



Neutral Citation: 2015-BCRMD-001

**RE: THE MOTOR DEALER ACT R.S.B.C. 1996 C. 316 and the  
BUSINESS PRACTICES AND CONSUMER PROTECTION ACT S.B.C. 2004 C. 2**

BETWEEN:

**ANDREA RENNEY**

Complainant

AND:

**SILK ROAD TRADERS LTD. dba SILK ROAD AUTOS  
(Dealer #30733)**

Motor Dealer

AND:

**SILK ROAD TRADERS LTD. dba SILK ROAD AUTOS  
(Dealer #40107)**

Motor Dealer

AND:

**KARIM QURAIISHI  
(Salesperson #108137)**

Salesperson

AND:

**GRZEGORZ (GREG) CYCOWSKI  
(Salesperson #201717)**

Salesperson

**DECISION OF THE REGISTRAR OF MOTOR DEALERS**

**Date and Place of Hearings:**

December 17, 2014, at Surrey, British  
Columbia

**Appearances for:**

The Complainant

Personally, by teleconference

Silk Road Autos (Dealer #30733)

Karim Quraishi

Silk Road Autos (Dealer #40107)

Karim Quraishi

Karim Quraishi

In person

Grzegorz Cycowski

Personally, by teleconference

Vehicle Sales Authority

Daryl Dunn, Manager of Compliance and  
Investigations

Jas Virk, Compliance Officer

**Introduction**

[1] This hearing was called to review the following three allegations against Silk Road Traders Ltd. dba Silk Road Autos (Dealer # 30733 & 40107) ("Silk Road"),

Karim Quraishi (Salesperson #108137) and Grzegorz (Greg) Cycowski (Salesperson #201717) (collectively the "Respondents"), as contained in the Hearing Notice, that between May 10 and 29, 2014:

- (a) The Respondents agreed to sell a 2008 Volkswagen Rabbit (the "Rabbit") for \$8,300 and deliver it to Terrace, B.C. and then added \$250 to the price to pay the salesperson's commission of \$500 and ultimately charging the customer \$8,750 plus taxes; [I believe the \$8,750 figure was in error as the evidence shows \$8,550 to be the selling price]
- (b) The Respondents sold the Rabbit to Andrea Renney on the condition that the Rabbit would have three keys, two with remotes and one regular key, and failed to provide all those keys; and

Between May 20, 2014 and November 4, 2014:

- (c) The Respondents failed to produce the dealer file or any transaction records for this transaction when requested from the VSA and specifically by Compliance Officer Jas Virk.

The Hearing Notice states allegations (a) and (b) are contrary to sections 4, 5, 8, and 9 of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 (the "BPCPA") and allegation (c) is contrary to sub-section 150(1)(e) of that Act.

[2] Silk Road has a dealer location in Surrey, B.C. (Dealer #30733) and in Terrace, B.C. (Dealer #40107). Both locations were involved with this transaction.

[3] Mr. Karim Quraishi for himself and for Silk Road acknowledged receiving the Hearing Notice which was entered as Exhibit 1 and the Affidavit of Jas Virk dated October 27, 2014 (the "Affidavit"), which was entered as Exhibit 2 at the Hearing. Mr. Virk also stated he provided Mr. Quraishi a copy of the Registrar's Decision in *Lamontagne & Lamontagne v. Bill Howich Chrysler Ltd.* (File 08-70064, August 12, 2008). That decision was entered as Exhibit 3 at the Hearing.

[4] Mr. Quraishi stated he thought he was at the hearing only to talk about the keys to the Rabbit and admitted he really did not look at the information in Exhibits 1 or 2 until the morning of the hearing.

### **Basic Facts**

[5] On May 27, 2014, Andrea Renney purchased the Rabbit from Silk Road which was located at its Terrace, B.C. location although the purchase agreement states the dealership location was in Surrey: Purchase Agreement, page 6 of the Affidavit Exhibits.

[6] On that same date in the evening, Ms. Renney emailed Karim Quraishi confirming their prior discussion that the Rabbit came with three keys. Karim Quraishi emailed on May 28, 2014, confirming the Rabbit came with three keys, two with a remote and one regular key. One key with a remote was sent with the Rabbit to Terrace. Karim Quraishi stated he forgot to send the other keys with the Rabbit when it was shipped to Terrace: emails at pages 8 & 9 of the Affidavit Exhibits.

[7] The keys that eventually were sent to Terrace ended up not being for the Rabbit. There was some back and forth between Ms. Renney and Mr. Quraishi about getting two more keys for the Rabbit as Silk Road had represented. Eventually a remote key was provided to Ms. Renney, but it required programming at a Volkswagen dealership with the Rabbit present. The nearest Volkswagen dealership to Terrace is in Prince George, B.C. The evidence is not completely clear about the status of the third non-remote key.

[8] Mr. Quraishi agreed to pay for the programming of the one remote key with the last quote obtained being \$71.00. However, Mr. Quraishi was not prepared to pay for Ms. Renney to travel to Prince George to have the key programmed as he felt she would stay the night. Ms. Renney believes Silk Road should compensate for

her to travel to Prince George. Part of why this hearing was called was because the parties cannot agree on who should be responsible for what expenses.

[9] At the hearing, Mr. Quraishi said he had been willing to work this situation out with Ms. Renney, however, because she made a formal complaint to the Vehicle Sales Authority (the "Authority"), he was no longer willing to work something out. At the hearing, Mr. Quraishi said he would like the Rabbit back. I advised that Ms. Renney is now the owner of the Rabbit and he cannot simply request that it to be returned.

[10] Again, I note that Mr. Quraishi stated he had not read the Affidavit that had been provided to him with the Hearing Notice: Transcript of Proceedings, pages 8 & 9. The Affidavit provided Mr. Virk's investigative findings and attached the documents being relied on by the Authority at this hearing. Mr. Quraishi was also surprised that the price of the Rabbit was an allegation before me as he believed it was irrelevant. I would note that the Notice of Hearing provided to Mr. Quraishi clearly noted the price paid for the Rabbit was an allegation for consideration at this hearing, as was his failure to provide records of this transaction.

