



Hearing File No. 13-08-001  
Investigation File No. 13-05-029

**IN THE MATTER OF 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:

**Motor Dealer Council of British Columbia dba  
Motor Vehicle Sales Authority of British Columbia**

Complainant

AND:

**AutoCanada Northtown Auto GP Inc., a general partner of  
Northtown Auto LP dba Northland Chrysler Jeep Dodge  
(Dealer Licence: 30541)**

Respondent

AND:

**Frederick Brent Marshall  
(Salesperson Licence: 106591)**

Respondent

AND:

**Murray Leonard Carlson  
(Salesperson Licence: 114143)**

Respondent

**DECISION OF THE REGISTRAR OF MOTOR DEALERS**

Date and Place of Hearing: **May 26 & 27, 2015** at Vancouver, British  
Columbia

**Appearances for:**

The Complainant

Robert Hrabinsky

The Respondent AutoCanada Northtown  
Auto GP Inc., a general partner of  
Northtown Auto LP dba Northland Chrysler  
Jeep Dodge

Paul M. Pulver

The Respondent Frederick Brent Marshall

Douglas McLauchlan

## Introduction

- [1]. On May 23, 2014 I released my decision on liability in this proceeding. In this decision I will refer to terms as defined in my May 23, 2014 decision, and the two decisions should be read together.
- [2]. On May 26 and 27, 2015 the parties appeared before me to address the penalty phase of this proceeding.

## Summary of relevant facts and findings

### *January 4, 2006 Decision*

- [3]. On January 4, 2006 the Registrar of Motor Dealers in British Columbia issued a decision against Northland Motor Holdings Ltd. and Northland Dodge Chrysler Ltd. Mr. Marshall confirmed in evidence that Northland Motor Holdings Ltd. and Northland Dodge Chrysler Ltd. were the predecessor companies to the present respondent AutoCanada Northtown Auto GP Inc., a general partner of Northtown Auto LP dba Northland Chrysler Jeep Dodge ("Northland"). Mr. Marshall appeared before the Registrar in the 2006 proceeding as a witness for Northland Motor Holding Ltd. and Northland Dodge Chrysler Ltd.
- [4]. In the 2006 proceeding the Registrar found that Northland Motor Holdings Ltd. and Northland Dodge Chrysler Ltd. had violated a number of provisions of the *Motor Dealer Act*, the *Motor Dealer Act Regulation* and the *Business Practices and Consumer Protection Act ("BPCPA")*, including provisions relating to correctly pricing vehicles on display, disclosing the "total asking price" on vehicles, deceptive advertising practices, and improper pricing of vehicles.
- [5]. Administrative penalties were imposed pursuant to s. 164(2) of the *BPCPA*. The Registrar found that all the considerations set out in s. 164(2) applied to the conduct of the respondents, and found:

Notwithstanding Mr. Marshall's many explanations as to why these contraventions occurred, and continue to occur after the dealership had been warned several times, and specifically because of his general attitude towards these matters, I believe a maximum penalty is in order.
- [6]. Penalties were imposed in the amount of \$50,000 with respect to Northland Dodge Chrysler Ltd. and \$10,000 with respect to Northland Motor Holdings Ltd.

### *November 1, 2010 Undertaking*

- [7]. In response to a separate matter unrelated to the factual determinations made herein, on November 1, 2010 the respondent Mr. Marshall gave a formal undertaking on behalf of the respondent Northland:

- (a) to comply with the *Business Practices and Consumer Protection Act* and the regulations made thereunder; and
- (b) to ensure that all employees comply with the *Business Practices and Consumer Protection Act* and the regulations made thereunder.

[8]. The November 1, 2010 undertaking included other features which are not directly applicable to the case before me.

*May 23, 2014 Decision and Related Events*

[9]. In my May 23, 2014 decision I found the respondents committed the following breaches of ss. 4 and 5 of the *Business Practices and Consumer Protection Act*:

- (a) 2006 Honda Civic. I found that the respondents engaged in three deceptive acts in relation to the 2006 Honda Civic:
  - (i) the respondents failed to price the Honda Civic on the lot at the price advertised in the June flyer;
  - (ii) the respondents engaged in a deceptive act in showing the image of a four-door sedan on the June flyer in relation to the Honda Civic when in fact the vehicle for sale was a two door coupe;
  - (iii) Northland, through its salespeople, engaged in a deceptive act in representing to the purchasers that they would be getting a "really good deal" and a "family deal" on the 2006 Honda Civic, which statement was intended to convey to and was understood by the purchasers as a representation that they would be getting a price advantage, which representation was false.
- (b) 2009 Chevy Impala. I found that the respondents engaged in a deceptive act in pricing the 2009 Chevy Impala higher than it was advertised on the June flyer.
- (c) 2009 Dodge Grand Caravan. I found that the respondents engaged in a deceptive practice in charging the purchaser a \$589 administrative fee on top of the advertised price, without advising the purchaser that such fee would be levied.
- (d) 2012 Dodge Journey. I found that the respondents engaged in a deceptive practice by describing a 2013 model on the June flyer when the actual vehicle for sale was a 2012 vehicle.

