



Neutral Citation: 2016-BCRMD-005

**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:

EMMA KLAIR HALEY

Complainant

AND:

**0695949 B.C. LTD. DBA K.F.M AUTO
(Dealer #30312)**

Motor Dealer

AND:

**FARSHAD (FRED) SHARIFPOUR
(Salesperson #106079)**

Salesperson

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Date and Place of Hearing: February 17, 2016, at Kelowna, British Columbia

Appearances for:

The Complainant	In person
0695949 B.C. Ltd. dba K.F.M. Auto	Farshad (Fred) Sharifpour
Farshad (Fred) Sharifpour	In person
Vehicle Sales Authority	Daryl Dunn, Manager of Compliance and Investigations Christopher Hoy, Compliance Officer

Introduction

[1] A hearing was called to review the following allegations, that 0695949 B.C. Ltd. dba K.F.M. Auto ("KFM") and Farshad ("Fred") Sharifpour breached provisions of the *Business Practices and Consumer Protection Act* (the "BPCPA") during the purchase of a 2002 Audi A4 (the "Audi A4") by Emma Klair Haley (the "Complainant") in which they:

- (a) Failed to imprint its name and address on the purchase agreement,
- (b) Displayed and sold the Audi A4 from a location other than the registered location of KFM,

- (c) Misrepresented to the Complainant that the Audi A4 was inspected by Kelowna Audi, when it had not been so inspected,
- (d) Misrepresented that the Audi A4's check engine light issue had been examined and resolved, and
- (e) Misled the Complainant as to the level of Warranty that they had purchased.

Basic Facts

[2] The Complainant purchased a 2002 Audi A4 from K.F.M. on July 28, 2015.

[3] During the test drive, the Complainant's spouse noticed the Audi A4 seemed under powered for a turbo equipped vehicle.

[4] The Audi A4's check engine light came on during the test drive. The Complainant was assured by K.F.M. that the issue was minor, an oxygen sensor problem, and K.F.M. would have it resolved. It was apparently at this time that K.F.M. represented that they had already had Audi of Kelowna look at the Audi A4.

[5] The Complainant also wanted the Audi A4 inspected before purchasing it. Canadian Tire cancelled the Complainant's appointment for an inspection and K.F.M. instead arranged for a mechanic to inspect the Audi A4.

[6] The Audi A4 was inspected by the mechanic and K.F.M. reported there were apparently no safety issues. The Complainant's spouse asked to see the written inspection report, but it was not provided, and has never been provided to the Complainant.

[7] The Complainant purchased the Audi A4. Again, the Complainant was advised by K.F.M. that the check engine light issue had been addressed and the Audi A4 checked out during the safety inspection.

[8] The Complainant had also advised K.F.M. that they intended to drive the Audi A4 from Kelowna to Nelson to visit family shortly after purchase. The Complainant picked up the Audi A4 and drove it to a service station to get gas. At that point the check engine light came back on.

[9] The Complainant's spouse contacted K.F.M. and they assured the Complainant's spouse that if there was a problem, it was minor and K.F.M. would look at the Audi A4 when the couple returned from the August long weekend in Nelson.

[10] On the way to Nelson, the Audi A4 had performance issues. The Audi A4 became inoperable and the Complainant managed to get the Audi A4 to a repair facility in the Slocan area. There, it was suspected that the Audi A4's turbo had failed and until the turbo was repaired, it could not be determined if there was damage to the engine.

[11] The Audi A4 was returned to Kelowna by tow vehicle. Initially it was thought the Audi A4 should go back to K.F.M., but K.F.M. said the issue should be covered by the warranty the Complainant had purchased. This necessitated taking the Audi A4 to a repair facility the warranty company authorized.

[12] It became apparent that the warranty would not cover the entire costs of repairs. The Complainant's spouse took steps to try and keep the costs of repairs as low as possible. For example, trying to see if a used turbo could be used.