## **The Law**

### **(a) *Deceptive Acts or Practices (misrepresentations)***

[11] A motor dealer must refrain from committing deceptive acts or practices, more commonly known as misrepresentations: section 5(1) of the BPCPA.

[12] Where it is alleged that a motor dealer committed a deceptive act or practice, the onus is on the motor dealer to prove their conduct or any representation they made was not a deceptive act or practice: section 5(2) of the BPCPA, and see *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894 (BC Supreme Court).

[13] Section 4 of the BPCPA defines deceptive acts or practices and sub-section 4(3) deems certain representations to be deceptive acts or practices. In this case the alleged representation that the Rabbit came with three keys when it did not would fall under the general definition of deceptive act or practice and the following provisions of section 4 of the BPCPA:

(3) Without limiting subsection (1), one or more of the following constitutes a deceptive act or practice:

(a) a representation by a supplier that goods or services

(i) have sponsorship, approval, performance characteristics, accessories, ingredients, quantities, components, uses or benefits that they do not have,

(v) are available if they are not available as represented,

[14] A deceptive act or practice does not need to be intentional, it can also be committed negligently or innocently and a consumer can still be entitled to a remedy: *Rushak v. Henneken Auto Sales and Service Ltd.* 1991 CanLII 178 (BC Court of Appeal), *Casillan v. Richmond Daewoo*, 2009 BCSC 1335 (BC Supreme Court) and *Cummings v. Richmond Daewoo*, 2009 BCSC 1009.

[15] The Legislature has made clear that it is proper grounds for the Registrar to cancel or suspend the licence of a motor dealer who has committed a deceptive act or practice: section 8.1(4)(b) of the *Motor Dealer Act* (the "MDA"). Whether such action should be taken is left to the discretion of the Registrar and is based on all the facts of each particular case.

**(b) Unconscionable Acts or Practices**

[16] Committing an unconscionable act or practice in a consumer transaction is contrary to section 9 of the BPCPA. If there is some evidence that a supplier (motor

dealer or salesperson) committed an unconscionable act or practice, the supplier must prove that they did not do so: section 9(2) of the BPCPA.

[17] When determining if an unconscionable act or practice occurred, the factors in section 8(3) of the BPCPA must be considered along with “all the surrounding circumstances of which the supplier knew or ought to have known”: section 8(2) of the BPCPA and *Bain v. The Empire Life Insurance Company*, 2004 BCSC 1577 (BC Supreme Court).

[18] If there is a finding that an unconscionable act or practice occurred, then the transaction is not binding on the consumer and the consumer may elect to void the entire transaction: section 10(1) of the BPCPA.

[19] The Legislature has made clear that it is proper grounds for the Registrar to cancel or suspend the licence of a motor dealer who has committed an unconscionable act or practice: section 8.1(4)(b) of the MDA.

**(c) Dealer maintaining and producing records**

[20] A dealer is required to maintain a minimum of two years of records at its business premises as registered with the VSA: section 11 of the MDA and section 20 of the MDA *Regulation*. The records that must be kept include:

- (a) purchase orders, sales orders and written records of all transactions resulting in the purchase or sale of a motor vehicle and,
- (b) in the case of a used motor vehicle, a record of material reconditioning or other substantial work performed on the motor vehicle, including the date and the particulars of substantial work done, supported by repair orders, the cost of such work and details of any inspection conducted under the *Motor Vehicle Act*.

"written records" include the "buy-in" documents establishing where the motor dealer obtained the vehicle prior to sale.

[21] These records must be produced to the Registrar, or his delegate:

- (a) upon request to investigate a complaint: section 25 of the MDA,
- (b) upon request to assess the motor dealer's suitability to be registered or continue to be registered: section 7 of the MDA, and
- (c) to review the operations of the motor dealer generally: section 7 of the MDA *Regulation*, including the financial information and financial statements of the motor dealer: section 32 of the MDA.

In addition to the above authority, the Registrar or his delegate may require the production of any record of a motor dealer to inspect for compliance with the conditions of their licence and for investigating any breach of the BPCPA: sections 149 to 152 of the BPCPA.

[22] The Registrar may consider suspending or canceling a motor dealer's licence for failing to abide by the lawful order to produce records: section 5 MDA.

### **Issues to be decided**

[23] From the Notice of Hearing, the following issues must be decided:

- (a) Did Silk Road, Mr. Quraishi and Mr. Cycowski commit a deceptive act or practice or an unconscionable act or practice by representing to Ms. Renney that the Rabbit came with three keys - two remote keys and one regular key, when it did not?
- (b) Did Silk Road, Mr. Quraishi and Mr. Cycowski commit a deceptive act or practice or an unconscionable act or practice by representing to Ms. Renney that the Rabbit was for sale for \$8,300 and instead sold the Rabbit for \$8,750 [again, I believe the Hearing Notice was in error and

meant to say \$8,550] on the pretense that Silk Road now had to pay a commission to its salesperson?

- (c) Did Silk Road, Mr. Quraishi and Mr. Cycowski fail to provide records to the Registrar, or his delegate, in breach of section 150(1)(e) of the BPCPA or section 25 of the MDA.
- (d) If the decision is in favor of the consumer in any of the above allegations, what is the appropriate remedy for the consumer?
- (e) If there has been a breach of the BPCPA and/or the MDA by Silk Road, Mr. Quraishi or Mr. Cycowski, then what, if any, compliance action should be taken to remedy those breaches and to ensure future compliance?

## **Discussion**

### ***(a) Representations about keys for the Rabbit***

[24] At the hearing, Ms. Renney gave evidence that Mr. Quraishi promised that the Rabbit came with three keys, two remote keys and one regular key. Mr. Quraishi seemed to argue that he was trying to honour that promise but felt he technically did not have to. Mr. Quraishi said that the promise about the keys was made when he and Ms. Renney first discussed the Rabbit and having it shipped to Terrace from the Surrey dealership. When Ms. Renney initially declined to purchase the Rabbit because she could not inspect it, that deal fell through: Transcript of Proceeding, pages 34 & 35.

