the purchase agreement. The trailer was never registered by Mr. M as he was only using it on his property. However, on February 29, 2008, the trailer was for some reason transferred from Ms. S to Southwest, with Kelly Grainger's name appearing on the APV9T Transfer/Tax Form. Ms. S was never told that the Cobra had sold nor that any money was received for that sale. The Board awarded \$2,500.00 to Ms. S from the Fund.

19) Investigation File: 08-70683 - Compensation Fund File: C08-C0091

47. Between September 16, 2007, and July 21, 2008, both dates inclusive, at or near Cobble Hill in the province of British Columbia, Southwest did sell a 1999 Citation 5th Wheel Travel Trailer, owned by D.S., to J. M. for approximately \$18,500.00. Mr. S consigned his trailer to Southwest on September 16, 2007, with Kersti Clark signing on behalf of Southwest. The consignment agreement shows Mr. S expected \$24,000.00, with Southwest to keep anything over that amount. The agreement also noted a lien in favour of TD Bank in the amount of \$24,000.00 against the trailer. Documents show the trailer was sold to Mr. M on March 14, 2008, for \$18,500.00. Mr. S was not informed about this sale, nor authorized the acceptance of a lesser amount than originally agreed to. After dozens of repeated calls to Southwest, he finally received \$2,000.00 of the sales proceeds. He has received no further payments. The Board awarded \$14,650.00 to Mr. S from the Fund.

20) Investigation File: 08-70690 - Compensation Fund File: C08-C0065

48. Between July 5, 2008, and July 21, 2008, both dates inclusive, at or near Chemainus in the province of British Columbia, Southwest did sell a 1987 Dodge Islander Motor Home, owned by R. R., to J. E. for approximately \$10,500.00. Mr. R consigned the Dodge with Southwest on July 5, 2008. The vehicle was sold on August 1, 2008, and Mr. R received no notice of the sale or any money from that sale. It is also noted that this sale occurred after the Registrar's Property Freeze Order was made on July 14, 2008, and the B.C. Supreme Court order of July 31, 2008, appointing a receiver-manager to operate Southwest. The Board awarded \$7,000.00 to Mr. R. R. from the Fund.

21) Investigation File: 08-70692 - Compensation Fund File: C09-C0020 & C08-C0101

49. Between September 17, 2007, and July 21, 2008, both dates inclusive, at or near Cobble Hill in the province of British Columbia, Southwest did sell a 2006 Hornet Toy Hauler Travel Trailer, owned by C. M., to C.W.M. for approximately \$34,000.00. Ms. M consigned her trailer with Southwest on September 17, 2007, with Ms. M agreeing that she wanted to receive \$55,000 for the trailer. The trailer was sold on April 25, 2008, to Mr. C.W.M. with the purchase agreement showing the selling dealer as True North. In March 2008, Ms. M asked Kersti Clark of

Southwest to return the trailer if Southwest was not able to sell it. On June 27, 2008, Ms. M's brother inspected Southwest's lot and could not find the trailer. Kersti Clark then informed Ms. M.'s brother that she had a sale pending. Shortly afterward, Ms. M determined that the trailer had been sold in April, 2008. Southwest had failed to inform Ms. M of the April 25, 2008, selling date within the required one day, contrary to the Consignment Regulation.

50. Ms. Clark informed Ms. M that the trailer had sold for \$32,000 while Ms. Clark knew Ms. M owed \$35,000 on the trailer. Ms. M received only \$3,000.00 from Southwest contrary to the Consignment Regulation. The Board awarded Ms. M the statutory maximum of \$20,000 from the Fund payable to the bank. This left an outstanding amount owing of \$12,830.20 to clear the lien. The Board has yet to consider the compensation application of Mr. C.W.M. (C09-C0020) on the outstanding lien.