[10]. In addition to the specific findings I made, as summarized above, I reviewed procedures taken in the dealership generally and with respect to the sales of the "2013" Dodge Grand Caravan, the 2008 Pontiac Montana, and the 2007



Jeep Patriot. I found the following conduct of Northland and Mr. Marshall to be deceptive and of concern generally:

- (a) failure to ensure that all salespeople know the sale pricing advertised in the relevant effective period of the flyers;
- (b) failure to correct flyers to clearly identify which vehicles are no longer available at the commencement of the effective period of the flyers;
- (c) failure to clearly identify that any negotiations on the purchase of an advertised vehicle will result in the administrative fee being added to the purchase price; and
- (d) failure to properly review the purchase agreements with purchasers, and to remove from or not include in such agreements items which have been declined by purchasers.

[11]. In September 2014 Mr. Marshall sent a series of broadcast emails to people in the industry in which he commented negatively and with very colourful language on the investigation conducted by the Motor Vehicle Sales Authority ("MVSA"), and the actions of MVSA employees Mr. Dunn and Ms. Walker, including stating numerous times that the proceeding was an abuse of process and suggesting that the conduct at issue should have been resolved with a warning or a ticket.

[12]. Approximately one week after the first broadcast email by Mr. Marshall, Mr. Marshall was terminated by Northland. Northland then wrote to all recipients of Mr. Marshall's email and advised them that Mr. Marshall's views were not the views of Northland or any entity relating to Northland, that Mr. Marshall was not speaking for the dealership, its employees or management, and expressed regret for any misunderstanding that may have been caused in this regard.

[13]. On October 22, 2014 Northland delivered cheques to the purchasers of each of the vehicles with respect to which I had identified conduct in breach of the *BPCPA*. Specifically, payments were made as follows:

- (a) \$4,593.12 to the purchasers of the 2006 Honda Civic,
- (b) \$1,733.12 to the purchaser of the 2009 Chevy Impala,
- (c) \$589 to the purchaser of the 2009 Dodge Grand Caravan,
- (d) \$2,172.80 to the purchasers of the 2012 Dodge Journey, and
- (e) \$7,000 by way of a credit on the purchase of a new vehicle to the purchasers of the 2012 ("2013") Dodge Grand Caravan.

[14]. On December 2, 2014 Northland (defined as "AutoCanada") and Mr. Marshall agreed to an interim compliance order which included the following terms:

1. That AutoCanada and Marshall, while they are registered and/or licensed under the *Motor Dealer Act*, comply with the *Business Practices and Consumer Protection Act* and the regulations made thereunder;
2. That AutoCanada and Marshall, while they are registered and/or licensed under the *Motor Dealer Act*, comply with the *Motor Vehicle Sales Authority Advertising Guidelines* pursuant to *Motor Vehicle Sales Authority Directive 4*.
3. That AutoCanada and Marshall, while they are registered and/or licensed under the *Motor Dealer Act*, ensure that:
  - (a) all advertisements clearly specify when the terms of sale so advertised are in effect (both start and end dates);
  - (b) advertisement copy is affixed to the vehicles advertised for sale therein throughout the effective date of the advertisement; and
  - (c) advertisement copy is displayed in the show room of the dealership throughout the effective date of the advertisement and the vehicles in the advertisement are clearly marked off as sold at the time of sale.

[15]. On December 2, 2014 Mr. Marshall voluntarily surrendered his sales person licence #106591 for Northland.

### **Orders sought**

- [16]. The MVSA seeks a compliance order, administrative penalties, and the suspension of Northland's dealer registration for a period of time.
- [17]. The MVSA seeks a compliance order in essentially the same form as the interim compliance order, with the following additional terms:
- (a) that the respondents pay the actual costs of the inspection/investigation and legal costs, in an amount to be settled between the parties or before me at a later date,
  - (b) that the respondents ensure that complete records, as may be necessary to verify compliance in every respect with the *BPCPA* and the regulations made thereunder, are kept for a period of two years at the dealer location and are available for inspection upon request in accordance with s. 20 of the *Motor Dealer Act Regulation*, and
  - (c) that all Northland managers and employees involved in the advertising of vehicles attend and complete an in person or online Advertising Workshop provided and administered by the MVSA at cost to the dealer within 90 days from the date of the Compliance Order.