[25] Mr. Quraishi also speaks about misunderstandings with ICBC, where Silk Road obtained the Rabbit from, believing there were three keys with the Rabbit and when shipping the Rabbit from the Surrey dealership to the Terrace dealership. From the evidence it is clear that there was no attempt on the part of Silk Road to ensure the Rabbit had three functioning keys before it was sold: Transcript of



Proceedings, pages 28 & 29. I note part of the issue in this case is that the remote key must be programmed by a Volkswagen dealer with the Rabbit present. There is no Volkswagen dealer in Terrace and the closest Volkswagen dealer is in Prince George. Mr. Quraishi's evidence is clear that he does not think he should be obligated to pay for Ms. Renney to travel to Prince George to have the one key programmed: Transcript of Proceedings, pages 29 & 30.

[26] Mr. Quraishi's testimony also offers another reason why he and Silk Road are unwilling to resolve this matter. Mr. Quraishi said he was willing to resolve the key issue, but once Ms. Renney filed a complaint things went sour and Silk Road was no longer willing to pay for programming the key even though Silk Road and Mr. Quraishi had agreed to doing so in emails to Ms. Renney before she filed her complaint: Transcript of Proceedings, pages 30 & 31. The clear indication is that Silk Road and Mr. Quraishi are not willing to deal with this matter because Ms. Renney exercised her statutory right to file a complaint. I would note that Ms. Renney warned Mr. Quraishi that she was going to file a complaint and he responded to her to "please go ahead with your complaints". (Email from Mr. Quraishi dated June 14, 2014, 01:33:16, page 44 of the Affidavit Exhibits).

[27] Despite what Mr. Quraishi said at the hearing, the documentary evidence clearly establishes that Silk Road and Mr. Quraishi represented that the Rabbit came with two remote keys and a regular key in the discussions leading up to the sale of the Rabbit on May 27, 2014, and as re-confirmed by Mr. Quraishi after the sale:

- Email from Mr. Quraishi to Ms. Renney dated May 20, 2014, 18:45:25 "it has got three keys" (page 60 & 61 of the Affidavit Exhibits);
- Email from Mr. Quraishi to Ms. Renney dated May 24, 2014, 19:07:15 (Affidavit exhibits, pages 51 & 52 );
- Email from Mr. Quraishi in response to Ms. Renney's email and confirming "those keys are yours" dated May 28, 2014, 12:06:06 (Affidavit exhibits, pages 48 & 49);

- Email from Mr. Quraishi in response to Ms. Renney asking about the keys, Jun 9, 2014, 20:04:49 (Affidavit exhibits, pages 46 & 47);
- Email from Mr. Quraishi explaining the problem with the keys after Ms. Renney emailed "You told me this car came with two extra keys..." Mr. Quraishi did not deny that statement: email dated June 10 2014, 12:58:20 responding to Ms. Renney's email of June 9, 2014, 7:08:02 PM (Affidavit Exhibits, pages 45 & 46); and
- Email from Mr. Quraishi to the Authority in response to Ms. Renney's complaint, dated June 19, 2014, 12:54 PM (Affidavit Exhibits, page 38).

All these documents corroborate the testimony of Ms. Renney at the hearing.

[28] It is clear that Mr. Quraishi and Silk Road represented to Ms. Renney that the Rabbit came with three keys, two with a remote and one regular. It was reasonable for Ms. Renney to expect that those two remote keys would be functional.

[29] I find that Mr. Quraishi and Silk Road misrepresented the Rabbit as having two remote keys and one regular key when it did not. This satisfies the definition of a deceptive act or practice under the BPCPA.

[30] There is no evidence to say that Mr. Quraishi or Silk Road committed an unconscionable act or practices contrary to the BPCPA. For such a claim to be found there must be some indication that Mr. Quraishi and Silk Road took advantage of Ms. Renney's inability to protect herself. This particular allegation against Silk Road and Mr. Quraishi is dismissed.

[31] There is no evidence that Mr. Cycowski participated in the misrepresentation about the keys and no evidence of him committing an unconscionable act or practice regarding the keys. As noted in an email from Ms. Renney, "Greg said pretty much everything goes through you [Mr. Quraishi]; we just give the cash and certified cheque to him". Email from Ms. Renney dated May 24, 2014, 3:51:53 PM (Affidavit Exhibits, page 54). All these allegations against Mr. Cycowski are dismissed.

**(b) Representations about the Rabbit's price**

[32] Before Ms. Renney purchased the Rabbit on May 27, 2014, from Silk Road's lot in Terrace, Ms. Renney inquired about purchasing the Rabbit when it was on Silk Road's lot in Surrey, B.C. for \$8,300 plus taxes. From the testimony at the hearing and the documents, it is clear Ms. Renney declined to purchase the Rabbit from Silk Roads while it was on the Surrey lot because she could not inspect the Rabbit. Mr. Quraishi said he was thinking of sending the Rabbit to Terrace and would let her know if he did: Emails dated May 20, 2014, 2:46 PM from Mr. Quraishi and one from Ms. Renney dated May 14, 2014, 10:38:38 AM (Affidavit Exhibits, page 61).

[33] When Mr. Quraishi sent the Rabbit to Terrace, Ms. Renney inquired whether the \$8,300 plus tax price was available. Mr. Quraishi said no, that he increased the price by \$500 because he would now have to pay a commission to the salesperson in Terrace. Eventually Mr. Quraishi and Ms. Renney agreed on a price of \$8,550 plus taxes. The testimony at the hearing is corroborated by the emails between Mr. Quraishi and Ms. Renney showing the back and forth of price negotiations. It is clear Ms. Renney agreed to a price with knowledge that the price increased to cover the cost of the salesperson's commission: Emails found in the Affidavit Exhibits, pages 50 - 53.

[34] At the hearing, Ms. Renney stated she had no problem with the price paid for the Rabbit: Transcript of Proceedings, pages 37 - 38.

[35] There was no evidence that the Rabbit was advertised for a price lower than \$8,550 plus taxes.

[36] I find on the evidence presented that no deceptive or unconscionable act or practice occurred regarding the price of the Rabbit. Those allegations are dismissed against Silk Road, Mr. Quraishi and Mr. Cycowski.

