



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:

MAFCAN MOTORS LTD.
(Assigned for reference Registration # 31030)

APPLICANT

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:

ALLA UDDIN CHEEMA
(Licence No. 113171)

SALESPERSON

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Appearances

For the Authority:	Hong Wong, Manager of Licensing Jaydon Rush, Licensing Officer Larry Barteski, Senior Compliance Officer
For Mafcan Motors Ltd.:	Alla Uddin Cheema
For Alla Uddin Cheema	Himself
Date and Place of Hearing:	May 25, 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 motor dealer registration application of Mafcan Motors Ltd. (Mafcan). This hearing also was to review the salesperson licence of Alla Uddin Cheema in accordance with sections 6 and 7 of the *Salesperson Licensing Regulation* B.C. Reg. 241/2004 (the "Regulation").

2. Mr. Cheema is the 100% owner of Mafcan and according to its application for registration as a motor dealer; Mr. Cheema is to be its only salesperson. The staff of the Motor Vehicle Sales Authority of B.C. ("Authority") have concerns about the prior conduct of Mr. Cheema that reflect on his licence as a salesperson and Mafcan's application for registration as a motor dealer.

POSITIONS OF THE PARTIES

(a) The Authority

3. The Authority feels Mafcan has not been forthcoming with information in its application, notably the business plan. Mafcan originally provided a business plan that did not provide a month-to-month budget breakdown for the first year. The Authority requested an updated business plan and it was not until the provision of a third plan that the month-to-month budget was provided. However, that plan showed no variance in sales volumes from month-to-month which is not conducive to car sales by a used car dealer. The Authority stated it appeared to be simply a business plan responsive to a request for a month-to-month budget. Mafcan subsequently provided a fourth business plan that showed variances in sales from month-to-month. The Authority then received another business plan the day of the hearing (it was emailed to the Authority over the weekend) and was tendered as Exhibit 3 at the hearing. Hong Wong stated that the Authority had no time to review this business plan before the hearing. I have done so.

4. The Authority noted Mr. Cheema was first licensed on March 31, 2009 and did not sell any cars while employed with Gagan Auto Sales Ltd. ("Gagan"), a former motor dealer. Mr. Barteski noted that on a few occasions, he would inspect Gagan to find unlicensed persons at a computer at Gagan looking at automotive auction sites. Those persons would leave when inspectors of the Authority would show up. During the time Mr. Cheema was ostensibly employed at Gagan, the Authority was investigating Gagan's activities in relation to supplying curbbers and other issues. Instead of going to a hearing before the Registrar, Gagan chose to voluntarily surrender its motor dealer registration.

5. Another concern is that Mr. Cheema appears to have ties to curbers, unlicensed dealers selling cars. Curbing is a provincial offence contrary to sections 35 and 35.1 of the Act. Mr. Barteski emphasized that Mr. Cheema was assisting curbers while licensed as a salesperson. Mr. Barteski related information he received from the owner of Gagan, Mr. Ubhi Jagjiven that Mr. Cheema, while a licensed salesperson, did buy some vehicles while at Gagan and bridged them. Bridging occurs when a person buys a vehicle but does not register it in their name. Instead they resell the vehicle as if they were the original owner. In this way the person bridging does not appear on any paper work. Bridging is contrary to the requirements of the *Motor Vehicle Act* R.S.B.C. 1996 c. 318, s. 17.

6. Mr. Barteski conducted an interview of Mr. Cheema on April 7, 2010. With him was Jaydon Rush. Mr. Barteski stated that Mr. Cheema was a bit evasive in answering his questions.

7. Mr. Barteski also emphasized Mr. Cheema took the Salesperson Level I Certification Course and was informed about curbers and their unlawful activity. Mr. Cheema was also required to sign a Licensee Undertaking regarding a code of conduct at the conclusion of that course. The signing of the Licensee Undertaking is standard for all salespersons. The last bullet in the Undertaking states:

In all matters, I will exhibit professional conduct and ensure that my dealings are measured by the guide: *Is it legal? Is it fair? Is it right?*

8. The final concern is the type of vehicles Mafcan intends to sell – rebuilt vehicles. Mafcan intends to bring salvage vehicles in from the United States, have them rebuilt in B.C. and then sell them to consumers and potentially to taxi companies.

(b) Mr. Cheema

9. Mr. Cheema states he did not initially pay attention to the form of the business plan that was required. He stated that, at the end of the day, they are just numbers inferring that one cannot adequately know sales projections. However, he later went on to say he would defend the numbers in the last business plan he submitted.