22) Investigation File: 08-70695 - Compensation Fund File: C08-C0059

51. Between October 18, 2007, and July 21, 2008, both dates inclusive, at or near Chemainus in the province of British Columbia, Southwest did sell a 1994 18 foot Sportsman Travel Trailer, owned by K. W. and J. B., to W. L. for approximately \$8,398.88. Kersti Clark signed the consignment agreement on behalf of Southwest. The sale documents showed that the sale took place on March 21, 2008, but Southwest, through Kersti Clark, did not inform Mr. W and Ms. B of the sale until July 17, 2008, contrary to the Consignment Regulation. Kersti Clark received payment for the sale on behalf of Southwest, but never remitted the money owing to Mr. W or Ms. B contrary to the Consignment Regulation. The Board awarded \$5,500.00 to Mr. W and Ms. B from the Fund.

23) Investigation File: 08-70704 - Compensation Fund File: C08-C0070

52. Between April 14, 2008, and July 21, 2008, both dates inclusive, at or near Chemainus in the province of British Columbia, Southwest did sell a 1989 Ford Camper Van, owned by Mr. and Mrs. T, to J. L. for approximately \$13,438.88. Documents show the sale took place on June 11, 2008, but Mr. and Mrs. T were never informed of the sale by Southwest, contrary to the Consignment Regulation. Mr. and Mrs. T never received any monies from the sale contrary to the Consignment Regulation. The Board awarded \$9,000.00 to Mr. and Mrs. T from the Fund.

24) Investigation File: 08-70705 - Compensation Fund File: C08-C0074

53. Between October 14, 2007, and July 21, 2008, both dates inclusive, at or near Cobble Hill in the province of British Columbia, Southwest did sell a 1996 Komfort Travel Trailer, owned by B. B., to Mr. and Mrs. M for approximately \$10,638.88. Documents show the sale took place on July 18, 2008, and Mr. B was never informed of the sale by Southwest contrary to the Consignment Regulation. Mr. B never received any monies from the sale proceeds contrary to the Consignment Regulation. The Board awarded \$7,500.00 to Mr. B from the Fund.

25) Investigation File: 08-70715 - Compensation Fund File: C08-C0102

54. Between March 18, 2008, and August 13, 2008, both dates inclusive, at or near Chemainus in the province of British Columbia, Southwest did sell a 1974 Vanguard 14 Foot Travel Trailer, owned by N. K., to J. A. for approximately \$3,082.88. Mr. K consigned his vehicle with Southwest on March 18, 2008, asking to receive \$2,750.00. Ms. Clark called in April 2008, and asked Mr. K for his “bottom number” which he said was \$2,300.00. Documents show the sale from Southwest to Mr. A took place on April 22, 2008. Mr. A subsequently consigned the trailer with another dealer in August 2008. Southwest did not inform Mr. K of the sale until August 2008, and that Mr. K had to contact the receiver-manager for his money. Mr. K received no money from Southwest. The Board awarded \$2,000.00 to Mr. K from the Fund.

26) Investigation File: 08-70717 - Compensation Fund File: C08-C0096

55. Between November 24, 2007, and July 21, 2008, both dates inclusive, at or near Cobble Hill in the province of British Columbia, Southwest sold to V. H. a CorCare RV extended warranty valued at \$2,140.00. The premium and warranty documents were never remitted to the insurer. Mr. H received no extended warranty coverage. The Board awarded \$2,140.00 to Mr. H from the Fund.

27) Investigation File: 08-70724 - Compensation Fund File: C08-C0077

56. On August 24, 2007, at or near Cobble Hill and Chemainus, in the province of British Columbia, Southwest entered into a consignment agreement with Mr. and Mrs. R to sell their 1995 Kustom Coach 5th Wheel Travel Trailer. The agreement is signed by Kersti Clark on behalf

of Southwest. That agreement also states that Mr. and Mrs. R were to retain \$12,500 of any proceeds with the rest going to Southwest. On March 4, 2008, Mr. and Mrs. R signed a blank transfer form at the suggestion of Kersti Clark, contrary to the Consignment Regulation. On July 3, 2008, Mr. and Mrs. R attended Southwest's lot and noticed their trailer was missing. Kersti Clark informed them that the trailer had been sold and was being inspected prior to delivery. After several phone calls near the end of July 2008, Ms. Clark advised Mr. and Mrs. R that the cheque was forthcoming. Documents show that the trailer was transferred into the name of Southwest on May 23, 2008, and remains registered to Southwest. Mr. and Mrs. R received no money for the trailer and the trailer has not been located. Kersti Clark has not advised of its location. The Board awarded \$6,000.00 to Mr. and Mrs. R from the Fund.