**(c) Failure to produce records**

[37] There is no question that a lawful request was made to Silk Road and its principal, Mr. Quraishi to produce the records regarding the Rabbit transaction. As noted, that includes records of where Silk Road obtained the Rabbit and any repairs and reconditioning to the Rabbit prior to sale.

[38] Compliance Officer, Jas Virk, who has been delegated in writing the authority of the Registrar to request records, gave evidence that he has on several occasions requested the records regarding the Rabbit transaction. Mr. Virk stated he has never received any records of the Rabbit transaction from Silk Road.

[39] On June 19, 2014, a formal Notice of a Complaint was sent to Silk Road c/o Karim Quraishi. That Notice clearly states the Registrar requires Silk Road to produce all dealer records pertinent to Ms. Renney's complaint. It warns a failure to do so is an offence under the MDA. It was signed by Consumer Services Officer, Avy Zhu, and under her signature it is clearly noted she is a delegate of the Registrar: Affidavit Exhibits, Page 32. That letter was sent by email and Mr. Quraishi responded to Ms. Zhu by email but did not provide any records: Email dated June 19, 2014, pages 38 & 39 of the Affidavit Exhibits.

[40] Ms. Zhu was present at the hearing and available to be questioned, but was not called to give evidence.

[41] In response, Mr. Quraishi stated at the hearing:

- (a) The purchase agreement was with "the tax guy" as the dealer pays taxes
- (b) "I just don't have a copy", and
- (c) "I just got too busy."

Transcript of Proceedings, page 32.

[42] The evidence is clear that a lawful written direction to produce records in relation to a complaint regarding the Rabbit was made to Silk Road c/o Karim Quraishi on June 19, 2014, and Silk Road and Karim Quraishi have admitted to not producing those records and not maintaining those records at its business premises as required by the MDA and its regulations.

[43] The evidence is clear that Compliance Officer, Jas Virk, as the Registrar's delegate, continued to request the production of those records under the authority of the BPCPA and there is no evidence to the contrary. Silk Road has not produced those records and is in breach of the MDA and the BPCPA.

**(d) Consumer Remedy**

**(i) Key Programming**

[44] Ms. Renney has been given two remote keys by Silk Road; one does not fully work as it requires programming. Silk Road and Mr. Quraishi did represent the Rabbit had three keys with two being remote keys. The evidence is very clear that having three keys, two with remotes, were an important consideration for Ms. Renney to enter into the agreement. It was also reasonable for Ms. Renney to expect the two remote keys would be functional. There were no representations by Silk Road otherwise. According to the evidence, the cost of programming the key is \$71. There would be tax on that amount. Ms. Renney is awarded \$79.52 (\$71 x 1.12) for key programming.

**(ii) Costs to go to Prince George**

[45] Is Ms. Renney entitled to recover costs for going to and from Prince George to get the key programmed by the Volkswagen dealer? In the case of *Lamontagne & Lamontagne v. Bill Howich Chrysler Ltd.* the consumer was entitled to the cost of the remote key the dealer had failed to provide. Similar to the current case, the consumer in *Bill Howich Chrysler Ltd.* had to travel from the Campbell River area to Courtney, B.C. to obtain the key from the Volkswagen dealer in Courtney. The consumer claimed \$336 for kilometers travelled. I noted in that case that the

consumer was already at the dealer having a spoiler installed and under those circumstances, no award for kilometers travelled would be made: paragraph 42. The circumstances here are different.

[46] The evidence before me is that Ms. Renney does travel from time-to-time to Prince George, and she went one weekend since purchasing the Volkswagen. She said she tried to get the key programmed at that time but the Volkswagen dealer in Prince George only programs keys during the weekdays: Testimony of Ms. Renney, Transcript of Proceedings at page 18. Ms. Renney works and would have to take a day off from work, perhaps a vacation day to get the key programmed. At the hearing, Ms. Renney said she had no current plans to go to Prince George.

[47] Mr. Quraishi raises a concern that he does not think Silk Road is responsible to pay for Ms. Renney to have a day in Prince George. Mr. Quraishi notes if there was a Volkswagen dealer in Terrace, this matter would already be resolved: Testimony of Mr. Quraishi, Transcript of Proceedings pages 29 - 31. Mr. Quraishi infers that Silk Road should not be responsible to pay because of that fact. A motor dealer's legal obligations to a consumer are not absolved because they may be difficult or expensive to meet. It must be remembered that it was Silk Road who sold the VW Rabbit in the Terrace market.

[48] The evidence introduced is that the distance from Terrace to Prince George is about 575 to 586 km one way and a round trip would be 1150 km to 1172 km: Testimony of Ms. Renney, Transcript of Proceedings, page 17 and Exhibit 5 (Google Maps printout). Evidence shows that the Canada Revenue Agency automobile allowance rate for 2013 and 2014 is .54¢ per kilometer for the first 5,000 km: Exhibit 4, Government of Canada website printout. Applying the Google Map round trip kilometers of 1150 km x .54¢ = \$621 for kilometers traveled. I find this amount is sufficient to cover the costs of Ms. Renney to travel to Prince George to have the key programmed. I am not awarding any additional amounts for hotels or meals even though the journey is about 6-7 hours each way. In my opinion this amount strikes a balance between compensating the consumer for rectifying the misrepresentation by Silk Road and Mr. Quraishi, while not providing a windfall for

Ms. Renney to “have a day” in Prince George. Ms. Renney is awarded \$621 for travel costs to Prince George.

**(e) Compliance – General Concerns and the Law**

[49] The concern here is that Silk Road and Mr. Quraishi made misrepresentations to Ms. Renney about the keys for the Rabbit. There is also the concern that Silk Road and Mr. Quraishi failed to provide records in breach of the MDA and the BPCPA. A further concern is the conduct of Silk Road and Mr. Quraishi after Ms. Renney filed her complaint. The Conduct of Silk Road and Mr. Quraishi, as exemplified by Mr. Quraishi’s testimony, is that they were not going to cooperate or resolve this complaint because Ms. Renney had filed a complaint. All these matters must be addressed.

[50] In deciding the correct compliance action, I keep in mind the goal of any compliance action is regaining compliance of the motor dealer and or salesperson in question and to have some reasonable assurance of continuing future compliance with the BPCPA and the MDA. There is also a concern for general deterrence on the industry as a whole.