[13] It was at this time that the Complainant says they discovered that they thought K.F.M. had provided a good comprehensive warranty only to discover that K.F.M. had not.

[14] The Complainant had to pay for repairs not covered by the warranty amounting to \$1,679.67. They are seeking these costs. K.F.M. has only offered to pay \$500 towards the repairs.

The Law

(a) Deceptive acts or practices – BPCPA

[15] Among other things, the BPCPA prohibits making misrepresentations (called deceptive acts or practices) during a consumer transaction: section 5(1) of the BCPCPA. The BPCPA codifies the common law of misrepresentation with statutory modifications to promote consumer protection.

[16] If a consumer is claiming they have suffered a loss during a consumer transaction due to a motor dealer's misrepresentation, the essential elements to prove such a claim remain the same as at common law:

- 1) There must be a misrepresentation (called a deceptive act or practice under the BPCPA).
- 2) The consumer relied on the misrepresentation when entering into the agreement.
- 3) The consumer's reliance was reasonable in the circumstances.

- 4) The consumer's reliance on the misrepresentation led to the loss (damages) claimed by the consumer. The remedy sought by the consumer must also be one that the law allows.

See *Queen v. Cognos Inc.* 1993 CanLII 146 (Supreme Court of Canada) and applied in consumer transactions with BC motor dealers. See for example *Vavra v. Victoria Ford Alliance Ltd.*, 2003 BCSC 1297 (BC Supreme Court); *Cummings v. 565204 B.C. Ltd dba Daewoo Richmond*, 2009 BCSC 1009 (BC Supreme Court); and in *Casillan v. 565204 B.C. Ltd. dba Daewoo Richmond* 2009 BCSC 1335 (BC Supreme Court).

[17] A deceptive act or practice can occur innocently, negligently or deliberately and a consumer may still be entitled to a remedy. However, the nature of the misrepresentation may have some bearing on the consumer's remedy.

Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers, 2014 BCSC 903 (BC Supreme Court)

Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia, 2014 BCSC 894 (BC Supreme Court) at paragraphs 28 – 30

Cummings v. 565204 B.C. Ltd. dba Daewoo Richmond, 2009 BCSC 1009 (BC Supreme Court) at paragraphs 20 – 22

Mikulas v. Milo European Cars Specialist Ltd. 1993 CanLII 183 (BC Supreme Court), affirmed by 1995 CanLII 2431 (BC Court of Appeal)

Rushak v. Henneken Auto Sales and Service Ltd., 1991 CanLII 178 (BC Court of Appeal)

[18] If a consumer provides some evidence that the motor dealer has made a misrepresentation, then the BPCPA reverses the burden of proof unto the dealer to prove they did not make the alleged misrepresentation or the representation is in fact true: section 5(2) of the BPCPA and applied in *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894 (BC Supreme Court).

[19] Certain conduct is deemed to be deceptive acts or practices (misrepresentations): section 4(3) of the BPCPA.

[20] A deceptive act or practice can occur before, during or after a consumer transaction: section 4(2) of the BPCPA.

(b) Identifying the Motor Dealer on purchase agreements – section 21 of the *Motor Dealer Act Regulation*

[21] A motor dealer selling a used motor vehicle must identify themselves on the purchase agreement as required by section 21 of the *Motor Dealer Act Regulation*:

21 (1) Where a motor dealer makes a written representation in the form of a sales or purchase agreement respecting the sale by him of a new motor vehicle he shall include the following information:

(a) the name and address of the purchaser and vendor;

Content of sale or purchase agreement (used vehicles)

(2) Where a motor dealer makes a written representation in the form of a sales or purchase agreement respecting the sale by him of a used motor vehicle, he shall include the particulars required for a new motor vehicle under subsection (1)

[22] The policy reason for this requirement is simple. A consumer should know who they are buying from so that if there are any problems they can identify the vendor. The Authority has dealt with complaints where consumers are unsure from whom they are purchasing a vehicle. When it comes time to address any issue and hold a motor dealer accountable, the dealers often point fingers at each other. This provision aims to make sure the one dealer the consumer dealt with is identifiable and cannot try and escape their legal obligations and liabilities to a consumer.

