



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:

LESLIE LANDSBERG
(Salesperson Licence # 111663)

SALESPERSON

DECISION OF THE REGISTRAR OF MOTOR DEALERS

APPEARANCES

For the Authority: Denis Savidan, Manager of Compliance and
Investigations
Ross Coté, Compliance Officer

For Leslie Landsberg: Andrew Tam, Legal Counsel

Date and Place of Hearing: May 5 & 6, 2011, at Victoria, British Columbia

INTRODUCTION

1. This hearing was to review the salesperson licence of Leslie Landsberg, Salesperson Licence # 111663, pursuant to sections 6 and 7 of the *Salesperson Licensing Regulation* B.C. Reg. 241/2004 (the "Regulation").

2. Of concern to the staff of the Motor Vehicle Sales Authority of British Columbia (the "Authority"), is Mr. Landsberg's alleged conduct, either directly or in his capacity as the General Manager of Victoria Hyundai,¹ in relation to several consumer complaints that Victoria Hyundai committed deceptive acts or practices

¹ Legal name being AutoCanada Hometown Motors GP Inc a General Partner Hometown Motors LP dba Victoria Hyundai

contrary to section 5(1) of the *Business Practices and Consumer Protection Act* S.B.C. 2004 c. 2 (BPCPA), as well as committed unconscionable acts or practices contrary to section 9(1) of the BPCPA.

3. The Authority brought forth seven consumers as witnesses along with Compliance Officer Ross Coté, who was an investigator in these matters.

4. Mr. Landsberg gave evidence in his defence of these allegations.

5. Various documents were entered into evidence. Case law, specifically past Registrar decisions, were brought to my attention.

6. For the reasons that follow, I would dismiss the allegations against Mr. Landsberg.

BASIC FACTS

7. The Authority investigated several consumer complaints starting in 2009 culminating in the corporate dealership, Victoria Hyundai, entering into an Undertaking to resolve the monetary complaints of those consumers. The Undertaking also provided for Victoria Hyundai to undertake steps to ensure it reviewed its business practices and make changes to those practices that were not compliant with BC law administered by the Authority.²

8. The Authority sought to bring several salespersons before the Registrar so that he could review each salesperson's conduct in these various consumer transactions. Mr. Leslie Landsberg was brought to this Hearing as he was the General Manager of Victoria Hyundai at the time of these transactions.

9. All seven consumers gave evidence about their transactions. In each case, the consumers did not deal directly with Mr. Landsberg at the time of their individual consumer transaction. Some of the consumers did deal with Mr. Landsberg after their consumer transaction in their attempts to resolve their complaints. Some consumers never dealt with Mr. Landsberg at all.

² <http://www.mvsabc.com/undertakings/VictoriaHyundaiUndertaking.pdf>

POSITION OF THE PARTIES

(a) The Authority

10. The initial allegations in the Notice of Hearing indicate the Authority was claiming Mr. Leslie Landsberg was directly involved in these consumer transactions and personally committed deceptive acts or practices or unconscionable acts or practices contrary to the BPCPA.

11. During the course of the hearing, and certainly at the conclusion of the evidence from the seven consumer witnesses, it became apparent the Authority was focusing on Mr. Landsberg's role as General Manager and his perceived culpability in these transactions while in that role.

(b) Leslie Landsberg

12. Leslie Landsberg's position is straight forward. He says he did not personally engage in any communications during the course of these consumer transactions. Mr. Landsberg notes that he made no representations to the consumers in these transactions which the consumers relied on to their detriment. Mr. Landsberg says this crucial and necessary element for a finding of a deceptive act or unconscionable act or practice under the BPCPA is missing. In support he cites decisions of the Registrar of Motor Dealers in: *Southern v. Victoria Hyundai et al* (File No. 08-70472, June 23, 2009)³ and *Gill v. Parkwood et al* (File No. 07-70263, August 6, 2010).⁴

13. Mr. Landsberg detailed his role within the dealership and where his oversight responsibilities were on a day-to-day basis. He notes that while he ultimately would have to report to the partnership on the sales activities at the dealership, day-to-day oversight of vehicle sales were left to others, and specifically the general sales manager. From Mr. Landsberg's evidence, it is clear this is not a small operation and a closely held company, where Mr. Landsberg would be intimately aware of everything that occurred. There was also no evidence to the contrary on this point.

