



Hearing File No. 14-10-001
Neutral Citation: 2014 BCRMD 020

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:

**JUSTIN QUOCKSISTER
(Proposed Licence # 202192)**

Salesperson Applicant

DECISION OF THE REGISTRAR OF MOTOR DEALERS

APPEARANCES

For Justin Quocksister: By written request

INTRODUCTION

[1] On November 7, 2014, I issued a written decision refusing to grant Mr. Justin Quocksister a salesperson's licence. Since that decision, Mr. Quocksister has inquired with the Manager of Licensing, Hong Wong, asking when he would be allowed to reapply for a salesperson licence.

[2] By email dated November 20, 2014, Hong Wong advised Mr. Quocksister that the Registrar would review this request. Mr. Wong advised Mr. Quocksister he could provide any written submissions by December 3, 2014, for my consideration. Mr. Hong Wong also suggested Mr. Quocksister review the three below decisions of the Registrar involving the same issue and provided Mr. Quocksister the website link to those decisions.

- Stanley Steven Ross (Registrar of Motor Dealers, December 23, 2013, VSA File 13-11-002)
- Peter Fryer (Registrar of Motor Dealers, December 13, 2013, VSA File 13-11-005)
- Arthur Patey (Registrar of Motor Dealers, February 18, 2013, VSA file 13-005)

[3] The December 3, 2014, date has come and gone and Mr. Quocksister has not provided any submissions.

[4] The following is my decision on when the Registrar would accept for consideration, a salesperson application from Mr. Quocksister. I emphasize that this

decision does not say Mr. Quocksister would be granted a salesperson licence in the future. That will depend on the facts that are in existence when or if Mr. Quocksister re-applies.

THE NOVEMBER 7, 2014 DECISION

[5] The reasons for refusing to grant Mr. Quocksister a salesperson licence are detailed in the November 7, 2014, decision, and are summarized here. Justin Quocksister:

- (a) Knowingly acted as an unlicensed salesperson involving at least 49 consumer transactions,
- (b) Specifically, he sold a Honda CRV that was the subject of a consumer complaint, while unlicensed,
- (c) Knowingly falsified his salesperson application, and
- (d) Admitted to aiding and abetting someone to declare a lesser value on a vehicle to avoid taxes.

THE LAW

[6] The *Motor Dealer Act* R.S.B.C. 1996 c. 316 (The "MDA") and the *Salesperson Licensing Regulation* B.C. Reg. 241/2004 (the "Regulation") do not set a time limit for re-application if a person is denied a salesperson licence. In theory, a person who has been denied a licence may re-apply the very next day, and repeatedly. This can place an inordinate financial and time burden on a regulator having to re-examine and re-consider an application time and time again in relatively short-order after a denial, only to come to the same conclusion. This is further exacerbated in the case of the Registrar of Motor Dealers as the MDA and the Regulation provide a person the right to have an oral hearing if the proposal is to refuse a salesperson licence.

[7] To address this administrative inefficiency and interject some control and order to the Registrar's processes, and to protect the public interest, administrative tribunals may set a time-frame where they would not accept an application for a licence: *Pugliese v. Clark (Registrar of Mortgage Brokers, British Columbia)* 2008 BCCA 130 (BC Court of Appeal).

DISCUSSION

[8] As I have stated in many decisions, a salesperson occupies a position of trust vis-à-vis consumers. Consumers expect and are entitled to trust that the salesperson they interact with is trustworthy, truthful and law abiding. Consumers expect truthful representations from salespeople so they may make informed purchasing decisions. The MDA and the *Business Practices and Consumer Protection Act* S.B.C. 2004 c. 2 (the "BPCPA") compel salespeople to make certain disclosures on behalf of their dealerships in a way that is not misleading or untrue. Consumers often share with salespeople, or salespeople can gain access to, a consumer's personal information, including home address, and financial information and social

insurance numbers, especially if a consumer is financing a purchase which is often the case. The public interest requires that a licensed salesperson be trustworthy, truthful and law abiding.

[9] I turn now to a discussion of the public interest concerns raised by each of my four above noted findings of fact.

(a) & (b) Knowingly acting as an unlicensed salesperson

[10] I found Mr. Justin Quocksister knew he was legally required to be licensed as a salesperson, but chose not to do so. This is an indication of Mr. Justin Quocksister's willingness to disregard the law. A consumer would be concerned if they were interacting with a person who was willing to disregard the law. As Registrar, I am concerned that Mr. Quocksister would disregard the consumer protection provisions of the MDA that requires he make certain declarations or he may disregard the BPCPA which require he refrain from making misrepresentations (deceptive acts or practices) or committing unconscionable acts or practices.

[11] As Registrar, I am further concerned that Mr. Quocksister may disregard the lawful orders of the Registrar such as the provision of information during an investigation or other information to be provided as required by the legislative scheme the Registrar administers. The purpose of regulation and requiring regulated persons to provide information is to prevent potential future harm. A regulated person is deemed to have accepted these terms and to meet a certain minimum standard of care. Certainly, a minimum standard is for a regulated person to be law abiding and specifically abide by the laws that govern his profession and industry.

- *R v. Fitzpatrick* [1995] 4 S.C.R. 154 (Supreme Court of Canada) at paragraph 40
- *R v. Wholesale Travel Group* [1991] 3 S.C.R. 154 (Supreme Court of Canada)

(c) Knowingly falsified his salesperson application

[12] In my November 7, 2014, decision I noted the public interest concern when a person falsifies their application materials. It reflects on whether that person is being truthful and will be truthful in the future with the regulator and with consumers. I will repeat here the decision of the Ontario Licensing Appeal Tribunal who reviewed and approved of the proposal of the Ontario Registrar of Dealers to refuse a salesperson licence:

In *Monzon v Registrar of Motor Vehicles Dealers* [unreported], Vice Chair Hunt wrote:

Whether or not the Applicant provided correct information in the Application document is a crucial matter in assessing the honesty of an Applicant as this

information is clearly intended to be relied upon by the Registrar. If any information is intentionally concealed, or if false information is given, the Registrar has good reason to have serious concerns that the Applicant will withhold information or provide false information in the future in his dealings with the public or with the Registrar.