[23] A second reason to identify the vendor is so the consumer knows they are purchasing a vehicle from a registered motor dealer and therefore know that all the consumer protections provided by of the *Motor Dealer Act* and the BPCPA apply to the transaction.

(c) Conducting business from the motor dealer's registered business premises

[24] A motor dealer may not conduct business other than from their business premise as registered with the registrar: section 3(1)(b) of the *Motor Dealer Act*.

[25] The policy rationale for this is the same as noted in paragraphs 22 and 23 above. Further, if the registrar is to regulate the consumer transactions of motor dealers, the registrar must know where those transactions occur in case he or she wishes to inspect a dealer during a transaction or otherwise inspect the transaction records of the dealer.

(d) Assessing credibility

[26] In assessing witness credibility I keep in mind the guidance from the case law.

Bradshaw v. Stenner, 2010 BCSC 1398 (BC Supreme Court) at paragraphs 186 – 187, affirmed 2012 BCCA 296 (BC Court of Appeal), leave to appeal to the Supreme Court of Canada dismissed 2013 CanLII 11302 (SCC).

Crest Realty Westside Ltd (Re/Max Crest Realty Westside) v W & W Parker Enterprises Ltd, 2014 BCSC 1328 (BC Supreme Court) at paragraph 44, affirmed *Crest Realty Westside Ltd. v. W & W Parker Enterprises Ltd.*, 2015 BCCA 447 (BC Court of Appeal).

Position of the Parties

(a) Complainant

[27] The Complainant's position has been essentially covered under the basic facts. They feel they were misled to believe the Audi A4 had no mechanical issues and that the check engine light issue was minor, and more importantly, resolved when they finally purchased the Audi A4. They also complain that they were misled about the warranty they had purchased.

(b) The Authority

[28] The Authority's concern is that K.F.M. did not properly identify itself on the purchase agreement and conducted business away from its registered business premise. The Authority highlights that K.F.M. has had some recent issues complying with its legal requirements. I am aware that K.F.M. was recently suspended for three days for allowing a person to "in any way" participate in the sale or disposition of a motor vehicle, without the necessary licence.

(c) The Motor Dealer

[29] K.F.M. states that the Audi A4 was sold at the proper location. It notes the Complainant's assertion that it was advertised for sale at the address for Kelowna Best Buy Auto but was actually located at K.F.M. is incorrect. K.F.M. says the Complainant has not provided any proof of this advertisement.

[30] K.F.M. states it did not mislead the Complainant about the warranty. It says the options were explained to the Complainant and that there were brochures

available at the dealership and posters on the wall. K.F.M.'s son, who operates the Best Buy Auto dealership, says he was present when the warranty information was discussed at the Best Buy Auto dealership where the sale of the Audi was finalized.

[31] K.F.M. says they never told the Complainant that the Audi A4 was inspected by Kelowna Audi. They maintain that the check engine light was reviewed by their mechanic and resolved. In giving evidence, K.F.M. did not identify what the mechanic did to resolve the check engine light issue.

Discussion

- (a) Failure to identify the Motor Dealer on the purchase agreement**
- (b) Selling from a location other than from the registered business premise.**

[32] A review of the purchase agreement shows no name or address for the vendor dealer.

[33] The evidence from the Complainant was they were confused from whom they were purchasing the vehicle from. Their evidence is that they were first directed to the Kelowna Best Buy dealership by the advertisement for the Audi. They were then directed to K.F.M. to view the Audi A4. The Complainant's spouse noted that they received a parking ticket for parking on the street by K.F.M.

