



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:

BRIAN STEPHEN BASSETT
(Salesperson License # 108822)

SALESPERSON

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Appearances

For the Authority:

Hong Wong, Manager of Licensing
Kim Murphy, Licensing Officer
Larry Barteski, Compliance Officer

Brian S. Bassett

In person

Date and Place of Hearing:

November 3, 2009, at Surrey, British Columbia.

INTRODUCTION

1. This hearing was to review the license of Brian Stephen Bassett, Salesperson License # 108822, pursuant to sections 6 and 7 of the *Salesperson Licensing Regulation* B.C. Reg. 241/2004 (the "Regulation"). Of concern to the staff of the Motor Vehicle Sales Authority of British Columbia (the "Authority"), is Mr. Bassett's recent conviction for criminal fraud and his apparent failure to report required information on his current and past applications for license renewal along with his original application for a license.

BACKGROUND FACTS

2. The following facts are not in contention.

3. On October 18, 2006, an application for a license as a salesperson was received by the Authority from Mr. Bassett. A review of that application noted Mr. Bassett had been working for a motor dealer since November 1, 2004, without being licensed to do so. His application was back-dated and Mr. Bassett was required to pay licensing fees for those years he worked while unlicensed. He did so.

4. Mr. Bassett was required to make certain declarations on his 2006 license application. Two declarations are important to my consideration in this hearing. First, Mr. Bassett said “no” to a question of whether he was under investigation and/or prosecution for a violation of any criminal or other law in Canada. Second, Mr. Bassett answered “no” to whether he had ever had a license from another regulated industry revoked or suspended, whether in Canada or elsewhere. I was also made aware that the criminal record check provided by Mr. Bassett with his October 18, 2006, application was dated December 8, 2004.

5. On November 21, 2007, Mr. Bassett submitted an application for renewal of his salesperson license. On that application he again answered “no” to the two same questions noted in paragraph 4. On January 9, 2009, Mr. Bassett submitted an application for renewal of his license via fax. On that application he again answered “no” to the two same questions noted in paragraph 4. Mr. Bassett stated he did not pay much attention to these questions when he answered them.

6. On February 15, 2009, an article ran in the Vancouver Sun stating Mr. Bassett had, in January 2009, pled guilty to nine counts of fraud totaling \$550,000.00. The Sun article also noted that while only facing nine counts of fraud, Mr. Bassett took more than \$2 million from about 30 people from 2000 to 2004. Mr. Bassett did not contest these facts at the hearing and noted he had repaid about one-third of the people before “this all blew up.” Mr. Bassett did want to point out that the people involved were not clients or customers; but colleagues and friends.

7. With new information, the Authority further investigated Mr. Bassett’s past and discovered he had been censured by the Investment Dealers Association of Canada (IDAC). This

is the national body which regulates investment dealers across Canada. Placed in evidence was a Notice of Hearing from the IDAC dated May 5, 2005, addressed to Mr. Bassett. The hearing was called to deal with his failure to provide information during IDAC's investigation of Mr. Bassett's alleged involvement with a Ponzi scheme involving some \$2.9 million, of which \$2 million was allegedly still owing to about 32 investors.

8. At a hearing held by the IADC on July 5, 2005, Mr. Bassett was found to have failed to provide information to the IADC during its investigation. Mr. Bassett did not attend that hearing. The IADC sanctioned Mr. Bassett by levying a \$50,000 penalty; ordering him to pay \$20,000 towards the IADC's investigation costs and a permanent prohibition of registration in "any capacity with the Association": The Investment Dealers Association of Canada (Enforcement Division) and Brian Stephen Bassett, "Decision of a Hearing Panel of the Pacific District Council of the Investment Dealers Association of Canada" July 6, 2005, page 5. Mr. Bassett did not contest these findings. Mr. Bassett wanted to make sure I noted the reasons for this sanction – which was his failure to provide information during a regulatory investigation.

9. Mr. Bassett spent several months incarcerated for his fraud conviction and is now on parole until February 18, 2011. Mr. Bassett was originally to be on parole until February 19, 2013, but that was subsequently reduced to 2011. Mr. Bassett has a restitution order to repay \$545,298.00 and the following special conditions apply to him: (1) he must obtain approval of his parole supervisor before accepting any employment; (2) Mr. Bassett may not directly or indirectly engage in any investment activity; and (3) Mr. Bassett must provide full financial disclosure to his parole supervisor upon request.

