



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

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

RE:

KEY TRACK AUTO SALES & DETAILING LTD.
(Assigned for reference Registration # 31038)

APPLICANT

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Appearances

For the Authority: Hong Wong, Manager of Licensing
Jaydon Rush, Licensing Officer
Denis Savidan, Manager of Compliance and Investigations

For Key Track Auto Sales & Detailing Ltd.: Gerald E. Palmer, Legal Counsel
Sukhvir Kaur Sidhu, owner of the Applicant

Date and Place of Hearing: April 16, 2010, at Surrey, British Columbia

INTRODUCTION

[1] In accordance with sections 5 and 6 of the *Motor Dealer Act* R.S.B.C. 1996 c. 316 (the "Act"), this hearing was to review the application of Key Track Auto Sales & Detailing Ltd. (Key Track) for registration as a motor dealer. Key Track proposes to operate in Abbotsford, British Columbia. The staff of the Motor Vehicle Sales Authority (the "Authority") has concerns about Key Track's application as set out in the Notice of Hearing (Exhibit 1):

- (a) Your affiliation with Jastej Singh Sidhu and Gurtej Sidhu, who are the principals of Massive Truck Sales Ltd. (Massive Truck), Dealer Licence # 30294.
- (b) Massive Truck Sales Ltd., Dealer Licence # 30294, has an outstanding administrative penalty of \$16,379.58 from the July 3, 2008 hearing after letting their Dealer Licence lapse on November 24, 2008.
- (c) Massive Truck Sales Ltd., Dealer Licence # 32094, has conditions placed on their Dealer Licence by the Registrar from the July 3, 2008 hearing, which says "All vehicles sold by dealer must pass the Provincial Private Vehicle Inspection prior to sale. That inspection may not be conducted by Massive Truck or anyone who is associated with Massive Truck, its directors, officers or employees. A copy of the inspection must be provided to the consumer prior to any purchase."

- (d) Management of your proposed dealership since you are not proposing to work at the dealership on a full-time basis.

[2] Entered as Exhibit 2 was a bundle of pages containing (i) Key Track's application materials; (ii) The Registrar's decision in *Hurtubise v. Massive Truck Sales Ltd. et al* (Registrar of Motor Dealers: August 18, 2008, VSA File No. 08-70288); and (iii) materials from the Authority's dealer file on Massive Truck Sales Ltd.

[3] Jaydon Rush provided oral testimony and was questioned by Mr. Palmer. Mrs. Sidhu also provided oral testimony and was questioned by myself and the Authority staff that were present.

POSITION OF THE PARTIES

(a) The Authority

[4] The position of the Authority is evident from the Notice of Hearing. The concern is that Mrs. Sidhu is the sister-in-law of Gurtej Sidhu, who was the owner of Massive Truck, and is the wife of Jastej Sidhu, who was listed as the manager/salesman at Massive Truck: page 57 of Exhibit 2.

[5] In *Hurtubise*, Massive Truck was found to have sold an unsafe vehicle to a consumer and did not declare that it was unsuitable for transportation as required by the *Motor Dealer Act Regulation* B.C. Reg. 447/78. Massive Truck, Gurtej Sidhu and Jastej Singh Sidhu were all found to have made misrepresentations about the truck sold to Mrs. Hurtubise. Jastej Singh Sidhu was also found to have made a false statement to a compliance officer with the Authority, during the investigation.

[6] The Registrar issued a Compliance Order that Massive Truck unwind the transaction and give a refund to Mrs. Hurtubise. That Compliance Order was filed in the B.C. Supreme Court and is deemed an order of that Court for all purposes except for appeal: s. 157(2) of the *Business Practices and Consumer Protection Act* S.B.C. 2004 c. 2 (BPCPA); and December 18, 2008, S.C.B.C. Vancouver Court Registry File L080556. There was also a Notice of Penalty issued against Massive Truck for \$20,000.00 which was also filed in the B.C. Supreme Court and is also deemed an order of that Court: s. 168(2) of the BPCPA.

[7] Massive Truck did not take its own steps to comply with the Compliance Order. The Authority had a \$10,000 letter of credit from Massive Truck on file. That letter of credit was used to reimburse the consumer, and the Authority for its investigation and hearing costs as ordered in the Compliance Order. The remainder of the Letter of Credit was applied towards Massive Truck's \$20,000 Administrative Penalty leaving \$16,379.58 still outstanding and no

payment has been received. Massive Truck disobeyed a Compliance Order and is disobeying a Notice of Penalty of the Registrar and orders of the B.C. Supreme Court.

