



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:

ANWAR BADSHAH
(Salesperson Licence # 111523)

SALESPERSON

DECISION OF THE REGISTRAR OF MOTOR DEALERS

APPEARANCES

For the Authority: Hong Wong, Manager of Licensing
Holly Childs, Compliance Officer
Denis Savidan, Manager of Compliance and
Investigations (May 26, 2010 only)
Jaydon Rush, Licensing Officer (January 8, 2010 only)

For Anwar Badshah Gerhard Pyper, Esq.
Michael Carter, assistant to Mr. Pyper (January 8, 2010
only)

Date and Place of Hearing: January 8 and May 26, 2010, Surrey, British Columbia

INTRODUCTION

1. This hearing was to review the licence of Anwar Badshah, Salesperson Licence # 111523, 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 Mr. Badshah's recent convictions for three counts of fraud over \$5,000 and his apparent failure to report required information on his application for a licence and for the renewal of his licence.

POSITIONS OF THE PARTIES

(i) The Authority

2. The Authority notes that Mr. Badshah did not advise the Authority of his criminal convictions nor that he was the subject of an investigation by the B.C. Securities Commission, which took enforcement steps in relation to him. This information came to light from an anonymous tip.

3. Licensing Officer Jaydon Rush, presented Mr. Badshah's salesperson file and reviewed Mr. Badshah's application for a licence as well as his renewal applications. Mr. Rush highlighted that Mr. Badshah answered "no" to certain questions on the application forms on the subject of criminal or other investigations or charges. The allegation being that Mr. Badshah failed to declare he was being investigated for, or charged with a crime, as well as that a regulatory body had taken enforcement action against him.

4. Compliance Officer Holly Childs, provided a report on her investigation on this matter. She noted Mr. Badshah's involvement in a securities scheme where Mr. Badshah pled guilty to three counts of fraud over \$5,000. Ms. Childs also relayed information she obtained during an interview with Mr. Badshah and specifically that he understood the application materials when he submitted them, but Mr. Badshah claimed he misunderstood the declaratory questions.

5. The Authority also presented James Coates, a peace officer and Senior Investigator, Enforcement Division of the B.C. Securities Commission. Mr. Coates provided evidence of the Securities Commission's investigation of Mr. Badshah, the search by warrant of the office of Badshah Communications, in which Mr. Badshah was present, and the resulting regulatory action by the Commission and the criminal charges being laid against Mr. Badshah.

(ii) Anwar Badshah

6. Mr. Badshah elected not to testify at this hearing. He mostly relied on evidence derived from the cross examinations of the Authority's witnesses.

7. Bob Venus, Sales Manager for King George Nissan and Midway Mazda, gave evidence in support of Mr. Badshah. Mr. Venus also spoke with authority for Mr. Badshah's employer, King George Nissan. Mr. Venus produced a bundle of documents showing how customers were satisfied with their experience with Mr. Badshah. Mr. Venus noted he and the dealership first became aware of Mr. Badshah's recent convictions during the Authority's investigation. Mr. Venus said the dealership, and he personally, are willing to stand behind Mr. Badshah.

8. King George Nissan, however, was not prepared to provide any additional security to the Registrar while Mr. Badshah was employed by them. Mr. Venus was also not prepared to place his own licence at risk in support of Mr. Badshah.¹ What King George Nissan and Mr. Venus were committed to doing was to immediately fire Mr. Badshah should he break the law or cause harm to any consumer in the future. Mr. Venus also stated the dealership would correct any such harm to a consumer.

9. Mr. Venus noted the procedures in place at King George Nissan do not allow Mr. Badshah to be in contact with any consumer money.

10. Legal counsel for Mr. Badshah submitted that Mr. Badshah made the declarations on his licence application and renewal forms under legal advice. Mr. Badshah did not state what that legal advice was nor name the lawyer. Evidence relied on for that point was apparently provided by Ms. Childs during her cross-examination. Mr. Badshah also argued that Ms. Childs did not make further inquiries about this legal advice as should have occurred.

11. Mr. Badshah further argued that he was currently employed with King George Nissan which distinguished his situation from that of *Re: Brian Stephen Bassett* (December 2, 2009: File 09-108822; Registrar of Motor Dealers). Mr. Badshah also argued that his recent convictions are not related to his licence as a motor vehicle salesperson: *Woodward Stores (British Columbia) Ltd. V. McCartney* 1983 CanLII 444 (B.C. Supreme Court).