28) Investigation File: 08-70730 - Compensation Fund File: C08-C0076

57. On or about May 14, 2008, at or near Chemainus in the province of British Columbia, Southwest agreed to sell on consignment a 1986 Wilderness Travel Trailer owned by Mr. and Mrs. P. Those consumers agreed to receive \$6,000 from the sale of the Trailer with Southwest being allowed to keep any proceeds in excess of \$6,000. Later, Mr. P called Southwest to inform them that he would be picking up the trailer in a few weeks as it was not selling. Afterwards, and on July 15, 2008, Mr. and Mrs. P noted the trailer was at the Southwest lot, but the dealer appeared to be out of business. When the receiver-manager conducted an inventory of Southwest, on or about August 1, the trailer was not on Southwest's lot. Documents show Southwest sold the trailer to Mr. and Mrs. W on July 26, 2008, contrary to the Registrar's Property Freeze Order and despite having been suspended as a motor dealer by the Registrar. The purchase agreement shows Southwest sold the trailer for \$5,900.00. Mr. and Mrs. P have received no money from Southwest. The Board awarded \$3,000.00 to Mr. and Mrs. P from the Fund.

29) Investigation File: 08-70757 - Compensation Fund File: C08-C0064

58. Between June 13, 2008, and July 21, 2008, both dates inclusive, at or near Chemainus in the province of British Columbia, Southwest did sell a 1986 Ford Motor Home, owned by D. S., to P. G. On June 13, 2008, Southwest and Mr. S entered into a consignment agreement sale with Mr. S agreeing to receive \$4,500 for the Ford and Southwest could keep anything above that amount. Documents show that the Ford was sold to Ms. G on June 26, 2008, for \$7,000 plus

taxes. In or about July 2008, Mr. S asked Southwest for the return of the Ford as he wanted to sell it himself. He was told there was a potential buyer and the Ford had been moved for servicing and a "compression test". After many follow up calls by Mr. S, on July 9, 2008, Kersti Clark advised him that the trailer had been sold and would provide him the funds soon. Mr. S has not received any money from this the sale. The Board awarded \$4,500.00 to Mr. S from the Fund.

30) Investigation File: 08-70759 - Compensation Fund File: C08-C0082

59. On April 18, 2008, at or near Chemainus in the province of British Columbia, Southwest entered into a consignment agreement to sell a 2006 Starcraft Tent Trailer owned by Mr. and Mrs. K with an agreed asking price of \$6,250.00. The consumers noted the trailer advertised for \$9,900.00 in May 2008, and were told that was in order to leave room for negotiations. After returning from vacation, the consumers learned of the appointment of the receiver-manager and the involvement of the RCMP and the VSA. The consumers do not know the whereabouts of their trailer and the VSA investigators were not able to locate the trailer. The Board awarded \$5,537.53 to Mr. and Mrs. K from the Fund.

31) Investigation File: 08-70760 - Compensation Fund File: C08-C0090

60. Between August 10, 2007, and July 21, 2008, both dates inclusive, at or near Chemainus in the province of British Columbia, Southwest did sell a 1986 Ford E250 Getaway Van, owned by W. H., to J. G. K. for approximately \$3,800.00. Documents show the sale took place on January 25, 2008. When she filed her complaint with the VSA on August 29, 2008, Ms. H was unaware that the vehicle had been sold, contrary to the Consignment Regulation. Ms. H never received any sale proceeds from Southwest contrary to the Consignment Regulation. The Board awarded \$2,300.00 to Ms. H from the Fund.