[8] As noted at the hearing, Jastej Singh Sidhu has fulfilled the conditions placed on his salesperson licence as a result of his conduct during the Hurtubise transaction.

[9] At the hearing, the Authority also raised concerns that the repair shop Key Track is proposing to use is the same as the one used by Massive Truck. The Authority's concern is that Massive Truck sold an unsafe vehicle while employing that repair facility and there is concern that Key Track may also sell unsafe vehicles.

(b) Key Track

[10] Key Track's position is that it is a separate corporate entity than Massive Truck. Mrs. Sidhu is the sole owner of Key Track and Gurtej Sidhu will have no part of the business. Key Track understands the Authority's concern in relation to Jastej Sidhu, but noted he has fulfilled the conditions placed on him by the Registrar.

[11] Mrs. Sidhu provided assurances that all sales will be approved by her and she will sign all sales agreements. Mrs. Sidhu highlighted that her skills will be used in the book-keeping part of the business and managing similar affairs. Mrs. Sidhu stated she will rely on her husband's experience for obtaining and selling automotive inventory.

[12] Mrs. Sidhu noted that she had no industry experience and is a dental hygienist. She will continue to work as a dental hygienist leaving her husband to oversee the dealership when she is working elsewhere. Counsel for Mrs. Sidhu said it is not uncommon that the owner of a motor dealership is not available all the time.

LEGAL PRINCIPLES

(a) General Principles - Licensing

[13] In *Re: LCB Autos Inc.* (Registrar of Motor Dealers: April 1, 2010: File 10-009) and *Re: Safe Auto Sales Ltd.* (Registrar of Motor Dealers: November 19, 2009: File 08-70508) I discussed the importance of regulatory oversight in general terms as described by Justice Cory in *R v. Wholesale Travel Group Inc.*, [1991] 3 S.C.R. 154 (Supreme Court of Canada); and see also *Zenner v. Prince Edward Island College of Optometrists*, [2005] 3 S.C.R. 645 (Supreme Court of Canada). In both those decisions I also expressed the general purpose of that oversight under the Act.

[14] In considering an application for a licence, I must consider the whole of the application: *Maple Lodge Farms v. Government of Canada*, [1982] 2 S.C.R. 2 (Supreme

Court of Canada). While obtaining a licence is important for a person in their pursuit of a livelihood; it is the public interest that is the paramount consideration: *Pacific International et al v. B.C. Securities Commission* 2002 BCCA 421 (B.C. Court of Appeal); and see *Lorindale Holdings et al v. B.C. Assets and Land Corp. et al* 2004 BCCA 352 (B.C. Court of Appeal).

[15] In considering the statutory scheme under consideration, I keep in mind the principals of statutory interpretation applicable to a B.C. statute: *Yeung (Guardian ad litem of) v. Au* 2006 BCCA 217 at paragraph 32 (5 panel Court of Appeal), *aff'd* 2007 SCC 45 (Supreme Court of Canada). I also keep in mind that the Act is consumer protection legislation: *Fireman's Fund Insurance Co. of Canada v. Shoreline Auto Sales Ltd.* [1986] B.C.J. No. 1745 (B.C. Supreme Court); which influences how it is to be interpreted: *Prestige Toys Ltd. v. Ontario (Registrar, Motor Vehicle Dealers Act)* 2009 CarswellOnt 4743 (Ont. S.C.J. (Div. Ct.))

(b) Corporate Personality

[16] The legal principle that the corporate personality is to be viewed as separate and apart from its principals (the corporate veil) adopted in the seminal case of *Salomon v. Salomon & Co.* [1897] A.C. 22 (H.L.); has limited applicability in licensing reviews. A licensing body may look to the whole of the facts surrounding an application for a licence, including relationships to third parties, to determine the applicant's *bona fides*. In fact, if a licensing body does not engage in such a review, it may act contrary to its statutory mandate and commit a reviewable error: *Wight v. Canadian Egg Marketing Agency*, [1978] 2 F.C. 260; (1977), 19 N.R. 529 (Federal Court of Appeal); *Syntex Pharmaceuticals International Ltd. v. Medichem Inc.* 1990 CarswellNat 636, [1990] 2 F.C. 499 (Federal Court of Appeal); and *Villetard's Eggs Ltd. v. Canada*, 1995 CarswellNat 669, [1995] 2 FC 581, 181 N.R. 374 (Federal Court of Appeal).