¹ A concept similar to the principal lawyer-articled student relationship in the legal profession.

PRELIMINARY MATTERS

12. During the course of this hearing, Mr. Badshah made a motion that the allegations against him should be dismissed and this hearing stayed because his rights under the *Charter of Rights and Freedoms* or alternatively, under procedural fairness and natural justice, were violated during the course of the investigation by the Authority. While hearing that application, Mr. Badshah further moved that I disqualify myself from hearing this matter. I refused to disqualify myself providing separate written reasons in: *Re: Badshah* (February 16, 2010: Reference No. 09-111523 (Motion to Disqualify): Registrar of Motor Dealers).²

13. Subsequent to adjourning this matter to deal with Mr. Badshah's motion that I disqualify myself, counsel for Mr. Badshah made a similar application regarding a breach of the *Charter of Rights and Freedoms* and of procedural fairness and natural justice in another case before me. Mr. Badshah agreed that my determination on the *Charter* and procedural fairness arguments in that other case would be applicable to this case. I refused to stay the proceedings in the other matter having found no breach of the *Charter of Rights and Freedoms* nor of procedural fairness and natural justice: *Re: Saini v. 68323 B.V. Ltd. et al & Re: Dumont v. Cal National Leasing Ltd. et al* (May 3, 2010: File No.'s 10-017 and 018: Registrar of Motor Dealers).³

THE LAW

(i) A Review of Conduct

14. Section 6 of the Regulation provides authority to review the past conduct of a licensee and consider whether it is in the public interest that they continue to be licensed.

15. The Ontario Superior Court of Justice (Div. Ct) has interpreted the meaning of "conduct" under a similar provision of Ontario's *Motor Vehicle Dealer Act*. Applying

² <http://www.mvsabc.com/decisions/File09-111523Badshah-MotiontoDisqualify-Feb162010.pdf>

³ <http://www.mvsabc.com/decisions/Saini&Dumont-v-Lenux-et-al-PreliminaryDecisionMay3-2010.pdf>

past precedents, the Ontario Court in *Prestige Toys Ltd. v. Ontario (Registrar, Motor Vehicle Dealers Act)* 2009 CarswellOnt 4743 stated:

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.**

See also *Ontario (Registrar, Motor Vehicle Dealers Act) v. Unity-A-Automotive Inc.* (2009), 98 O.R. (3d) 468 (Ontario Superior Court of Justice (Div. Ct.)).

16. In *Re: Mafcan Motors Ltd. & Cheema* (July 2, 2010: Files 10-017 and 10-018), I applied *Prestige Toys* to the conduct of a salesperson and noted that another conduct of concern was a lack of transparency by a regulated person:

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.

17. The core of that concern is that the regulated person has deprived the regulator of information it needs to carry out its mandate. Information is the cornerstone under which regulatory bodies operate. A licensing body looks to the past conduct of a person and assesses whether that past conduct gives rise to a concern that the regulated person's future conduct "*will not be carried on in accordance with law, honesty and integrity.*" Without "*clear, concise, accurate and*

timely information,” the regulator cannot properly assess, in a timely fashion, any future risk a regulated person poses to the public interest. Also, a willingness to hide information is a concern that the regulated person would also hide information of any legal transgressions in the future. It is thus of grave concern to the public interest when a regulated person withholds information from its regulator.

(ii) A Review of a Licensee’s Criminal Record

18. When it comes to reviewing the criminal record of a licensee, section 14 of the *Human Rights Code* R.S.B.C. 1996 c. 210 (“Code”) provides:

14 A trade union, employers' organization or occupational association must not

(a) exclude any person from membership,

(b) expel or suspend any member, or

(c) discriminate against any person or member

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or member, or because that person or member has been convicted of a criminal or summary conviction offence that is unrelated to the membership or intended membership.[underlining added]

19. Section 14 of the Code is applicable to a licensing body, such as the Authority, by virtue of the statutory definition of “occupational association”: *B.C. Council of Licensed Practical Nurses v. Mans & Humphreys v. B.C. Council of Human Rights* 1993 CanLII 1501 (B.C. Court of Appeal). Whether a charge or conviction is related to the occupation or employment of a person depends upon all of the circumstances of the individual case: *Woodward Stores (British Columbia) Ltd. V. McCartney* 1983 CanLII 444 (B.C. Supreme Court) at paragraph 9. This principle is consistent with administrative law principles in the granting of a licence: *Maple Lodge Farms v. Government of Canada* [1982] 2 S.C.R. 2.