Both the failure to provide full disclosure and the provision of false information reflect an Applicant's honesty and integrity. The regulatory regime set out in the Act is largely based on disclosure. A consumer's right to full information in order to make an informed decision is set out in requirements regulating, for example, vehicle history and advertising disclosure.

The Tribunal finds that the Applicant provided false and misleading information to the Registrar in his application for registration...

8193 v. Registrar, Motor Vehicle Dealers Act 2002, 2013 CanLII 69341 (ONT LAT).

[13] In the Registrar's decision involving Stanley Ross, Mr. Ross had falsified his application materials by not declaring his previous sanctions by the BC Securities Commission in 1999 and 2007. There was no evidence of any other recent breaches of the law by Mr. Ross. In that case the Registrar refused to accept any future applications from Mr. Ross for two years.

(d) Aiding and abetting someone to declare a lesser vehicle price to avoid taxes

[14] I found Justin Quocksister admitted to having counseled (aid and abetted) someone to commit an offence. That someone was the consumer who purchased the Honda Civic. So this offence occurred in the course of his employment of selling a vehicle at a dealership and while unlicensed. This reflects on Mr. Quocksister's willingness to disregard the law, to provide false information and to counsel consumer's to also break the law. As I noted in the November 7, decision, this is a very serious matter: *R v. Karamali* 2006 BCPC 0454 (BC Prov. Ct.) and *Re: Karamali* (Registrar of Motor Dealers, April 23, 2007).

[15] In *Re: Karamali*, Registrar Smith refused to grant a salesperson's licence to Mr. Karamali due to a history of breaching the *Motor Dealer Act* including the conviction for odometer tampering under that Act and counseling persons to declare a lesser value of a vehicle to avoid taxes. In that case Registrar Smith set a three year period before Mr. Karamali could re-apply for a license. Mr. Karamali more recently received a life-time ban: *Roberts v Matrix et al* (Registrar, May 4, 2011, Files 09-70100 & 09-70695).

[16] I have considered the cases of Peter Fryer and Arthur Patey. In both those cases there were fairly recent criminal convictions which are not present in this case. However, in both cases there was no history of rehabilitation from the recent criminal conduct of concern. In this case, there is also no history that Mr. Quocksister has rehabilitated from the noted transgressions. The mere passage of time is not sufficient evidence of rehabilitation. The public interest requires there be evidence that a person has rehabilitated themselves and is deserving of another chance to be trusted by the public. I find the following comment of the Ontario Court of Justice (Div. Ct.) discussing similar legislation of assistance:

5 In the circumstances of this case, we have the concern that the Tribunal appears not to have made the requisite qualitative assessment of the respondent's conduct in light of all the evidence placed before it and the standards of "integrity" and "honesty", as well as "law", imposed by s.6(1)(b). We are also troubled that the Tribunal appears to have found that a period of time during which no violation of the law is established automatically meets the required standard of belief, presumably as a matter of law or on the basis of a principle of rehabilitation, notwithstanding the nature of established past misconduct and the possible absence of positive and material exemplary conduct. Clearly, s.6(1)(b) requires a more qualitative assessment of the entire conduct of an applicant to determine whether past conduct affords reasonable grounds for belief that he or she will not carry on business in accordance with law and with integrity and honesty.

Ontario (Registrar of Real Estate & Business Brokers) v. Faccenda 1994 CarswellOnt 2726 (Ont. Court of Justice [Div. Ct])

[17] The Ontario decision in *Faccenda* was more recently applied to an application for licensing of a car salesperson under Ontario's *Motor Vehicle Dealers Act, 2002*:

The Tribunal disagrees that any time period is automatically to be relied upon. It relies on the *Faccenda* case to conclude that the assessment of the conduct in question must be more nuanced than a simple reliance on the passage of time. In this proceeding there has been no evidence of conduct, positive or negative, during these two years. As noted above, such a neutral situation is insufficient to overturn the reasonable conclusion arising out of older past conduct which clearly falls below the standard.

- *Alfa Motors and Amrish Gathani* (December 6, 2011, Ontario Licence Appeal Tribunal).

[18] In setting any wait period, I must also consider what amount of time is satisfactory to gain a history of rehabilitation sufficient to overcome these past transgressions. The public interest would expect a person in the situation Mr.

Quocksister finds himself, would not be licensed unless there was some objective and verifiable evidence to indicate rehabilitation has occurred and trustworthiness has been regained.

DECISION

[19] In taking into consideration the transgressions of Mr. Quocksister, that they are recent transgressions with no history of rehabilitation as yet, the seriousness of the transgressions, especially disregard for abiding by the law and aiding and abetting a consumer in a motor vehicle transaction to commit an offence, and the past cases noted here, I set a period of three years before the Registrar would be willing to accept a salesperson application from Mr. Quocksister for consideration.

[20] I again emphasis that whether Mr. Quocksister will be granted a salesperson licence in the future will depend on the facts that exist at that future date.

[21] If there is disagreement with this decision, it may be reviewed by the BC Supreme Court pursuant to the *Judicial Review Procedure Act*.

Date: December 8, 2014

A large black rectangular redaction box covers the signature of Ian Christman. There are some faint blue ink marks above the box, possibly remnants of a signature or initials.

Ian Christman J.D., Registrar