[17] In *Syntex*, the Federal Court of Appeal considered a review by a Project Officer, a delegate of the Commissioner of Patents, who stated he had to keep the conduct of one company separate from another in considering issuing a licence. The Federal Court of Appeal reviewed the law regarding the corporate personality and the corporate veil and found the Project Officer did not apply the correct legal principle and that he had an obligation to consider the relationship of the two corporations:

40 The foregoing authorities are but a few among many which show that the pronouncement of the Project Officer that arguments based on the conduct of Apotex were irrelevant *because* it was "a separate, legally distinct company" from the respondent was a misapprehension of the law in the circumstances relied upon by the appellant as showing

the true purpose for the respondent's incorporation and application for licence. The determination of whether the facts disclosed did or did not provide "good reason" for not granting the licence was solely his to make but in making that determination he must have acted on proper principles which, for both reasons given, he did not do. [emphasis in the original]

[18] In *Villetard's Eggs Ltd.* the Federal Court of Appeal stated:

18 The proposition for which *Wight* stands, in my respectful view, is that implicit in the licensing power of the Agency is its ability to enquire into the conduct of an applicant and to refuse to issue a licence to an applicant whose application is in reality an attempt to circumvent the Regulations. That ability does not stem from a specific provision in the Regulations; it stems, rather, from the very duty imposed by Parliament on the Agency "to have due regard to the interests of producers and consumers of the regulated product or products".

19 I simply cannot imagine a licensing authority invested with such a duty, not being capable of denying a licence where it has good grounds to believe that the issuance of the licence would be detrimental to the interests of the public.[underlining added]

[19] Under the Act, it is also clear that I am not to blind myself from the underlying structure and realities of a corporate applicant and its *bona fides*: section 5 of the Act; and also see *Prestige Toys Ltd.*; and *Re: Safe* at paragraph 23. There is also no legislative direction under the Act that a licence must issue if certain requirements are met.

(c) "Conduct"

[20] Section 5 of the Act speaks of a review of past "conduct" of an applicant. Under similar legislation in Ontario, the Ontario Superior Court of Justice (Div. Court) in *Prestige Toys Ltd.* noted "conduct" means:

32 In *Allright Automotive Repair*, above, the Court found that the failure of a manager to effectively supervise the activities of a salesperson who entered into a number of fraudulent transactions justified revocation of both the dealership's licence and the manager's own salesperson licence.

33 Even in *Coates*, the Court noted that evidence of the nature and quality of the officer's and director's operational control would have been relevant to the issue of whether he was personally involved in the wrongdoing of the corporation. In that case, the individual operated a company with some 60 employees and it could not be presumed that the individual appellant had knowledge of the employees' activities.

34 In my view, the term "conduct" under s. 5(1)(b) and (c) of the *MVDA* is broad enough to reasonably support the conclusion that the conduct of *Prestige's* officer and director was a basis upon which to revoke the registration of the car dealership. Conduct does not require evidence of deceit or even of wilful blindness. It encompasses any act or omission or course of behaviour that affords reasonable grounds to believe that the business will not be carried on in accordance with law, honesty and integrity.[underlining is added]

Prestige Toys Ltd. was applied in Ontario (Registrar, Motor Vehicle Dealers Act) v. Unity-A-Automotive Inc. 2009 CarswellOnt 7553 (Ont. S.C.J. (Div. Ct.)).

[21] I would add to that list the related concept of “transparency.” In order to carry out their mandate, regulatory bodies need clear, concise, accurate and timely information. In my opinion, “transparency” encompasses these notions. Where a regulated person is not transparent with its regulatory body, it raises a concern that the regulated person is willing to hide facts from that body – which is not in the public interest.