[51] I note the seriousness that the B.C. Legislature places on registered motor dealers breaching Part 2 of the BPCPA [deceptive and unconscionable acts or practices] as section 8.1(4)(b) of the MDA specifically says that one breach of that part of the BPCPA, “*is 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*”. This same seriousness translates to salespeople.

[52] Where a motor dealer or a salesperson has breached the BPCPA, such as made misrepresentations and failed to provide documents, I can order an administrative penalty as a means to regain compliance and deter future non-compliance. In deciding on issuing an administrative penalty, I am to have regard to the factors noted in section 164(2) of the BPCPA and to consider the whole of the

transaction. Administrative penalties can address both the specific deterrence of the motor dealer and/or salesperson in question and the general deterrence of the industry as whole: *Cartaway Resources Corp. (Re)*, [2004] 1 S.C.R. 672 (Supreme Court of Canada) and *Hogan v. British Columbia Securities Commission* 2005 BCCA 53 (BC Court of Appeal) both applied in *Harris & Harris v. Windmill Auto Sales & Detailing Ltd.* (Registrar of Motor Dealers, Hearing file 12-030, April 10, 2013) affirmed by *Windmill Auto Sales et al v. Registrar of Motor Dealers et al*, 2014 BCSC 903 (B.C. Supreme Court).

[53] Where a motor dealer or a salesperson has failed to produce records in breach of the MDA or its regulations, I may add conditions to the dealer's or salesperson's licence, suspend their licenses, or cancel their licenses. There are currently no administrative penalties available for a breach of the MDA or its regulations. In considering the failure to provide records upon being directed to do so, the concern is that the motor dealer or salesperson will not abide by the lawful orders of the Registrar and would be "ungovernable". It is contrary to the public interest that a motor dealer or salesperson who is and would continue to be ungovernable remain licensed: *Re: Peter Fryer* (Registrar of Motor Dealers, Hearing File 13-11-005, December 13, 2013) affirmed by *Peter Fryer v. Motor Vehicle Sales Authority of B.C.* 2015 BCSC 279 (BC Supreme Court).

**(i) Misrepresentation of the keys for the Rabbit – breach of the BPCPA**

[54] I have considered whether adding conditions to Silk Road would address the non-compliance issue regarding the keys. The condition that would be added is to not commit deceptive acts or practices which is already the law. I find adding conditions alone would be insufficient to address the non-compliance and to ensure future compliance.

[55] I find that given the history of the dealer, as noted below, that a suspension or cancellation of Silk Road's licence is not necessary to regain compliance and



ensure future compliance regarding the misrepresentation of the keys. I believe the correct approach is a middle-ground of issuing an administrative penalty.

[56] I now turn to an assessment of the section 164(2) BPCPA factors and a consideration of the case as a whole regarding the misrepresentation involving the keys.

**(a) Previous enforcement actions for contraventions of a similar nature**

[57] I note there have been five investigations involving Silk Road, including this one. One has just commenced and one resulted in a consumer receiving compensation from Silk Road regarding repairs to a vehicle based on an allegation of misrepresenting a vehicle's safety (VSA file 11-70451). I note in that case, Silk Road compensated the consumer without resort to a hearing.

**(b) The gravity and magnitude of the contravention**

[58] The misrepresentation involves the availability of extra keys. Compared to a misrepresentation about the roadworthiness of a motor vehicle, this is not a very grave issue and based on the evidence, does not appear to be a wide-spread problem at this dealership.

**(c) The extent of the harm to others**

[59] The evidence indicates the harm is confined to Ms. Renney.

**(d) Whether the contravention was repeated or continuous**

[60] On the evidence, the contravention was continuous. Mr. Quraishi and Silk Road continued to assure Ms. Renney that the Rabbit came with three keys and intimated those keys would be provided. Mr. Quraishi said they simply forgot to send the keys with the Rabbit when it was shipped to Terrace. When Silk Road and Mr. Quraishi finally provided a second remote key it was not fully functional and

they simply made it Ms. Renney's obligation to get it programmed, although they would refund Ms. Renney the \$71 for programming. Silk Road was not willing to pay the costs to ensure the key was programmed and working because the Volkswagen dealer in Prince George was too far away. Had Silk Road exercised due diligence and ensured there were three functional keys before shipping the Rabbit to Terrace (as represented), it would have discovered the error and been able to obtain the necessary keys from a Metro Vancouver area Volkswagen dealership without the need to travel about a 1,000 km to do so.

**(e) Was the conduct deliberate?**

[61] Based on the evidence, I find the conduct of Silk Road in respect of the keys was reckless. Mr. Quraishi noted they obtained the Rabbit from ICBC. He believed the Rabbit came with three keys, but there is no evidence that he or Silk Road took any steps to ensure that was the case. When Mr. Quraishi first stated to Ms. Renney that the Rabbit had three keys, the Rabbit was at the dealer's location in Surrey. Silk Road then sent the Rabbit to its location in Terrace and it clearly did not ensure it had three working keys for the Rabbit when it did so. It would stand to reason that if you believed a vehicle had three keys and were sending it to Terrace, you would send those keys with it. Especially after you represented to someone that the Rabbit indeed had three keys.

[62] Finally, after Ms. Renney purchased the Rabbit, Mr. Quraishi continued to say the Rabbit did come with those three keys but they forgot to send them along to Terrace. There is simply no evidence of any due diligent steps taken by Silk Road to ensure the Rabbit in fact had three keys (two with remotes) as it represented and it initially continued to maintain it had those keys when it did not, and without taking steps to ensure the truth of that statement. This is reckless conduct on the part of Silk Road and I find the representation regarding the keys by Silk Road to have been reckless and a reckless misrepresentation is sufficient to find the conduct as deliberate: *Casillan v. 565204 B.C. Ltd. dba Daewoo Richmond* 2009 BCSC 1335 (BC Supreme Court).

