



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

**IN THE MATTER OF THE *MOTOR DEALER ACT* R.S.B.C. 1996 C. 316 AND  
THE *BUSINESS PRACTICES AND CONSUMER PROTECTION ACT* S.B.C. 2004 c. 2**

**RE:**

**KELLY MILLAR**

**COMPLAINANT**

**AND:**

**HARE MOTORS LTD.**  
**(Dealer License #11180)**

**MOTOR DEALER**

**AND:**

**VIJAYA NAIDU, also known as**  
**FRANK NAIDU**  
**(Salesperson License #103448)**

**SALESPERSON**

**RECONSIDERATION OF THE DECISION OF THE**  
**DEPUTY REGISTRAR OF MOTOR DEALERS**

Appearing for the Authority:	Denis Savidan, Manager of Compliance and Investigations Holly Childs, Compliance Officer.
Appearing for Kelly Millar	Herself
Appearing for Hare Motors Ltd:	Ajit Hare, Manager and Director
Appearing for Vijaya Naidu	Himself
Date and Place of Hearings:	August 28 <sup>th</sup> 2009, at Surrey, British Columbia. September 10 <sup>th</sup> , 2009, Langley BC

**INTRODUCTION**

1. On March 2<sup>nd</sup>, 2009, Ian Christman, Deputy Registrar of Motor Dealers for the Province of British Columbia, delivered his final decision in the matter.
2. By letter dated March 23<sup>rd</sup>, 2009, Sandeep Gill, solicitor for Hare Motors Ltd., formally requested a reconsideration of Mr. Christman's decision pursuant to Section 181 of the Business Practices and Consumer Protection Act (BPCPA)

3. In his request for reconsideration, the solicitor for Hare Motors Ltd. advised that pursuant to Section 182(2)(a) of the BPCPA, new evidence had become available that was substantial and material, that was not available at the time of the original hearings in this matter, and, that would have an effect on Mr. Christman's decision in this matter had it been available.
4. The evidence that Hare Motors Ltd. produced in this application for reconsideration was that the Ford F-150 had been in an accident subsequent to being purchased by Mr. and Mrs. Millar and that it was this subsequent accident that caused the damages that resulted in the vehicle being declared by Richey and Sons Collision Repairs, as not roadworthy, on July 8<sup>th</sup>, 2008.
5. As will be explained in detail following, this new evidence shows that Hare Motors Ltd. were correct in asserting that this was new evidence that would have been material to Mr. Christman's final decision in this matter, but incorrect in making the assertion that the subsequent accident caused the damages that resulted in the vehicle being declared as not roadworthy.
6. The accident that Hare Motors Ltd. referred as "new evidence", and not previously considered, was a side collision with a Mazda 3 Protégé on May 9, 2008, and very minor in nature and, in my view, not at all significant to the issues under consideration in these proceedings.
7. I also do not accept the suggestion made by Hare Motor's solicitor that the VSA compliance staff intentionally withheld evidence of the accident between the Ford F-150 and the Mazda 3 Protégé on May 9, 2008. As outlined above, it is my determination herein, based on Mrs. Millar's testimony and the expert evidence discussed following, that this subsequent accident was minor in nature and not significant to the issues under consideration in these proceedings.
8. In addition to the evidence of a subsequent accident, Hare Motors Ltd. brought forward evidence which was not new, but because of its nature could have been both substantial and material to Mr. Christman's decision in this matter. This was the evidence regarding the inspection report completed by Joel Cruz, the "house mechanic" for Hare Motors Ltd.
9. Joel Cruz, both by affidavit and by his appearance at the hearings in this reconsideration, indicated that he had inspected the vehicle purchased by Mr. and Mrs. Millar prior to their taking possession. Re-entered into evidence as an exhibit to support this evidence, was the inspection report completed by Mr. Cruz with a checked box indicating "no defect detectable" in regards to "frame cross members."
10. Mr. Christman, in his decision in this matter starting at paragraph 30, made the following determinations in regards to Mr. Cruz's inspection report and how it was used to inform the sale;

*30. I find that Mr. Naidu represented the Ford as in great condition and a great truck. This is not contested. I also find that Mrs. Millar was shown the Hare Motors' inspection which indicated no problems with the frame cross-member. This was confirmed by Mr. Hare. It is clear from Mrs. Millar that these verbal and written representations formed part of her decision to purchase the Ford, which has turned*

*out to have been an error of judgment. The Ford is not roadworthy and Mrs. Millar's purpose for buying the Ford was to drive it on the road.*

