



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:

ALIREZA ZOLNASR
(Salesperson Licence # 102013)

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 Alireza Zolnasr In person

Date and Place of Hearing: July 12, 2012, at Surrey, British Columbia

Introduction

1. This hearing was to review the application of Alireza Zolnasr seeking reinstatement of his salesperson licence #102013, 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. Zolnasr's guilty plea of fraud over \$5,000 in relation to 10 vehicle transactions involving his former employer, The Dick Irwin Auto Group Ltd. dba Pacific Honda: *R. v. Zolnasr* 2011 BCSC 1754 (BC Supreme Court).

2. As described by the BC Supreme Court, Mr. Zolnasr traded various vehicles while not reporting them on the books of Pacific Honda. In order to try and cover the costs of these sales, Mr. Zolnasr then attempted to run a used car dealership on

the side to repay the losses he concealed from Pacific Honda. That venture failed and he ended up in bankruptcy: *Bankruptcy of Zolnasr* 2010 BCSC 1805 (BC Supreme Court).

The Charge

3. Mr. Zolnasr pled guilty to fraud over \$5,000 contrary to section 380(1)(a) of the *Criminal Code*. Mr. Justice Willcock set out the basic facts of the offence at paragraphs 9-12 of his reasons for sentencing:

[9] In 2006, according to the Crown, a customer of Pacific Honda reported fraudulent activity, leading to an audit. According to the account given by the accused to Dr. Smith, that occurred when the police seized unplatd cars that ought to have been in the Pacific Honda inventory, but were not, and alerted Pacific Honda, leading to wider inquiries.

[10] When those inquiries were conducted, Pacific Honda uncovered the ten specific transactions leading to the charge described in the indictment. They involved either the sale of vehicles by Mr. Zolnasr to third parties without documenting the sale on the Pacific Honda records and falsely attributing the money received to other prior transactions, or the false representation that vehicles had been purchased by Pacific Honda that did not come into inventory.

[11] All of the transactions in question occurred between January and April 2006. The total loss suffered by Pacific Honda, measured as the value of the shortfall in inventory as a result of the identified transactions, was \$258,726.

[12] Each transaction required the preparation of numerous false documents, some deception, and considerable planning.

4. Mr. Irwin was present at the hearing and gave evidence. He stated that there were actually 27 transactions involved, but the Crown proceeded with only 10 which were the easiest transactions to explain to the Court. All totaled, Mr. Irwin advised the police that the potential loss was about \$719,010.50: Exhibit 3 at the Hearing. Mr. Irwin noted that he was out a further \$260,000 in legal fees. He has been taken to civil court by the various other dealers with whom Mr. Zolnasr made his agreements.

5. Mr. Zolnasr did not deny any of these facts.

6. On November 18, 2011, Mr. Justice Willcock sentenced Mr. Zolnasr to 12 months incarceration. He also ordered Mr. Zolnasr to pay restitution of \$77,000 to the Dick Irwin Group Ltd. Prior to the sentencing hearing Mr. Zolnasr had already

paid \$30,000 (total of \$107,000). Mr. Zolnasr was released on parole March 23, 2012 and will remain on parole until November of this year. Mr. Zolnasr has not made any payments towards the \$77,000 as of the hearing date. I am advised he has yet to work steady in order to make payments.

The Application

7. Mr. Zolnasr's licence as a salesperson had lapsed while he was incarcerated. He applied to have his licence reinstated on May 9, 2012. Mr. Zolnasr initially agreed to a quick hearing date which was set for May 17, 2012. He later changed his mind and this matter was heard July 12.

8. Ms. Murphy, Licensing Officer, provided evidence of Mr. Zolnasr's licensing history with the Authority. Apart from one late renewal and a consumer complaint that was eventually resolved, Mr. Zolnasr has not been troublesome when he was licensed.

