



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:

SANJAY ASHOK SHARMA
(Salesperson Application # 119609)

SALESPERSON

DECISION OF THE REGISTRAR OF MOTOR DEALERS

APPEARANCES

For the Authority: Hong Wong, Manager of Licensing
 Kim Murphy, Licensing Officer
 Ross Coté, Compliance Officer

For Sanjay Ashok Sharma: In person

Date and Place of Hearing: October 6, 2011, Surrey, British Columbia

INTRODUCTION

1. This hearing was to review the salesperson licence application of Sanjay Sharma, salesperson licence application # 119609, 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. Sharma's recent discipline by the Insurance Council of British Columbia and Mr. Sharma's failure to declare he had been licensed with and disciplined by the Insurance Council, as he was required to on his application materials. Mr. Sharma lost his insurance licence for two years.

2. Placed into evidence was the Notice of Hearing along with Mr. Sharma's application materials, a Licensing Hearing Report from Kim Murphy, Licensing Officer with the Authority. The Hearing Report contained the order of the Insurance Council as well as its findings of facts after it conducted a hearing. Mr. Ross Coté provided evidence of his background check of, and his interview with Mr. Sharma. Mr. Sharma gave evidence, which included providing a customer satisfaction report.

THE LAW

A Review of Conduct – Salesperson Licensing Regulation

3. I reviewed in detail the applicable law in *Re: Bruce Ironside* (May 27, 2011, File No. 11-025, Registrar of Motor Dealers). For ease, I will reproduce the relevant provisions and principles here. Reference can be made to the following Registrar decisions and the statutory and case law authority noted within each:

Re: Badshah (September 24, 2010, File No. 09-71010, Registrar of Motor Dealers)¹;

Re: Bassett (December 9, 2009, File No. 09-108822, Registrar of Motor Dealers);²

Re: Mafcan Motors Ltd. & Cheema (July 2, 2010, File 10-017 and 10-018, Registrar of Motor Dealers);³ and

Re: Parkwood Auto Sales Ltd. et al (August 6, 2010, File No.'s 07-70285A/07-70263A/08-70631A/08-70997A, Registrar of Motor Dealers)⁴.

4. In summary:

- (a) One purpose of licensing is to provide an opportunity to review a person and determine if the person poses a risk to the public interest if allowed to participate in the industry. This is accomplished by reviewing past conduct as a predictor of future conduct. The goal is to protect those who

¹ *Re: Badshah* <http://www.mvsabc.com/decisions/File%2009-71010Badshah-License-FinalDecisionSeptember24-2010.pdf>

² *Re: Bassett* <http://www.mvsabc.com/decisions/File09-108822%20HearingDecisionBrianBassettDecember22009.pdf>

³ *Mafcan & Cheema* <http://www.mvsabc.com/decisions/Mafcan-CheemaRegistrarsDecisionJuly22010.pdf>

⁴ *Parkwood et al* <http://www.mvsabc.com/decisions/ReParkwoodAutoSalesLtdetalAugust62010.pdf>

may interact with the applicant from potential future harm: *Parkwood* paragraphs 16-18 and *Re: Badshah* paragraphs 20-22. Therefore, accurate and timely information from an applicant is essential: *Re: Badshah* paragraphs 16-17.

- (b) A person's individual circumstances must be assessed and their desire to work in the industry considered against the public interest of protecting persons from future harm; with the public interest being the paramount concern: *Re: Bassett* paragraph 17 and *Re: Badshah* paragraph 22.
- (c) Conduct does not require evidence of deceit or even of willful blindness. It encompasses any act or omission or course of behaviour that affords reasonable grounds to believe the salesperson's conduct will not be carried out in accordance with law, honesty and integrity, or the person may not be transparent with his/her regulator as required by the law: *Re: Badshah* paragraph 17 and *Parkwood* paragraphs 10-15.
- (d) Further, the evidence may show that a person's conduct makes them ungovernable in that the regulator lacks the necessary assurance that the person will abide by the law or the lawful directions of its regulator, or will cooperate with a lawful investigation by its regulator: *Evans v. The Society of Notaries Public of British Columbia*, 2010 BCSC 1232 (B.C. Supreme Court).

5. Motor dealers, who interact with purchasing consumers through their sales staff, have certain declaratory requirements imposed on them under the *Motor Dealer Act* and its regulations. Sales staff can and do make some, if not all of those declarations/representations, to consumers. Also of importance is that the deceptive (misrepresentation) and unconscionable act or practice provisions of the *Business Practices and Consumer Protection Act* S.B.C. 2004 c. 2 are applicable to motor dealers and their sales staff, and the Registrar of Motor Dealers has the authority to administer and enforce those provisions within this industry: section 8.1 of the *Motor Dealer Act* and section 29 of the *Motor Dealer Act Regulation*.

6. A salesperson interacts with customers and tries to sell them a product – in this case a motor vehicle. Today, a motor vehicle is probably the second most expensive purchase for a consumer that can tie them financially to that asset for several years. For others, it will be the most expensive purchase in their lifetime. There is a significant amount of trust placed in a salesperson by the buying consumer to deliver them a good product. Consumers also look to a salesperson to provide them with accurate information about that product so the consumer may

make an informed decision. A licensee needs to demonstrate that they can be trusted within the motor vehicle sales industry as the cost of the potential harm to consumers and to the dealers is significant: *Re: Parkwood*.