[18]. The MVSA sought the imposition of the following administrative penalties:

<b>Contravention</b>	<b>Vehicle</b>	<b>Northland Penalty</b>	<b>Marshall Penalty</b>
Advertising a vehicle for sale when it is not actually available for sale	"2013" Dodge Grand Caravan	\$2,000	\$200
	2008 Pontiac Montana	\$2,000	\$200
	2007 Jeep Patriot	\$2,000	\$200
Affixing sticker prices on vehicles that are greater than the advertised price	2006 Honda Civic	\$10,000	\$1,000
	2009 Chevy Impala	\$10,000	\$1,000
	2012 Dodge Journey	\$10,000	\$1,000
Failing to make a vehicle available for sale at the advertised price	2006 Honda Civic	\$10,000	\$1,000
	2009 Chevy Impala	\$10,000	\$1,000
	2012 Dodge Journey	\$10,000	\$1,000
	2012 Dodge Grand Caravan	\$10,000	\$1,000
Displaying an image of a four door sedan in an advertisement when the actual vehicle for sale was a two door coupe	2006 Honda Civic	\$3,000	\$300



Misrepresenting a deal as a "very good deal" and a "family deal", when in fact there was no such price advantage	2006 Honda Civic	\$20,000	\$2,000
Breach of the November 2010 undertaking		\$35,000	

[19]. The MVSA sought the temporary suspension of Northland's dealer registration for a period of 7 consecutive days commencing on a date to be determined by me.

**Compliance Order**

[20]. The respondents did not oppose the continuation of the interim compliance order.

[21]. Northland opposed the requirement that Northland keep complete records to verify compliance with the *BPCPA* and the regulations thereunder for a period of two years. Northland says orders for compliance with the *BPCPA* and the *Motor Dealer Act* are sufficient.

[22]. Northland has been the subject of an earlier undertaking requiring compliance with the *BPCPA* and yet found itself in breach of that Act in the hearing before me. I find it reasonable and in the public interest to order that Northland maintain complete records to ensure compliance with the relevant Acts, and I find that two years is a reasonable length of time to maintain such records.

[23]. Northland opposed the inclusion of a term requiring managers and employees to attend an Advertising Workshop provided by the MVSA and said such a term is not properly the subject of a compliance order. I disagree.

[24]. I am satisfied that Northland's employees did not adequately understand their obligations in relation to advertising. Section 155(4)(c) of the *BPCPA* provides the Registrar with the power to order specified actions to remedy an act or practice by which the Act or Regulation are contravened. I am satisfied that this power is broad enough to allow me to order employees and managers to attend educational sessions to ensure that they and Northland are compliant with their advertising obligations in the future. I find it is in the public interest to require attendance at such education sessions.

[25]. The MVSA seeks a term that the respondents pay the actual costs of the investigation and inspection, including any actual legal costs, incurred by the

MVSA in respect of a contravention referred to in the compliance order, pursuant to s. 155(4)(d) of *BPCPA*.

- [26]. The respondents take the position that 1) only those costs incurred in relation to the proven contraventions may be ordered against the respondents, 2) s. 155(4)(d) refers to investigation costs, not hearing costs, and therefore hearing costs cannot be awarded, and 3) all costs awarded must be subject to assessment pursuant to the Rules of Court.
- [27]. The hearings undertaken by the Registrar in this matter are part of the inspection process outlined in the *BPCPA*, and made applicable to the MVSA by virtue of the *Motor Dealer Act*. The inspection powers, as defined in s. 151 of the *BPCPA* include the same powers that the Supreme Court has for the trial of a civil action, including ordering the attendance of witnesses, and compelling the production of records and things. As such, hearing costs may be ordered to be paid as a term of a compliance order.
- [28]. Unlike ordinary costs ordered under the Rules of Court, or other enactments such as the *Strata Property Act* referred to by counsel for Northland, s. 155(4)(d) of the *BPCPA* permits the Registrar to include in the compliance order a term requiring payment of actual costs of any inspection, including actual legal costs. As such, actual legal costs may be ordered paid as a term of a compliance order and are not required to be assessed under a process akin to the process set out in the Rules of Court.
- [29]. At this hearing I was presented with no evidence of actual costs claimed. The parties seek an order from me describing what costs will be payable, if any, and have suggested that they will be able to work out between themselves the actual amount of the costs payable consistent with my direction. If they cannot come to agreement on such costs, they will appear before me to settle the costs.
- [30]. For the balance of my decision, when I refer to costs, I am referring to actual costs of the investigation, the inspection (which includes the hearings), and all associated legal costs. In addition, my reference to such costs also includes an assessment of the reasonableness of such costs. Because I have not been provided with any proof of actual costs, I am not prepared to order that all costs are payable without the check and balance of a reasonableness assessment.
- [31]. While many of the cases referred to by counsel contained orders for costs in a modest amount (less than \$5,000), that is not expected to be the case here. This case was unlike cases where the parties were not represented by counsel, or were completed in a brief hearing of one day or less. This case involved multiple days of hearings, multiple motions, telephone conferences with the registrar, travel costs, and extensive documentation.