³ http://www.mvsabc.com/decisions/File08-70472Southern_v_VictoriaHyundai-SwanbergJune23-2009.pdf

⁴ <http://www.mvsabc.com/decisions/File07-70263Gill&GillParkwoodAugust62010.pdf>

THE LAW

(a) BPCPA – deceptive act or practice

14. Section 5(1) of the BPCPA prohibits a supplier from committing a deceptive act or practice – generally, a misrepresentation. A deceptive act or practice need not be intentional, it may be innocent, negligent or fraudulent and the consumer will still be entitled to a remedy: *Pirvulescu v. Parkwood et al* (August 6, 2010 File 07-70285, Registrar of Motor Dealers)⁵ paragraphs 39-46 citing the following:

Rushak v. Henneken (1991), 59 B.C.L.R. (2d) 250 (BC Court of Appeal) affirming [1986] BCJ No. 3072 (BC Supreme Court)

Mikulas v. Milo European Cars Specialists Ltd. [1995] BCJ No. 638 (BC Court of Appeal) affirming [1993] BCJ No. 2818 (BC Supreme Court)

British Columbia (Director of Trade Practices) v. Landsdowne Pontiac Buick GMC Ltd. [1987] BCJ No. 2325 (BC Court of Appeal.) affirming [1985] BCJ No. 2065 (BC Supreme Court)

The Consumer's Association of Canada et al v. Coca-Cola Bottling Company et al. 2006 BCSC 863, additional reasons 2006 BCSC 1233 (BC Supreme Court), affirmed by 2007 BCCA 356 (BC Court of Appeal), leave to appeal to the Supreme Court of Canada refused [2007] S.C.C.A. No. 464 (SCC)

Cummings v. 565204 B.C. Ltd. dba Daewoo Richmond 2009 BCSC 1009 (BC Supreme Court)

Casillan v. 565204 B.C. Ltd. dba Daewoo Richmond 2009 BCSC 1335 (BC Supreme Court)

Findlay v. Couldwell [1976] 5 W.W.R. 340 (BC Supreme Court).

And see also *Applewood v. Ratte et al* (Oral Reasons for Judgment S.C.B.C. Action# 094126, Vancouver Registry, April 13, 2010) (BC Supreme Court).

15. I note that the definition of “supplier” in the BPCPA can apply to an individual.

16. The BC Legislature has set out a general definition of what constitutes a deceptive act or practice in section 4(1) of the BPCPA. The BC Legislature has also

⁵ <http://www.mvsabc.com/decisions/File07-70285PirvulescuvParkwoodAugust62010.pdf>

identified conduct that it deems to be deceptive acts or practices in section 4(3) of the BPCPA.

17. Of course, if a consumer does not rely on a misrepresentation (ex. because they do not believe what is being represented) and it forms no part of their decision to enter into a consumer transaction, then the consumer would not be entitled to damages. The clear reason for this is that the misrepresentation is not a cause of those damages. However, reliance and the existence of damages is not necessary for there to have been a deceptive act or practice as other remedies such as a declaration and an injunction are also available to a consumer: section 172 BPCPA and see *Seidel v. Telus Communications Inc.* 2011 SCC 15 (Supreme Court of Canada) and *Robson v. Chrysler Canada Inc* 2001 BCSC 40 at paragraph 34, rev'd but not on this point 2002 BCCA 354, leave to appeal to the SCC refused (2003), 313 N.R. 196 (note) and (2003), 313 N.R. 197 (note) (SCC).

(b) BPCPA – unconscionable act or practice

18. In order to establish an unconscionable act or practice, the factors set out in section 8(3) of the BPCPA must be considered as well as the whole of the transaction: section 8(2) of the BPCPA; and see *The Consumer's Association of Canada et al, supra; Bain v. Empire Life Insurance Company* 2004 BCSC 1577 (BC Supreme Court); and *George Mann Sr. (Estate of) v. Ocean Park Ford* (Registrar of Motor Dealers on reconsideration: File No. 07-70255, May 19, 2009).⁶

(c) BPCPA – onus and burden of proof

19. Once an allegation of a deceptive act or practice or an unconscionable act or practice is made against a supplier, section 5(2) and section 9(2) of the BPCPA places the onus on the supplier to prove that they did not commit a deceptive or unconscionable act or practice: *Cummings* and *Casillan*.

20. The burden of proof remains on the balance of probabilities, even for claims that could amount to deceit or civil fraud: *F.H. v. McDougall* [2008] 3 S.C.R. 41 (Supreme Court of Canada).