10. Mr. Cheema admitted to knowing one of the curbers identified by the Authority. He stated he has a towing company and hauled about 2 vehicles a month for “Richard”. He stated that hauling vehicles and selling vehicles are two different things. If he is asked to haul vehicles, he does not think it is his place to inquire what happens afterwards. He feels he is being wrongly painted by his business association with Richard Tsuang. He did admit that he would assist persons in picking vehicles for importation from the USA, including

Richard, if they asked for his advice. He said his advice was related to proper title and documents in order to import the vehicles.

11. Mr. Cheema related that his obtaining a salesperson licence was one step for him registering his company as a motor dealer. It took a year to get the motor dealer application going as he was having difficulties securing a location. This is why he has no sales history for the past year.

12. Mr. Cheema stated his evasiveness during Mr. Barteski's interview is attributed to him not being provided with an agenda. He felt unprepared for the "bombardment" of questions.

13. Mr. Cheema never adequately addressed the allegation that he had sold some vehicles by bridging them.

THE LAW

(a) Purpose of Registration/Licensing - Regulation

14. Mister Justice Cory of the Supreme Court of Canada made clear the purpose of regulation and by extension licensing/registration:

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. [emphasis added]

R v. Wholesale Travel Group Inc., [1991] 3 S.C.R. 154 (Supreme Court of Canada); applied approvingly in *R. v. Fitzpatrick*, [1995] 4 S.C.R. 154; and see also *Zenner v. Prince Edward Island College of Optometrists*, [2005] 3 S.C.R. 645 (Supreme Court of Canada); and *Pugliese v. British Columbia (Registrar of Mortgage Brokers)* 2008 BCCA 130, (2008), 79 B.C.L.R. (4th) 283 (B.C. Court of Appeal).

15. The purpose of licensing under the Act is to review and vet individuals and business proposals to ensure they do not represent a risk to the public interest. In reviewing the Act

and its regulations, the public interest includes reviewing any past unlawful conduct, poor business practices, and poor financial practices. It also looks forward by looking at an applicant's business plan to assess any potential risk to the public interest. The public interest also includes the interest of the industry, which has a vested interest in seeing all dealers, and their salespersons, act lawfully in the conduct of their businesses: sections 5, 7 and 14 of the MDA, section 7 of the *Motor Dealer Act Regulation* (B.C. Reg. 447/78) and sections 2, 3, and 5 of the *Motor Dealer Customer Compensation Fund Regulation* (B.C. Reg. 102/95).

16. Judge Bowden in *Dong v. Tong & Canadian Lord Enterprises Inc.* 2009 BCPC 133 (B.C. Prov. Ct.), noted the importance of registration under the Act:

[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.**

(b) Reviewing the individual applicant

17. In reviewing an applicant for a licence/registration, I must review the individual applicant's particular facts: *Maple Lodge Farms v. Government of Canada*, [1982] 2 S.C.R. 2 (Supreme Court of Canada).

(c) Reviewing the relationship between the applicant and third persons

18. In carrying out my duty to protect the public interest, I am not to blind myself to the fact that Mafcan is a corporate entity. I may look to the relationships associated with Mafcan including that of its principal Mr. Cheema: sections 5 and 7 of the Act; section 7 of the *Motor Dealer Act Regulation* and see *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).

(d) Review of conduct

19. Section 5 of the Act and section 6 of the Regulation speaks of a review of "conduct" of an applicant or licensee. Under similar legislation in Ontario, the Ontario Superior Court of Justice (Div. Court) 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. v. Ontario (Registrar, Motor Vehicle Dealers Act) 2009 CarswellOnt 4743 (Ont. Superior Court of Justice (Divisional Court)).

20. 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.

(e) Witness credibility

21. Where witness credibility is at issue in these proceedings, I keep in mind the various factors the courts have identified to assist in determining the credibility and reliability of the evidence being submitted – see for example: *R v. J.W.R.* 2007 BCCA 452 at paragraph 73 (B.C. Court of Appeal); *R. v. R.W.B.* [1993] B.C.J. No. 758 (Q.L.) at paragraph 29 (B.C. Court of Appeal); *R v. Essex* 2004 BCSC 445 paragraphs 9-11 (B.C. Supreme Court); and *R v. Kok* 2007 BCPC 0162 at paragraph 8 (B.C. Provincial Court).

DISCUSSION

22. I have concerns with the application for registration of Mafcan and continuing to licence Mr. Cheema.

23. I am satisfied on a balance of probabilities that Mr. Cheema knowingly assisted a known curber with the importation of vehicles. I am also satisfied that Mr. Cheema has bridged vehicles and I accept the evidence provided by Mr. Barteski from the owner of Gagan. I found Mr. Cheema to be evasive in his evidence on this point. I note he never outright denied his helping Mr. Tsuang to import cars for resale. He simply took the view that as he was only hauling the vehicles, what happened after they were delivered was none of his business. In this regard Mr. Cheema was blinding himself to what was unlawful activity which he knew was unlawful activity by way of the Salesperson Certification Course. Mr. Cheema, however, admitted he was not simply hauling cars, but would give advice on importing those cars. His evidence is contradictory on this point.