- [32]. The MVSA conceded that it was only pursuing costs in relation to those contraventions which were proven.
- [33]. This matter has a rather protracted history. On August 7, 2013 the initial hearing notice was issued by the MVSA. On January 2, 2014 the MVSA advised the respondents that it would not be proceeding with a number of allegations, including in relation to five specific vehicles. On January 6, 2014 a new hearing notice was issued, and this hearing notice formed the basis of all subsequent hearings in this matter.
- [34]. Pursuant to the January 6, 2014 hearing notice, the MVSA raised a number of allegations in relation to specific transactions and conduct generally. These are all reviewed in detail in my decision of May 23, 2014. Many of the allegations were proven in relation to deceptive practices. I found that there had been no instances of unconscionable conduct. I also found that the allegations arising from the July flyer were not proven. I find that the MVSA is entitled to 75% of its costs of the investigation and inspection, including the hearings, leading up to and including my May 23, 2014 decision.
- [35]. Following my May 23, 2014 decision, the respondents sought an order that I recuse myself from this proceeding, and that my earlier decision be vacated. The respondents were not successful in this application, and I find that the MVSA is entitled to its costs of this application.
- [36]. The MVSA prepared a series of statutory declarations which it sought to rely on at this penalty phase of the hearing. The respondent Northland objected to the content of a number of the statutory declarations. Written submissions were exchanged, an oral hearing was held, and on March 11, 2015 I issued my decision on the admissibility of the challenged statutory declarations. The respondent Northland was substantially successful on this application and I award no costs to the MVSA in relation to this application.
- [37]. In April 2015 Northland sought an adjournment of the penalty phase hearing to allow it to inform itself in relation to an alleged conflict of interest on the part of counsel for Mr. Marshall. While I did allow the adjournment to give counsel for Northland time to complete his investigation, ultimately nothing came of this allegation, no motion to remove Mr. McLauchlan was made, and the penalty phase hearing had to be rescheduled. As the additional time and cost associated with this application arose solely in relation to issues between the respondents, I award the MVSA its costs in relation to the adjournment application, payable by Northland.
- [38]. Finally we come to the penalty phase hearing. The MVSA sought \$134,000 in administrative penalties, a 7 day suspension of the dealer's registration, and a compliance order. Northland largely consented to the terms of the compliance order, opposed the suspension of its registration, and proposed administrative penalties in the range of \$5,000. For the reasons set out

below, I have not ordered a suspension of the dealer's registration, and I have awarded \$47,550 in administrative penalties. The outcome of the penalty phase hearing was mixed. I award the MVSA 75% of its costs of the penalty phase hearing.

[39]. With the guidance I have set out above, I am hopeful the parties can agree on the amount of costs payable. With the exception of the costs in relation to the adjournment application, all costs are payable to the MVSA by Northland and Mr. Marshall jointly.

[40]. By October 30, 2015, if the parties cannot agree on the total amount of costs payable to the MVSA they are to contact the MVSA to set down a hearing before me to determine the amount of costs payable.

### ***Administrative Penalties***

[41]. Sections 164 and 165 of the *BPCPA* provide as follows:

**164** (1) After giving the person an opportunity to be heard, the director may impose an administrative penalty on the person if the person contravenes

- (a) a prescribed provision of this Act or the regulations,
- (b) a condition of a licence,
- (c) a compliance order,
- (d) a direct sales prohibition order,
- (e) a property freezing order, or
- (f) an undertaking.

(2) Before the director imposes an administrative penalty on a person, the director must consider the following:

- (a) previous enforcement actions for contraventions of a similar nature by the person;
- (b) the gravity and magnitude of the contravention;
- (c) the extent of the harm to others resulting from the contravention;
- (d) whether the contravention was repeated or continuous;
- (e) whether the contravention was deliberate;
- (f) any economic benefit derived by the person from the contravention;
- (g) the person's efforts to correct the contravention.

(3) If the director imposes an administrative penalty on a person, a prosecution for an offence under this Act for the same contravention may not be brought against the person.

(4) A person who has been charged with an offence under this Act may not be subject to an administrative penalty in respect of the circumstances that gave rise to the charge.

(5) If a corporation contravenes

(a) a prescribed provision of this Act or the regulations,

(b) a condition of a licence,

(c) a compliance order,

(d) a direct sales prohibition order,

(e) a property freezing order, or

(f) an undertaking,

an officer, director or agent of the corporation who authorized, permitted or acquiesced in the contravention is also liable under this section, whether or not an administrative penalty is imposed on the corporation.

**165** (1) An individual on whom an administrative penalty is imposed is liable to a penalty of not more than \$5 000.

(2) A corporation on which an administrative penalty is imposed is liable to a penalty of not more than \$50 000.

#### *Administrative Penalty for Breach of 2010 Undertaking*

[42]. The MVSA seeks to have an administrative penalty imposed for breach of the undertaking made November 2010. However, I am not satisfied that the respondent Northland was given adequate notice of this intention.

[43]. In June 2014, following my decision of May 23, 2014, the MVSA notified the respondents of its intention to seek an administrative penalty in relation to breach of the November 2010 undertaking. However, the amended hearing notice dated January 6, 2014 in relation to this proceeding did not address the November 2010 undertaking in any way. If the MVSA intended to pursue a specific remedy for breach of the November 2010 undertaking, that ought to have been made clear at the outset.