10. Mr. Barteski spoke with Mr. Bassett's parole supervisor who indicated he was not concerned with Mr. Bassett selling motor vehicles. The parole officer did express concern if Mr. Bassett were to work in the business office of a motor dealership.

11. Mr. Bassett cited as an extenuating circumstance his wife's illness and the strain that placed on him. He noted that he was on his way to repaying the money taken from the investors when the scheme came to light. He emphasized that he made a mistake.

12. Mr. Basset also wanted me to note his unblemished 30 years work history before his conviction. He also asked if I would consider his employment history with the motor dealer who previously employed him. Mr. Bassett was provided an opportunity to have that dealer provide a letter of recommendation; which was received by the Authority and brought to my attention.

13. Finally, I have had the benefit of reviewing the oral reasons for sentencing of Judge C. Baird Ellan, now reported at *R v. Bassett* 2009 BCPC 0111. I would note that Judge Ellan had the benefit of full submissions on the facts of the criminal matter as well as an opportunity to review a psychologist's report regarding Mr. Bassett. In these circumstances, Judge Ellan was in the best position to comment on Mr. Bassett's criminal conduct and any of her findings of fact regarding his motives must be respected: *Toronto (City) v. C.U.P.E., Local 79* [2003] 3 S.C.R. 77 (Supreme Court of Canada).

THE LAW

14. Section 6 of the Regulation provides authority to review the past conduct of a licensee and consider whether it is in the public interest that they continue to be licensed. When it comes to reviewing the criminal record of a licensee, section 14 of the *Human Rights Code* R.S.B.C. 1996 c. 210 ("Code") provides:

14 A trade union, employers' organization or occupational association must not

- (a) exclude any person from membership,
- (b) expel or suspend any member, or
- (c) discriminate against any person or member

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or member, or because that person or member has been convicted of a criminal or summary conviction offence that is unrelated to the membership or intended membership.[underlining added]

15. Section 14 of the Code is applicable to a licensing body, such as the Authority, by virtue of the statutory definition of "occupational association": *B.C. Council of Licensed Practical Nurses v. Mans & Humphreys v. B.C. Council of Human Rights* 1993 CanLII 1501 (B.C. Court of Appeal). "Whether a charge or conviction is related to the occupation or employment of a person

depends upon all of the circumstances of the individual case”: *Woodward Stores (British Columbia) Ltd. V. McCartney* 1983 CanLII 444 (B.C. Supreme Court) at paragraph 9.

16. The inherent purpose of licensing is to ensure minimum standards of conduct and care are met. Licensing, and the resulting regulation of an occupation, serves an important societal need to ensure that otherwise lawful conduct is not abused and innocent persons are protected from potential future harm. Mr. Justice Cory of the Supreme Court of Canada made this concept clear:

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

...
In short, regulation is absolutely essential for our protection and well being as individuals, and for the effective functioning of society. It is properly present throughout our lives. The more complex the activity, the greater the need for and the greater our reliance upon regulation and its enforcement. For example, most people would have no idea what regulations are required for air transport or how they should be enforced. Of necessity, society relies on government regulation for its safety.
[underlining added]

R v. Wholesale Travel Group Inc., [1991] 3 S.C.R. 154 (Supreme Court of Canada); see also *Zenner v. Prince Edward Island College of Optometrists*, [2005] 3 S.C.R. 645 (Supreme Court of Canada).

17. In considering whether to cancel a license or refuse a license, the B.C. Court of Appeal noted that a person’s individual circumstances should be taken into consideration: *Pacific International et al v. B.C. Securities Commission* 2002 BCCA 421 (B.C. Court of Appeal). However, the weight given to the individual’s circumstances depends on his chosen profession. For instance, the desire of the doctor or lawyer to practice their trade is given more weight than the person wanting to sell securities: *Pacific* at paragraph 12. A person who sells securities (or motor vehicles) can move on and sell other things. Without licensing, a doctor or lawyer may not practice their specific trade. The Court also noted that when considering licensing; what is in the public interest is the paramount consideration: *Pacific* at paragraph 12.