⁶ <http://www.mvsabc.com/decisions/File07-70255Mann-v-OceanParkDecisionReconsiderationMay192009.pdf>

(d) Conduct under the Salesperson Licensing Regulation

21. I have considered the applicable legal principles in reviewing the conduct of a salesperson in cases such as *Roberts v. Matrix et al* (File No's 09-70100 and 09-70695, May 4, 2011);⁷ *Re: Parkwood Sales Ltd. & Beune & Hawes* (File No. 07-70285A, August 6, 2010)⁸ and see also *Re: Mafcan Motors Ltd. & Cheema* (File No. 10-017 and 10-018, July 2, 2010).⁹ In summary, conduct of concern:

- (a) does not require evidence of deceit or of willful blindness;
- (b) entails any act or omission or course of behaviour that gives reasonable grounds to believe the person will not conduct themselves in accordance with the law, honesty and integrity;
- (c) includes a failure to be forthright and transparent with the regulatory body in the lawful execution of its duties; and
- (d) includes evidence that a person will be ungovernable within the regulated industry.

See also *Prestige Toys Ltd. v. Registrar (Motor Vehicle Dealers Act)* 2009 CarswellOnt 4743 (Ont. S.C.J. (Div. Ct.)).

22. In *Allright Automotive Repair Inc v. Ontario (Motor Vehicle Dealers Act, Registrar)* [2008] O.J. No. 1557 (Ont. S.C.J. (Div. Ct.)) the Court agreed with the Tribunal that the failure of an officer and director of the motor dealership to properly supervise an employee who committed fraud, justified canceling the officer and director's salesperson licence in that case:

7 The failure of Anderson to supervise Rockwell permitted him to enter into, as verified by the record, a number of fraudulent transactions.

8 The conduct of Anderson, in this context, reflects not only upon the corporate dealership but as well upon him personally.

9 While no doubt the Board's reasons are not couched in the applicable statutory language, we interpret the Board's reasons to be a finding that the past conduct of the Appellant Anderson as an officer and director of the corporation and as an individual, affords reasonable grounds for the belief that he would not conduct himself in accordance with the law, with integrity and honesty.

⁷ <http://www.mvsabc.com/decisions/Roberts-v-Matrix-Foroghi-Karamali-and-Rezapoor-RegistrarsDecison%20May4-2011.pdf>

⁸ <http://www.mvsabc.com/decisions/ReParkwoodAutoSalesLtdetalAugust62010.pdf>

⁹ <http://www.mvsabc.com/decisions/Mafcan-CheemaRegistrarsDecisionJuly22010.pdf>

23. However, the above decision must be considered in its proper context by reviewing the evidence before the Tribunal in its decision of *Allright Automotive Repair Inc. (Re)* [2006] O.L.A.T.D. No. 177 (Ontario Licence Appeal Tribunal). The facts in that case showed that Mr. Anderson (the officer of the dealership) allowed an employee to operate while unlicensed for some nine months and, after becoming aware of the employee's arrest and criminal charges did nothing to implement proper inspections, monitoring and controls on that employee. After the dealer became aware of the criminal charges, the employee committed fraud against consumers while employed by the dealer.

24. Cancellation of a salesperson licence for a failure to provide proper supervision will depend on each circumstance. For instance, in *Coates v. Ontario (Registrar of Motor Vehicle Dealers & Salesmen)* (1988), 65 O.R. (2d) 526, 1988 CarswellOnt 945 (Ont. S.C. (Div. Ct.)) the Court disagreed that the supervisor in that case should lose his licence due to fraud committed by another employee because the dealership was large with some 60 employees. In *Prestige Toys, supra*, the court summarized this point from *Coates*:

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. [underlining added]

25. The Court in *Prestige Toys* noted that the owner in that case was intimately aware of the dealership's operations and the day-to-day sales at the dealership such that her personal salesperson licence could be reviewed due to transgressions by another employee.

DISCUSSION

(a) BPCPA

26. I do not intend on going through in detail the oral testimony of each of the seven consumer witnesses. At the core of all their testimonies is that Mr. Landsberg

did not make any representations to them during the course of their consumer transactions. There was also no direct evidence that Mr. Landsberg coached his employees to conduct themselves in the way that they did, resulting in the misrepresentations and unconscionable conduct covered in the above noted Undertaking involving Victoria Hyundai.