(iii) The Purpose of Licensing and the Public Interest

20. The inherent purpose of licensing is to ensure minimum standards of conduct and care are met. Licensing, and the resulting regulation of an occupation, serves

an important societal need to ensure that otherwise lawful conduct is not abused and innocent persons are protected from potential future harm. Mr. Justice Cory of the Supreme Court of Canada made this concept clear:

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. [underlining added]

R v. Wholesale Travel Group Inc., [1991] 3 S.C.R. 154 (Supreme Court of Canada); see also *Zenner v. Prince Edward Island College of Optometrists*, [2005] 3 S.C.R. 645 (Supreme Court of Canada);

21. In *R v. Fitzpatrick* [1995] 4 S.C.R. 154 (Supreme Court of Canada), Justice La Forest writing for the Court, discussed the licensing concept in relation to the application of the *Charter of Rights and Freedoms* in the regulatory context. It is appropriate to set out here the underlying legal and public policy principles for the licensing concept as stated by the Supreme Court of Canada:

40 In making this point, I rely on a form of the "licensing argument" discussed by Cory J. in *Wholesale Travel*, *supra*. There, Cory J. identified this argument as one rationale for subjecting the fault requirement of regulatory offences to a lower standard of *Charter* scrutiny than that of "true crimes". **The licensing argument postulates that regulated actors entering a licensed field should be presumed to know of, and to have accepted, the terms and conditions relevant to the regulated area, and should therefore be held liable for breaching these terms and conditions.** At page 229 of his judgment in *Wholesale Travel*, Cory J. described the licensing argument as follows:

The licensing concept rests on the view that those who choose to participate in regulated activities have, in doing so, placed themselves in a responsible relationship to the public generally and must accept the consequences of that responsibility. Therefore, it is said, those who engage in regulated activity should, as part of the burden of responsible conduct attending participation in the regulated field, be deemed to have accepted certain terms and conditions applicable to those who act within the regulated sphere. Foremost among these implied terms is an undertaking that the conduct of the regulated actor will comply with and maintain a certain minimum standard of care.

The licensing justification is based not only on the idea of a conscious choice being made to enter a regulated field but also on the concept of control. **The concept is that those persons who enter a regulated field are in the best position to control the harm which may result, and that they should therefore be held responsible for it.**

Later, at pp. 239-40, he continued on the same theme:

The regulated actor is allowed to engage in activity which potentially may cause harm to the public. That permission is granted on the understanding that the actor accept, as a condition of entering the regulated field, the responsibility to exercise reasonable care to ensure that the proscribed harm does not come about. **As a result of choosing to enter a field of activity known to be regulated, the regulated actor is taken to be aware of and to have accepted the imposition of a certain objective standard of conduct as a pre-condition to being allowed to engage in the regulated activity.**

41 Though the present case does not raise the issue of fault requirements under the *Charter*, Cory J.'s comments respecting the licensing argument in *Wholesale Travel* are, as I see it, equally relevant to the analysis of the principle against self-incrimination in the present case. **Indeed this case would seem to present us with a paradigmatic example of a licensing scheme, in that the appellant literally cannot participate in the commercial fishery without a licence. In accepting his licence, he must accept the terms and conditions associated with it, which include the completion of hail reports and fishing logs, and the prosecution of those who overfish. To the extent that the appellant believes himself to be compelled "against his will" to produce hail reports and fishing logs, lest they one day be used against him in a prosecution for overfishing, he is free to resign from the commercial fishery, and thereby to be released from this obligation.**

22. When considering licensing issues, the public interest is paramount over the desire of a person to work in a specific licensed field: *Pacific International et al v.*

B.C. Securities Commission 2002 BCCA 421 (B.C. Court of Appeal). Mr. Justice Smith in *Pacific International et al* cited approvingly:

[12] However, the right to participate in the securities business is not a right of the same order. As Hollinrake, J.A., speaking for this Court in *Rak v. British Columbia (Superintendent of Brokers)* (1990), 51 B.C.L.R. (2d) 27, commented aptly in another context, at 34:

In my view, trading in securities is not a profession in the sense that doctors, lawyers, architects, engineers, accountants and other professionally-trained persons can be said to be engaged in a profession. In my opinion it cannot be said that a trader in securities is deprived of his ability to pursue a profession because his exemptions under the *Securities Act* are lifted.