9. Mr. Coté gave evidence that Mr. Zolnasr did not live up to an agreement with the Authority when he was placed in the position of manager of Best Import. A few years ago, the Authority had some issues with Best Import being run by the owner's son. An agreement was made with the owner of Best Import that the dealership could continue to operate with new management in place who was acceptable to the Authority. Mr. Zolnasr was accepted in that role. I am advised that it was made clear to Mr. Zolnasr that he was to immediately report if the son returned to the dealership. Mr. Coté says he observed the owner's son at the dealership on a few occasions and he had evidence that the son continued to direct the dealership operations. When he confronted Mr. Zolnasr with this, Mr. Coté says nothing seemed to happen.

Mr. Zolnasr's position

10. Mr. Zolnasr did not contest the main facts.

11. He noted that when he was advised by Mr. Coté about the son returning to Best Imports, he spoke with the owner and that stopped occurring. Mr. Zolnasr

stated he did not believe the son was trying to run Best Import until about 2008 and he advised the Authority when that occurred. He said he followed the advice of Compliance Officer Larry Barteski to speak firmly with the owner of Best Import. Mr. Zolnasr said this worked and the son stopped.

12. He is remorseful for what occurred. He stated his parole officer was not initially agreeable to Mr. Zolnasr returning to car sales, but changed his mind. It would allow Mr. Zolnasr to earn more money and start paying his restitution. Mr. Zolnasr stated he started wholesaling cars (no licence required), but it was not enough to support his family including an elderly mother. He said his wife has had to start working full time. Mr. Zolnasr says he tried applying for other jobs such as selling insurance or property management. He advises he was told he'd be denied a licence for such occupations due to his recent criminal record.

13. Mr. Zolnasr is currently under the care of a doctor. The reasons for this do not need to be detailed here. I have considered this fact.

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 or be granted a licence. Quite basically, past conduct is used as a predictor of future conduct.

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

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.)).

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

16. When 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]

17. 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 principal is consistent with administrative law principals in reviewing 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

18. 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 protect persons 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);

19. 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] ...

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).

20. 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); *Re: Badshaw* (September 24, 2010: File 09-71010) and *Re: Brian Stephen Bassett* (December 2, 2009: File 09-108822)¹.

DISCUSSION

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

21. On May 25, 2011, Mr. Zolnasr pled guilty to a charge of fraud over \$5,000 under section 380(1)(a) of the *Criminal Code* of Canada. These were in the course of his employment at Pacific Honda and involved other motor dealers. Mr. Zolnasr was able to accomplish these frauds by virtue of his position as sales manager at Pacific Honda. The position of sales manager requires a salesperson licence and a person in this position makes significant decisions, which are binding on his employer.

22. Mr. Zolnasr was recently sentenced on November 18, 2011, and remains on parole until November of 2012. The conviction is close in time to the application.

23. The public interest is clearly engaged.

24. Deceit, fraud and breach of trust are serious concerns for a regulator. Mr. Irwin noted that he believes Mr. Zolnasr should be given a second chance, but he would not rehire him because of the damage these events have caused at the dealership. The inference was no one would trust Mr. Zolnasr at Pacific Honda.

25. Mr. Zolnasr's criminal conviction is related to his application for reinstatement of his salesperson's licence: *Woodward Stores (British Columbia) Ltd.*

¹ All of these decisions are available for review at: <http://www.mvsabc.com/industry/compliance-decisions>

(ii) The Public Interest

26. 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 or applicant indicates that there is a potential for future harm.

27. On a balance of probabilities, I am satisfied from the evidence that Mr. Zolnars poses a risk to the public interest and a risk of future harm. Mr. Zolnars has very recently been released from jail. There is very little history to gauge whether he has truly rehabilitated himself. The convictions of fraud and the substantial amount of that fraud are also of concern to the public interest. Again, I am also mindful that it was a customer who discovered the fraud resulting in the investigation and criminal conviction.

28. Based on the evidence the potential for harm is significant. Pacific Honda is out a considerable amount of money. If Mr. Zolnars's scheme was not discovered, there is no guarantee he would have stopped.

29. A licensed 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.

30. The public would expect that a person convicted of fraud would have rehabilitated themselves before being placed into the position of trust that a licensed salesperson holds. Mr. Zolnars has just recently been released and there is simply not enough history to say he is rehabilitated and to be trusted.

