



**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:**

**DENNIS DANIELS**  
**(Salesperson Licence # 106422)**

**SALESPERSON**

**DECISION OF THE REGISTRAR OF MOTOR DEALERS**

**APPEARANCES**

For the Authority: Hong Wong, Manager of Licensing  
Denis Savidan, Manager of Compliance and  
Investigations  
Tara Klassen, Licensing Officer  
Ron Sharein, Compliance Officer (by teleconference)

Dennis Daniels By Teleconference

Date and Place of Hearing: May 25, 2010, Surrey, British Columbia

**INTRODUCTION**

1. This hearing was to review the licence application of Dennis Daniels, dated January 18, 2010, salesperson licence # 106422, 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 whether Mr. Daniels' past conduct is such that it would not be in the public interest for him to be licensed as a salesperson.

## **BACKGROUND**

2. Mr. Daniels had been previously registered with the Authority. Mr. Savidan provided evidence surrounding Mr. Daniels departure from the industry. Exhibit 3 is a letter from Traxler Haines, Barristers & Solicitors, providing an Undertaking signed by Mr. Daniels. The Undertaking was executed under the authority of section 154 of the *Business Practices and Consumer Protection Act* S.B.C. 2004 c. 2 (BPCPA). The important portions of that Undertaking are the allegation and the Undertaking itself:

Whereas it is alleged Dennis Daniels engaged in a deceptive act, did terminate First Canadian Insurance Corporation contracts in the names of insured persons, accepted refund cheques at addresses controlled by Dennis Daniels and did deposit such refund cheques into bank accounts controlled by Dennis Daniels without the knowledge of the insured persons or Action Motors (1999) Ltd, [sic] Contrary [sic] to Section 9(1) of the Business Practices and Consumer Protection Act.

...

Hereby undertakes:

(a) To surrender his Motor Vehicle Sales Authority of British Columbia Salesperson Licence number 106422 immediately for cancellation and forward to:

...

(b) To reimburse the Registrar for the costs of investigations, including actual legal costs, relating to the matters which are the subject matter of the Undertaking...

3. The Undertaking also specifies that Mr. Daniels has had an opportunity to consult legal counsel as to the Undertaking. The Undertaking was signed by Mr. Daniels on January 30, 2009, and I signed and accepted as Registrar of Motor Dealers for the Province of British Columbia on February 23, 2009.

4. I am informed that Mr. Daniels has repaid the Authority as required by the Undertaking. Mr. Daniels stated that he has repaid the motor dealer he worked for at the time of these transgressions.

5. The Authority has furnished evidence to suggest that Mr. Daniels has acted as a salesperson while employed by a motor dealer and while he was unlicensed to do so. Mr. Daniels admits he is working at a motor dealership but says he is not engaged in sales and that he was advised by a representative of the Authority that he could be at a dealership so long as he does not sell motor vehicles.

6. Mr. Daniels submits he made a mistake in the past and asks to be licensed as a salesperson. Mr. Daniels submitted various letters attesting to his character.

## **THE LAW**

7. 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 *Motor Dealer Act* R.S.B.C. 1996 c. 316 (MDA) 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.))

8. The purpose of licensing is to regulate conduct and assess licensees or potential licensees to ensure they are not a risk to the public. Various court decisions have made it clear that in licensing matters, the public interest is paramount: see cases cited in *Re: Key Track Auto Sales & Detailing Ltd.* (Registrar of Motor Dealers, File No. 10-013, May 11, 2010) at paragraphs 13-14 and *Re: Kenneth McKinnon* (Registrar of Motor Dealers, File No. 09-70325, January 5, 2010) at paragraph 24.

9. Recently, Judge Bowden noted the importance of registration, and by extension licensing, under the *Motor Dealer Act* in *Dong v. Tong & Canadian Lord Enterprises Inc.* 2009 BCPC 0133 (Prov. Ct.) where an unregistered and unlicensed person sub-leased 50 vehicles to unsuspecting recent immigrants. Mr. Tong obtained hefty down payments on these sub-leases and defaulted on the head

lease. This resulted in the 50 vehicles being seized from the consumers. Judge Bowden faced the first of undoubtedly many civil claims and commented:

[22] In my view the requirement in the *Motor Dealer Act* is intended to protect those persons who may acquire a motor vehicle from a person or corporation is not registered under that Statute and who may engage in the sale or other disposition of a motor vehicle in a way that is detrimental to the purchaser or, in this case, the lessee. The requirement of registration in this regulatory statute and penalties for non-compliance are necessary to try and prevent unqualified and, perhaps, unscrupulous persons from engaging in the sale or other disposition of motor vehicles. In my view the registration requirement is designed to try and prevent just the kind of transaction that has taken place between the Claimant and the Defendants. [underlining added]

10. Under section 2 of the *Salesperson Licensing Regulation* B.C. Reg. 241/2004 a person may not act as a salesperson unless they are licensed:

**Licensing**

- 2** (1) The Authority may issue a licence to an individual to act as a salesperson.
- (2) A person must not act as a salesperson unless the person holds a licence.

11. "Salesperson" is defined in s. 1(1) of the MDA as:

**"salesperson"** means

- (a) an individual, other than a motor dealer, who, on behalf of a motor dealer and for or in the expectation of a fee, gain or reward,
- (i) solicits, negotiates or arranges for the sale of a motor vehicle to a person,  
or
- (ii) in any way participates in the soliciting, negotiating or arranging for the sale of a motor vehicle to a person, or
- (b) an individual who is a motor dealer and who
- (i) solicits, negotiates or arranges for the sale of a motor vehicle to a person,  
or
- (ii) in any way participates in the soliciting, negotiating or arranging for the sale of a motor vehicle to a person.

