



Hearing File No. 14-12-001
Investigation File No. 14-05-033

Neutral Citation: 2015 BCRMD 003

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:

NEIL SUDRA
(Salesperson Licence # 106852)

Applicant

DECISION OF THE REGISTRAR OF MOTOR DEALERS

APPEARANCES

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

For Neil Sudra: Craig D. Sicotte (Legal counsel)

Date and Place of Hearing: April 1, 2015 at Surrey, British Columbia

INTRODUCTION

[1] A hearing was called to review the salesperson licence of Neil Sudra, #106852. The staff of the Motor Vehicle Sales Authority (the "Authority") raise the following concerns, as summarized from the Notice of Hearing, that in the months of April to June of 2010, Mr. Sudra did:

- (a) convert \$3,000 of consumer money for his own use without authorization from the consumer or knowledge of the dealer,
- (b) provide financial advice to a consumer without the necessary regulatory licence, and
- (c) lose his employment for theft of \$3,378.00 from his employer.

[2] This issue came to light on May 6, 2014, when the dealer, where Mr. Sudra had been employed in 2010, contacted Compliance Officer Jas Virk to say they had a consumer claiming she gave Mr. Sudra \$3,000 during the 2010 transaction, but the records she had did not account for that money. The consumer had gained employment at another dealership in 2014, and after her training relooked at her purchase documents and noted the discrepancy. The dealer compensated the consumer in the amount of \$3,926.92 encompassing the original \$3,000 plus interest.

Adjournment

[3] When counsel for Mr. Sudra concluded his submissions as to the appropriate disposition of this matter, I advised him that the *Motor Dealer Act* did not provide for a fine for this type of issue. My authority was to add conditions to a licence, to suspend or cancel a licence, or simply make a note of the transgression and no further sanction was necessary. A discussion ensued about specific and general deterrence and that Mr. Sudra's case was a bit different than the other cases relied on by Mr. Sudra. In those cases, the initial transgression had been dealt with by another authority (example the courts in the cases of Mr. Curtin and Mr. Chieduch). In this case, the initial transgression by Mr. Sudra was being brought before me for review. To allow Mr. Sudra and his legal counsel time to respond to this information, I order that Mr. Sudra provide written submissions by the end of May 2015. I have now received and reviewed those submissions.

Allegation of unlicensed activity

[4] The VSA's allegation that Mr. Sudra provided financial advice without the necessary regulatory authority was not fully explored. I was not referred to any legislative requirements that Mr. Sudra may have breached. The evidence was mostly from Mr. Sudra's initial explanation of why he may have asked the consumer for the \$3,000 and an admission that from time-to-time he would, outside of the dealership, try to help his customers improve their credit ratings for a fee. While Mr. Sudra did not really contest this evidence (Exhibit 3 – Compliance Hearing Report) at the hearing, it was incumbent on the VSA to identify which legislation required Mr. Sudra to be licensed to carry on this type of work and that he was not so licensed. The VSA did not, and I would dismiss this allegation against Mr. Sudra.

THE LAW

[5] 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

(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.

[6] 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 CanLII 43657 (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 and Dirani*;
- (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, affirmed *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279 (BC 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.

[7] Recently, Madame Justice Sharma discussed section 6 of the *Salesperson Licensing Regulation* and noted:

[23] The Registrar states that the requirement to examine a person's past conduct demonstrates an overarching concern with public safety. Past conduct is the statutory tool by which the Registrar can determine if applicants will be governable, act in accordance with the law and conduct themselves with honesty and integrity. Salespersons are in a position of trust with the buying public who rely on them to give clear and honest information about buying motor vehicles. The public also expects safety to be a priority if

taking a test drive with a salesperson. Lastly, integrity is important because salespersons may be privy to customer's confidential personal information including home address and financial information.