7. In regards to falsifying information on a salesperson licence application, I noted the following in *Badshah* at paragraph 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.

The Decision of the Insurance Council of B.C.

8. Mr. Sharma did not present any new evidence to suggest the findings of fact by the Insurance Council were somehow incorrect. He simply reiterated what he said before the Insurance Council, that what happened was a mistake.

9. Where findings of fact by one adjudicative body are before another adjudicative body, those findings should be respected. This is so especially where the Insurance Council reviewed all the evidence (not before me), and examined the witnesses and tested Mr. Sharma's defense. Mr. Sharma also chose not to challenge that decision. I further note the burden of proof before the Insurance Council is the same as before me. For me to make different findings of fact on this past conduct would bring the administration of justice into disrepute.

10. I therefore must accept the findings of fact by the Insurance Council of B.C.

- *Toronto (City) v. C.U.P.E., Local 79* [2003] 3 S.C.R. 77 (Supreme Court of Canada).

DISCUSSION

Findings of Fact by the Insurance Council of BC

11. Mr. Sharma was licensed with the Insurance Council and employed as a “runner” who went from one car dealership to another in order to sell Autoplan insurance to those who had purchased a motor vehicle.

12. On one occasion, Mr. Sharma accepted about \$1344 in cash from one client (Client A). He then returned to his employer to remit his day’s proceeds and transaction paper work for processing. The \$1344 was not provided and Mr. Sharma initially said nothing about the missing funds. When confronted he made various excuses. Ultimately, he claimed that he had lost the \$1344 and provided an explanation that he left it behind at the dealership while he went to other dealerships to conduct transactions.

13. On a second occasion, he was at another dealership to sell Autoplan insurance to another couple (Clients B). The couple were recent immigrants and had never insured in B.C. before. They did not bring all the necessary documentation with them in order to finalize the insurance transaction. Mr. Sharma asked the couple for a \$100 deposit on the insurance transaction until it could be finalized. When the couple attended the office to finalize the transaction, they asked about their deposit and the insurance company was unaware of the deposit. They gave the couple the \$100.

14. The following excerpts from the Insurance Council of B.C.’s order⁵ and findings of fact of Mr. Sharma’s past conduct are pertinent to my consideration here:

... Council considered the Licensee’s submissions and found his evidence was not corroborated by the transactional documentation, the Agency’s records,

⁵ [http://www.insurancecouncilofbc.com/Downloads/Publications/Sanjay%20Ashok%20Sharma%20\(GEN\)%20%20-%2031Aug2010.pdf](http://www.insurancecouncilofbc.com/Downloads/Publications/Sanjay%20Ashok%20Sharma%20(GEN)%20%20-%2031Aug2010.pdf)

the witness accounts gathered during Council's investigation and the Licensee's actions after completing Client A's transaction. **Cumulatively, these factors led Council to question the Licensee's credibility and seriously undermined the reliability of his submissions.** As a result, Council did not accept the Licensee's characterization of how Transaction A was mishandled. **On a balance of probabilities, Council concluded the evidence demonstrated the Licensee had taken the cash collected for the purpose of a premium payment from Client A and used it for his own purpose.**

Council also determined the Licensee was less than forthcoming to the Agency [Mr. Sharma's employer] about the missing premium. When the Licensee remitted the documentation for batching, he did not disclose that the premium had been misplaced or lost. He then offered several excuses and delayed the matter until he eventually provided the Agency with a personal cheque. Council found the fact the Licensee's cheque was returned due to insufficient funds exacerbated the matter and further compromised Client A's interest.

... Council concluded the Licensee had taken the cash in Transaction B and used it for his own purpose.

Council also found the Licensee knowingly processed Transaction B without the required documentation. **Council also found the Licensee had improperly accepted a counter cheque to arrange for the financing of Transaction B and accepted the documentation without the wife's necessary identification.** The Licensee acknowledged this was inappropriate.

In the circumstances, Council concluded the Licensee had demonstrated a disregard for the requirements of processing insurance transactions, mishandled funds received from clients and provided misleading explanations to the Agency [Mr. Sharma's employer] and Council throughout the process. Council found that the Licensee's conduct was a direct consequence of placing his own interests ahead of the interests of his clients, his employer and ICBC. Council's concerns were compounded by the incompetent manner in which he handled Transaction B.

... The Licensee had used cash obtained from his clients for insurance payments for his own purpose ... Throughout the investigation and the meeting with the Committee the Licensee failed to demonstrate credibility and continued to offer misleading explanations for his actions. In light of this, Council determined that a fine in the amount of \$5,000 was appropriate in the circumstances ...

Council concluded the Licensee had failed to demonstrate trustworthiness, financial reliability, competence and an intention to carry on the business in good faith and in accordance with the usual practice ... In

Council's view, the matter necessitated a disposition that appropriately addressed the gravity of the Licensee's misconduct, the Committee's concerns regarding the Licensee's suitability and the risk he poses to the public....