24. His attitude of "whatever happens after I deliver the vehicle is no concern of mine" is also a disconcerting attitude (behaviour) for a person to possess while running a motor dealership. Part of a motor dealer's responsibilities and obligations is to care about what a consumer intends to do with a motor vehicle once it is purchased. For instance, a dealer needs to know if a consumer intends to use a pick-up truck for towing and if so, for what weight of trailer in order to deliver a pick-up truck mechanically and legally suited to tow that weight. Failure to do so could lead to a disastrous result. Also consider a dealer's obligations under the implied conditions in the *Sale of Goods Act* R.S.B.C. 1996 c. 410.

25. Mr. Cheema, through Mafcan, intends to sell rebuilt motor vehicles. The Authority is all too aware of the problems of having such vehicles properly rebuilt: *Knapp v. Crown Autobody & Auto Sales Ltd.* (VSA File No. 08-70578, September 21, 2009: Registrar of Motor Dealers). Mr. Barteski highlighted a situation where a consumer bought a rebuilt vehicle which had been imported from the U.S.A by a motor dealer. It turned out that the vehicle could not be registered in B.C. and the Insurance Corporation of B.C. (I.C.B.C.) contacted the consumer to tell them their registration was being voided. It is noteworthy that the motor dealer in question was one that Mr. Cheema admitted having hauled motor vehicles for; although it is unknown if this particular vehicle was hauled by Mr. Cheema.

26. Late in 2009 the Authority in conjunction with inspectors from the Commercial Vehicle Safety Enforcement (CVSE) branch of the B.C. Ministry of Transport inspected two motor dealers who specialized in selling rebuilt vehicles. The CVSE inspectors found at least one vehicle on each of the dealers' lots that was not suitable for sale and ordered the dealers to remove the "for sale" signs and have the vehicles properly repaired.

27. Mr. Cheema stated that Gagan, which has a repair shop component, would do the inspections on all the vehicles that are rebuilt. Mr. Cheema said that if Gagan is not acceptable to the Authority, he would look for another inspection facility.

28. He noted that all the body work would be performed by Sean Conway with whom he trusted. Mr. Conway was recently before me as a witness on another matter. Mr. Conway identified his training and experience in repairing motor vehicles. He stated he has a general engineering degree from Simon Fraser University. Mr. Conway stated he has no formal training in body repairs to motor vehicles and has not been trained, tested or certified under any standards such as I-Car, a worldwide auto-body repair training and certification program. Mr. Conway's experience is on-the-job.

29. When considering registering a motor dealer with a business plan that incorporates buying salvaged vehicles from the USA, importing that salvage and subsequently rebuilding the salvaged vehicles to be sold to consumers, it is part of the Registrar's duty to ensure that the motor vehicles being sold to consumers have some assurance of proper repair. This duty is derived from section 3(1)(a)(iv) of the Act¹, which states:

3 (1) A person must not carry on business as a motor dealer

(a) unless the person

(iv) maintains motor vehicle repair facilities or files with the registrar a service contract providing for motor vehicle repair facilities satisfactory to the registrar,

30. It is also highlighted in the duty of a motor dealer to declare that a motor vehicle meets the requirements of the *Motor Vehicle Act*: section 21(2)(e) of the *Motor Dealer Act Regulation*, or otherwise declare to the consumer the motor vehicle is "unsuitable for transportation": sections 21(2)(f), 22 and 27(b) of the *Motor Dealer Act Regulation*. Section 222 of the *Motor Vehicle Act* prohibits a motor dealer from even offering for sale a motor vehicle not in compliance with that Act and its regulations as does section 8.01 of the *Motor Vehicle Act Regulation*. The *Schedule* attached to the *Inspection Standards (Safety and Repair) Regulation* B.C. Reg. 103/2002 made under the *Motor Vehicle Act*, set the tolerances and requirements for body repairs and structural integrity for motor vehicles which, in general, must meet the specifications of the original equipment manufacturer. A motor dealer must declare that a motor vehicle offered for sale meets these standards: section

¹ Applying the principles of statutory interpretation applicable to B.C. statutes: *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).

21(2)(e) of the *Motor Dealer Act Regulation*, and the Registrar is charged with overseeing those motor dealers.

31. As Registrar, I would expect, at a minimum, a motor dealer to use repair facilities that use licensed repair persons trained and certified to carry out the type of repairs they have been requested to do. The certification and training must be to a recognized industry standard. I would also expect that the repair facilities be properly equipped to carry out the requested repairs. Such a minimum is necessary to ensure proper repairs and to ensure safe vehicles are on the roads. Unsafe vehicles represent a significant risk to the lives of British Columbians occupying the roadways. Anything less cannot be accepted as protecting the public interest.