Fryer v. Motor Vehicle Sales Authority of British Columbia, 2015 BCSC 279

[8] Cancelling or suspending the licence of a salesperson (or a dealer) generally deprives them of earning income and affects their and their family's livelihood. I am mindful of the cautions noted in cases such as *Pacific International et al v. B.C. Securities Commission* 2002 BCCA 421 (CanLII) at paragraphs 11-13 and also see *Zenner v. College of Optometrists (Prince Edward Island)*, [2005] 3. S.C.R. 645 (Supreme Court of Canada). Even so, the public interest is paramount: *Pacific International et al*.

See also *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894

POSITION OF THE PARTIES

(a) The VSA

[9] The VSA's position is apparent in the Notice of Hearing. There is a concern that Mr. Sudra's past conduct may pose a risk to the public interest. Also of concern was Mr. Sudra's initial explanation for the use of the \$3,000, which turned out to be incorrect.

[10] Compliance Officer Jas Virk investigated this issue. Mr. Virk stated he went to all the past dealers where Mr. Sudra had been employed since the 2010 incident and found no evidence of Mr. Sudra committing any other repeated transgressions. Mr. Virk did not speak to Mr. Sudra's current employer (at the time of the hearing), but would do so once Mr. Sudra had advised the employer of this hearing and the allegations.

[11] During the investigation it came to light that the dealer where Mr. Sudra had been employed in 2010, terminated Mr. Sudra's employment for inappropriate use of consumer credit cards where he would channel deposit refunds to his own account. The dealer's internal risk management system uncovered four such irregularities (pages 4-5 of the Compliance Hearing Report). Mr. Sudra repaid those payments as a deduction of his final pay.

[12] Mr. Virk also facilitated Mr. Sudra's repaying the dealer \$3,926.92 by delivering two cheques to the dealership. Mr. Sudra has repaid the dealer in full.

[13] Other evidence (see the Licensing Hearing Report, Exhibit 2) noted that Mr. Sudra was first licensed in October 26, 2005, and has maintained his licence in good standing with only one late renewal in 2006. There were no other licensing issues to report. Mr. Sudra has also completed his mandatory education

requirements with his last continuing education requirement being completed on March 8, 2012 (Level 2 Salesperson Certification Course).

(b) Neil Sudra

[14] Mr. Sudra did not deny the allegations at the hearing. During the course of the investigation, Mr. Sudra initially explained that the money was probably paid to purchase a warranty for the consumer outside of the dealer transaction. Ultimately, however, Mr. Sudra admitted to having taken the consumer's money. He has repaid the dealer.

[15] Mr. Sudra provided a report from Dr. Karl Williams, a clinical, forensic and consulting psychologist. Dr. Williams was not produced as a witness to explain the report and his qualifications. The report itself does explain Dr. Williams's assessment of Mr. Sudra and does identify Dr. Williams's qualifications. Doctor Williams has provided expert testimony before various levels of courts; he is a consultant for the B.C. Ministry of Children and Family Development, WorkSafeBC and the Yukon Government; and he was a long-term consultant for the B.C. Ministry of Justice and the Correctional Service of Canada. Doctor Williams provides expert evidence and opinions on criminogenesis, dangerousness, recidivistic risk in youth and adults, and assess psychological stability. Doctor Williams provides risk assessment training at the Justice Institute of B.C. and at other national and international venues.

[16] The VSA did not object to Doctor Williams's report being entered at the hearing, and I note that administrative tribunals have greater leeway than the courts in accepting and relying on expert opinions.

Western Forest Products Limited v. HMTQ, 2009 BCCA 354 (BC Court of Appeal) at paragraphs 26-27

Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia, 2014 BCSC 894 (BC Supreme Court) at paragraphs 66-67

[17] I will not detail Dr. Williams's report but in summary:

- (a) Mr. Sudra was undergoing stressors in his life at the relevant time related to family health and financial issues,
- (b) Mr. Sudra has a strong need for social approval and being seen in a positive light and seen as being successful and in control,
- (c) Tests and interviews suggest Mr. Sudra is prone to be accommodating and responsive to others' needs (such as a family member in need) and indicates Mr. Sudra is not intrinsically dishonest and suggests the potential for recidivism is low,

- (d) Doctor Williams's view is Mr. Sudra has undergone great stress and anxiety over this issue and having to explain this situation to his wife, and
- (e) Doctor Williams's opinion is that Mr. Sudra is a low risk of repeated conduct as this incident has impacted Mr. Sudra greatly.