He went on to cite with approval, the following passage from the reasons for judgment of Robertson, C.J.O. of the Ontario Court of Appeal in *Re the Securities Act and Morton*, [1946] O.R. 492 at 494:

A registered broker or salesman has no vested interest that is to be weighed in the balance against the public interest. I have no doubt the Commission will, on proper occasions, give consideration to the possible serious consequences of taking away a man's livelihood, and of making the business of a broker or salesman a precarious occupation. Such considerations may have their proper place in determining what is in the public interest. **It is, however, the public interest that is to be served by the Commission, and no private interests or the interest of any profession or business, in the exercise of the Commission's powers of suspension or cancellation of the registration of any broker or salesman.** [emphasis added]

See also *Pugliese v. B.C. (Registrar of Mortgage Brokers)* 2008 BCCA 130, 79 B.C.L.R. (4th) 283 (B.C. Court of Appeal); and *Lorindale Holdings et al v. B.C. Assets and Land Corp. et al* 2004 BCCA 352 (B.C. Court of Appeal).

23. The above licensing principles and the paramountcy of the public interest have been applied by the Registrar of Motor Dealers in several past decisions involving salespersons: *Re: Parkwood Auto Sales Ltd. & Beune & Hawes* (August 6, 2010: Files No. 07-70285A, 07-70263A; 08-70631A; 08-70997A); *Re: Mafcan Motors Ltd. & Cheema* (July 2, 2010: Files 10-017 and 10-018); *Re: McKinnon* (January 5, 2010: File No. 09-70325); and also see *Re: Brian Stephen Bassett*

(December 2, 2009: File 09-108822)⁴. The later decision was provided to legal counsel for Mr. Badshah prior to these hearings: Exhibit 1.

DISCUSSION

(i) Are the Convictions related to the Salesperson Licence?

24. in June of 2009, Mr. Badshah personally pled guilty to three counts of fraud over \$5,000 under section 380(1)(a) of the *Criminal Code* of Canada, which states:

Fraud

380. (1) Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service,

(a) is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars; or

25. In September 2009, Mr. Badshah received an 18-month conditional sentence, was ordered to write letters of apology to certain victims and restitution orders were made. Mr. Badshah's conditional sentence expires in March 2011.

26. Mr. Coates relayed the basis of the charges in his testimony. Mr. Coates stated that Mr. Badshah, through the corporate vehicle Badshah Communications Group Ltd., devised what is known as a Ponzi scheme which defrauded at least 150 persons of approximately \$2.2 million. In its parallel investigation and enforcement proceedings, the B.C. Securities Commissions' Acting Executive Director made a temporary order against Mr. Badshah personally and Badshah Communications Group Ltd. from any further contraventions of the *Securities Act: 2007 BCSECCOM 700*. In rendering the temporary order, the Acting Executive Director made the following findings:

⁴ All of these decisions are available for review at: http://www.mvsabc.com/compliance_decisions.htm

Illegal Distribution & Unregistered Advising

7. None of the Respondents [Anwar Badshah and Badashah Communications Group Ltd.] is registered in any capacity under the Act.

8. No prospectus has ever been filed in British Columbia respecting the distribution of the Promissory Notes.

9. By offering the Promissory Notes for sale to investors and recommending the purchase of the Securities to investors and potential investors, Badshah has been promoting, negotiating and advising on the purchase and sale of securities, contrary to section 34(1) of the Act.

Misrepresentations

10. The Respondents have been representing to investors and potential investors, among other things, that:

(a) money received from investors would be used by the Respondents to purchase various securities and the return on such investments would fund the payments due on the Promissory Notes; and

(b) money received from investors would be used by the Respondents to purchase the securities of certain issuers on behalf of investors and that the Respondents would deliver such securities to investors.

