

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 BUSINESS PRACTICES AND CONSUMER PROTECTION ACT S.B.C. 2004 c.**

2

RE:

DAVID KNAPP

COMPLAINANT

AND:

**Crown Autobody & Auto Sales Ltd.
(Dealer License #30290)**

MOTOR DEALER

AND:

**JAWEED JOOYA
(Salesperson License #104873)**

SALESPERSON

FINAL RECONSIDERATION
OF THE DECISION OF THE DEPUTY
REGISTRAR OF MOTOR DEALERS

BACKGROUND

1. On September 21st, 2009, Ian Christman, Deputy Registrar of Motor Dealers for the Province of British Columbia, delivered his final decision in this matter.
2. By letter dated October 16th, 2009, Deepak Gautam, solicitor for Crown Autobody & Auto Sales Ltd. and JAWEED JOOYA, formally requested a reconsideration of Mr. Christman's decision pursuant to Section 181 of the Business Practices and Consumer Protection Act (BPCPA).

3. On April 15th, 2010, I granted this request with comments on the evidence and asking specifically that the issues raised in Denis Savidan's (VSA's Manager of Compliance and Investigations) email of October 23, 2009, to Deepak Gautam (solicitor for Crown Autobody & Auto Sales Ltd. and JAWEED JOOYA).
4. I made this request as I continue to question what new evidence is being presented by Crown Autobody & Auto Sales Ltd. that is material to the issues in these proceedings and that was otherwise not available when the matter was before Mr. Christman.

ISSUES

5. The Compliance Order in this matter, which still remains in effect though partially stayed for these proceedings, was that Crown Autobody & Auto Sales Ltd. and JAWEED JOOYA are to:
 - Refund David and Keturah Knapp the total purchase price for the Prius of \$19,040.00;
 - Arrange to take back the Prius at their own expense;
 - Reimburse David and Keturah Knapp any costs associated with the inspection of the Prius and investigating its ability to be repaired in Ontario;
 - Reimburse the Motor Vehicle Sales Authority's inspection, investigation and hearing costs in the amount of \$2831.11;
 - Pay an Administrative Penalty of \$20,000 assessed against Crown Autobody & Auto Sales Ltd; and
 - Pay an Administrative Penalty of \$2000 assessed against JAWEED JOOYA;
6. Additionally, Mr. Christman ordered the cancellation of the Motor Dealer Registration of Crown Autobody and Auto Sales Ltd.'s Dealer registration number 30290.
7. As Mr. Christman's original decision correctly noted, there are two significant legal issues in this matter.
8. First issue; did Crown Autobody and Auto Sales Ltd. and Mr. JOOYA commit a deceptive act or practice by representing to Mr. and Mrs. Knapp that the Prius was roadworthy and suitable for transportation when it was not?
9. Second issue; did Crown Autobody and Auto Sales Ltd. and Mr. JOOYA commit a deceptive act or practice by representing to Mr. and Mrs. Knapp that the auto had traveled 40,188 km when it in fact had traveled at least 114,163 kilometers?

AUTHORITY TO RECONSIDER

10. On July 12th, 2010, I held a hearing in this matter to determine if pursuant to Section 182 of the Business Practices and Consumer Protection Act (BPCPA) the final decision of Mr. Christman should be reconsidered.
11. Since this date, and with some encouragement from our Manager of Compliance, Denis Savidan, the parties have been attempting to resolve their issues.
12. I am advised the final negotiating deadline in these settlement discussions passed on March 1st, 2011; it is therefore time for my final decision in this matter.
13. Presented in evidence at the July 12th, 2010 hearing in this matter were two affidavits one by JAWEED JOOYA dated October 19th, 2009, and the other sworn by SEAN BATH, also dated October 16th, 2009.
14. Dealing firstly with the JOOYA affidavit - all of what is contained in Mr. JOOYA'S affidavit regarding the number of kilometers showing on the odometer of the Prius, is not new, nor is this evidence, that on its own would be sufficient to allow for the reconsideration of Mr. Christman's decision.
15. The Motor Dealer Act and the Business Practices and Consumer Protection Act, whether read together or separately, both make it clear that when a registered Motor Dealer sells a vehicle to the public that is for personal or family use, the Dealer needs to declare the correctness of the odometer reading that is on the vehicle or otherwise declare the vehicle as "kilometers unknown" – and this needs to be done on both the Bill of Sale and APV9T transfer form.
16. The legislation makes it clear that registered Motor Dealers have a positive duty to enquire and disclose all material facts to purchasers and they cannot rely solely on ICBC records when making representations regarding odometer readings on vehicles that they are selling, and, I also do not accept the argument that the difference between 40,000 km and a 114,000 km on a fairly new vehicle is somehow immaterial.

Robillard v Comox Valley Ford Sales (1964) Ltd. And Gordon Leo Rug
(Third Party) and Port Chevrolet Oldsmobile Ltd. (Fourth Party) (1995),
B.C.J. No. 436 (BC Court of Appeal)

Motley v Regency Chrysler 2002 BCSC 1885 (BC Supreme Court)
17. Turning now to BATH affidavit - all of what is contained in Mr. Bath's affidavit regarding the original inspections and certifications on the Prius prior to it being sold to Mr. Knapp, is not new, nor is it sufficient evidence to allow for the reconsideration of Mr. Christman's decision.

