



MOTOR VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA

**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:

**STANLEY STEVEN ROSS
(Licence # 115288)**

Salesperson

DECISION OF THE REGISTRAR OF MOTOR DEALERS

APPEARANCES

For the Authority: Hong Wong, Manager of Licensing
Tara Klassen, Licensing Officer
Jas Virk, Compliance Officer

For Stanley Ross: In person

Date and Place of Hearing: December 4, 2013, at Surrey, British Columbia

INTRODUCTION

[1] A hearing was called to review the salesperson licence of Stanley Ross, number 115288. The staff of the Motor Vehicle Sales Authority (the "Authority") raise the following two concerns:

- (a) Mr. Ross was previously sanctioned by the B.C. Securities Commission in 1999 and 2007; and
- (b) Mr. Ross provided false or incomplete declarations on his initial salesperson application and three subsequent licence renewal applications by failing to advise of the noted sanctions.

[2] At the conclusion of the hearing I reserved my decision to provide a written decision. I noted at the hearing that I was not, at that time, prepared to order the suspension or cancelation of Mr. Ross's licence. To be clear, my statement was regarding any interim order pending this written and final decision.

[3] For the reasons that follow, I am canceling Stanley Ross's salesperson licence number 115288.

BASIC FACTS

(a) 1999 B.C. Securities Commission Order

[4] On July 19, 1999, Mr. Ross and the B.C. Securities Commission entered into a consent order which essentially banned Mr. Ross from trading and investor relations for a period of seven years. The conduct of concern involved various breaches which were noted in the Agreed Statement of Facts and Undertaking. To briefly paraphrase, Mr. Ross:

- (a) traded in securities when he ought to have known of a material fact not generally disclosed to the general public;
- (b) exercised discretion over a client's account without the client's approval; and
- (c) knew an account opened by a friend used false names to hide the true identity of the clients and Mr. Ross made trades using those accounts and received a benefit in doing so.

[5] The 1999 consent order also required Mr. Ross to disgorge any profits earned from these accounts and to pay a fine and costs totaling over \$200,000.

(b) 2007 B.C. Securities Commission Order

[6] On March 9, 2007, Mr. Ross and the B.C. Securities Commission entered into a Consent Order with an Agreed Statement of Facts cited at 2007 BCSECOM 113 and 2007 BCSECOM 114 respectively. At that time Mr. Ross received a further seven year ban on trading and in engaging in investor relations which is set to expire in March of 2014. Briefly, the Agreed Statement of Facts notes the following:

- (a) Mr. Ross was registered under the *Securities Act* to trade securities in B.C. from 1984 to 1997 (15 years);
- (b) Between 2004 and 2007, Mr. Ross traded in securities contrary to the 1999 Order and while not registered to do so, in his own name, in his company, Fortune Capital Management Inc., name through a securities dealer in Ontario, and through the account of a third party, contrary to the *Securities Act* of B.C.

[7] Mr. Ross received his further seven year ban at this time and was ordered to pay costs to the B.C. Securities Commission of \$50,000.

[8] Mr. Hong Wong, Manager of Licensing, spoke with David Inglis at the B.C. Securities Commission who confirmed Mr. Ross had paid all his fines.

(c) Salesperson Licence Application and Renewals

[9] Mr. Ross applied for and received a salesperson licence effective March 15, 2010. In his application materials, Mr. Ross declared he had not been granted any registration or certificate of any kind in a regulated industry, e.g. real estate, in any jurisdiction. Mr. Ross also declared that he had never had a licence suspended or revoked in another regulated industry anywhere in Canada or elsewhere.

[10] Each year a salesperson licence must be renewed. Mr. Ross diligently renewed his licence on time each year. Salespersons are to renew their declarations regarding whether they have had any criminal or offence convictions or any licence in another regulated industry suspended or revoked. In each of the 2011, 2012 and 2013 renewals, Mr. Ross declared no.

(d) Current position at the Dealership

[11] Mr. Ross advises he basically runs the dealership on behalf of the owner and deals with all matters during the sale of a motor vehicle including arranging financing.