32. At present I cannot say I am satisfied with the repair facilities proposed by Mafcan. From Mr. Conway's own evidence in the other matter, he is not licensed nor certified to carry-out the types of repairs Mafcan would require him to do.

33. Finally, I find Mr. Cheema to have been elusive in delivering a business plan. His excuse of not paying attention to the format may have excused his first business plan. However, Mr. Rush stated he informed Mr. Cheema that he needed a month-to-month budget and asked for a second updated business plan. That month-to-month budget was not delivered until the third business plan, although it appears numbers were just thrown in to satisfy the format. I find Mr. Cheema was not taking the budgeting and business plan request of the Authority seriously. One aspect of the review of a new motor dealer applicant is their potential risk for business failure that can affect both consumers and industry.

34. If a dealer's business fails (bankruptcy or otherwise), any losses to a consumer may be compensated by the Motor Dealer Customer Compensation Fund. Motor Dealers in B.C. contribute to that fund as an assurance fund to protect consumers from a motor dealer's business failure. It is therefore important that a new dealer applicant be reviewed to ensure, as best as possible, their financial viability. Mr. Cheema's attitude towards this request for information was less than satisfactory. I feel Mr. Cheema has not given the proper attention to his business planning, which is a concern for the public interest. I am also concerned that Mr. Cheema has been less than forthcoming with the Authority and only by the continued requests by Mr. Rush did Mr. Cheema finally provide a business plan compliant in format. I find Mr. Cheema has not been transparent, noting Mr. Rush's comment that Mr. Cheema never advised the Authority where he obtained his first seven motor vehicles already in Mafcan's possession. Mr. Cheema also never addressed this issue at the hearing.

35. For the above noted reasons, I am satisfied that it would not be in the public interest to register Mafcan as a motor dealer. I refuse to register Mafcan as a motor dealer.

36. For the above reasons, I do not believe it is in the public interest that Mr. Cheema continues to be licensed as a salesperson, and I cancel his salesperson licence.

37. I find Mr. Cheema's attitude towards the requests of the Authority, his bridging of vehicles and acquiescence in the unlawful activity of a curber are of such great concern that accepting an application from him in the future should be carefully considered. The public and the industry would expect a person that assists or blindly acquiesces in unlawful activity would never be registered. However, in some past cases the Registrar has left the door open for some persons to rehabilitate themselves and be able to gradually work themselves back into the industry: *Re: Brian Basset* (VSA File No. 09-108822, December 2, 2009: Registrar of Motor Dealers); and *The Registrar v. Karamali* (April 23, 2007: Registrar of Motor Dealers).

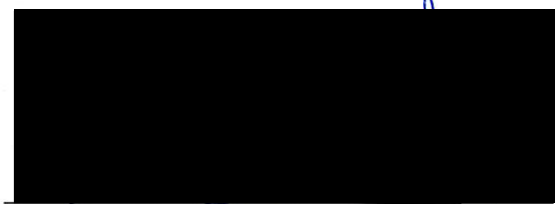
38. I find that a waiting period of 3 years before accepting an application from Mr. Cheema for licensing as a salesperson is appropriate. This will provide some history in which to gauge if Mr. Cheema's conduct has changed. I would also not accept an application for registration as a motor dealer from any new applicant in which Mr. Cheema is involved until Mr. Cheema has been a licensed salesperson in good standing for at least two years after the date of this decision. This was a similar order made by Registrar Smith in *Karamali*.

39. The waiting period before considering licensing Mr. Cheema as a salesperson is to have some history to gauge Mr. Cheema's behaviour to ensure his conduct is no longer a risk to the public interest. Requiring Mr. Cheema to be a salesperson in good standing for two more years before considering any application for registration as a motor dealer is to have some history of Mr. Cheema's conduct that is directly under the jurisdiction of the Registrar to review. This allows the Registrar to compel information from industry members who have interacted with Mr. Cheema in order to better assess if he, and by extension his application for registration as a motor dealer, is a risk to the public interest.

40. I set these waiting periods in order to protect the public interest, the industries reputation and the Registrar's process: *Pugliese v. B.C. (Registrar of Mortgage Brokers)* 2008 BCCA 130; (2008), 79 B.C.L.R. (4th) 283 (B.C. Court of Appeal). I would note that the expiry of these waiting periods does not guarantee the issuance of a licence or registration. Whether Mr. Cheema should be licensed as a salesperson or granted a registration as a motor dealer will depend on the facts that exist at the time those applications are made.

41. Mafcan's application for registration as a motor dealer is refused. The salesperson licence of Alla Uddin Cheema No. 113171 is cancelled effective this day.

Dated: July 2, 2010



Ian Christman LL.B.