11. The above statements are false:

(a) The money received by the Respondents from investors was used by the Respondents for personal expenses and to make payments due on the Promissory Notes to earlier investors; and

(b) The Respondents did not use investors' money to purchase securities of certain issuers on behalf of investors and the Respondents delivered no securities to investors.

12. In making these and other false statements, the Respondents made misrepresentations contrary to section 50(1)(d) of the Act.

Fraud

13. The distribution of the Promissory Notes by the Respondents is a Ponzi scheme. By obtaining investors' funds under false pretenses, misdirecting investors' funds and making the above false statements to investors and potential investors, the Respondents are perpetrating a fraud, contrary to sections 57 and 57.1 of the Act.

27. Under the *Motor Dealer Act Regulation*, motor dealers are compelled to make certain representations to consumers during the "sale" of a "motor vehicle."⁵ Salespersons that interact with consumers during these sales often make these declarations to consumers. Often consumers ask questions such as whether the vehicle for sale has suffered any prior damage to which salespersons provide answers.

28. Certain provisions of the *Business Practices and Consumer Protection Act* S.B.C. 2004 c. 2 ("BPCPA") have been prescribed to the authority of the Registrar of Motor Dealers. Relevant here is that the Registrar has authority to review whether or not a "supplier" of a "motor vehicle" has committed a deceptive act or practice contrary to the BPCPA. A review of the deceptive act or practice provisions of the BPCPA, especially those deemed to be deceptive acts of practices by the Legislature, makes it clear the concern is misrepresentations made by a "supplier." Noteworthy is that the definition of "supplier" under the BPCPA includes a corporate entity as well as a natural person. So where a salesperson commits a deceptive act or practice by making a misrepresentation to a consumer, they are personally held liable under the BPCPA; and their employer, the motor dealer, is vicariously liable. Section 5 of the BPCPA prohibits a supplier from committing a deceptive act or practice.

29. I find the criminal convictions are related to Mr. Badshah's salesperson licence. Mr. Venus testified that Mr. Badshah sells both new and used vehicles at the dealership. Mr. Badshah would be in contact with consumers and in a position to make representations about the vehicles he is showing. Mr. Badshah would be in a position to also make misrepresentations about those motor vehicles to consumers.

30. I note Mr. Venus stated Mr. Badshah would not be in contact with consumers' money. However, Mr. Badshah would receive wages and commissions based on the number of sales he makes. The possibility exists that he may make a misrepresentation about a vehicle in order to ensure a sale, which directly affects his wages and continued employment.

⁵ As those two words are defined in the *Motor Dealer Act*.

31. I would also note the Acting Executive Director's finding that Mr. Badshah was operating within a regulated industry while not being licensed to do so. That is a concern for any regulator and is conduct that is certainly related to Mr. Badshah's salesperson licence. It is a reflection of Mr. Badshah's past willingness not to abide by the law, which must be considered in relation to any of his future conduct.

32. Finally, I would note that I heard no evidence from Mr. Badshah that disputed the Acting Executive Director's findings of fact noted in his decision reported at 2007 BCSECCOM 700. The Acting Executive Director was in the best position to assess the evidence before that tribunal and in the absence of evidence to the contrary of some overriding nature, I give those findings of fact full faith and credit: *Toronto (City) v. C.U.P.E., Local 79*, [2003] 3 S.C.R. 77, 2003 SCC 63.

(ii) The Applications

(a) Initial Application for Licensing

33. On May 22, 2008, the Authority received an application, with supporting documents, for licensing as a salesperson from Mr. Badshah. It was dated May 15, 2008. Mr. Badshah confirmed he signed the application: Exhibit 2, pages 2-10. Page 6 of that application is a consent and undertaking, being right above the signature box, and which states in part:

I certify the information provided by the undersigned in support of this application is true.

An application containing false information may result in the suspension or cancellation of the salesperson's licence and disciplinary action against the employer(s)/dealer(s) of record.

