

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

INTRODUCTION

[1] In accordance with sections 5 and 6 of the *Motor Dealer Act* R.S.B.C. 1996 c. 316 a hearing was held to review the amended application of Key Track Auto Sales & Detailing Ltd. (Key Track). By agreement of Mrs. Sidhu for Key Track, this hearing was based on written submissions she provided and a review of the amended application materials from Key Track.

[2] Key Track had previously applied for registration as a motor dealer and the staff of the Motor Vehicle Sales Authority of B.C. (the "Authority") had concerns with its application. Generally, those concerns were the relationship Key Track had with Massive Truck Sales Ltd. and that Key Track's application was an attempt by the principals of Massive Truck to circumvent the order of the Registrar of Motor Dealers in *Hurtubise v. Massive Truck Auto Sales Ltd.* (Registrar's decision of August 18, 2008: VSA File No. 08-70288) and subsequent B.C. Supreme Court orders. A hearing was held before me and I refused to register Key Track finding evidence that its application was a colourable attempt by the principals of Massive Truck Auto Sales Ltd. to avoid its liabilities and responsibilities and the conditions placed on Massive Truck's registration: *Re: Key Track Auto Sales & Detailing Ltd.* (Registrar's decision, May 11, 2010, VSA File No. 10-013).

[3] Subsequent to that decision, Key Track met with the staff of the Authority and provided an amended application to address the concerns I had stated in my May 11, 2010, decision. Key Track has now fully identified all persons who will be involved at the dealership. It has declared as a director Mrs. Sidhu's husband and Mrs. Sidhu's brother-in-

law as an employee. Key Track has provided a letter from its bank which addresses my concern about having enough available capital for a used car dealership.

[4] Key Track has also provided the name of and a letter from, the owner of Key Track's designated repair facility. The new facility will be Fraser Valley Truck Repair Ltd. The repair facility has a business licence to repair the classes of vehicles Key Track intends to sell. Fraser Valley Truck Repair is also a designated inspection facility authorized to conduct the provincial private vehicle inspection on behalf of the Province of British Columbia.

[5] Importantly, Mrs. Sidhu has by written letter agreed that Key Track will be responsible for paying the remainder of the administrative penalty owed by Massive Truck if that company should default in making the payment. I understand a significant payment has recently been made and an agreement reached between Massive Truck and Key Track with Denis Savidan, Manager of Compliance and Investigations of the Authority, that the remainder be paid in installments. Also, Key Track has provided an irrevocable letter of credit to the benefit of the Authority which would cover the amount of the remainder of the administrative penalty should it default.

[6] At this time I would note that in my decision in Massive Truck, I did not suspend or cancel the motor dealer's registration. Massive Truck was allowed to continue operation so long as it complied with conditions placed on its registration. I also did not preclude Key Track from re-applying for registration in my May 11, 2010 decision in *Re: Key Track*. I have in the past precluded persons from submitting future applications where warranted: see *Re: Brian Stephen Basset* (Registrar's decision of December 2, 2009, VSA File No. 09-108822). The purpose of such a restriction from applying is to protect both the public interest and the Registrar's process: *Pugliese v. British Columbia (Registrar of Mortgage Brokers)* 2008 BCCA 130; (2008), 79 B.C.L.R. (4th) 283 (B.C. Court of Appeal).

[7] In *Re: Key Track* I relied on the Federal Court of Appeal decision in *Villetard's Eggs Ltd. v. Canada* [1995] 2 F.C. 581, 181 N.R. 374 (C.A.). That decision identified the authority and responsibility of a licensing agency to look behind a corporation to assess all the evidence regarding its licensing application. I would note that Court's decision also addressed a future re-application and the Federal Court of Appeal stated at paragraph 34:

34 I wish to add, in closing, that nothing in these reasons should be interpreted as preventing the respondent, or the partnership, as the case may be, from filing a new application or as excusing the Agency from considering afresh any new application thus submitted. Indeed, I read the last paragraph of the reasons of the Agency as a clear indication that the Agency would welcome a new application and would look at it favourably once it has been satisfied that the application has

been filed by the "real" applicant and that this "real" applicant has every intention in the immediate and distant future to comply with the Regulations.

By necessary implication, I left it open for Key Track to re-apply for registration as a motor dealer in my May 11, 2010, decision.

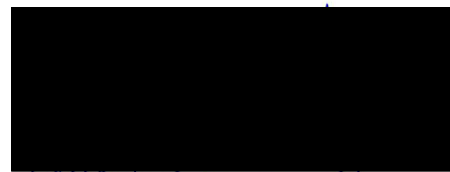
[8] I have reviewed Key Track's amended application and the letter of committal from Key Track to be responsible for Massive Trucks' administrative penalty. I am satisfied that it is now being transparent with the Authority: *Re: Key Track*. I am also cautiously satisfied that it will abide by the laws of British Columbia in the sale of motor vehicles to consumers in the future. I do find it appropriate to add conditions to its registration and to make clear that this registration is "probationary" and will be subject to close scrutiny by the Authority.

[9] I am granting Key Track Auto Sales & Detailing Ltd. a registration as a motor dealer on the following conditions:

- (a) Key Track is to abide by all the laws of British Columbia and Canada regarding its operations and the sale of motor vehicles.
- (b) Key Track is to advise and obtain the Authority's prior approval for any change to its management and ownership structure.
- (c) If Key Track, as guarantor of Massive Truck, should default in paying the remainder of the administrative agreement, its registration shall be suspended until it has paid the remainder of the administrative agreement in full.
- (d) All motor vehicles sold by Key Track shall either pass a Provincial Private Vehicle Inspection (PVI) conducted by a designated inspection facility that Key Track, its officers, directors or employees have no relationship with or interest in, or a B.C.A.A. inspection will also suffice. Before any sale of a motor vehicle, a consumer must be shown a copy of the passed inspection report. Any consumer who has purchased a motor vehicle shall be given a copy of that inspection report.
- (e) Key Track may not conduct consignment sales.

[10] Conditions (b) and (d) may be reviewed after one year, at the time of Key Track's renewal. The condition on consignment sales (e) may be reviewed in three years time, in accordance with the Registrar's normal procedures.

DATE: June 8, 2010



Ian Christman LL.B.