[44]. In my view it would have been possible for the MVSA to allege a breach of the November 2010 undertaking in the January 6, 2014 hearing notice. While the MVSA could not have known in January 2014 whether the respondents would ultimately be found to have contravened the *BPCPA* until my decision was rendered, the same can be said of all allegations made by the MVSA. In fairness to the respondents, they are entitled to know all of the



allegations which will be advanced against them at the outset of the hearing, which in this case began with the hearings in February 2014.

- [45]. While I will not impose a specific penalty in relation to a breach of undertaking, I am satisfied that the 2010 undertaking is a relevant consideration in determining terms of the compliance order and assessing the proper administrative penalties for the contraventions which were determined in this proceeding.

*Administrative Penalties for Breaches determined in May 2014 Decision*

- [46]. Administrative penalties may be imposed by an administrative tribunal to ensure compliance with the regulatory scheme and to protect the public. Administrative penalties may not be imposed for a punitive purpose: *Walker v. British Columbia (Securities Commission)*, 2011 BCCA 415 at para. 68; *Harris v. Windmill*, MVSA April 10, 2013 para. 54-57.
- [47]. In relation to the specific vehicles at issue, the MVSA has taken the approach that each vehicle is the subject of multiple contraventions, and that administrative penalties may be assessed to the maximum for each contravention. Counsel for the MVSA urged me to impose very significant penalties, intended to act as a general deterrent to the industry at large as well as a deterrent to the respondents. He says the penalties cannot be a mere cost of doing business.
- [48]. The respondents on the other hand take the position that most of the contraventions relate to the June flyer, and the contraventions that flow from the June flyer must be treated as one and be subject to only one administrative penalty. Counsel for the respondent Northland urged me to impose very modest penalties, describing the contraventions as unusual, not repeated in the July flyer, and not consistent with the good record this high volume dealership has demonstrated in the past and since the incidents at issue.
- [49]. The MVSA and the respondents referred me to numerous cases which demonstrate the range of penalties which have been imposed for breaches of the *BPCPA*, including those dealing with very serious infractions which had the potential to put the lives of the purchasers at risk.
- [50]. A review of the following cases reveals the range of measures taken against dealers and salespeople (note investigation and hearing costs were ordered against the respondents in all cases):
- (a) *Knapp v. Crown Autobody & Autosales Ltd.*, MVSA September 21, 2009, affirmed 2014 BCSC 894: representing a vehicle as road worthy when it was not. Refund of purchase price of \$19,040 ordered, administrative penalty of \$20,000 ordered against dealer and \$2,000

against the salesperson, cancellation of motor dealer registration. Decision upheld on review: 2014 BCSC 984.

- (b) *Pirvulescu v. Parkwood Auto Sales Ltd.*, MVSA August 6, 2010: failure to accurately report damage to vehicle. Reimbursement of \$11,000, administrative penalty of \$7,500 ordered against dealer and \$500 against salesperson, cancellation of motor dealer registration and licence of one salesperson.
- (c) *Gill v. Parkwood Auto Sales Ltd.*, MVSA August 6, 2010: failure to accurately report mileage on vehicle. Administrative penalty of \$10,000 ordered against dealer and \$750 against salesperson, cancellation of motor dealer registration and licence of one salesperson.
- (d) *Anselmo v. Parkwood Auto Sales Ltd.*, MVSA August 6, 2010: representing a vehicle was suitable for transportation, when it was not and did not meet the requirements under the *Motor Vehicle Act*. Administrative penalty of \$10,000 ordered against dealer (reduced from \$20,000 due to attempts by dealer to rectify situation) and \$500 against salesperson, cancellation of motor dealer registration and licence of one salesperson.
- (e) *Androsoff v. Parkwood Auto Sales Ltd.*, MVSA August 6, 2010: representing a vehicle had full mechanical inspection and was suitable for transportation, when it was not and did not meet the requirements under the *Motor Vehicle Act*. Damages payable to purchaser in the amount of \$2,518.84, administrative penalty of \$12,500 ordered against dealer (reduced from \$20,000 due to attempts by dealer to rectify situation) and \$1,000 against salesperson, cancellation of motor dealer registration and licence of one salesperson.
- (f) *Connell v. Joe Cunningham Ford Ltd.*, MVSA January 21, 2010: misrepresenting prior accident history of vehicle and failing to report damage over \$2,000 on purchase of vehicle. Return of vehicle and refund of purchase price of \$13,500, administrative penalty of \$2,000 ordered against dealer.
- (g) *Crowston v. Platinum Auto Corporation*, MVSA April 26, 2012: representation of damage over \$2,000 unclear, ambiguous, and failed to state a material fact. Administrative penalty of \$5,000 ordered against dealer and suspension of licence of one salesperson.
- (h) *Chyplyk v. Technique Auto Sales Corporation*, MVSA June 21, 2011: sale of stolen vehicle where dealer had no knowledge of theft. Repayment of purchase price of vehicle to purchasers in the amount of \$10,640.