15. Mr. Sharma was fined \$5,000, ordered to pay the Insurance Council's investigation costs and his insurance licence was cancelled for a minimum of two years. That order was effective August 31, 2010.

Mr. Sharma Falsifying his Salesperson Application

16. Mr. Sharma does not dispute he falsified his applications materials provided to the Registrar. He offers the explanation that he was embarrassed and knew if he declared this information, he probably would not be issued a licence.

DISCUSSION

17. Mr. Sharma seeks a licence as a salesperson. The exact role of a salesperson varies from dealer-to-dealer depending on whether they are a franchise dealer, used/independent car dealer, RV dealer or motorcycle dealer. Generally, the salesperson interacts with the consumer and provides information about the motor vehicle being purchased. The salesperson will be expected to make representations about vehicles and in many instances will make declarations about vehicles as mandated by legislation. They may even handle deposits. It is therefore important that a salesperson can be trusted to provide truthful representations and declarations, to properly handle consumer money, and the buying consumer is entitled to have assurances that this will be the case when they buy a motor vehicle from a motor dealer.

18. A salesperson is also licensed and regulated. Salespeople are expected to abide by the laws that govern them and to cooperate with their regulator. The regulator, the Registrar in this case, must have some reasonable assurance that a salesperson will abide by the law as well as the lawful directions of the Registrar. This requires open and honest communication and cooperation by a licensee with the Registrar. Mr. Sharma's transgressions while an insurance salesperson occurred with the clients of car dealerships, and is closely related to the licence he now seeks.

19. Overall, the Insurance Council found Mr. Sharma to have misappropriated his clients' money and to have misled his former employer and former regulator. He lacked sufficient credibility and trustworthiness to be licensed to sell insurance. When he applied for his vehicle salesperson licence, he misled the Registrar with false declarations on his application. It is clear that even a year after his insurance licence was cancelled, Mr. Sharma is still willing and capable of misleading his regulator. Mr. Sharma deprived the Registrar of pertinent facts so that the Registrar could assess whether he posed a risk to the public interest.

20. I have considered past decisions of the Registrar where applicants have falsified their applications, and also had past conduct of concern such as *Basset*, *Badshah*, and *Bruce Ironside* noted above. I find this case similar to *Bassett*, *Badshah* and *Bruce Ironside* in that the prior discipline occurred close in time with their falsifying application materials to the Registrar. They all deal with issues of breach of trust and the conversion of consumers' money to their own use, as with Mr. Sharma. They are distinguishable in the amount of money involved, the number of consumers affected and that those persons had criminal convictions; as opposed to a regulatory sanction. However, I am most concerned with the "past conduct" and not as concerned with the particular law or venue in which that past conduct was addressed.

21. At the hearing, I asked Mr. Sharma to provide me with evidence of what has occurred since the Insurance Council decision and what he felt I should know in order to properly assess his particular facts. He provided little information and maintained that what occurred while he was an insurance agent was an error. What he did provide was one customer satisfaction survey from one customer who appreciated the assistance Mr. Sharma provided, calling him a competent salesperson. The survey does not speak about trustworthiness vis-à-vis a regulator.

22. Overall, I believe it would not be in the public interest to grant a salesperson licence to Mr. Sharma. His transgressions, as found by the Insurance Council, were serious and involved converting consumers' money to his own use. Mr. Sharma's employer bore the cost of those transgressions until it can recoup those costs from

Mr. Sharma, which it has not fully been able to do. The transgressions are recent in nature. Importantly, Mr. Sharma misled his former employer and his then regulator; conduct which has continued when he attempted to mislead the Registrar by falsifying his application. It was only due to the background check conducted by the Authority's staff that Mr. Sharma's transgressions and discipline came to light.

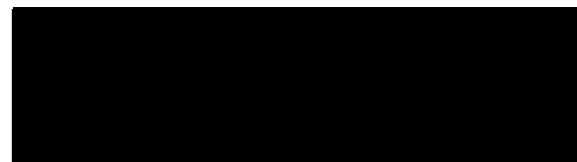
23. Given that Mr. Sharma has shown no signs of having changed his behaviour one year after losing his insurance licence, I believe it appropriate to refuse to accept an application for licensing as a salesperson from Mr. Sharma for a period of two years. This decision is made in order to protect the public interest, the Registrar's process and provide sufficient time and history to see whether Mr. Sharma will change his behaviour : *Pugliese v. Clark* 2008 BCCA 130 (BC Court of Appeal). Two years reflects the seriousness of the recent transgressions, the falsification by Mr. Sharma on his application, and importantly, his ongoing willingness to mislead his regulator and potential regulator. This is consistent with the past decisions of the Registrar noted above. Whether Mr. Sharma would be granted a licence in the future will depend on the circumstances that exist at any future date.

DISPOSITION

24. Mr. Sharma is refused a salespersons licence.

25. Mr. Sharma may not apply for a salesperson licence for a period of two years – being October 26, 2013.

Date: October 25, 2011



Ian Christman LL.B.