32) Investigation File: 08-70792 - Compensation Fund File: C08-C0069

61. Between September 28, 2007, and July 21, 2008, both dates inclusive, at or near Chemainus in the province of British Columbia, Southwest did sell a 2007 Okanagan Travel Trailer, owned by L. G. (V), to Mr. and Mrs. M for approximately \$23,500.00. Ms. G (V) consigned the trailer with Southwest in September 2007, and informed Southwest of a lien of around \$36,000 on the trailer. The trailer was sold on December 11, 2007, with the purchasers

making three separate Visa payments between December 1 and 11, 2007, to Kelly Grainger. The purchasers were not informed of the lien. In May 2008, Ms. G (V) contacted Southwest and Kersti Clark told her there was a pending sale and financing was being arranged and funds should be paid directly to the bank holding the lien. The funds were never paid to the bank and Ms. G (V) continued to make payments on the trailer. The money was never remitted by Southwest. The Board awarded \$20,000.00 to Ms. G (V) payable to the bank towards the discharge of the lien which Ms. G (V) could reasonably have expected to receive. This award should be viewed in conjunction with C09-C0004.

33) Investigation File: 09-70021 - Compensation Fund File: C09-C0004

62. See the basic facts noted in paragraph 61 for Investigation File: 08-70792 - Compensation Fund File: C08-C0069. The Board awarded \$14,238.47 to Mr. and Mrs. M payable to the bank, being the balance of the money owed in order to discharge the lien. Southwest had failed to inform the consumers of the existence of the lien at the time of purchase and to ensure clear title was transferred.

34) Investigation File: 08-70863 - Compensation Fund File: C08-C0092

63. Between May 25, 2007, and July 21, 2008, both dates inclusive, at or near Cobble Hill in the province of British Columbia, Southwest did sell a 1989 Pace Arrow Class A Motor Home, owned by Mr. and Mrs. A, to T. T. and M. L. for an unknown amount. The vehicle was consigned with Southwest on May 25, 2007, and sold on January 19, 2008. The agreement was for a sale price of \$15,000 or best offer. The purchasers could not be contacted to obtain the actual selling price. On March 28, 2008, Southwest paid \$7,000.00 of the sales proceeds to Mr. and Mrs. A. The Board awarded \$600.00 to Mr. and Mrs. A from the Fund being the difference in the market value noted in the NADA guide for this vehicle and the amount Mr. and Mrs. A received from Southwest.

35) Investigation File: 08-70937 - Compensation Fund File: C08-C0095

64. Between March 26, 2007, and July 21, 2008, both dates inclusive, at or near Chemainus in the province of British Columbia, Southwest did sell a 1995 Rustler 29 foot Travelaire Trailer, owned by Mr. and Mrs. W, to A. J. G. for approximately \$8,500.00. Mr. and Mrs. W consigned

their Travelaire Trailer on March 26, 2007, and dealt with Kersti Clark at Southwest. Documents show the Travelaire Trailer was sold on April 13, 2007. However, Kersti Clark did not advise Mr. and Mrs. W of the sale until May 2008, even though they had inquired several times before that date. On July 15, 2008, Kersti Clark gave Mr. and Mrs. W \$2,000.00 and promised the rest of the money within one week. Kersti Clark and Southwest never paid the remainder of the money owing. The Board awarded Mr. and Mrs. W \$4,000.00 from the Fund.

FAILURE TO MAINTAIN RECORDS

65. It is also alleged from the evidence gathered that Southwest RV and Sport Ltd. between October 1, 2006 and July 21, 2008, both dates inclusive, at or near Duncan, Cobble Hill, Sidney and Chemainus, in the province of British Columbia, did fail to maintain for a period of 2 years from the date of the original transaction purchase orders, sales orders and written records resulting in the purchase or sale of a motor vehicle, records of material reconditioning or other substantial work performed on the motor vehicle, including the date and particulars of substantial work done, supported by repair orders, the cost of such work and details of any inspection conducted under the Motor Vehicle Act. Southwest is required to keep two years of such records on site by virtue of section 11 of the MDA and section 20 of the MDA-R.

66. On July 15, 2008 compliance officers of the VSA attended at all three Southwest locations to conduct inspections and review Southwest's business records. At each location the motor dealer did not have previous sales records going back up to two years as required by section 20 of the MDA-R. At one location, there were 74 vehicles on the premise, but only 7 files for vehicles were on site. A demand for production of documents was made and only after some delay from dealing with Southwest's legal counsel, were some of the documents produced. The investigation in this matter revealed that not all documents required to be kept by a motor dealer, were kept or produced by Southwest.