18. This all said, solicitors for Crown Autobody & Auto Sales Ltd. and JAWEED JOOYA have raised an interesting argument in regards to procedural errors, or more particularly, alleged breaches of the duty of fairness, which could, in my view, allow this matter to be reconsidered if accepted as correct.
19. The general rule applicable to administrative tribunals that make decisions, is that once they have made a decision, the case cannot be reopened except to deal with a slip or error "in expressing the manifest intention of the [tribunal]." Legislation can allow a tribunal to re-open a case but only to the extent directed by the legislation.

Chandler v. Assn. of Architects (Alberta), [1989] 2 S.C.R. 848, 1989 CarswellAlta 160 at paragraphs 75-79.

20. One consideration recognized in *Chandler* that would allow a tribunal to reopen and rehear a matter is where it has determined there has been a breach of procedural fairness and natural justice during its process. If such an error is found to exist, then the hearing should be redone "afresh."

Chandler at paragraph 81.

21. Section 182 of the Business Practices and Consumer Protection Act sets out the Registrar's powers for a reconsideration and must be read as intending to include the principles of procedural fairness and natural justice as this section applies to administrative decision makers empowered to render decisions under that Act.
22. Combining section 182 of the Business Practices and Consumer Protection Act with the common law principles noted in the decision of *Chandler*, I arrive at the following principled approach for deciding whether Mr. Christman's decision should be reconsidered and varied or cancelled:

- (a) The authority to set aside or vary Mr. Christman's decision in this matter is firstly defined by Section 182 of the BPCPA. Section 182(2) of the BPCPA clearly limits my ability to do so "only if [I am] satisfied that new evidence has become available or has been discovered that

(a) is substantial and material to the determination, **and**

(b) did not exist at the time of the review or did exist at that time but was not discovered and could not through the exercise of reasonable diligence have been discovered."

Or,

- (b) Alternatively, based on *Chandler*, I may cancel the determination made by Mr. Christman and rehear the matter if it is established that

there has been a breach of his "duty of fairness" to one of the parties in the proceedings, and direct a new hearing.

- (i) The above principle cannot be used simply as a reason for admitting further evidence; the errors in the original decision must be so fundamental as to be a breach of the Registrar's duty of fairness to one of the parties.
 - (ii) The authority to rehear a matter because of a breach of a "duty of fairness" cannot be used to overcome any other type of alleged errors in law, as these become matters for the courts to consider on judicial review or appeal (the importance of this principle will be mentioned following when I comment on Crown Auto's arguments asserting errors in law).
23. Crown Autobody and Auto Sales Ltd.'s and Mr. JOOYA's arguments on a possible breach of an administrative decision maker's "duty of fairness" is in regards to the April 8th, 2009 hearing, which was partially conducted by telephone conference call and at a time when Crown Auto and Mr. JOOYA were not represented by legal counsel.
 24. In paragraph 15 of his affidavit Mr. JOOYA deposes that he did not have prior notice of the details contained in the verbal telephone evidence provided by LANCE STEVENS.
 25. It is further argued that because of this alleged oversight, Mr. JOOYA did not have an opportunity to prepare and thus was unable to ask considered questions of LANCE STEVENS over the telephone.
 26. It is clear that Mr. Christman relied on some of the evidence provided by LANCE STEVENS in making his final decision in this matter so I have carefully considered this argument as to its merits.
 27. I cannot accept these arguments as to their being a breach of a "duty of fairness" because of what happened both before, and after the April 8th, 2009 hearing, in that, firstly, the affidavit filed and served on Mr. JOOYA prior to the April hearing outlined in detail what Mr. Stevens' evidence regarding the repairs to the vehicle would be.
 28. Secondly, and more importantly, following the April 8th, 2009 hearing Mr. Christman adjourned the proceedings to obtain additional evidence as to the mechanical safety of the Prius, and the details of this evidence were made available to Mr. JOOYA well in advance of the next hearing date, which was May 27th, 2009.
 29. This additional evidence was provided in a report prepared by Mike Srigley, an expert in body repair retained by the Motor Vehicle Sales Authority,

whose detailed report was provided to Mr. JOOYA in the Notice to Attend served on him the first week in May, 2009.

30. It should also be noted that this adjournment from April 8th, 2009 to May 27th, 2009, provided Mr. JOOYA ample opportunity to obtain his own legal counsel, which is something he was encouraged to do, but chose not to.
31. I also note that in the May 27th, 2009 proceedings Mr. JOOYA extensively questioned Mr. Srigley on his report and his evidence, and also Mr. JOOYA was given ample opportunity throughout the proceedings to provide his own evidence as well.

CONCLUSION

32. Given these circumstances there was no breach of “duty of fairness” as advanced by council for Mr. JOOYA, and because of this determination, the other arguments raised by Crown Autobody and Auto Sales Ltd. and Mr. JOOYA in regards to possible errors in law, or the improper admission of opinion evidence, go beyond what I can consider – as these become matters that must go before the courts (see paragraph 22(b)(ii) above).
33. As discussed in paragraphs 14, 17 and 22 above, the requirements of Section 182 of the Business Practices and Consumer Protection Act regarding new or otherwise unavailable evidence have not been met and therefore Crown Autobody & Auto Sales Ltd.’s and JAWEED JOOYA’s application for reconsideration is dismissed.
34. The Registrar’s original Decision in this matter dated September 21st, 2009, and all related subsequent Orders and Directions now comes into full force and effective from the date of these final determinations.

Ken Smith – Registrar of Motor Dealers for the
Province of British Columbia



March 18th, 2011