[34] The evidence from Chris Hoy, Compliance Officer for the Authority, is that the signature and name on the document of the salesperson is Farshad (Fred) Sharifpour who is the owner and salesperson of K.F.M. Mr. Farshad (Fred) Sharifpour is not a salesperson associated with Kelowna Best Buy Auto.

[35] The evidence of Mr. Farshad (Fred) Sharifpour's son, who is the owner and dealer principal of Kelowna Best Buy Auto, was that the warranty and final sale of the Audi was conducted at Kelowna Best Buy Auto and not at K.F.M.

[36] The ICBC Transfer/Tax form shows ownership of the Audi A4 was transferred from K.F.M. to the Complainant.

[37] Based on the above evidence, the sale of the Audi A4 was by K.F.M.'s owner and the salesperson for K.F.M. K.F.M. was the owner of the Audi A4 when it was transferred to the Complainant. K.F.M. did not identify itself on the purchase agreement by name or by their address. I am satisfied that the transaction occurred at Kelowna Best Buy Auto dealership, as confirmed by Mr. Farshad (Fred) Sharifpour's son, and not at K.F.M.

[38] The fact that the Complainant was confused as to who was the selling dealer is evidenced on their consumer complaint form filed with the Authority. That form lists K.F.M. and Kelowna Best Buy Auto as the selling dealer.

[39] It is unnecessary for me to determine if the dealer advertisement for the Audi A4 directed the consumer to K.F.M. or to Best Buy to reach these conclusions.

[40] K.F.M. is in breach of section 3(1)(b) of the *Motor Dealer Act* and section 21 of the *Motor Dealer Act Regulation*.

(c) Misrepresented that the Audi had been inspected by Kelowna Audi

[41] The Complainant alleges the dealer told them that Kelowna Audi had inspected the Audi A4.

[42] The Complainant's spouse spoke of the efforts he went to after the purchase to try and talk to someone at the Audi dealership if they had inspected the Audi A4. He could not ascertain that the Audi A4 had been looked at by Kelowna Audi.

[43] Mr. Chris Hoy explained his investigation could not identify if the Audi A4 had been inspected by Kelowna Audi.

[44] Ryan Budnyski is the Fixed Operations Manager at Kelowna Audi. Mr. Budnyski stated he could not find any electronic or paper records that this particular Audi A4 had ever been at Kelowna Audi, let alone sent to them by K.F.M.

[45] K.F.M.'s evidence was simply to assert that they did not make that representation to the Complainant.

[46] The Complainant has provided evidence that K.F.M. misrepresented to them that the Audi A4 had been inspected by Kelowna Audi. Evidence has been presented that that representation was not true. There is sufficient evidence to trigger the reverse onus provision of the BPCPA and require K.F.M. to prove this representation did not occur or was otherwise true.

[47] I would note that the Complainant has maintained K.F.M. had made this representation to them. It is contained in their written letter to Fred (K.F.M.) dated August 11, 2015, and which they submitted with their written complaint to the Authority and received by the Authority on August 27, 2015.

[48] During the hearing, the Complainant and the Complainant's spouse's evidence did not waiver and was never successfully challenged by the dealer. Their evidence was clear, unwavering and repeated before the hearing.

[49] K.F.M.'s simple statement that they never made the statement is not in any way supported. I also have concerns of K.F.M.'s evidence. K.F.M. initially stated that this transaction was at K.F.M. They say the advertisement directed inquiries to K.F.M. But then, the son says the discussion about the warranty and the conclusion of the transaction occurred at Kelowna Best Buy Auto. During the hearing, K.F.M.'s evidence switches to meet its assertions. Another case in point, discussed below, is how K.F.M. responds to the evidence of its mechanic that he never actually did review the check engine light issue.

[50] I am satisfied that on this point the Complainant and the Complainant's spouse's evidence should be believed. I am satisfied on the evidence that K.F.M. represented that the Audi had been seen by Kelowna Audi, which is not true.