[18] Tendered into evidence (Exhibit 4) were six letters in support of Mr. Sudra. They range from personal friends to business associates. All indicate Mr. Sudra was of good character and honest. Mr. Sudra's wife also provided a letter in support of Mr. Sudra (Exhibit 6). Among other things, that letter notes Mr. Sudra is a kind and generous person and a devoted family member. The letters in support of Mr. Sudra contain facts about Mr. Sudra's character which are consistent with Doctor Williams's report.

[19] As part of his written submission, Mr. Sudra also attached a letter from his last employer who let Mr. Sudra go after they became aware of these proceedings. Even though the dealer let Mr. Sudra go, their letter states they were pleased with Mr. Sudra's performance during his employment.

[20] The overall tenor of Doctor Williams's report and the letters in support of Mr. Sudra are that this incident occurred due to stressors (a confluence of both family health and financial issues) in Mr. Sudra's life accompanied by Mr. Sudra's need to appear successful. The indications are that the conduct of concern is generally out of character for Mr. Sudra. This view is generally corroborated by Compliance Officer Virk's investigation findings that there appears to be no further similar issues after the original conduct of concern in 2010.

[21] As to the appropriate sanction, counsel for Mr. Sudra notes:

- (a) Mr. Sudra has repaid all monies,
- (b) The issue was five years ago and not repeated,
- (c) Mr. Sudra has lost his last job as a manager at a dealership on April 10, 2015, and has not worked since, effectively being suspended during that time,
- (d) The publication of this decision will act as a deterrent on Mr. Sudra, impacting on his reputation and can act as a general deterrent on the industry,
- (e) Mr. Sudra is unlikely to repeat this type of conduct,
- (f) Mr. Sudra is better aware of why this has occurred and can take appropriate steps to ensure there is no repeat occurrence,
- (g) Mr. Sudra has the support of his wife and family,
- (h) Mr. Sudra is remorseful, and
- (i) Mr. Sudra has otherwise been licensed in good standing.

[22] Overall, Mr. Sudra asks that conditions be added to his licence similar to conditions noted in the Philip Curtin and Edward Chieduch cases. If a suspension is

deemed appropriate, then Mr. Sudra asks that he be credited for the time he has been unemployed (effectively suspended).

DISCUSSION

[23] Mr. Sudra has admitted to converting consumer money for his own purpose. Further, the purpose of the consumer paying the \$3,000 was not actually related to the vehicle transaction, but was represented that way by Mr. Sudra. While he has repaid the money, he did so only after he was confronted with the allegations. This is a serious matter that impacts the level of trust consumers would have interacting with Mr. Sudra. Further, this conduct impacts the level of trust a dealership would have employing Mr. Sudra.

[24] I have considered the cases advanced by Mr. Sudra's lawyer. In the Tam's decision, conditions were added to the salesperson's licence for improperly keeping money owed to the dealer out of spite for the dealer. That case is slightly different than in this case. In Tam, the dealer knew it was owed money as part of the deal and had not received it from Mr. Tam. In the case of Mr. Sudra, the dealer received all its money, but the consumer paid more than was required under Mr. Sudra's direction. That over-payment was to Mr. Sudra's benefit.

[25] As noted in paragraph 3, I have to deal with Mr. Sudra's conduct at first instance. This is not a case where I am reviewing prior conduct already adjudicated and sanctioned by another body (example: a court or the securities commission) to see if Mr. Sudra is suitable to keep his licence. I am dealing with the original conduct at first instance and deciding whether that conduct requires action against Mr. Sudra's licence.