34. Of note is the declarations on page 4 and specifically declaration 5 of that application which asks, and Mr. Badshah answered:

5.	Are you currently under investigation and/or prosecution for violation of any criminal or other law in force in Canada or elsewhere? <hr/>	<input type="checkbox"/> Yes Explain in space provided	<input checked="" type="checkbox"/> No
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35. As noted in the evidence of Mr. Coates, Mr. Badshah was served a search warrant pursuant to the *Criminal Code* of Canada and the warrant listed the criminal infraction of one count of fraud over \$5,000 alleged against Mr. Badshah. That search warrant was served and executed on September 27, 2007. The above-noted order of the Acting Executive Director of the B.C. Securities Commission's Acting Executive Director (2007 BCSECCOM 700) was issued on November 27, 2007. Mr. Coates' evidence was that Mr. Badshah's then legal counsel acknowledged receipt of the Acting Executive Director's order on December 3, 2007.

36. Mr. Coates also testified that on December 4, 2007, Mr. Badshah, through his legal counsel, commenced negotiations with the Commission to delay its hearing of the regulatory infractions. There were several back-and-forth communications and on November 12, 2008, there was an agreement to adjourn the Commission's hearing generally until the *Criminal Code* matter was resolved.

37. I find that on the evidence, Mr. Badshah knew at least by September 27, 2007, that he was under investigation for "a violation of any criminal or other law in force in Canada." I further find that on December 3, 2007, Mr. Badshah, through his lawyer, acknowledged receipt of the Acting Executive Director of the B.C. Securities Commission order. I find Mr. Badshah provided false information on his initial application for a licence, received on May 22, 2008, as a salesperson as at that time he knew that he was under investigation for "a violation of any criminal or other law in force in Canada."

(b) Application for a Renewal of Licence

38. On March 6, 2009, the Authority received an application for renewal of a salesperson licence for Anwar Badshah. That application was dated March 6, 2009, and Mr. Badshah confirmed it was his signature on the renewal application. Above the signature line on that form is a certification of the facts and by his signature, Mr. Badshah certifies the "*all the information and statements contained in this application and any attachments are true and complete.*"

39. The renewal application is a one-page document. There are three questions under the heading "Eligibility Questions". The answer provided to question 1 is of concern, and it asks and was answered by Mr. Badshah:

- 1) Since the date of your last criminal record check submitted to the VSA, have you been convicted of, or are you currently charged with, any criminal or other offence under any federal or provincial legislation, or under any law of any foreign jurisdiction?

If yes, attach a copy of the offense, date of offense and outcome. Yes No

40. Mr. Coates' evidence was that on December 15, 2008, Mr. Coates personally served Mr. Badshah with a summons of a person charged, requiring Mr. Badshah to appear in Provincial Court in Port Coquitlam, on January 12, 2009, for an additional appearance. Mr. Coates noted that attached to that summons were the charges of three counts of fraud over \$5000 contrary to section 380(1)(a) of the *Criminal Code*.

41. I am satisfied on the evidence that Mr. Badshah was aware that there were criminal charges against him by December 15, 2008. Mr. Badshah's declaration on his March 6, 2009 application, as noted at paragraph 39, is untrue. I find on the evidence that Mr. Badshah made a false statement on his application for renewal.

(iii) Badshah's Defence

42. As noted, Mr. Badshah did not testify on his own behalf. He relied on the evidence derived from the cross-examinations of the various witnesses and the direct testimony of Mr. Venus.

43. Mr. Badshah's legal counsel inferred that Mr. Badshah made the impugned declarations on the advice of a lawyer. The name of the lawyer and the legal advice that was given were never placed in evidence. Where a person raises as a defence, the reliance on legal advice, they implicitly waive solicitor-client privilege over that advice so that its veracity may be explored: *Reid v. B.C. (Egg Marketing Board)* 2006 BCSC 346.

44. Mr. Badshah argues that the investigator for the Authority was responsible for following up and determining the legal advice that was given. Counsel for Mr.

Badshah said Ms. Childs gave evidence in cross-examination that she was told by Mr. Badshah that he made the declarations under the advice of a lawyer. I did not hear Ms. Childs make that statement at the hearing. Ms. Childs did mention Mr. Badshah had a lawyer during the criminal proceedings. Her evidence was that Mr. Badshah told her that he made the declarations the way that he did because he did not understand the questions. A review of the transcript of the hearing confirms that Ms. Childs never testified that she was told by Mr. Badshah that he made the declarations in the way he did under legal advice. There is no evidence at all that Mr. Badshah made the declarations in the way he did under legal advice. That is simply a statement and argument from Mr. Badshah's legal counsel without an evidentiary foundation.