(d) Check Engine Light

[51] The Complainant and her spouse gave evidence that during the test drive of the Audi A4 the check engine light came on. This is also contained in the Complainant's letter to K.F.M. dated August 11, 2015. The Complainant gave evidence that they were told by K.F.M. that the check engine light issue was minor, an oxygen sensor, and it would be taken care of. K.F.M. did not deny this conversation took place. The Complainant clearly was concerned about the check engine light and brought that to the attention of K.F.M.

[52] K.F.M. stated that they had a mechanic look at the check engine light issue and it was resolved.

[53] The Complainant's spouse also said he felt the Audi A4 lacked power for a turbo when he took it for a test drive. K.F.M. commented that the spouse may not be used to the 4-cylinder engine as they had been driving a Jeep with a V8 engine. The Complainant's spouse said at the hearing that could be the case. This reasonable concession by the Complainant's spouse also assists me in determining his credibility. K.F.M. did not deny this conversation took place.

[54] Almost immediately after purchase, the Audi A4's check engine light came on. The Complainant called K.F.M. who assured them the issue was minor and they should return the Audi A4 to K.F.M. once the couple returned from their trip to Nelson. The Audi A4 became inoperable and the Complainant managed to get it to a mechanic near Slocan. The Complainant then towed the Audi A4 to Kelowna where

the turbo was determined to have failed. Fortunately, there was no apparent engine damage.

[55] At the hearing the mechanic who inspected the Audi A4 gave evidence. He is not a red seal mechanic. He has never had formal training. He has learned on the job. The mechanic used to operate a garage and have mechanics working for him. He has since closed that business and does his own work.

[56] The mechanic was asked what work he performed on the Audi A4. The evidence the mechanic gave was that he only looked at the Audi A4 from a safety perspective. He checked things like the brakes, the suspension and exhaust and looked for major oil leaks. He stated that he only checked the turbo to see if it was leaking. The mechanic also stated he did not test drive the Audi A4 as it had no plates and insurance and he does not have a repairer's plate. Importantly, the mechanic did not do any investigations about the check engine light. His evidence was that the light was not on when he received the Audi A4 from K.F.M. and did his review.

[57] When K.F.M. gave evidence, they said their mechanic had checked the check engine light issue and resolved the problem. When K.F.M. was confronted with the fact that the mechanic did not say he even checked for a check engine light issue and that the check engine light was off when he inspected the Audi A4, K.F.M. then said, well they know the mechanic has the tool to diagnose a check engine light. The evidence of K.F.M. on this point also assists me in assessing his credibility.

[58] Overall, K.F.M. did not deny the check engine light on the Audi A4 had not come on. K.F.M. did not deny they told the Complainant they would resolve the check engine light issue, and that it was probably a minor issue such as an oxygen sensor. K.F.M. did not deny that the Complainant called them after purchase when the check engine light again came back on. K.F.M. did not deny that the Audi A4 broke down in Nelson. In fact, K.F.M. gave evidence that he (Fred) did not respond to the phone calls from the Complainant's spouse because he was with his family on the long weekend.

[59] Of interest is that K.F.M. has not produced any evidence of what it did do to resolve the check engine light issue. It denies telling the Complainant that the Audi A4 was seen by Kelowna Audi. The only other evidence was from K.F.M.'s mechanic who said the check engine light was not on when he had the Audi and that he did nothing to review or resolve that issue. K.F.M. has not provided any evidence that it in fact did address the check engine light issue and what it did do to resolve that issue, before it sold the Audi A4 to the Complainant.

[60] I now turn to a discussion on each of the legal elements of the claim.

(i) Misrepresentation – deceptive act or practice

[61] I am satisfied on the evidence that K.F.M. represented to the Complainant that the check engine light was a minor issue, an oxygen sensor, and that the issue would be resolved. The issue was not minor, as the issue was the failure of the turbo, at significant cost.