**(f) The economic benefit derived from the contravention**

[63] The benefit derived is the profit on the sale of the Rabbit. The evidence is clear that having those three keys was an integral part of Ms. Renney's decision to purchase the Rabbit. The Authority was unable to ascertain the profit on the Rabbit as Silk Road and Mr. Quraishi have, as of this date, not supplied the documents regarding the Rabbit as required by the legislation. Based on the evidence I have, the profit is something less than the \$8,550 purchase price.

**(g) The person's effort to correct the contravention**

[64] Initially, it appeared Silk Road was working towards resolving this matter once it realized there were not three keys as it originally stated. However, Silk Road stopped short of fulfilling its obligations when it realized the key required programming at a Volkswagen dealer and was unwilling to cover the cost of the Rabbit traveling to the nearest Volkswagen dealer in Prince George to have the key programmed. Also, I must consider that Silk Road stopped trying to resolve this matter because Ms. Renney exercised her statutory right to file a complaint with the VSA. It is clear from Mr. Quraishi's testimony that he believed Ms. Renney filing a complaint was wrong. Ms. Renney has a right to file a complaint and have it investigated.

**(h) Consideration of all the facts and past precedents**

[65] Silk Road was provided a copy of the Registrar's Decision in *Lamontagne & Lamontagne v. Bill Howich Chrysler Ltd.* (VSA file 08-70064, August 12, 2008). There were many unfounded claims put forward by the consumer in *Bill Howich, supra*, but the claim involving a remote key for a Volkswagen Jetta was accepted. In assessing an administrative penalty of \$1,000, I found that while *Howich* made little effort to resolve the issue, I noted that was understandable as the consumer's proven loss for the key was \$313.50 opposed to the \$12,568 demanded by the consumer for various claims unrelated to the misrepresentation. They were simply too far apart to resolve the issue without a formal hearing. In ordering the dealer to

pay the Authority costs, I noted it was appropriate to reduce those by 50% because the need for a hearing was as much because of the consumer's conduct as it was the dealer's initial misrepresentation. Another distinguishing factor between *Howich* and this case is that in *Howich* I found the misrepresentation to be "inadvertent", an error, while in the case of *Silk Road*, I find the misrepresentation to be reckless and deliberate.

[66] In the Registrar's decision of *Harris & Harris v. Windmill Auto Sales & Detailing Ltd.* (Hearing File 12-030, April 10, 2013) affirmed *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers*, 2014 BCSC 903 (BC Supreme Court), I found the dealer to have deliberately misled the consumer in making the damage declaration on the vehicle in question. I note the section 164(2) factors of the BPCPA discussed in that case are very similar to this one. The greater concern in the *Windmill* case was the misrepresentation had a higher financial impact on the consumer than in this case. In that case a \$2,500 administrative penalty was order but that also was in consideration of the \$43,000.16 the dealer had to pay to the consumers.

[67] Finally in *Ratte v. Applewood Kia* (Registrar, April 16, 2008), affirmed *Applewood Kia v. Ratte and Registrar of the Motor Dealer Council* (April 13, 2010, SCBC File No. S094126, Vancouver Registry, unreported) (BC Supreme Court), the Registrar ordered a \$2,000 administrative penalty against the dealer for misrepresenting the existence of a remaining manufacturer's warranty on a used vehicle. In that case, it was found the consumer had suffered no financial losses and there was no order for the dealer to provide compensation to the consumer.

[68] In this case, the evidence shows the consumer simply wanted the key and the associated costs of having it programmed compensated for by the dealer. There is nothing extravagant in her claim. In contrast, the evidence is clear that *Silk Road* and Mr. Quraishi simply "dug in" and refused to go further believing its duty to the consumer was absolved because (a) there was no Volkswagen dealer in Terrace and it would be too costly to pay for the Rabbit to go to Prince George, and (b) the consumer filed a complaint with the VSA.

[69] Given:

- (a) my findings on the section 164(2) BPCPA factors,
- (b) the past precedent in *Bill Howich Chrysler*, but with the more aggravating and concerning conduct of Silk Road in this case,
- (c) the past precedent in *Windmill* but with its distinguishing factors especially the compensation paid to the consumers in *Windmill* versus here,
- (d) the past precedent in *Applewood Kia*,
- (e) the need to ensure future compliance of Silk Road and for general deterrence on the industry, and
- (f) especially my concern that dealers should not act in a way that tries to “dissuade or punish” consumers from making complaints

I believe an administrative penalty of \$2,000 is appropriate to address these factors and concerns in relation to the misrepresentation of the keys. A \$2,000 administrative penalty is imposed on Silk Road.

**(ii) Failure to maintain records**

[70] As noted, a failure to maintain records at a motor dealer’s business premise is a breach of section 11 of the MDA and section 20 of the MDA *Regulation*. Such a breach is an offence under the MDA (section 35(2)) punishable upon prosecution by a fine up to \$200,000 on a corporation and a fine of up to \$100,000 and/or 6 months incarceration for an individual (section 35.1). The Registrar may address these breaches administratively by adding conditions to a motor dealer’s registration or by suspension or cancelation of the motor dealer’s registration. The goals remain the same: regain compliance and deter future non-compliance by the specific motor dealer and the industry as whole and protect the public interest.

[71] In this case the evidence at the hearing became clear that Silk Road is not maintaining records at its business premise as required. A condition is placed on Silk Road’s licence to, within 45 days of this decision, have at a minimum the past

two years of the required business records at its business premises and available for inspection.

[72] I considered whether I should suspend Silk Road's registration for failing to maintain business records at its location as a deterrence to ensure future compliance. I note that allegation was not made on the hearing notice and Silk Road was not on notice it could be suspended for failing to maintain records. That issue only became apparent during the course of the hearing. For this reason it would be inappropriate to issue a suspension at this time without a further hearing: s. 6 MDA. I can add conditions to a motor dealer's registration without a hearing so long as written notice is given: section 4(6) MDA.

[73] Having become aware of the noted non-compliance during the course of the hearing, I can take some action to regain compliance and the condition noted above is to achieve that goal. If Silk Road does not meet that condition and abide by the legislative requirement, it risks a suspension or cancelation of its registration as a motor dealer in the future.

**(iii) Failing to produce records upon demand**

[74] A failure to produce records upon demand and in relation to a consumer complaint regarding a deceptive act of practices is a clear breach of section 25 of the MDA and sections 149 and 150 of the BPCPA. Breaching these provisions are also offences under their respective acts indicating the importance the Legislature places on adherence to these provision.