- (i) *Registrar of Motor Dealers v. Wen Li Xu dba Golden Year Auto Broker and Pan*, 2015 BCRMD 002: misrepresenting condition of vehicle and advertising vehicle as suitable for transportation when it was not, breach of undertaking, acting as motor dealer following voluntary surrender of registration. Administrative penalty of \$5,000 ordered against dealer for advertising breaches, administrative penalty of \$3,500 against dealer for breach of undertaking, suspension on application for motor dealer registration and salesperson licence for five years.
- (j) *Harris v. Windmill Auto Sales & Detailing Ltd.*, MVSA April 10, 2013, affirmed 2014 BCSC 903: failure to disclose extent of prior accidents and damage to vehicle. Repayment of purchase price in the amount of \$43,000.16 and administrative penalty of \$2,500 ordered against dealer and \$500 against salesperson.

[51]. Each of the above cases was specific on its facts, with the range of penalties being linked to factors such as the knowledge or recklessness of the dealer, the number of times the dealer had been found to have engaged in the conduct at issue, the amount of other monetary orders made by the Registrar, and other such considerations which are identified in the *BPCPA*.

[52]. Pursuant to s. 164(2) of the *BPCPA* I must consider a series of factors when assessing administrative penalties.

***(a) previous enforcement actions for contraventions of a similar nature by the person***

[53]. The November 2010 undertaking arose out of a finding of unconscionable conduct on the part of the Northland in the sale of a 2004 Dodge Grand Caravan. While I did not find Northland committed an unconscionable act in my May 23, 2014 decision, I did find numerous examples of deceptive practices. The conduct which gave rise to the November 2010 undertaking was similar in nature to many of the instances of deceptive conduct I found here, namely a failure on the part of the dealer to be forthright with purchasers in relation to the price of the vehicle and to be clear with purchasers on the content of the sales agreements.

[54]. In relation to the 2006 decision, while it was made against predecessor companies to Northland, Mr. Marshall appeared at the hearing and gave evidence in support of the predecessor companies and was aware of the findings of contraventions under the *BPCPA* relating to advertising and pricing.



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

- [55]. The respondents point to other cases where the dealer, for example, sold unsafe vehicles, or was untruthful about the extent of damage to the vehicles, and argued that in comparison the harm at issue here was much less grave. Further, the respondents point to the fact that the contraventions arose in or about one month and primarily in relation to one flyer.
- [56]. The respondents point to the fact that the purchasers themselves did not complain. They also point out that no complaints were made in the months previous to June 2013 and no infractions were found with the July flyer. A routine inspection by the MVSA on May 20, 2015 resulted in a positive assessment of Northland by the MVSA, and Northland points to this as evidence of compliance since the 2014 hearing. Essentially, the respondents ask me to infer that the June flyer and the conduct I assessed in and around June 2013 were anomalous and do not indicate a problem of any real significance with the dealership.
- [57]. In my decision of May 23, 2014 I found instances of deceptive conduct in relation to specific vehicle sales, and a general pattern of deceptive conduct within the dealership. All of these instances of deceptive conduct were found within a six week period. In my view this does represent a serious problem. The respondents have demonstrated a repeated carelessness in respect of the obligations of the dealership towards potential purchasers.
- [58]. The fact that it was the MVSA who investigated the respondents in the absence of a customer complaint is not material. The purchasers were unknowing targets of deceptive conduct. This does not make the conduct any less blameworthy. In fact, it may be worse. Consumer protection legislation is designed to protect the public from sellers who might take advantage of credulous purchasers (see for example *Rushak v Henneken Auto Service and Sales*, 1991 CanLII 178 (BCCA) and other authorities cited at para. 66 of *Wen Li Xu, dba Golden Year Auto Broker* (2015 BCRMD 002)). The powers of the MVSA to regulate the industry do not rely on the initiation of complaints by purchasers.
- [59]. I can make no finding that the contraventions I found in my May 23, 2014 decision are anomalous. If the respondents had been investigated over a one year period, I might be able to make such a finding. As it was, I was presented with two flyers and the sales of eight vehicles. I found deceptive conduct in relation to one flyer and the sales of four of the vehicles, and a general pattern of deceptive conduct at the dealership including in relation to three other vehicles. Within the period of my review, the number of problems were significant. I do not have sufficient evidence before me to conclude that these problems were or were not present in other periods.
- [60]. I am satisfied that this conduct is not trivial.

***(c) the extent of the harm to others resulting from the contravention***

- [61]. The contraventions at issue financially harmed the purchasers of the vehicles. The respondent Northland recognized the harm to purchasers of five vehicles and provided those purchasers with financial compensation in October 2014.