DISCUSSION

[22] On February 25, 2010, the Authority received an application for registration as a motor dealer from Key Track. A conditional motor dealer registration was issued on March 10, 2010, pending a new dealer inspection and the provision of a business license. On March 17, 2010, Senior Compliance Officer Bruce Forbes completed a new dealer inspection. Mr. Forbes advised the Licensing Department that Mrs. Sidhu is the wife of Jastej Sidhu and that Jastej Sidhu is the brother of Gurtej Sidhu. Mr. Forbes also advised that Key Track’s location was the former location for Massive Truck. Mr. Forbes’ inspection report also notes that Mrs. Sidhu’s husband will be buying vehicles for the dealership: page 38 of Exhibit 2.

[23] On page 2 of Key Track’s Application, all persons who will be involved in the sales of motor vehicles (managers included) were to be identified: page 2 of Exhibit 2. Mrs. Sukhvir Sidhu is the only person listed. At the hearing, Mrs. Sidhu stated she will rely on her husband for advice on running the dealership. Mrs. Sidhu also agreed that Jastej Sidhu would be alone at times to run the dealership. Mrs. Sidhu added that all of Jastej Sidhu’s sales will be reviewed and signed off by her. In this way she would oversee her husband’s work. When asked how this would be accomplished during those times when she is working (32 hours a week) as a dental hygienist, Mrs. Sidhu initially kept saying she would be available. When asked what would happen if she was not available, Mrs. Sidhu finally said the consumer would be asked to come back and complete the deal later.

[24] I find it odd that Mrs. Sidhu would both oversee her husband’s sales while at the same time rely on him for guidance on that very point. Mrs. Sidhu admitted she has no car sales experience and her purpose at the dealership would be bookkeeping and similar type of work. Under this arrangement, there is really no oversight of Mr. Jastej Sidhu. I also note that Mrs. Sidhu’s declaration on the application that she would be the only salesperson is inconsistent with her oral testimony. She stated that one of the reasons for creating Key Track was that she and her husband felt it would be better that Jastej Sidhu work in their own company because he can make more money than as an employee of another

dealership. It is clear to me that the intention from the start was to have Jastej Sidhu work at Key Track in a sales capacity. However, that fact was not declared on the application as required. There was a lack of transparency on the part of Key Track in its application, as declared by Mrs. Sidhu.

[25] Given my experience with the motor dealer industry, saying that a consumer would be told to come back to complete a deal is hard to accept. If a motor dealer has a clear offer to purchase a motor vehicle they generally close the deal on the spot. If they do not, they risk the consumer leaving and shopping around and buying something else. The times in which a motor dealer will not close a deal on the spot are generally related to a physical inability to deliver the vehicle, there is a waiting period to determine if financing is approved, or there are additional repairs or servicing to be done to the vehicle as part of the sale agreement. I find Mrs. Sidhu's answer to this question was designed to placate the Authority's concern about her husband being unsupervised at the motor dealership. It is my opinion that sales would be completed whether or not Mrs. Sidhu was present. After all, she would be deferring to Mr. Sidhu's experience on this point.

[26] Key Track provided a copy of its lease agreement with its February 25, 2010 application materials. The Landlord is described in that agreement as "property owners of South Fraser Way": page 27 of Exhibit 2. On March 17, 2010, Bruce Forbes noted on his inspection report that Key Track was to provide a new lease/rental agreement. On March 18, 2010, the Authority received an updated lease agreement. In this agreement the landlords are noted as: Gurtej Sidhu, Gurpreet Sidhu, Jastej Sidhu and Sukhvir Sidhu and describes them collectively as the property owners. I have already highlighted the close relationship between Gurtej, Jastej and Sukhvir Sidhu. Also Gurtej and Jastej Sidhu were involved in Massive Truck as noted above. I find that the initial lease agreement that was supplied with Key Track's application was not transparent, and was an attempt to hide the ongoing business relationship amongst these family members.

[27] The property in which Key Track wishes to operate is the same property in which Massive Truck operated. While I recognize that it is economically beneficial to operate from land you already own, this is still a fact that is to be weighed in this matter.

[28] In Key Track's business plan, it is noted that Mrs. Sidhu will be contributing \$100,000 to finance Key Track's operations: pages 22 and 26 of Exhibit 2. At the hearing Mrs. Sidhu stated she would be contributing about \$30,000 to the business and that she would get a loan for more once a licence is granted. I find this to be an inconsistency on Mrs. Sidhu's part. The \$100,000 declaration on the business plan reads as if it has already

occurred and is a fact; when it is not. Again, this is a lack of transparency by Key Track, as declared by Mrs. Sidhu.