31. I note his failure to advise the Authority in a timely fashion of the return of the owner's son of Best Import. This is a minor point in contrast to the criminal conviction.

32. From the evidence, a pattern appears to emerge that Mr. Zolnasr only acted to correct his inappropriate behaviour only once he was caught, confronted or went bankrupt.

33. In the sentencing decision of Justice Willcock it is noted at paragraphs 58-59:

[58] I must consider whether there are extreme mitigating personal factors such as to warrant a conditional sentence. Mr. Zolnasr lost his job, but has only briefly been out of work as a result of the investigation, the charges, and his conviction. He has continued to work in the same industry, doing a similar job. He has not sought the treatment recommended by the psychiatrist. He does not appear to have committed the crime under the influence of illness, disability or addiction. He was motivated by a desire to appear to be successful; in other words on economic motive. While he has been humiliated at home and become depressed by the impact of his actions on his self-respect and the loss of his position as a sales manager, he has not been prohibited from employment by professional associations. He has not suffered extreme public humiliation and embarrassment. In fact, he has not obtained references with a view toward concealing his offences from colleagues and associates, although there has been some recent publication of these proceedings.

[59] He and his family will certainly suffer hardship if jail is imposed, but there is another breadwinner in the family.

34. I asked Mr. Zolnasr if he is seeking any counseling and he said no. His desire to move from wholesaling cars to retailing was to increase his earnings. It was noted at the time of sentencing that Mr. Zolnasr was profiting about \$1,000 per car and selling about 5-6 cars per month: *R v. Zolnasr* at paragraph 15. Mr. Zolnasr seems to be capable of making an O.K. living from the wholesaling² of cars. This business activity does not need a license as a salesperson or registration as a motor dealer. While Mr. Zolnasr did have to sell his home, his family was able to purchase a townhome from his wife's proceeds of sale: *R v. Zolnasr* at paragraph 23.

35. Based on the forgoing, I find that it is in the public interest to refuse to issue a licence to Mr. Zolnasr. I do not find his need to be a licensed salesperson outweighs the public interest engaged in these circumstances. Mr. Zolnasr can make a living in concert with his wife without a salespersons licence. I have considered the public interest in having Mr. Zolnasr pay his restitution to Pacific Honda. I am

² Business-to-business transactions

not satisfied that granting Mr. Zolnasr a salesperson licence is the only way to accomplish that goal.

(v) Re-Applying for a Licence

36. I have found that the public interest requires some time to pass in order to see whether or not Mr. Zolnasr has rehabilitated himself. Mr. Zolnasr needs to earn back the trust that has been lost. This can only be accomplished with time and a review of Mr. Zolnasr's conduct in the many months to come.

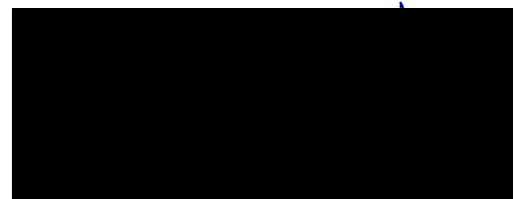
37. In all, I believe a waiting period of 24 months from the date of this decision would be appropriate before the Authority would consider an application from Mr. Zolnasr. This is markedly reduced than the wait period imposed in the *Re: Badshaw* and *Re: Bassett* cases. This reduction reflects Mr. Zolnasr's remorsefulness, his candour once caught, and his attempt to pay restitution prior to the sentencing decision. This waiting period is put in place to protect the public interest as well as the Registrar's process: *Pugliese*. Mr. Zolnasr may re-apply for licensing as a salesperson after August 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. There must be a Registrar's hearing to review any such application.

SUMMARY

38. I hereby refuse to issue a salesperson licence for Alireza Zolnasr.

39. An application for licensing as a salesperson will not be accepted by the Authority from Mr. Zolnasr until after August 1, 2014.

Date: August 1, 2012.



Ian Christman J.D.
Registrar of Motor Dealers