27. I note that a deceptive act or practice can occur before, during or after a consumer transaction: section 4(2) of the BPCPA. In law, it is possible that Mr. Landsberg's conduct after these consumer transactions was a deceptive act or practice.

28. On the evidence before me, the only consumer transaction that may be viewed as questionable was Mr. Landsberg's conduct in obtaining a barbeque for Amanda Beazley in her transaction.

29. On the evidence presented, Ms. Beazley was given a small "hibachi" type barbeque instead of the larger propane-style barbeque noted in a newspaper advertisement. When Ms. Beazley confronted Mr. Landsberg and insisted on the barbeque as advertised, there was some back and forth and eventually one was given to her within about one week's time.

30. One must be careful not to misconstrue misrepresentations (deceptive acts), of which I have jurisdiction over, with miscommunications or mistakes which I do not have jurisdiction over: *The Consumer's Association of Canada et al, supra* at paragraph 86 and *George Mann Sr. (Estate of), supra*. On the evidence before me, there is nothing here to suggest that Mr. Landsberg personally made a misrepresentation to Ms. Beazley about the barbeque. The appropriate barbeque was eventually delivered to Ms. Beazley.

31. I do not find evidence that Mr. Landsberg committed a deceptive act or practice. There is also no evidence of reviewable conduct under section 8(3) of the BPCPA to say Mr. Landsberg committed an "unconscionable act or practice" as the cases have applied that term: *The Consumer's Association of Canada et al; Bain v. Empire Life Insurance Company; and George Mann Sr. (Estate of), supra*.

(b) Motor Dealer Act – a review of conduct

32. As there is no evidence of misconduct on the part of Mr. Landsberg directly, the question is whether his failure to properly supervise staff who committed the conduct noted in the above Undertaking is sufficient to warrant action against his salesperson licence.

33. At this juncture, I would note that there was no evidence from any current or former employees of Victoria Hyundai who worked under the supervision of Mr. Landsberg. I only have Mr. Landsberg's account of how he supervised operations within Victoria Hyundai and how operations were overseen generally.

34. Based on the evidence of Mr. Landsberg, and with no evidence to the contrary, Victoria Hyundai was a larger dealership with many employees who reported to various persons other than directly to Mr. Landsberg. On the evidence presented, this seems true of the sales staff. Mr. Landsberg's evidence is that while he was ultimately responsible to the partnership regarding the sales of the dealership, and all aspects of the dealership, day-to-day operational oversight of the sales department was left to the general sales manager. The general sales manager at the time of the consumer transactions in question is no longer at Victoria Hyundai and I was informed that he has moved to Alberta and was unavailable for this hearing.

35. Based on the evidence before me, I find the operations at Victoria Hyundai are more closely aligned with the dealership noted in *Coates, supra*, than with the dealerships noted in *Prestige Toys, supra* and *Allright, supra*. Also, based on the evidence before me, the operational control Mr. Landsberg had over the employees of concern in this matter is not sufficiently close enough to warrant action against his salesperson licence for a failure to provide proper supervision and monitoring.

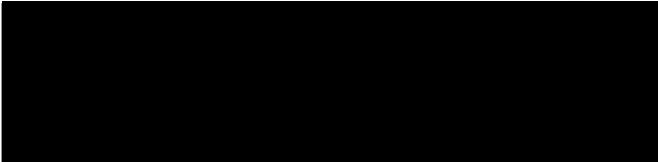
36. I would note that once these issues came to light, the partnership sent its Chief Executive Officer and Chief Financial Officer to deal with the consumer complaints and they initiated a review of the business processes at Victoria Hyundai

and made changes. After that review was complete and changes implemented, Mr. Landsberg took a position at a dealership in Alberta.

SUMMARY

37. In considering all the evidence presented in this matter, I find Mr. Landsberg personally did not commit a deceptive act or practice or an unconscionable act or practice. Further, I do not find the necessary evidence, as presented at the Hearing, to suggest Mr. Landsberg failed to provide proper supervision and monitoring to prevent the transgressions within these consumer transactions. I therefore do not find the necessary evidence was presented at the Hearing to take action against Mr. Landsberg's salesperson licence. Under these facts, "it could not be presumed" from his mere position as the General Manager of Victoria Hyundai, that Mr. Landsberg was aware of his employee's misconduct during the consumer transactions in issue in this case: *Prestige Toys, supra*.

Dated June 27, 2011



Ian Christman, LL.B.