[emphasis added]

12. The definition of salesperson does not require physical contact or actual interaction with a consumer by a person in order for them to be captured by that definition. What is required is that the person in some way participates in the arranging of the sale of a motor vehicle to a person. Exemptions to this are found in

section 14 of the *Motor Dealer Act Regulation* B.C. Reg. 447/78. Such an exemption exists for banks providing a loan for the purchase of a motor vehicle.

13. Section 6 of the *Salesperson Licensing Regulation* allows for the refusal of licensing or the cancellation of a licence if the conduct of an applicant or licensee is "such that it would not be in the public interest for the applicant or licensee to be licensed or continue to be licensed". In *Prestige Toys Ltd.*, the Ontario Superior Court of Justice (Div. Crt.) considered similar legislation in Ontario regarding licensing car salespeople in that province and stated "conduct" included:

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.

14. In *Re: Key Track*, I applied this definition in that case and noted that another important and related consideration is whether an applicant is being transparent with the Authority. If there is no transparency, (meaning clear, concise, accurate and timely provision of information) with a regulator, then there is a concern that the person will attempt to hide facts from that regulator. It is not in the public interest for a person to hide information from its regulator and therefore it would not be in the public interest to licence that person.

## **DISCUSSION**

15. The conduct attributed to Mr. Daniels in the Undertaking has not been contested. It involves canceling insurance policies of consumers, without their knowledge, and having refund cheques sent to his home and depositing them to his bank account. This is not a mistake or error! It is a deliberate violation of the rights of others which could have jeopardized their livelihoods had they needed to claim against the insurance policies. It is a serious matter and the evidence of Mr. Daniels during the hearing regarding his involvement was attempting to downplay that seriousness. He attempts, on one hand, to infer it was caused by his former employer, but to also say he is repaying that former employer for these transgressions. If this conduct is truly his former employer's doing, why repay him?

16. I am satisfied that while unlicensed; Mr. Daniels has acted as a salesperson. It is unnecessary to actually interact with the consumer and "sell" the motor vehicle to the consumer. If Mr. Daniels "in any way participates in the soliciting, negotiating or arranging for the sale of a motor vehicle to a person" he must be licensed. From the evidence of Mr. Sharein and Mr. Daniels himself, I am satisfied on a balance of probabilities that Mr. Daniels has participated in the arranging for the sale of a motor vehicle to consumers after he surrendered his licence.

17. The evidence of Mr. Daniels' employer is even stronger. The employer's signed written statement says that Mr. Daniels assists "John" (John Abbot) if "John" is having difficulty in filling out the paper work to obtain financing for a consumer. Assisting a consumer to obtain financing for a motor vehicle purchase is certainly participating in the sale of a motor vehicle. In fact, it is a very important facilitation in the sale of a motor vehicle. If there is no financing, there is generally no sale. Also of grave concern is that Mr. Daniels was in contact with the personal and financial information of consumers. To obtain financing, a consumer must provide information of value to identity thieves and is the sort of information Mr. Daniels required in relation to the conduct attributed to him in the Undertaking. It is reprehensible that the motor dealer placed Mr. Daniels in such close proximity to that type of consumer information.

18. I would note that prior to this matter coming before me, Mr. Daniels' current employer has been issued a warning letter about allowing Mr. Daniels to participate in any way with the soliciting, negotiating or arranging for the sale of a motor vehicle to a person. Fair warning this time. Such reprehensible conduct will not be tolerated in the future from this dealership.

## **DISPOSITION**

19. It has been a year since Mr. Daniels surrendered his salesperson licence due to the transgressions noted in the Undertaking. Those transgressions are serious and I believe the public interest would have required Mr. Daniels to remain unlicensed for at least another year before he be considered for re-licensing. Such time would allow to better review his rehabilitation: *Pugliese v. Allan (in his capacity*

as Registrar of Mortgage Brokers for British Columbia) 2008 BCCA 130; (2008), 79 B.C.L.R. (4<sup>th</sup>) 283 (B.C. Court of Appeal).

20. However, added to this mix is the fact that Mr. Daniels has acted as a salesperson while not licensed to do so. He effectively maintains, as does his current employer, that he may do so as long as he is not directly selling cars to consumers. He is incorrect. Mr. Daniels does not have to directly interact with a consumer to be a salesperson. I find on this point Mr. Daniels is attempting to create a grey zone where none exists. I find Mr. Daniels is not being transparent or completely honest with his regulator. I find this conduct to be contrary to the public interest and reason to refuse to licence Mr. Daniels.

21. I also find it necessary to expand the wait time before an application from Mr. Daniels will be entertained by the Authority. This time will allow Mr. Daniels an opportunity to rehabilitate himself and provide some additional history in which the Authority can review his conduct. In considering the appropriate wait time I consider the seriousness of the allegation in the Undertaking which has gone uncontested. I consider his acting as a salesperson without a licence. I also note Mr. Daniels was once a licensed salesperson and must be taken as knowing his obligations and what conduct constitutes acting as a salesperson: *R v. Fitzpatrick* [1995] 4 S.C.R. 154 (Supreme Court of Canada) at paragraphs 40-42.

22. I find that Mr. Daniels conduct is such that it would not be in the public interest to licence him at this time. I also find it necessary to refuse to accept an application for a licence, or registration as a motor dealer for that matter, from Mr. Daniels for a period of three years. Accepting an application at that time does not guarantee a licence will be issued. The facts that exist at that future time must be considered. I make this decision to protect the public interest, the reputation of the industry and the Registrar's process: *Pugliese*.

DATE: June 21, 2010

  
Ian Christman LL.B.