DISCUSSION

18. First, I would note that a salesperson license is required whenever a person engages in the “sale” of a “motor vehicle”¹ to a consumer. A person with such a license may be employed by a motor dealer in many aspects of their operations including: (1) sales (in person and over the internet); (2) marketing; (3) management; and (4) the business office, to name a few. In the business office, a salesperson would be responsible for selling additional products (such as insurance) and services as well as obtaining financing for a consumer. This means having access to the personal and financial information of consumers. It also means giving advice and information about those products and services. There is an element of trust in such a position. I note Mr. Bassett’s conditions of parole and his parole supervisor’s misgivings about Mr. Bassett working around financing and in the business office.

19. The salesperson license has broad application and while conditions can be placed on a salesperson’s license to restrict its use, ensuring compliance with conditions is difficult. There are over 1500 motor dealers in British Columbia with about 6,800 salespeople. There are 8 investigators/inspectors, called compliance officers, to review the conduct of all these persons within the province. Given that these officers investigate about 1,000 complaints per year and also must do routine inspections of motor dealers; monitoring one particular salesperson’s condition of license is a monumental undertaking. This would be so even if Mr. Bassett was confined to working only at one specific dealership. This is a factor that gets weighed in the mix.

20. Second, I note that Mr. Bassett has provided false information to the Authority on his applications. By the time the Authority received Mr. Bassett’s first application in October 2006, the IDAC had made its decision regarding his license with that body. Certainly, by about July 2005, Mr. Bassett was aware that his license with the IDAC was revoked. Mr. Bassett says his answers were oversights. For a person who has operated within a regulatory context for decades, before applying to be licensed by the Authority, I find it hard to believe that he made this same oversight three times. Also, Mr. Bassett’s role as an investment broker/dealer would require attention to detail. In these circumstances it is hard to accept three different lapses of attention on

¹ As those two terms are defined in the *Motor Dealer Act* R.S.B.C. 1996 c. 316

three separate occasions, years apart. I also find it notable that the criminal record check submitted with his October 2006 application was dated December 2004 – almost two years prior.

21. I also note that by January 2009, Mr. Bassett had pled guilty to the nine fraud charges. The charges against him were laid in 2008: *R v. Bassett* 2009 BCPC 0111 at paragraph 5. He certainly would have known he was under investigation and was charged with fraud by the time he sent in his renewal on January 9, 2009. I do not see this as being an oversight on his part. I find Mr. Bassett specifically falsified his answers on his original application and his two applications for renewal. This is conduct relevant to possessing a salespersons license.

22. Third, I find that Mr. Bassett's conviction is related to the issuance of a license. Mr. Bassett pled guilty to fraud. Mr. Bassett may be in a position to obtain the financial information of consumers and of any motor dealer that employs him if he were to be licensed. There is a concern that Mr. Bassett may misuse such information. He could be in a position to make representations to consumers about the purchases they are making. My concern is that he will not be as truthful and forthcoming as B.C. law requires him to be during the sale of a motor vehicle.

23. I am also mindful that a motor vehicle in today's market is generally the second most expensive purchase a person makes in their lifetime. For some, it will be the most expensive purchase they will make. Consumers rely on the representations by salespeople in making their decisions to purchase and rely on that salesperson's integrity. The potential future harm to consumers is significant. In her reasons for sentencing, Judge Ellan noted the following concern regarding Mr. Bassett on this point:

[13] It is submitted that these individuals were enticed by these representations to put up considerable sums of money, some in circumstances, I find, where they could not afford to lose them. The victim impact statements make it clear that it was not the fictitious attributes of the scheme, the get-rich-quick aspect, alone that enticed the investors.

[14] It was, as well, Mr. Bassett's reputation, what they believed to be his adherence to an ethical standard applicable across the industry, and his personal guarantee. Of those, only his reputation had any substance behind it. [underlining added]

24. Fourth, and in my opinion an important consideration, is Mr. Bassett's history of failing to co-operate with a regulatory investigation and to provide information to a regulatory body, the

IDAC, when statutorily required to do so. The IDAC was of the opinion that Mr. Bassett's failure to provide the requisite information subverted the IDAC's ability to perform its regulatory function. Accurate information is a cornerstone of a regulatory body's ability to carrying out its functions. Without accurate information, it cannot protect the public interest when reviewing a licensee. Mr. Bassett failed to provide that accurate information in his application and annual renewals for a license to the Authority. As such, he deprived the Authority of carrying out its mandate of accurately reviewing his past conduct with the public interest in mind. I agree with the IDAC that a failure to provide information to a regulatory body subverts the very purpose of that body and of the regulation of a profession. It is a significant breach of a licensee's obligations. I find this conduct is related to possessing a salesperson license.

