



Hearing File No. 14-03-002
Neutral Citation: 2014 BCRMD 011

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:

**LLOYD CLEMENT SCHELL
(Proposed Licence # 201339)**

Applicant

DECISION OF THE REGISTRAR OF MOTOR DEALERS

APPEARANCES

For the Authority: Hong Wong, Manager of Licensing
 Jaydon Rush, Licensing Officer
 Ross Cote, Compliance Officer

For Lloyd Clement Schell: In person

Date and Place of Hearing: April 16, 2014, at Surrey, British Columbia

INTRODUCTION

[1] A hearing was called to review the salesperson licence application of Lloyd Clement Schell, proposed licence # 201339. The staff of the Motor Vehicle Sales Authority (the "Authority") raise the following concerns:

- (a) Mr. Schell is the subject of a 15 year direct sales ban issued December 5, 2013, by Consumer Protection B.C. for breaching provisions of the *Business Practices and Consumer Protection Act* S.B.C. 2004 c. 2 (BPCPA);
- (b) Mr. Schell was the subject of a 5 year direct sales ban issued December 9, 2005, by the Business Practices and Consumer Protection Authority (now Consumer Protection B.C.) for breaching provisions of the BPCPA; and
- (c) Mr. Schell conducted direct sales in Alberta from about 2005 until 2010 while not licensed to do so.

[2] At the conclusion of the hearing I reserved my decision to provide this written decision.

BASIC FACTS

[3] Mr. Schell did not contest the facts contained in the material entered into evidence at the hearing. Mr. Schell also admitted to having received those materials prior to the hearing. Entered as exhibits were:

- (a) Hearing Notice to Mr. Schell setting out the allegations and enclosing the evidence to be presented at this hearing;
- (b) Licensing Hearing Report of Licensing Officer Jaydon Rush with attachments;
- (c) Compliance Report of Compliance Officer Ross Cote with attachments; and
- (d) A Registrar's Decision dated May 27, 2011 *Re: Bruce George Ironside*, File # 09-71010.

(1) The 2013 Direct Sales Prohibition Order

[4] On December 5, 2013, Adjudicator Shahid Noorani, acting as the Director, issued the Direct Sales Prohibition Order against Mr. Schell and also provided his written reasons. Adjudicator Norrani's findings of fact leading to the Prohibition Order can be summarized as follows:

- (a) Mr. Schell was found to have committed deceptive acts or practices contrary to section 5 of the BPCPA by misleading two elderly consumers to believe their residential drinking water was "dirty" causing them to enter into a contract with Mr. Schell for filtration services;
- (b) Mr. Schell made representations that he had an affiliation or status he did not have, the effect of which could mislead the consumers;
- (c) Mr. Schell failed to include in his direct sales contracts information required by the BPCPA and failed to clearly and properly advise consumers of their right of cancellation of a direct sales contract as required by that Act;
- (d) Mr. Schell was the subject of a Direct Sales Prohibition Order in 2005, for breaches of the BPCPA (discussed more fully below). There was also evidence that Mr. Schell did not abide by that Order; and

- (e) Mr. Schell had entered into an Assurance of Voluntary Compliance with the consumer protection office of the Ministry of Public Safety and Solicitor General in 2002 for similar misconduct.

[5] Based on the findings of fact and Mr. Schell's past history of non-compliance, adjudicator Noorani ordered a 15 year direct sales ban against Mr. Schell. Adjudicator Noorani also issued a Compliance Order requiring Mr. Schell to provide the consumers with restitution and reimburse certain expenses of Consumer Protection B.C.

[6] At the hearing before me, Mr. Schell stated he had not been able to make any payments to the consumers. His explanation for the misconduct was that he experienced financial difficulty around 2005 leading to poor money management decisions. He initially stated he had no consumer issues until 2005. I then asked about the 2002 Assurance of Voluntary Compliance and he then corrected himself indicating it was about 2002 when his financial issues started developing.