AUTHORITY'S POSITION

[12] The Authority is concerned about the nature of Mr. Ross's initial 1999 ban and the subsequent 2007 ban for breaching the B.C. Securities Commission's first order. The Authority is also concerned that Mr. Ross falsified information on his application and three subsequent renewal applications.

MR. ROSS'S POSITION

[13] Mr. Ross states he did not deliberately falsify information on his initial application, but he failed to read the questions clearly and answer them properly. Mr. Ross noted his wife at that time was going through health issues when he applied and he was probably not thinking clearly. As for the three subsequent renewals, Mr. Ross said he simply answered them the same as he did the first application.

[14] Regarding the 1999 B.C. Securities Commission ban, Mr. Ross stated he went with the advice of his lawyer and accepted the consent order. He was advised that it would cost some \$200,000 in legal fees to fight the allegation and it would be quicker and easier to just accept the ban and the about \$200,000 in penalties and disgorging of profits.

[15] Regarding the 2007 B.C. Securities Commission ban, Mr. Ross stated the allegations were false. He said that it was a friend who was a firefighter who was actually doing the trading and Mr. Ross was all set to prove that to the B.C. Securities Commission. Mr. Ross stated the B.C. Securities Commission threatened the friend in order that he would provide evidence against Mr. Ross. Mr. Ross said he would have brought his friend to the hearing before me, but did not think it

would make a difference. Mr. Ross also said he accepted the consent order because he had decided not to work in that industry any further.

[16] Mr. Ross stated that in retrospect he should have had his lawyer fight the allegations in both instances.

[17] Mr. Ross provided evidence of his community involvement and various memberships. He noted that none of the allegations related to misconduct involving consumers or clients. The Authority had provided Mr. Ross with two prior Registrar decisions. Mr. Ross distinguished his case from both of those, which involved salespersons with criminal convictions for fraud or other breaches of the law involving the BC *Securities Act* and action taken by the BC Securities Commission. In both those cases, the two salespersons had also failed to declare their prior criminal convictions or regulatory action taken against them: *Registrar v. Basset* (December 2, 2009, File 09-108822); and *Registrar v. Badshah* (September 24, 2010, File 09-71010).

THE LAW

[18] Section 6 of the *Salesperson Licensing Regulation* B.C. Reg. 241/2004 states:

6 If the conduct of an applicant or licensee is, in the opinion of the authority, such that it would not be in the public interest for the applicant or licensee to be licensed or continue to be licensed, the authority may

(a) refuse to issue the licence, or

(b) if a person is licensed,

(i) cancel the licence, or

(ii) suspend the licence for a period of time and subject to conditions the authority considers necessary.

[19] I have noted in past decisions the important position of trust that a licensed salesperson holds. Consumers trust the salesperson to provide them truthful information about their purchases; to keep their personal, financial and private information confidential; and to be safe when alone with a salesperson, especially if on a test drive. A salesperson licence is portable in that a salesperson can sell vehicles, be in the business office arranging financing or move into a management position. A motor vehicle purchase is probably the second most expensive purchase made by individuals and the most expensive for some. A Class 'A' motorhome can be in the \$100,000's.

[20] From past decisions of the Registrar, the reviewable conduct of a salesperson is not viewed as an exhaustive list, but generally:

- (a) ...encompasses any act or omission or course of behaviour that affords reasonable grounds to believe that the business [or person] will not be carried on in accordance with law, honesty and integrity: *Re: Badshah* (Registrar's Decision, File 09-71010, September 24, 2010) at paragraph 20 citing *Prestige Toys Ltd. V. Ontario (Registrar, Motor Vehicle Dealers Act)* 2009 CarswellOnt 4743 (Ont. Superior Court of Justice).
- (b) behaviour indicating a lack of transparency or candour on the part of the salesperson in their interaction with the Authority: *Re: Badshah*;
- (c) behaviour indicating the salesperson is or will be ungovernable, meaning they will not abide by lawful orders of the Registrar or the Authority: *Registrar v. Peter Fryer* (December 13, 2013, File 13-11-005) at paragraph 11, citing *Evans v. Society of Notaries Public (British Columbia)* 2010 BCSC 1232 (Supreme Court);
- (d) behaviour of concern to the public's safety: *Registrar v. Peter Fryer* at paragraph 9; and *Re: Bruce Ironside* (BC Registrar of Motor Dealers, File 11-025, May 27, 2011) at paragraph 8;
- (e) behaviour of concern to consumer's personal, financial and otherwise confidential information: *Registrar v. Peter Fryer* at paragraph 10; and *Re: Basset* (Registrar of Motor Dealers, December 2, 2009, File 09-108822) at paragraph 22; and
- (f) behaviour of concern indicating an inability to trust the salesperson: *Re: Basset* at paragraph 22.

[21] I am mindful that in reviewing a salesperson's past conduct, I must consider their individual circumstances and factors including, but not limited to: the length of time that has transpired since the conduct of concern; any evidence of rehabilitation by the salesperson; what the salesperson did to correct any harm from the conduct; the relationship of the conduct to the salesperson licence; and any evidence presented on the salesperson's character: *Maple Lodge Farms v. Canada* [1982] 2 S.C.R. 2 (Supreme Court of Canada) and see *Registrar v. Peter Fryer*; *Re: Badshah*; *Re: Basset*; and *Re: Bruce Ironside*.

[22] Mr. Ross provided explanations and some oral evidence that the B.C. Securities Commission Orders were made based on inaccurate or otherwise false accusations. He specifically stated the 2007 Order and Agreed to Statement of Facts were obtained by the BC Securities Commission coercing the testimony of a witness. Mr. Ross's evidence is that he received legal advice when he entered into the 1999 Consent Order. Both the 1999 and 2007 Orders were made by consent. Mr. Ross never appealed those orders or otherwise sought them being set aside.

[23] I cannot sit in appeal of those two Orders. Further, for me to make findings of fact inconsistent with the two Orders, and their Agreed Statement of Facts, requires Mr. Ross to provide sufficient evidence to suggest that relying on the Orders as statements of the true facts, would bring the administration of justice into disrepute: *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 (Supreme Court of Canada). Mr. Ross has not met that evidentiary burden and I accept the Agreed Statement of Facts in the 1999 and 2007 B.C. Securities Commissions Orders as being true.

DISCUSSION

(a) Prior Action by the B.C. Securities Commission

[24] I find the 1999 and the 2007 Orders from the B.C. Securities Commission are related to a salespersons licence. Those Orders and the Agreed Statements of Fact indicate Mr. Ross took advantage of his position for his own gain and in breach of rules that governed his conduct. Mr. Ross used his position of trust to access client accounts without their authorization, contrary to Mr. Ross's evidence. They indicate he knowingly used accounts with falsified names. The 2007 Order was made because Mr. Ross failed to abide by the 1999 Order.

[25] The combination of this conduct impacts Mr. Ross's trustworthiness. It indicates Mr. Ross may take advantage of his position of trust as a salesperson for his own benefit. His failure to abide by the 1999 Order indicates he is willing to disobey lawful orders of a regulator. It also suggests that Mr. Ross may not be governable and may pose a risk to the financial and personal information entrusted to him by consumers. The culmination of this conduct is that Mr. Ross poses a risk to the public interest in that he will not act with honesty, integrity and in accordance with the law.

[26] I also note Mr. Ross's ban by the B.C. Securities Commission is in place until March of 2014. I note this as a measure of the seriousness the B.C. Securities Commission placed on Mr. Ross's past conduct.

[27] Had Mr. Ross been forthright and contrite about the two Orders in his original 2010 application, I still would have been concerned about granting him a licence for the reasons stated here. I certainly would, at a minimum, have placed conditions on any licence, if it had been granted; that he is to be supervised at all times and may not deal with consumer financial information for a period of time.