[75] A failure to produce records upon demand is a matter that is separate and apart from the misrepresentation of the keys noted above.

[76] A failure to produce records upon demand for the purpose of an investigation is far more serious than a failure to maintain records at a dealer's business premises. Refusing to provide records as required deprives the regulator from carrying out its function. In *Wise v. LSUC*, 2010 ONSC 1937 (Ont. Superior Court) the court stated:

[19] It is well recognized that to ensure the effective discharge of the responsibilities of professional regulators, every professional has an obligation to co-operate with the self-governing body: *Artinian v. College of Physicians and Surgeons of Ontario* (1990), [1990 CanLII 6860 \(ON SC\)](#), 73 O.R. (2d) 704 (Div. Ct.) at 707; *Law Society of Saskatchewan v. Stromberg* (1995), [1995 CanLII 3909 \(SK CA\)](#), 122 D.L.R. (4<sup>th</sup>) 433 (Sask. C.A.) at 438; *Adams v. Law Society of Alberta* (2000), [2000 ABCA 240 \(CanLII\)](#), 82 Alta. L.R. 219 (Alta. C.A.) at 221, para.7.

[77] Failure to provide records also shows a willingness not to abide by the law and the lawful orders of the regulator. It raises a concern that a person may be ungovernable. If a person is found to be ungovernable, then it is generally not in the public interest they be licensed or registered: *Re: Peter Fryer* (Registrar, File 13-11-005, December 13, 2013) affirmed by *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279 (BC Supreme Court).

[78] In *Re: Raymond Roy Browne* (Registrar, July 15, 2005, SP# 100022) the Registrar cancelled the salesperson licence of Mr. Browne for refusing to provide information of his conduct while employed by a motor dealer. In *Re: Mirage Auto Sales Ltd.* (Registrar, October 19, 2005) Mirage's conduct was reviewed. It was found to be consistently in breach of many provisions of the *Motor Dealer Act*, employing unlicensed sales staff and mismanaging consumer deposits and "repeatedly refuse to cooperate with MDC's [Motor Dealer Council, which is the Vehicle Sales Authority] investigation staff". For all those issues, Mirage's registration was cancelled. In *Re: BMI Bartram Motorcars Inc.* (Registrar, April 19, 2006), the Registrar lifted a suspension of that dealers registration once all matters of concern were addressed and on condition that "we [Authority] will expect continued cooperation and full collaboration with our investigation staff [by the dealer]. And failing that, we will immediately reconvene these hearings". Finally, in *Registrar v. H&F Auto Sales Ltd.* (Registrar, February 6, 2008, Reg. # 10847) the Registrar suspended the dealer's registration for a minimum of 60 days for operating with unlicensed salespeople and the suspension would only be lifted when all salespeople at the dealership were licensed.

[79] In this case, the Authority still has not received the records of this consumer transaction. Mr. Quraishi says they he does not have a copy. I cannot accept that

explanation. Silk Road purchased this vehicle from ICBC and it no doubt had the Rabbit inspected and did some preparation work (reconditioning) to place it into a sellable state. It had the Rabbit transported to Terrace with associated costs. All those transactions have tax implications for which Silk Road would have to account. It is simply unfathomable that a motor dealer would lose records of buying and reconditioning and then selling a motor vehicle. It would need to track costs, account for taxes or any tax credits, and would want to know its profit. Mr. Quraishi's emails specifically raises concerns that if he did not charge enough for the Rabbit he would lose money.

[80] A condition is placed on the registration of Silk Road to provide to the Authority all records related to this consumer transaction within 14 days of receiving these reasons. While the consumer's claimed loss has been dealt with, the investigation of this consumer transaction is not complete and cannot be completed until the Authority has reviewed the records of Silk Road. Failure to produce the records will lead to another hearing to consider whether it is in the public interest that Silk Road continues to be a registered motor dealer.

[81] To address the actual failure to provide records so far and as a means for specific deterrence on Silk Road and general deterrence on the industry, I believe a suspension of Silk Road's registration is necessary. This is a serious matter. In considering past precedents, I find that a 14 day suspension is warranted or until Silk Road has produced all the records related to this consumer transaction, whichever is later. For clarity the suspension begins on April 1, 2015, and ends midnight on April 14, 2015. If the records of this consumer transaction are not produce by April 14, 2015, the suspension continues until the records are produced and the suspension lifted by the Registrar.

[82] I considered whether issuing an administrative penalty instead of a suspension for failure to produce records was more appropriate. In this case, we have continued non-compliance and it is my opinion a suspension of Silk Road's registration for 14 days so long as the records are produced is a more effective method of regaining compliance and deterring future non-compliance. If Silk Road had eventually complied by producing the records, then an administrative penalty



for failing to produce records may have been appropriate depending on all the facts.

**(iv) Mr. Quraishi**

[83] Mr. Quraishi is the owner and operator of Silk Road. Much of the above conduct has been attributed to Silk Road, the motor dealer. However, much of what transpired was conduct by Mr. Quraishi who is a licensed salesperson. From a licensing perspective, I can review Mr. Quraishi's salesperson licence within the context of Silk Road's breaches as under the facts, they are also his breaches as he undertook the negotiations and made the misrepresentation about the Rabbit's keys and responded and failed to respond to the request to produce records: *Harris & Harris v. Windmill Auto Sales & Detailing Ltd.* (Hearing File 12-030, April 10, 2013) affirmed *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers*, 2014 BCSC 903 (BC Supreme Court).

**(a) Failure to maintain and provide records**

[84] I find that the suspension of Silk Road for failure to produce records will also impact Mr. Quraishi as the owner and the primary salesperson of the business. He will effectively be suspended as well during that time period.

**(b) Misrepresentations regarding the keys**

[85] As for the misrepresentation, he is separately liable for the misrepresentation because he is the salesperson involved: see for example section 155(6) of the BPCPA. I find it is necessary for the purpose of specific and general deterrence to deal with his salesperson license separately from Silk Road's motor dealer registration.