*32. Was this a deliberate deceptive act? From the evidence, I am satisfied that there was an intention to mislead Mrs. Millar. The report of Hare Motors shows no frame cross-member problems. It must be taken as having looked at those components. I have found that the frame was damaged prior to sale, and thus this notation was either a deliberate attempt to deceive, or negligence on the part of Hare Motors. When other evidence is considered, I find it was part of a deliberate attempt to deceive.*

*33. For example, two independent garages who were specifically looking at the frame, noted the same frame damage problems. Neither missed these problems. Second, when Hare Motors took the Ford into Dams for repair work and an inspection, it did not ask that the frame be inspected even though by then, Mrs. Millar had complained to them about the frame damage. It seems odd to ask for a vehicle to be repaired when there is evidence to suggest it is not roadworthy and cannot be sold to a consumer: s. 222 of the MVA [Motor Vehicle Act]. One would expect Hare Motors to ask for the frame to be specifically inspected; before it chose to spend over \$1,000 on repairs to a vehicle it may not be able to sell. I find Hare Motors knew of the frame damage and was having repairs done to make the Ford more saleable.*

*34. Third, Hare Motors made all its declarations on the purchase agreement, except the one requiring it to declare the vehicle as meeting the requirements of the MVA. Why go to the effort of making the other five declarations and not this one? I find Hare Motors deliberately did not make this declaration because it knew of the frame damage. Finally, none of the declarations were made on the APV9T transfer tax form: Exhibit I of the Affidavit exhibits. For instance, Hare Motors declared the Ford as an ex- lease/rental on the purchase agreement, but not on the APV9T. While this may just be laziness, I must consider it in relation to the whole of the evidence. On the whole of the evidence, I find it more likely than not that Hare Motors deliberately misled Mrs. Millar into purchasing the Ford.*

11. I find nothing in the evidence of Mr. Cruz presented at this rehearing that rebuts these original determinations made by Mr. Christman. Mr. Cruz's testimony before me lacked credibility as he was unclear in several of his answers and seemed evasive when trying to explain how he examined underneath this vehicle when Hare Motors Ltd. does not actually have a hoist on their premises. Also, in substance, his evidence was simply a repeat of the affidavit evidence that was considered when this matter was first heard by Mr. Christman.
12. I also take particular note of the fact that Hare Motors Ltd. made no attempt to rebut the several other observations and determinations outlined in the above quote from Mr. Christman's decision.
13. During the reconsideration hearings in this matter, Mrs. Millar again denied the allegation of Hare Motors Ltd. that the vehicle's frame was damaged after the Millar's had purchased the vehicle. Sandeep Gill, solicitor for Hare Motors Ltd. had the opportunity to question Mrs. Millar on her testimony and I am satisfied that she is telling the truth in regards to this important issue.

14. It is the Vehicle Sales Authority's (VSA's) practice when the Registrar has agreed to reconsider a formal decision under Section 181 of the BPCPA, to have the VSA compliance team reopen the investigation file and produce for consideration at the reconsideration hearing any evidence (new or old) felt to be relevant to the issues under consideration.
15. Holly Childs, Compliance Officer for the VSA, introduced an affidavit dated August 5, 2009, confirming that Mr. and Mrs. Millar did not inspect underneath the vehicle prior to taking delivery and relied on the representations of Vijaya Naidu as to the mechanical soundness of the vehicle. Also attached to Ms. Child's affidavit are several photos taken by Mr. Millar of the undercarriage of the subject vehicle. These photos were taken after Mr. Christman's final decision in this matter and, in my opinion, what they show is information that would have been relevant to his considerations had this information been made available at the original hearing.
16. Mr. and Mrs. Millar's suggestion being that the photos show paint over-spray from a repair that was completed on the vehicle prior to it being purchased by them. As the over-spray appears to be on top of the rust developing around the torn frame members, this is evidence that shows conclusively that the frame damage existed prior to Mr. and Mrs. Millar purchasing the vehicle.
17. Also of significance to the issue of when the frame on this vehicle was substantially compromised, is the report and testimony of Patrick Gordichuk, the owner of Sunshine Auto Body Ltd. in Langley, British Columbia. Mr. Gordichuk is an ICBC certified specialist in frame repairs and was acknowledged by all parties to be an expert in this area.
18. Mr. Gordichuk testified as to the accuracy and completeness of his report dated April 8<sup>th</sup>, 2009, and was questioned by Sandeep Gill, solicitor for Hare Motors Ltd.
19. In regards to Mr. Gordichuk's expert evidence there are two key findings. First that, and I quote, "... *the damage to the frame and undercarriage of the Ford F-150 serial #1FTPW145544KD62691 could not have been caused by the side impact from the Mazda 3 Protégé on May 9, 2008, (the subsequent accident Hare Motors alleges caused the damage to the frame of the Ford F-150)*".
20. Of equal significance to the matters at issue here is Mr. Gordichuk's other finding, which came in his testimony in regards to his report. He explained using the pictures from the report that the frame damage to this vehicle was quite extensive and could not have been caused by a simple collision with another vehicle. He explained that this type of frame damage is the result of driving over and high-centering the truck on something very substantial, such as a large rock or very hard ground.
21. On September 10<sup>th</sup>, 2009, I attended Sunshine Auto Body Ltd. in Langley, British Columbia, to have the vehicle put on a hoist so I could better see for myself what was in the pictures provided by both Mr. Millar and Mr. Gordichuk. Sandeep Gill, solicitor for Hare Motors Ltd. and his clients were in attendance at this examination of the vehicle as well.
22. This examination did not take very long, as it is clear to me that the damage to the frame on this vehicle is very easy to identify and has paint over-spray on it, as suggested in Mr.