(2) The 2005 Direct Sales Prohibition Order

[7] On December 9, 2005, Director Gary Spence of the BPCP Authority issued a 5 year Direct Sales Prohibition Order against Mr. Schell and his companies. That order found Mr. Schell and or his companies, among other things:

- (a) Used misleading telemarketing tactics to allow salespersons entry into consumer homes;
- (b) Salespersons used undue pressure and remained in consumer homes for several hours;
- (c) Consumers felt distressed and frustrated in not being able to protect their interests;
- (d) Prices charged for vacuums and trade-ins were grossly exaggerated and inflated to make it look like the consumers were receiving a significant discount, contrary to the fact;
- (e) Information required by law to be on a direct sales contract was often missing;
- (f) Salespersons continued to apply pressure on seniors even though they declined a sale or advised they could not afford a vacuum; and
- (g) Salespersons took trade-in vacuums and promised to forward proceeds of sale, but did not.

[8] The 2005 Prohibition Order was clear that Mr. Schell and his companies committed deceptive and unconscionable acts or practices contrary to the BPCPA, necessitating the Order. I note these provisions of the BPCPA are administered by the Registrar in the auto sales industry.

[9] Ken Garley is an Enforcement Inspector with Consumer Protection B.C. He wrote a Report to the Director dated July 3, 2013, which was considered by Adjudicator Noorani in his December 5, 2013, decision to issue the 15 year Direct Sales Prohibition Order. Mr. Garley notes that there was evidence that Mr. Schell was not abiding by the 2005 Direct Prohibition Order. To highlight:

- (a) Soon after the Order was made, eight complaints were received of high pressure sales involving elderly consumers;
- (b) An interview of Mr. Schell by an Enforcement Inspector and an RCMP constable showed Mr. Schell was aware of the Prohibition Order but said he was not going to abide by it;
- (c) The BPCP Authority issued a press release in 2006 warning the public about Mr. Schell's practices;
- (d) In February 2010, the RCMP issued a press release warning consumers that Mr. Schell appeared to be selling in the Smithers area; and
- (e) The BPCP Authority filed the Prohibition Order in the BC Supreme Court in order to enforce it as a court order.

[10] I would note that at the hearing Mr. Schell stated he knew he could not sell in B.C. after the 2005 Prohibition Order was issued and went to Alberta to sell in that province. It appears Mr. Schell continued to sell in B.C. contrary to his evidence before me.

(3) Direct Sales in Alberta while unlicensed

[11] Mr. Schell says he was not aware he could not conduct direct sales in Alberta without a licence until he was advised by the Alberta authorities some four years after he started doing so. Mr. Schell stated he asked the City of Hinton when he applied for a business licence if he needed a direct sellers licence and they said they did not think so. Also during the hearing Mr. Schell stated his belief was that a direct seller's licence was not necessary for rural parts of Alberta. Mr. Schell stated he stopped selling as soon as he learned he needed to be licensed in Alberta.

[12] Mr. Garley's report indicates Mr. Schell was found running the same water filtration business in Alberta as he did in B.C., which led Adjudicator Noorani to issue the 2013 Prohibition Order. Mr. Schell was apparently charged in Alberta, but no record was found in his criminal background check by the staff of the Motor Vehicle Sales Authority.

(4) Assurance of Voluntary Compliance Agreement of 2002

[13] In 2002, Mr. Schell entered into an agreement with the Ministry of Public Safety and Solicitor's General office which at that time was responsible for the

consumer protection legislation in B.C. In that Assurance of Voluntary Compliance agreement, Mr. Schell agreed to:

- (a) Cease subjecting consumers to undue pressure to purchase expensive vacuum cleaners;
- (b) Cease taking advantage of elderly consumers by reason of their age, infirmity or inability to fully understand or appreciate the nature of the transaction;
- (c) Cease refusing to provide refunds when consumers exercised their statutory right to a refund; and
- (d) Cease representing to consumers that a price benefit or advantage exists on vacuum cleaners and accessories when it does not.

[14] It appears he did not abide by this Agreement necessitating the 2005 Direct Sales Prohibition Order.