45. Mr. Venus gave evidence in support of Mr. Badshah as stated above. The evidence is of some assistance in this matter. It allows the Registrar to look at Mr. Badshah's conduct while a salesperson. Mr. Venus speaks positively about Mr. Badshah and the documents he tendered into evidence are also of assistance. I note that it was Ms. Childs of the VSA who suggested Mr. Venus attend and give evidence in support of Mr. Badshah.

46. However, Mr. Venus's evidence on what the dealership and he personally would do in the event Mr. Badshah does commit a wrong, speaks only of fixing the wrong once discovered. As the Supreme Court of Canada noted above, the goal and purpose of regulatory law is to try and prevent future harm by ensuring a minimum standard of conduct and care are met. My concern and mandate cannot focus on steps to fix a wrong once discovered, but they must also look at the proper steps to be taken to prevent future harm from occurring.

(iv) The Public Interest

47. As I noted, the public interest is paramount in this matter. That public interest requires the Registrar take steps to prevent future harm where the past conduct of a salesperson indicates that there is potential for future harm.

48. I am satisfied on the evidence that Mr. Badshah poses a risk to the public interest and a risk of future harm. That concern is not only due to the criminal record and the nature of the convictions, but because Mr. Badshah provided false evidence to his regulator. Mr. Badshah deprived the Registrar of vital information so that his past conduct could be assessed and determine whether it was in the public interest to allow Mr. Badshah to be licensed. This is past conduct that indicates his willingness to hide information from his regulator, which is not in the public interest. The convictions of fraud and the substantial amount of that fraud and the relationship I have noted between the misrepresentations in the criminal matter to the position of a licensed salesperson are also of concern to the public interest. The public would expect that such a person would have rehabilitated themselves before being placed into the position of trust that a licensed salesperson holds. I also find that this case is very similar to the case in *Bassett* noted above, which provides some guidance in this matter.

49. Based on the forgoing, I find that it is in the public interest to cancel the salesperson license of Mr. Badshah.

(v) Re-Applying for a Licence

50. I also find that the public interest would require a period of time to pass in order to see whether or not Mr. Badshah has rehabilitated himself. A licensed motor vehicle salesperson acts in a considerable position of trust. First-time car buyers, and those who are new immigrants and do not understand the purchasing process, place their trust in the salesperson to provide them a quality product, at a fair price, and that meets their needs. Consumers in general rely on the representations made to them by salespeople about particular vehicles they are interested in purchasing. The general buying public rightly expects a salesperson that is licensed to be honest and trustworthy. Mr. Badshah's recent past conduct indicates that he is at risk of being dishonest and untrustworthy. Mr. Badshah needs to earn back that trust and that can only be accomplished with time and a review of Mr. Badshah's steps to rehabilitate himself and conduct that shows he has earned back the trust necessary to be a licensed salesperson.

51. I note Mr. Badshah's conditional sentence expires in March 2011. In *Bassett*, I noted the Authority would not accept an application from Mr. Bassett for a period of five years after his conditional sentence and probation ended. In Bassett's case, he did not have employment with a dealer, nor did he have a dealer come forward and give evidence in his favour. Mr. Venus and Mr. Badshah's current employer have done so. It is here that I can take the evidence of Mr. Venus into consideration and give it some effect.

52. However, I note that Mr. Badshah was only able to obtain some employment history with the dealership by falsifying his applications as noted. In all, I believe a waiting period of three years would be appropriate before the Authority would consider an application from Mr. Badshah. This waiting period is put in place to protect the public interest as well as the Registrar's process: *Pugliese*. Mr. Badshah may re-apply for licensing as a salesperson after April 1, 2014. Whether or not he will be granted a licence in the future will depend on the facts that exist at the time any future application is received.

SUMMARY

53. I hereby cancel the salesperson licence of Anwar Badshah, number 111523 effective immediately.

54. An application for licensing as a salesperson will not be accepted by the Authority from Mr. Badshah until after April 1, 2014.

Date: September 24, 2010



Ian Christman LL.B.