[62] I am satisfied on the evidence that K.F.M. represented to the Complainant that they had their mechanic resolve the check engine light issue. There is no evidence that any mechanic looked into the check engine light issue.

[63] I am further satisfied on the evidence that K.F.M. repeated that the issue was minor, an oxygen sensor issue, after the purchase of the Audi A4. The Complainant believed this and continued to drive the Audi A4 only for the turbo to fail along their journey.

[64] I am satisfied that the evidence shows K.F.M. made a misrepresentation both during and after the consumer transaction in breach of the deceptive act or practice provisions in sections 4(1) and 5(1) of the BPCPA.

(ii) Reliance on the representation

[65] The Complainant was very diligent in asking about the check engine light issue. The Complainant was also very clear that it required that issue to be addressed and resolved before they would purchase the Audi. The Complainant called K.F.M. when the light came on after purchase and was told it would be OK to continue their journey and to see K.F.M. when they returned from their trip. There is ample evidence that the Complainant relied on the representations of the motor dealer.

(iii) Was the Complainant's reliance reasonable?

[66] Consumers enjoy a presumption that their reliance on the representations of a motor dealer are reasonable: *Vavra v. Victoria Ford Alliance Ltd.*, 2003 BCSC 1297 (BC Supreme Court). This makes sense as a motor dealer operates daily within the industry and gains expertise in the buying, selling, servicing and repairing of motor vehicles that a consumer does not gain. The motor dealer can rebut this presumption with sufficient evidence. In this case, the motor dealer has not provided any such evidence. The Complainant's reliance was reasonable.

(iv) Reliance on the misrepresentation led to the consumer's loss

[67] The evidence shows a direct connection between K.F.M.'s misrepresentations and the Complainant's loss. It was because of the assurances of K.F.M. that the check engine light was a minor issue, that it would be resolved before purchase and that it remained a minor issue when it came back on after purchase that the Complainant continued to drive the Audi A4 until the turbo failed. The evidence is that the Complainant suffered a loss when they paid \$1679.67 in costs not covered by the warranty: Exhibit A-15 of the Affidavit of Chris Hoy – Affidavit is Exhibit 2 at the hearing.

[68] The fact that the Complainant purchased a warranty insufficient to cover the costs of the repairs, does not absolve the dealer of their legal liabilities to the consumer associated with its misrepresentations. A vehicle warranty is to cover mechanical break downs and not to cover losses due to a motor dealer's misrepresentations. See a related principle in *Rushak v. Henneken Auto Sales and Service Ltd.*, 1991 CanLII 178 (BC Court of Appeal)

(v) Comparator case

[69] I find similarities between this case and *Cummings v. 565204 B.C. LTD. dba Daewoo Richmond*, 2009 BCSC 1009 (BC Supreme Court).

[70] In *Cummings*, the consumer asked the motor dealer about the state of the rear tires. The consumer was concerned they appeared worn out. The vehicle's rear fender design did not allow a good look at the tires. The motor dealer in that case said the tires were good. The consumer drove the vehicle a short time and the rear tires lost traction in the rain resulting in a single vehicle accident.

[71] The court said the motor dealer had made a misrepresentation about the condition of the tires. The misrepresentation assured the consumer of the quality of the motor vehicle's tires that led to the accident. The court awarded the consumer the cost of repairs, the cost of four new tires, damages for her personal injuries and 20% of the purchase price of the vehicle as accelerated depreciation because the accident caused an immediate loss in value to the vehicle.

(vi) Award

[72] The Complainant is entitled to the \$1,679.67 proven loss. No award is made regarding the warranty as the Complainant has had a beneficial use of that warranty.

[73] I have found it unnecessary to address the misrepresentation about the warranty as there is sufficient evidence to show the consumer is entitled to their remedy for the misrepresentation involving the check engine light. From the discussion below, it will be clear that addressing the warranty misrepresentation will be unnecessary.