KERSTI RITA CLARK SALESPERSON APPLICATION – FALSE STATEMENT

67. Hong Wong, Manager of Licensing with the VSA, swore an affidavit dated November 26, 2008, regarding the salesperson application of Kersti Clark. That affidavit is exhibit 6 at this hearing. The application was dated received by the VSA on July 20, 2005.

68. The salesperson application of Ms. Clark asks a series of questions about her past. Ms. Clark was asked if she was ever convicted of a criminal offence or violation of another law in Canada or anywhere else. Ms. Clark answered no. Ms. Clark's Canadian criminal record check noted no issues. After the investigation into Southwest commenced, information came to light that Ms. Clark may have been charged with a crime in the USA. A search ultimately found a conviction for theft in the state of Arizona (Exhibit B in the Affidavit of Hong Wong.). Ms. Clark provided false information to the VSA.

KELLY RAE GRAINGER – FALSE STATEMENT TO A COMPLIANCE OFFICER

69. On July 15, 2008, VSA compliance officer Larry Barteski attended the Southwest location at 9534 Trans Canada Highway for the purpose of conducting an inspection and to review business records. While there, he dealt with Kelly Grainger and asked her to see the past two years of sales and inventory records. Mr. Barteski has sworn in an affidavit (Exhibit 8) that Ms. Grainger informed him that there were no such records on site and that all the records were in the possession of Kersti Clark. Mr. Barteski then noted an open file cabinet where he found seven files pertaining to motor vehicle transactions. Ms. Grainger gave a false statement to a compliance officer while he was discharging his duties under the MDA.

DISPOSITION

(a) Southwest and True North

70. As noted above, the conduct of Southwest (and True North) is responsible for the various consumer compensation claims and payments and investigation and legal costs amounting to \$783,868.20 as of the date of the hearing. A dealer is responsible to repay the compensation fund for any payment made due to its conduct. Section 24 of the MDA, provides the following enforcement option:

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.

71. As Registrar, I may also cancel a motor dealer registration if I am satisfied that the past conduct of a motor dealer, or its officers or directors, is such that they should no longer be registered as a motor dealer: Section 5 of the MDA.

72. Based on the above evidence and the various payments from the Fund, I find it would not be in the public interest that Southwest be registered as a motor dealer and I cancel the registrations of Southwest # 30606, 30672 and 30679, pursuant to sections 5 and 24 of the MDA. True North's registration # 30314 is currently lapsed. If it were a valid and current registration, I would cancel it as well for the same reasons.

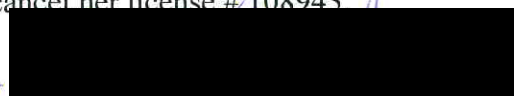
(b) Kersti Clark

73. I am satisfied from the above evidence that Kersti Clark knowingly sold vehicles on consignment when not legally authorized to do so. I am satisfied on the above evidence that Kersti Clark failed to remit money owed to consumers. I am satisfied on the above evidence that Kersti Clark sold vehicles on behalf of Southwest when she knew the Registrar's Freeze Orders were in place and when Southwest was under the control of a court appointed receiver-manager. I am satisfied on the above evidence that Kersti Clark diverted funds to True North that should have been paid to Southwest in trust. I am also satisfied that Kersti Clark gave a false statement to the VSA on her application form. In accordance with Section 6 of the Salesperson Licensing Regulation, I find it would not be in the public interest that Kersti Clark be licensed as a salesperson and I cancel her license # 106593.

(c) Kelly Grainger

74. I am satisfied on the above evidence that Kelly Grainger made a false statement to compliance officer Larry Barteski. I am also satisfied that Kelly Grainger accepted consumer money for the purpose of purchasing extended warranties and insurance and did not remit them to the insurer. I am satisfied that Kelly Grainger arranged payments from banks to be made to True North instead of to Southwest in trust, and when the Registrar's Property Freeze Order was in place. I am satisfied that the conduct of Kelly Grainger is such that it would not be in the public interest that Kelly Grainger be licensed as a salesperson and I cancel her license #108943.

Date: November 20, 2009


Ian Christman B.A., LL.B.