(5) Acting as a salesperson while unlicensed

[15] Mr. Schell admitted to working as a salesperson for eight days in January of this year at Maple Ridge Chrysler before being let go. He then stated he worked at Murray GM for a few days in or around February before he was also let go. Mr. Schell then went to a school that provided training to sell vehicles and there learned of his need to be licensed. He applied to the Authority in March of 2014. The evidence from Licensing Officer Jaydon Rush was that Mr. Schell made all the necessary declarations including his issues with Consumer Protection B.C. on his application materials. Mr. Rush stated it did not appear that Mr. Schell hid any facts from the VSA. I do not find it necessary to consider these few days of unlicensed activity as I cannot ascertain on the presented evidence whether or not Mr. Schell worked knowing he had to be licensed.

THE LAW

[16] 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

[17] Section 8.1 of the *Motor Dealer Act* and section 29 of the *Motor Dealer Act Regulation* empower the Registrar to administer certain provisions of the BPCPA to the motor dealer industry, including salespeople. Those provisions include the deceptive and unconscionable act or practice provisions that Mr. Schell has been

found on numerous occasions to have breached. Within the motor dealer sales industry, the BC Legislature has deemed even one breach of the deceptive or unconscionable act or practice provisions of the BPCPA as "*grounds for the registrar or director, as the case may be, to determine that it is not in the public interest for the person to be registered or to continue to be registered under this Act: s. 8.1(4)(b) of the MDA.* The Legislature has made clear the importance of regulated persons in the motor dealer industry abiding by the BPCPA.

[18] Salespersons hold a considerable position of trust vis-à-vis consumers. Consumers depend and rely on salespeople to provide them accurate and truthful information about motor vehicles so they may make informed decisions. Importantly, consumers are entitled to rely on the representations of motor vehicle salespeople: *Vavra v. Victoria Ford Alliance* 2003 BCSC 1297 (BC Supreme Court).

[19] 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 consumers' 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.

[20] Mr. Schell effectively asks me to ignore the findings of fact made by Adjudicator Noorani and to accept his explanation that these errors were due to his poor money management skills. I cannot sit in appeal of the orders issued by

Consumer Protection B.C., or the findings of fact by Adjudicator Noorani. Further, for me to make inconsistent findings of fact than found by Adjudicator Noorani based on the same evidence would bring the administration of justice into disrepute: *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 (Supreme Court of Canada).

DISCUSSION

[21] I find the relationship of direct sales and the conduct of motor vehicle salespeople are extremely similar. Salespeople are left alone to make representations to consumers about motor vehicles, which also occur with direct sales. In some dealerships, salespeople are left alone and finalize the sales and take deposits and full payments, also very similar to direct sales. Salespeople are to use contracts containing legislatively required disclosures, similar to direct sales.

[22] I note Mr. Schell has been found in breach of provisions of the BPCPA administered by the Registrar in the motor dealer industry. He has been found to have misled consumers and has shown a continuing propensity to do so. Mr. Schell has continuously used legislatively deficient contracts, has ignored the law and the lawful orders of his regulator. For this conduct, and his past history of continuous non-compliance, Mr. Schell has only 4 months ago been banned from direct sales for 15 years. I find Mr. Schell's past conduct indicates he will not abide by the law in the future, that he would be ungovernable and that he poses a risk to the public interest if licensed. I therefore refuse to issue Mr. Schell a salesperson license.

[23] In order to protect the Registrar's process and the public interest, I find it necessary to declare that the Registrar would not accept a salesperson application from Mr. Schell until the Direct Sales Prohibition Order of December 5, 2013, expires in 15 years: *Pugliese v. Clark (Registrar of Mortgage Brokers, British Columbia)* 2008 BCCA 130 (Court of Appeal).

[24] Whether or not Mr. Schell will be granted a salesperson licence in the future will depend on the facts that exist at that future date. This includes, but is not limited to, the steps Mr. Schell has taken to rehabilitate and show that he can be trusted by the public as a salesperson. The simple passage of time is not evidence of rehabilitation: *7340 v. Registrar, Motor Vehicle Dealers Act 2002*, 2012 CanLII 52462 (ON LAT), and *7804 v. Registrar, Motor Vehicle Dealers Act 2002*, 2013 CanLII 27307 (ON LAT).

[25] 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 Procedure Act*.

Date: April 17, 2014


Ian Christman, Registrar