[26] The unique facts of Mr. Sudra's case do not warrant cancellation of his licence. In this case, I believe a suspension of Mr. Sudra's licence is in order to deal with the conduct. The allegation is serious and specific deterrence in this case is important to instill in Mr. Sudra the need to keep this incident "top of mind", so that he does not repeat that conduct. Doctor Williams noted in his report that it will be important that Mr. Sudra keeps this incident at the forefront of his mind to reduce the likelihood of recidivism (page 6 of the Report). It is also important that I address general deterrence, but I am mindful that Mr. Sudra's case must be assessed individually and too much emphasis on general deterrence could be unfair to Mr. Sudra.

[27] Overall, I believe in Mr. Sudra's case a suspension of 3 months to deal with the initial conduct is sufficient. The suspension would have been significantly longer if:

- (a) Mr. Sudra had not repaid the money,
- (b) Mr. Sudra was not remorseful,
- (c) There was evidence that this type of conduct had been repeated, and
- (d) Mr. Sudra had not taken steps to try and understand why this occurred and to try and ensure it was not repeated – Mr. Sudra is rehabilitating.

[28] It is also important that five years has passed without any reported incidents and Mr. Sudra has at all times kept his licence in good standing. I have been guided in my decision based on past cases discussed at the hearing and the Undertaking of James Lee dated May 22, 2012.¹ Mr. Lee had accessed another dealer's client list without authorization, and Mr. Lee agreed to a 30 day suspension. There was no indication that consumers suffered financially from Mr. Lee's conduct. I find Mr. Sudra's case more of a concern as a consumer was financially affected.

[29] I would also order that Mr. Sudra be credited for the time he has not worked as a licensed salesperson. His loss of employment was directly related to the conduct in question. Mr. Sudra's suspension will end midnight on July 10, 2015.

[30] I also believe conditions should be added to Mr. Sudra's licence. The conditions are put in place to protect the public interest and as a means to monitor whether Mr. Sudra has earned back the public's trust. I believe the conditions should be similar in nature as those of Mr. Tam, and should include Mr. Sudra successfully fulfilling his continuing education requirement early. The continuing education requirement will remind Mr. Sudra of his obligations to consumers and to abide by the law, and provide him some useful suggestions on how to do so. The following conditions are added to Mr. Sudra's licence:

1. Mr. Sudra is not to handle consumer money except for the taking of deposits which is to be provided to his employer as soon as possible.
2. Mr. Sudra is to immediately advise the VSA of any new employment.
3. Mr. Sudra may not change employers without prior approval of the VSA.
4. Mr. Sudra is to, at his own cost, successfully complete the VSA Continuing Education modules by August 31, 2015.
5. Mr. Sudra is to submit to an interview by a Compliance Officer of the VSA within 6 months of being re-employed, and his employer will be interviewed for compliance with these conditions. Transactions involving Mr. Sudra are subject to review at any time.
6. These conditions are to be reviewed within one year of this decision's date and the Manager of Licensing, Hong Wong, is authorized to amend, extend the time to complete, or remove any of these conditions.
7. Mr. Sudra may ask the Registrar to review any decision made under condition 6 by the Manager of Licensing.

¹ http://www.mvsabc.com/images/pdf_files/COMPLIANCE%20UNDERTAKINGS/Undertaking_Lee.pdf

SUMMARY

[31] Mr. Sudra's salesperson licence is suspended for three months. With credit since April 10, 2015, the suspension ends midnight on July 10, 2015.

[32] Conditions are imposed on Mr. Sudra's licence as detailed in paragraph 30.

[33] This decision is reviewable by way of Petition to the B.C. Supreme Court pursuant to the *Judicial Review Procedure Act*. In accordance with the recent addition of section 7.1(t) of the *Motor Dealer Act*, referencing section 57 of the *Administrative Tribunals Act*, such a Petition must be filed within 60 days of this decision being issued.

Date: June 26, 2015



Ian Christman, J.D.
Registrar of Motor Dealers