Millar's pictures. It is also very clear that the extensive frame damage to this vehicle goes well beyond what could have reasonably been caused by a small collision or, for that matter, missed in a routine inspection.

23. Before getting to my final determinations on how this matter needs to be resolved, I mention, for the record, that two other witnesses were called by the VSA compliance staff. Ms. Andria Weiser, a claims officer with ICBC, and Mr. Mike Srigley, owner and manager of Sunshine Auto Body Ltd., both of whom provided verbal testimony supporting my findings outlined above.
24. At my request, Sandeep Gill, solicitor for Hare Motors Ltd., made his final submission in this matter on October 7<sup>th</sup>, 2009.
25. In his submission, Mr. Gill firstly asserts that the actions of Hare Motors in this case were accidental and not deliberate. The argument being that Hare Motors Ltd. had a mechanical inspection report showing that there were no structural problems with the Ford F-150 and that they had acted appropriately given the contents of this report. This of course, is the same argument presented and rejected by Mr. Christman when the matter was first heard.
26. I have determined on the evidence before me that the frame damage to the subject vehicle could not have been caused by the side impact in the very minor accident with the Mazda 3 Protégé on May 9, 2008.
27. I have also determine, as did Mr. Christman, that the frame on the Ford F-150 was damaged prior to Mr. and Mrs. Millar purchasing the vehicle, that these damages are very apparent to anyone looking under the vehicle and that Hare Motors Ltd. made a deliberate attempt to deceive Mr. and Mrs. Millar when selling them this truck.
28. Accordingly, it is clear from the evidence before me that the actions of Hare Motors Ltd. in this matter were not accidental, but deliberate.
29. In his closing arguments, Mr. Gill goes on to suggests that his clients were unfairly prejudiced in their defense of this matter due to the non-disclosure by Mr. and Mrs. Millar and the VSA compliance staff of the minor accident involving the Ford F-150 and the Mazda 3 Protégé on May 9, 2008. While this is a somewhat novel argument it is not supported by the evidence as pointed out above.
30. In his final decision in this matter Mr. Christman made the following Compliance Orders:

*"I have found that Hare Motors and Mr. Naidu have deliberately committed a deceptive act or practice in its sale of the Ford to Mrs. Millar. In order to rectify a deceptive act, section 155(4) of the BPCPA provides that I may make a compliance order ...*

*In this case it would be appropriate that Hare Motors and Mr. Naidu, jointly and severally, take back the Ford and refund Mrs. Millar the total purchase price. The Ford cannot be driven on the road until repaired and that obligation should be Hare Motors'. The purchase agreement (Exhibit 4) shows Mrs. Millar paid \$16,918.40 on May 9, 2008, plus she provided a \$1,500 payment by Visa on May 1, 2008, for a total of*

*\$18,418.40 owing to her for the purchase of the Ford. It will be Hare Motors' responsibility to retrieve the Ford.*

*Mrs. Millar's evidence also shows they purchased an extended warranty from Hare Motors for the Ford for \$609.00. Hare Motors and Mr. Naidu, jointly and severally, are to also refund this amount to Mrs. Millar. It would also be appropriate for Hare Motors and Mr. Naidu, jointly and severally, to refund Mrs. Millar the \$89.95 for the Private Vehicle Inspection done by Canadian Tire and the \$75.00 for the Structural Integrity Assessment done by Ritchey & Sons Collision Repairs Ltd. The evidence before me does not show that this is inclusive or exclusive of taxes and I can therefore only order these amounts returned.*

*I am not going to require Hare Motors pay for the inspection by Hallmark Ford on the second vehicle offered in trade to Mrs. Millar. It was her decision to consider a trade instead of insisting on a refund. She was being prudent in having the second vehicle inspected, but that was her decision."*