Compliance Action

[74] In assessing the appropriate action to take, I am mindful that the role of the regulator is to ensure compliance of the motor dealer and salesperson, most importantly, of their future compliance. A regulator's role is not to punish past immoral conduct but to look to the future and see if there is a concern of potential harm to the public if a person continues to operate in the industry. As noted in *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132, 2001 SCC 37 (Supreme Court of Canada) at paragraph 42:

...It is also consistent with the objective of regulatory legislation in general. The focus of regulatory law is on the protection of societal interests, not punishment of an individual's moral faults: see *R. v. Wholesale Travel Group Inc.*, [1991] 3 S.C.R. 154, at p. 219.

See also

- *Guindon v. Canada*, 2015 SCC 41 (Supreme Court of Canada)
- *Re: Cartaway Resources Corp* 2004 SCC 26 (Supreme Court of Canada)
- *Walker v. British Columbia (Securities Commission)* 2011 BCCA 415 (B.C. Court of Appeal)

[75] In determining whether or not an administrative penalty should issue to deter future misconduct, the factors in sub-section 164(2) of the BPCPA must be considered. Two specific issues stand out in this case:

- (a) previous enforcement actions for contraventions of a similar nature by the person; and
- (b) whether the contravention was deliberate.

[76] I note the recent history of K.F.M. is that it does not seem to abide by the laws governing its operations. Recently, K.F.M. was suspended for three days for allowing a person to engage in the activities of a salesperson without the appropriate licence. It would appear the transaction leading to this complaint occurred before that suspension and that incidence of non-compliance. There is now clear evidence K.F.M. did not identify itself on its purchase agreement and conducted business from a place other than its registered location.

[77] Where it appears to a regulator that a person, including a motor dealer, will be ungovernable, or they will not operate their business in accordance with the law or with integrity, that is sufficient grounds to cancel a registration or licence or refuse to register or licence a person. This was recently noted in relation to a salesperson in this industry by Madam Justice Sharma in *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279 (BC Supreme Court), affirming *Re: Peter Fryer* (December 13, 2015, File 13-11-005, Registrar of Motor Dealers):

[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.

See also *Evans v. Society of Notaries Public (British Columbia)* 2010 BCSC 1232 (BC Supreme Court).

[78] Second, it is my view that K.F.M.'s misrepresentations in this case were reckless.

[79] There is no evidence that they knew the turbo was a problem and intentionally misled the consumer. The evidence does not show K.F.M. was negligent. If K.F.M. was negligent it would have tried to take steps to ascertain why the check engine light was on, but failed to have taken enough reasonable steps to do so. This is certainly not an innocent misrepresentation. An innocent misrepresentation occurs where the dealer has taken reasonable due diligent steps to ascertain the truth of its statements, but still gets it wrong.

[80] In this case, K.F.M. stated the check engine light was a minor issue, an oxygen sensor, and there is no evidence that the motor dealer took any steps to ensure the truth of that fact. The motor dealer again made that representation when the Complainant's were about to go to Nelson, and did so over the phone without examining the Audi. Again the motor dealer did not take any reasonable steps to ensure the truth of that statement. The conduct of K.F.M. was reckless. It made representations without concern whether they were true or not. In law, a reckless misrepresentation is sufficient to find K.F.M. made a deliberate

misrepresentation: *Casillan v. 565204 B.C. Ltd., dba Daewoo Richmond* 2009 BCSC 1335 (BC Supreme Court), citing *Catalyst Pulp and Paper Sales Inc. v. Universal Paper Export Company Ltd.*, 2009 BCCA 307 (BC Court of Appeal).

[81] Finally, I note sub-section 8.1(4)(b) of the *Motor Dealer Act*. That provision states, if a motor dealer breaches the deceptive act or practice provisions of the BPCPA that is grounds for the Registrar to cancel or suspend their registration as a motor dealer.