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

- [62]. Numerous contraventions arose in relation to the vehicles offered for sale in the June flyer. The contraventions were not inadvertent mistakes on the part of one person, but rather a pattern of conduct throughout the dealership as a whole and affected the advertising and sales of 7 vehicles. The contraventions and pattern of conduct at issue began as early as May 13, 2013 with the sale of the 2007 Jeep Patriot and continued through June 15, 2013 with the sale of the 2006 Honda Civic, to the end of the effective period of the June flyer on June 30, 2013.

***(e) whether the contravention was deliberate***

- [63]. In relation to the pricing set out in the June flyer, the respondents were deliberate in setting the prices in the flyer and recklessly indifferent as to whether the pricing was available during the effective period of the flyer, and whether the pricing was in fact offered on the lot to purchasers.
- [64]. In relation to the failure to inform purchasers of the inclusion of an administrative fee as a consequence of negotiation, the respondents were deliberate and maintained throughout the original hearing that they were entitled to act as they did.

***(f) any economic benefit derived by the person from the contravention***

- [65]. The respondents received economic benefits from the contraventions by way of higher prices received from the purchasers than was advertised. These benefits have been disgorged voluntarily by Northland in October 2014.

***(g) the person's efforts to correct the contravention***

- [66]. Northland has taken a number of positive steps to address the contravention. It has provided reimbursement to the purchasers of identified vehicles. It terminated Mr. Marshall in October 2014. It agreed to the terms of the interim compliance order, which included specific directions in relation to advertising.



[67]. In addition, since the hearing in February 2014 Northland has taken the following steps to ensure contraventions do not take place in the future:

- (a) an enlarged poster size copy of the flyer is placed in two places at the dealership and as a vehicle is sold it is crossed off the flyer;
- (b) all online advertising for a vehicle is taken down after the vehicle is sold;
- (c) sales pricing information for all advertised vehicles is kept in a brightly coloured deal jacket with the sales/inventory clerks, so that they can double check that deals brought to them by the salespeople are consistent with the sale price;
- (d) an effective start date is placed on all flyers;
- (e) dealer support services provided by AutoCanada Inc. are used by Northland for training on correct forms of advertising, use of checklists, etc.;
- (f) the manager is responsible for all pricing on the lot;
- (g) the computer system has been changed to prevent a documentation fee from being added on top of the sale price, when the sale price states the documentation fee is included in the sale price; and
- (h) a compliance officer has been added at the AutoCanada Inc. level, to conduct internal reviews on advertised pricing, among other things.

[68]. Having reviewed all of the cases which the parties brought to my attention, it is my view that administrative penalties ought to be assessed for the deceptive practices which were described in my May 23, 2014 decision. In assessing these penalties I note in particular that these respondents have been the subject of similar complaints in the past, and the proven allegations were numerous over the short time frame which was the subject of the hearing. As the focus of administrative penalties is to achieve compliance with the regulatory scheme and protect the public interest, significant penalties are in order.

[69]. I also note that Mr. Marshall is no longer a licenced salesperson or employee of Northland, that Northland has taken significant steps to respond to my 2014 decision, and that Northland has voluntarily reimbursed the purchasers in relation to the specific vehicles at issue. These factors have caused me to reduce somewhat the amount of penalties I might have otherwise imposed.

[70]. The deceptive practices which give rise to specific administrative penalties are set out in my 2014 decision at paragraphs 140-193, and summarized at paragraphs 195-202. While I refer in summary form below to those findings, the 2014 decision contains the full reasons for my decision. In determining



the total administrative penalties to be assessed against each respondent, I am governed by the analysis set out below:

- (a) 2006 Honda Civic - failure to price the Honda Civic on the lot at the price as advertised in the June flyer;

**Penalties assessed: Northland - \$6,000; Marshall - \$600;**

- (b) 2006 Honda Civic - showing the image of a four-door sedan on the June flyer in relation to the Honda Civic when in fact the vehicle for sale was a two door coupe;

**Penalties assessed: Northland - \$2,500; Marshall - \$250;**

- (c) 2006 Honda Civic - misrepresenting a price advantage;

**Penalties assessed: Northland - \$6,000;**

- (d) 2009 Chevy Impala – failure to price the 2009 Chevy Impala on the lot at the price advertised in the June flyer;

**Penalties assessed: Northland - \$6,000; Marshall - \$600;**

- (e) 2009 Dodge Grand Caravan - charging the purchaser a \$589 administrative fee on top of the advertised price, without advising the purchaser that such fee would be levied;

**Penalties assessed: Northland - \$2,500;**

- (f) 2012 Dodge Journey - describing a 2013 model on the June flyer when the actual vehicle for sale was a 2012 vehicle; and

**Penalties assessed: Northland - \$1,000; Marshall - \$100;**

- (g) General conduct calculated to deceive and mislead customers including:

- (i) failure to ensure that all salespeople know the sale pricing advertised in the relevant effective period of the flyers;
- (ii) failure to correct flyers to clearly identify which vehicles are no longer available at the commencement of the effective period of the flyers;
- (iii) failure to clearly identify that any negotiations on the purchase of an advertised vehicle will result in the administrative fee being added to the purchase price; and
- (iv) failure to properly review the purchase agreements with purchasers, and to remove from or not include in such agreements items which have been declined by purchasers;

**Penalties assessed: Northland - \$20,000; Marshall - \$2,000.**

[71]. In summary, Northland is ordered to pay administrative penalties in the total amount of \$44,000 and Mr. Marshall is ordered to pay administrative penalties in the total amount of \$3,550.