[29] I asked Mrs. Sidhu if Key Track intends on providing financing to consumers for their purchases. She said eventually and stated she probably would obtain financing with Forbes Financing. I note that this is the same financier used by Massive Truck: page 56 of Exhibit 2. I also note the intention was to use the same repair facility (Blund Auto) as was used by Massive Truck. Counsel for Key Track noted this could be changed as there were others in Abbotsford who could be used for repairs. That being so, why did Key Track initially intend on using Blund Auto as its designated repair facility and to consider Forbes for its finance company? I find it more likely than not that the experience of Massive Truck has been influencing Mrs. Sidhu's decisions. This is so even though she is the 100% shareholder, represents herself as the decision maker of Key Track and represents Key Track as a separate legal entity. I again note Mrs. Sidhu's own evidence is that she has no experience in the industry. These too are facts that get weighed with all the other facts.

[30] I find the operations of the two companies to be very similar; property location, potential financial backing (Forbes) and even the proposed repair shop (Blund Auto) were to be the same. Jastej Sidhu is to work for and advise Key Track. Jastej Sidhu also worked for and advised Massive Truck as its manager. If Gurtej Sidhu would start working at Key Track, it would be Massive Truck reborn with a different name and a different registered 100% shareholder.

[31] Finally, the close family relationship between Sukhvir, Jastej and Gurtej Sidhu cannot be ignored. In *Villetard's Eggs Ltd.*, the Federal Court of Appeal found it permissible for the Canadian Egg Marketing Agency to deny a licence to a corporation which was controlled by a partnership consisting of a father and three sons. The Federal Court of Appeal stated that the clear attempt was for the partnership to bypass the regulations through the vehicle of the corporation. The Federal Court of Appeal also noted at Carswell paragraph 31:

[31] The question the Agency was entitled to ask itself was whether respondent's application was colourable, in the sense that it was made by a corporation controlled by persons whose licences had been very recently revoked. If the Agency had good grounds to find, on a balance of probabilities, that it was, it could then in its discretion decide not to issue the licence.

[32] In reviewing all the facts noted above, I find that the application of Key Track for registration as a motor dealer is colourable. I find evidence that Key Track was initially hiding certain facts from the Authority such as Jastej Sidhu's involvement in Key Track's

proposed operations. I also find that the close business and family relationship between Mrs. and Mr. Sidhu and Gurtej Sidhu was purposively withheld from the Authority. It was only through the inspection and investigation of the Authority that this additional information came to light.

SUMMARY & DISPOSITION

[33] For the above reasons, I find on a balance of probabilities, that Key Track's application is an attempt to bypass obeying the order of the Registrar and of the B.C. Supreme Court requiring Massive Truck to pay the remainder of its Administrative Penalty, and having to inspect vehicles prior to sale. If Key Track were to be registered under these circumstances, it would set a precedent allowing any company to avert obeying the Registrar's orders. Any company not wanting to abide by such an order could simply be wound down by its principals, who then would incorporate a new entity with a new declared owner, and start all over again. Under such a precedent, any meaningful enforcement of the Registrar's orders would cease to exist; which would be contrary to the public interest. It would not be in the public interest to allow such a circumvention of the Registrar's and B.C. Supreme Court's orders.

[34] For the above reasons, I am also satisfied on a balance of probabilities, that Mrs. Sidhu and Key Track have been less than forthcoming in their application for registration to the Authority. A lack of transparency and honesty by Key Track on its application materials can be taken as an indicator of its future conduct. I am satisfied on a balance of probabilities that both Mrs. Sidhu and Key Track will not operate a motor dealership in accordance with the law, honesty, integrity or transparency. That being so, it would not be in the public interest to register Key Track on this point alone: *Prestige Toys Ltd.*

[35] I have also considered the importance Mrs. Sidhu places on Key Track being registered as a motor dealer. However, I also note Mrs. Sidhu has never owned and operated a motor dealership and is employed as a dental hygienist. Mr. Sidhu is currently working as a salesperson. If I refuse to register Key Track, Mrs. and Mr. Sidhu could simply carry on as they have.

[36] I am refusing to register Key Track as a motor dealer.

Date: May 11, 2010


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