[86] The evidence is clear that Mr. Quraishi made the misrepresentations in this case and the continuing misrepresentations regarding the key and was reckless in doing so. Therefore, I find it appropriate that he be jointly and severally liable with Silk Road to compensate Ms. Renney: section 155(6) of the BPCPA.

[87] An owner of a motor dealer who is also the salesperson in a consumer transaction may have an administrative penalty levied against him or her separate from the motor dealer's administrative penalty: *Harris & Harris v. Windmill Auto Sales & Detailing Ltd.* (Hearing File 12-030, April 10, 2013) affirmed *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers*, 2014 BCSC 903 (BC Supreme Court); and *Knapp v. Crown Autobody & Auto Sales Ltd.* (Registrar, File 08- 70578, September 21, 2009) affirmed *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894.

[88] The same section 164(2) BPCPA factors that were considered for Silk Road are to be considered regarding an administrative penalty for Mr. Quraishi. The findings for Silk Road in paragraphs 58 to 64 above are equally applicable to Mr. Quraishi. The first factor, previous similar enforcement actions, is different and there is currently no similar enforcement actions noted for Mr. Quraishi specifically.

[89] I also note that it is Mr. Quraishi who speaks for Silk Road and sets the tone for Silk Road. In *Crown Auto Body, supra*, the dealer was found to deliberately have sold a vehicle that did not meet the requirements of the *Motor Vehicle Act* and was not roadworthy. In that case the owner who was also the salesperson received an administrative penalty of \$2,000 (the dealer received \$20,000) and the salesperson's licence was cancelled. In *Windmill, supra*, the salesperson who was also an owner of the dealer received an administrative penalty of \$500 (the dealer \$2,500) for misrepresenting previous damage on a vehicle.

[90] Taking the above factors into consideration and past precedents and my concern that a salesperson should not in any way dissuade a consumer from making a complaint, I believe an administrative penalty of \$500 is appropriate. Mr. Quraishi is issued an administrative penalty of \$500.

**(v) Mr. Cycowski**

[91] Based on all the evidence, I find Mr. Cycowski (a) did not commit a deceptive act or practice, (b) did not commit an unconscionable act or practice, (c) did not fail to produce records, and (d) did not fail to maintain records. All allegations against Mr. Cycowski are dismissed.

**(vi) Investigation and Hearing costs – section 155(4)(d) BPCPA**

[92] Having found a breach of the BPCPA, I find that pursuant to section 155(4)(d) of the BPCPA, Silk Road and Mr. Quraishi are jointly and severally liable to pay the investigation and hearing costs in this matter of \$1,484.86.

**Summary of Decision**

**(a) Findings of fact**

[93] I find that Silk Road and Mr. Quraishi committed a deceptive act or practice contrary to the BPCPA by representing to Ms. Renney that the Rabbit came with three keys (2 remote and 1 regular key) when it did not. I further find that misrepresentation was made continuously and recklessly making it a deliberate act.

[94] I find that Silk Road and Mr. Quraishi have failed to provide the records of this consumer transaction contrary to the MDA and the BPCPA.

[95] I find Silk Road is not properly maintaining records of transactions at its place of business in breach of the MDA.

[96] I find no evidence at all that Mr. Cycowski breached any of the legislation and all allegations against Mr. Cycowski are dismissed.

**(b) Compliance Order – section 155 of the BPCPA**

[97] The following compliance order is issued:

Silk Road Traders Ltd. *dba* Silk Road Autos (Dealer #30733 and 40107) and Karim Quraishi (Salesperson #108137) are jointly and severally required to:

- (a) Abide by the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 and its regulations,
- (b) Abide by the *Motor Dealer Act* R.S.B.C. 1996 c. 316 and its regulations,
- (c) Refrain from committing a deceptive act or practice during a consumer transaction,
- (d) Pay to Andrea Renney \$79.52 for programming a key and \$621 for travel expenses for a total of \$700.52, and
- (e) Pay to the Motor Vehicle Sales Authority \$1,484.86 for the Registrar's investigation and hearing costs.

**(c) Administrative Penalties – section 164 BPCPA**

[98] Silk Road Traders Ltd. *dba* Silk Road Autos (Dealer #30733 and 40107) is ordered to pay an administrative penalty of \$2,000.

[99] Karim Quraishi (Salesperson #108137) is ordered to pay an administrative penalty of \$500.

**(d) Conditions on Silk Road's Registration – section 4(6) MDA**

[100] Silk Road Traders Ltd. *dba* Silk Road Autos (Dealer #30733 and 40107) is to, within 45 days of this decision, ensure it has the legislatively required minimum two (2) years of business records at its registered business premises at Surrey and at Terrace.

[101] Silk Road Traders Ltd. *dba* Silk Road Autos (Dealer #30733 and 40107) is to, within 14 days of receiving a copy of this decision, provide to the Authority the records requested by the Authority involving the Rabbit transaction with Andrea Renney.

**(e) Order of Suspension – section 5 MDA**

[102] I order the motor dealer registrations of Silk Road Traders Ltd. *dba* Silk Road Autos (Dealer #30733 and 40107) be suspended commencing April 1, 2015, and ending midnight on April 14, 2015, subject to Silk Road having provided the records of the transaction with Andrea Renney by April 14, 2015. If those records have not been received by that date, the suspension will continue until lifted by the Registrar.

**Options for Review**

[103] If Silk Road or Mr. Quraishi disagree with the Compliance Order or the administrative penalties issued against them, they may seek a reconsideration of those decisions if they can provide new evidence that was not previously in existence or was not discoverable and has come to light and would have a material effect on those decisions: sections 180-182 of the BPCPA. If there is no new evidence, they may request a judicial review before the B.C. Supreme Court as noted below.

[104] If Silk Road or Mr. Quraishi disagree with the conditions placed on their licence or the suspension of Silk Road's two motor dealer registrations, those may be reviewed by way of petitioning the B.C. Supreme Court for judicial review pursuant to the *Judicial Review Procedure Act*.

Dated: March 10, 2015

A large black rectangular redaction box covers the signature of Ian Christman. A blue ink scribble is visible to the left of the box.

Ian Christman J.D.  
Registrar of Motor Dealers