### ***Suspension of Registration***

[72]. Pursuant to ss. 5, 6, 7 and 8.1 of the *Motor Dealer Act* I may suspend or cancel a dealer's registration. Such an order is a very serious step.

[73]. Section 8.1 of the *Motor Dealer Act* confirms that such an order can be made where the registrar believes it is not in the public interest for the person to continue to be registered. A finding of contravention of Part 2 of the *BPCPA* is grounds for such a finding by the registrar.

[74]. The MVSA submits that Northland exhibited profound contempt for the regulator in this proceedings, and relies heavily on the broadcast email issued by Mr. Marshall in September 2014 as evidence of this contempt. It says that a suspension is required to ensure the regulatory system is not brought into disrepute, and to ensure that the confidence of consumers is not eroded. The MVSA seeks a suspension of Northland's registration. No similar order is sought against Mr. Marshall personally. Mr. Marshall voluntarily gave up his salesperson licence in December 2014.

[75]. I find that the contraventions of Northland were serious. I have imposed significant administrative penalties on Northland to reflect the seriousness of these contraventions. Northland will also be responsible for payment of significant costs in relation to this proceeding. I am not persuaded that a suspension of Northland's registration is necessary or in the public interest.

[76]. I find that Northland has improved its procedures to address the conduct which gave rise to my findings, has addressed financial compensation for the purchasers of the vehicles in question, has terminated Mr. Marshall, and has taken steps at the AutoCanada Inc. level to provide additional support to the dealership to ensure compliance with the regulatory environment.

[77]. While the broadcast emails by Mr. Marshall were contemptuous of the MVSA and its investigators, Northland did not endorse or authorize such email and took immediate steps to distance itself from the comments made and terminated Mr. Marshall. These actions were prompt and clearly demonstrated that Northland did not condone the actions of Mr. Marshall.

[78]. I am satisfied that Northland has acted responsibly in the face of my findings, and a suspension is not required to ensure compliance.

## Conclusion

[79]. The following compliance action is ordered:

- (a) A compliance order under the *Business Practices and Consumer Protection Act* is made with the following terms:
  - (i) That Northland and Marshall, while they are registered and/or licensed under the *Motor Dealer Act*, comply with the *Business Practices and Consumer Protection Act* and the regulations made thereunder;
  - (ii) That Northland and Marshall, while they are registered and/or licensed under the *Motor Dealer Act*, comply with the *Motor Vehicle Sales Authority Advertising Guidelines* pursuant to *Motor Vehicle Sales Authority Directive 4*.
  - (iii) That Northland and Marshall, while they are registered and/or licensed under the *Motor Dealer Act*, ensure that:
    - (A) all advertisements clearly specify when the terms of sale so advertised are in effect (both start and end dates);
    - (B) advertisement copy is affixed to the vehicles advertised for sale therein throughout the effective date of the advertisement; and
    - (C) advertisement copy is displayed in the show room of the dealership throughout the effective date of the advertisement and the vehicles in the advertisement are clearly marked off as sold at the time of sale;
  - (iv) That Northland and Marshall pay the actual costs of the inspection/investigation and actual legal costs, in an amount to be settled between the parties in accordance with the decision of the Registrar dated August 13, 2015, or before the Registrar if the parties cannot reach agreement by October 30, 2015.
  - (v) That Northland, while it is registered under the *Motor Dealer Act*, ensure that complete records, as may be necessary to verify compliance in every respect with the *Business Practices and Consumer Protection Act* and the regulations made thereunder, are kept for a period of two years at the dealer location and are available for inspection upon request in accordance with s. 20 of the *Motor Dealer Act Regulation*.
  - (vi) That all Northland managers and employees involved in the advertising of vehicles attend and complete an in person or online Advertising Workshop provided and administered by the Motor Vehicle Sales Authority at cost to the dealer within 90 days from the date of the compliance order.



- (b) An administrative penalty of \$44,000 is ordered against Northland for breaches of the *Business Practices and Consumer Protection Act*
- (c) An administrative penalty of \$3,550 is ordered against Marshall for breaches of the *Business Practices and Consumer Protection Act*

[80]. The administrative penalties and compliance order may be reconsidered in accordance with the *Business Practices and Consumer Protection Act*, Part 12. A request for reconsideration must be submitted in writing within 30 days of receiving these reasons. A request for reconsideration may be submitted to the MVSA to the attention of the Manager of Compliance and Investigations.

DATED: August 13, 2015



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Wendy A. Baker, QC  
Acting Registrar