25. Fifth, while I have sympathy for the condition of Mrs. Bassett, I have concern regarding Mr. Bassett's inference that his scheme came about partly because of his wife's declining health. Noted in the Vancouver Sun article was that Mr. Bassett spent \$100,000 on flight lessons and a bid to make the 2000 Summer Olympics sailing team. Money derived from the scheme went towards paying these debts. These are motives personal to Mr. Bassett and do not involve the care of Mrs. Bassett. There was clearly more to Mr. Bassett's motives than his wife's illness. I again note that Mr. Bassett did not dispute these reported facts. Judge Ellan also dealt with Mr. Bassett's explanation of his motives and noted the following:

[9] After taking a position as western regional manager with Dundee Securities in 2000, Mr. Bassett experienced a dramatic reduction in his income. Though he had been led to expect that his income would increase or remain the same, it was, in fact, essentially halved in the first year of his employment at Dundee.

...

[15] None of the money was ever invested by Mr. Bassett. He used some of it to falsify returns to some of the investors, but the balance went to pay Mr. Bassett's debts or interest on debts. The Crown alleged it went to support a lifestyle beyond his means. Whether that was its immediate application, it would appear at least that it was used to service debts arising from a long entrenched extravagant lifestyle that was not responsibly curtailed in response to his reduction in income.

...

[64] I am prepared to accept that the case law does not require extreme personal circumstances to justify a conditional sentence order for an offence of this kind. However, in my view, Mr. Bassett's situation does not contain any particularly unusual stressors or unique challenges that might reasonably be considered to have compelled him to act as he did. The psychologist's report essentially documents a disposition that

feared abandonment or disapproval, such that it overrode his morality. In that respect, I distinguish it from cases where people have actual mental illnesses that have compelled them - as in some of the cases referred to in submissions - that have compelled them to commit offences and that provide a larger explanation for the behaviour on the part of the individual.

[65] Mr. Bassett appears to have made a conscious choice here to risk financially ruining several of his friends and colleagues in order that his wife would not be upset and his sons would not have to change their prior lifestyle. The offences appear simply to have arisen from a change in Mr. Bassett's financial situation to which he reacted at first irresponsibly and then criminally.

...

[67] As far as his wife's health is concerned, it is not a situation where her health problems created a financial need contributing to the defendant's motive. As pointed out by the Crown, Mr. Bassett's current personal circumstances, the experience of bankruptcy, loss of his home and assets and reputation, the threat to the welfare of his ill wife should he go to jail, are all natural and foreseeable consequences of the criminal actions he took. [underlining is added]

26. Sixth, I note that Mr. Bassett is still on parole and his guilty plea on nine counts of fraud was only eleven months ago. He still has conditions to meet such as his restitution order. I am of the opinion that not enough time has elapsed since his conviction to accurately gauge whether Mr. Bassett has rehabilitated himself. I am also satisfied that at this hearing, Mr. Bassett continued to attribute some responsibility for his conduct on his wife's health, which was clearly rejected by Judge Ellan. It appears Mr. Bassett has not yet fully accepted the responsibility he alone bears in the criminal matter.

27. Finally, I also note that Mr. Bassett is currently not working in the motor vehicle sales industry. He stated at the hearing that he could sell in any industry, but had a preference for car sales as he has always liked cars. The letter from the motor dealer he previously worked for says he represented the dealer in a professional manner and describes his responsibilities while employed there. That letter does not say they wish to employ Mr. Bassett. Therefore, if I were to refuse his license at this time, he would not lose his employment.

28. In considering the above noted factors, and weighing the public interest with that of Mr. Bassett's individual circumstances and his desire to be licensed, I find that it would not be in the public interest to license Mr. Bassett. Mr. Bassett's application for renewal of his salesperson license is refused.

29. Considering the seriousness and magnitude of the criminal offence; the factors noted above; and Mr. Bassett's willingness to hide facts from a regulatory body; I believe a waiting period of five years from this decision's date must pass before any future license applications from Mr. Bassett should be considered. The purpose of the waiting period is to allow enough time to lapse and be able to review Mr. Bassett's rehabilitation history. Any such application is to be reviewed by the Registrar of Motor Dealers at a hearing.

Date: December 2, 2009

A large black rectangular redaction box covers the signature of Ian Christman. There are some faint blue ink marks above and below the box.

Ian Christman B.A., LL.B.