31. Having reviewed all the evidence (old and new) in this matter, I see no reason to change any of these determinations. Therefore, these now become my directions to be acted upon as soon as reasonably possible.
32. In regards to administrative costs and assessments, I see the following determinations by Mr. Christman (which included his extensive and helpful explanations as to what he considered, and why);

*"... the Motor Vehicle Sales Authority of B.C. has incurred costs to inspect/investigate this matter and bring it to a hearing before me. Pursuant to section 155(d) of the BPCPA, Hare Motors and Mr. Naidu, jointly and severally, are to refund the VSA the amount of \$682.05 for those costs. An invoice will be forwarded to them..."*

*In considering all of the above factors of this particular case, the evidence placed before me, the compliance order that is to be issued and I specifically note the serious concern for the safety of consumers and the general public (accidents and potential carnage on the road), I believe an administrative penalty (against Hare Motors Ltd.) in the amount of \$20,000 is appropriate ...*

*... an administrative penalty is warranted (against Vijaya Naidu), and (I) order Mr. Naidu to pay a \$750.00 administrative penalty."*

33. Again, having reviewed all the evidence (old and new) in this matter and the detailed explanations provided by Mr. Christman, I see no reason to change these determinations. Therefore these now become my directions to be acted upon as soon as reasonably possible.
34. In his closing arguments, Mr. Gill tries to distinguish his client's situation from the *Massive Truck* case referred to in Mr. Christman's final decision. The suggestion is that in the *Massive Truck* case there was an intentional deception by the dealer's representatives, while here, Hare Motors Ltd. had simply made a mistake when they sold an unsafe vehicle to the Mr. and Mrs. Millar.

35. As I have determined that the frame on the Ford F-150 was damaged prior to Mr. and Mrs. Millar purchasing the vehicle, and that Hare Motors Ltd. made a deliberate attempt to deceive Mr. and Mrs. Millar when selling them this truck, this argument is simply not supported by the facts as determined herein.
36. In addition to the above assessments, the VSA incurred additional cost in preparing evidence for, and hosting this reconsideration. Given the circumstances and my finding that Hare Motors Ltd.'s intentionally deceived Mr. and Mrs. Millar when they sold this vehicle. I have decided that Hare Motors Ltd. are to refund the VSA the amount of \$5,247.73 for these costs. An invoice will be forwarded to them with the details in this regard.
37. Turning now to the conditions imposed on the licenses of Hare Motors Ltd. and Mr. Naidu, I concur with Mr. Christman's reasons and decision in regards to the license of Mr. Naidu and therefore direct that, and I quote;
- "... in order to protect the public interest that a condition be placed on Vijaya Naidu's salesperson license requiring him, at his own cost, to successfully complete the new Level I Salesperson Certification Course, as soon as it is offered in the Metro Vancouver area. A failure to do so will be grounds to suspend his salesperson license until he has successfully completed the course."*
38. In regards to restrictions on the license of Hare Motors Ltd. I am going to vary Mr. Christman's decision. Section 8.1(4)(b) of the MDA, provides authority for me to add conditions on to a motor dealer's registration. Section 181(2)(b) of the BPCPA allows me to vary Mr. Christman's compliance order in regards to the registration of Hare Motors Ltd. as part of this reconsideration. Under section 5 of the MDA, I am to consider whether it is in the public interest to cancel, suspend or add conditions to their registration/license.
39. The conditions to be placed on the license of Hare Motors Ltd. are;
- a) They must, within 30 days, comply with all directions and determinations contained in this reconsideration,
  - b) They must only sell vehicles that have been properly inspected for mechanical condition and that comply with the Motor Vehicle Act,
  - c) With every vehicle they sell, they must provide the purchaser with a copy of a mechanical inspection report and keep a copy of this report on their files and available for inspection,
  - d) They must comply in all respects with the Motor Vehicle Act, the Motor Dealer Act and the Business Practices and Consumer Protection Act,
  - e) They will immediately make available to VSA compliance staff, all books and records for the last two years that apply to the intake and sale of every motor vehicle bought and sold by the dealership during this period of time.
40. Failure to comply with any of the above conditions will result in the immediate suspension of the registration for Hare Motors Ltd. pending a hearing before the Registrar of Motor Dealers.

41. Section 181(6) of the BPCPA makes it clear that this will be the final reconsideration in this matter. Accordingly, these hearings are now closed and my directions herein need to be acted upon as soon as reasonably possible.
42. I would like to thank everyone involved in these proceedings for their thoughtful considerations and patience. It has been a very busy time for the VSA, and myself and these matters took longer than I would have liked.

December 14<sup>th</sup>, 2009



---

Ken Smith  
Registrar of Motor Dealers