[28] However, while Mr. Ross is noted as cooperating with the B.C. Securities Commission and has paid his fines, he still minimizes his culpability. His evidence at the hearing was that he consented to the 1999 Order to save money on legal fees and not because he was sorry nor did anything wrong. His evidence at the hearing regarding the 2007 Order is that they were false accusations and substantiated from evidence obtained from a friend through coercion by the B.C. Securities

Commission. He also stated he was investigated because of a complaint brought by an ex-wife during their divorce proceedings. At the hearing, Mr. Ross did not accept any culpability on his part or show remorse for the conduct giving rise to the 1999 and 2007 Orders.

[29] Paying the fines and the passage of time are not sufficient indicators that Mr. Ross has accepted his responsibility and taken steps to rehabilitate himself and show he is not a risk to the public interest.

[30] For the above reasons alone, I would not have granted him a licence in 2010.

(b) False declarations

[31] Mr. Ross states his failure to make proper declarations was an oversight because he was distracted at the time and did not read the application closely. I do not accept this evidence.

[32] Mr. Ross was a registrant under the BC *Securities Act* for 15 years. He understood what being a regulated person meant and the oversight on him. He would have had to make similar declarations when he applied for registration under that Act.

[33] Mr. Ross worked for 15 plus years (registered and unregistered) in the securities industry. This is a heavily regulated industry where providing clear declarations and information, such as on a prospectus, are paramount. Details are of high importance when choosing or recommending a security to a client. Mr. Ross worked in an industry where attention to detail and the fine print were crucial.

[34] Even if Mr. Ross was distracted when he made the initial declaration in 2010, he failed to make the proper declarations in 2011, 2012 and the March 2013 renewal applications.

[35] I also note Mr. Ross's evidence at the hearing was that he had not advised his employer that he was called to a hearing. While not determinative, this indicates a willingness to hide information that may not put Mr. Ross in the best light.

[36] I find on the evidence that Mr. Ross knew he had to declare his dealings with the B.C. Securities Commission in 1999 and 2007 and purposively withheld that information from the Authority on at least four separate occasions. The last time was in March of 2013. Mr. Ross deprived the Authority and the Registrar of important information necessary to carry out their regulatory duties – review Mr. Ross's suitability for a salesperson licence. This is grounds enough to cancel Mr. Ross's salesperson licence as it shows a willingness to hide the truth and falsify information to his regulator.

(c) Future applications

[37] I have considered whether I should refuse to accept any future application from Mr. Ross. The facts under which the two Orders were made are serious. Mr. Ross's continuing falsification of information on his renewals, and failure to accept his culpability in 1999 and 2007 indicates he has not rehabilitated himself. Before accepting an application for a salesperson licence, Mr. Ross needs to demonstrate that he rehabilitated himself and can be trusted to interact with the public without posing a risk to the public interest. This requires some time to elapse.

[38] I have considered other Registrar orders and note that the most serious cases received life-time bans such as in *Registrar v. Peter Fryer*, and that more serious cases involving criminal convictions for fraud received around a three year ban: *Re: Badshah*. Mr. Ross has never had a substantiated consumer complaint, although one was recently received by the Authority, but is as yet unproven and I place no wait on the consumer allegations. Overall, I would not accept a salesperson application from Mr. Ross for a period of two years from the date of this decision: *Pugliese v. Clark (Registrar of Mortgage Brokers, British Columbia)* 2008 BCCA 130 (Court of Appeal).

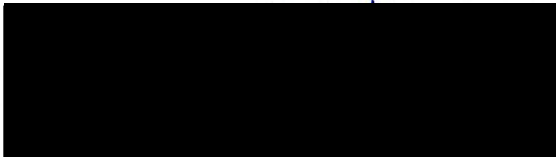
[39] Whether or not Mr. Ross will be granted a salesperson licence in the future will depend on the facts that exist at that future date.

CONCLUSION

[40] Mr. Stanley Ross's salesperson licence 115288 is canceled effective immediately. He may not reapply for two years.

[41] If there is disagreement with this decision, it may be challenged by way of judicial review before the BC Supreme Court under the *Judicial Review Procedures Act*.

Date: December 23, 2013



Ian Christman J.D., Registrar