[82] At present, the evidence, the law and the concern for the public interest all indicate that this motor dealer's registration should be cancelled. It appears to disregard its legal obligations and make representations to consumers that are untrue and appears to not care whether its statements are true or not. There is currently no evidence before me to indicate K.F.M. will be compliant in the future.

[83] I do note that K.F.M.'s three day suspension was recent and that this transaction occurred before that suspension. To ensure K.F.M. has a fair opportunity to comment and to better explore whether the suspension has had the desired effect of obtaining K.F.M.'s future compliance, I believe the hearing should be reconvened for the sole purpose of determining whether K.F.M.'s registration should be cancelled to protect the public's interest; or to see if other options are available, such as administrative penalties, conditions on licence or another suspension will provide a sufficient deterrent to allow the Registrar to say that on balance, K.F.M. does not pose a future risk to the public interest.

[84] K.F.M.'s conduct after today's date and its response to this decision and the order I am about to make, will also factor into the assessment.

[85] I have not directly addressed the issue of Farshad (Fred) Sharifpour's personal involvement in this matter. Mr. Sharifpour is a licensed salesperson with K.F.M., and its owner. Mr. Sharifpour was the person making the misrepresentations to the Complainants. Mr. Sharifpour's conduct is directly in issue. As Mr. Sharifpour is the owner and directing mind of K.F.M., his conduct is also the direct conduct of K.F.M..

[86] I would propose addressing Mr. Sharifpour's salesperson licence at the same time as we address K.F.M.'s registration as a motor dealer. Mr. Sharifpour's salesperson's licence is equally under review and he is also subject to having his licence cancelled or suspended, administrative penalties issued against him personally or conditions being added to his licence. The Notice of Hearing in this matter made it clear those consequences may apply here.

Compliance Order

[87] I have found K.F.M. breached the *Business Practices and Consumer Protection Act* (BPCPA) causing damage to the Complainant. I therefore make the following compliance order pursuant to section 155 of the BPCPA:

1. 0695949 B.C. Ltd. *dba* K.F.M. Auto and Farshad (Fred) Sharifpour are to abide by the *Business Practices and Consumer Protection Act*.
2. 0695949 B.C. Ltd. *dba* K.F.M. Auto and Farshad (Fred) Sharifpour are to abide by the conditions of their respective registration and licence and abide by all laws applicable to them in acting as a motor dealer and as a salesperson.
3. 0695949 B.C. Ltd. *dba* K.F.M. Auto and Farshad (Fred) Sharifpour are to pay to Emma Klair Haley the sum of \$1,679.67. Payment must be made within 45 days.
4. 0695949 B.C. Ltd. *dba* K.F.M. Auto and Farshad (Fred) Sharifpour are to pay to the Vehicle Sales Authority the sum of \$2,788.68 for investigation and hearing costs to date. Payment must be made within 45 days.

Where two or more persons are named in a compliance order, they are joint and severally liable to comply with that order and for paying any amounts ordered: section 155(6) of the *Business Practices and Consumer Protection Act*.

Conclusion

[88] The motor dealer has breached the *Business Practices and Consumer Protection Act* and is ordered to pay to the Complainant their proven loss of \$1,679.67.

[89] The motor dealer has also breached section 3(1)(b) of the *Motor Dealer Act* and section 21(2) of the *Motor Dealer Act Regulation*.

[90] The hearing will be reconvened to determine what action should be taken against the dealer and the salesperson in order to protect the public interest.

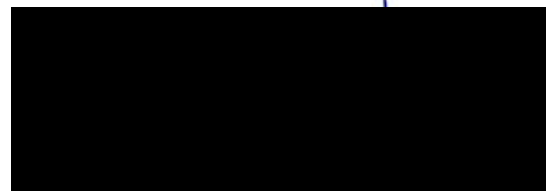
[91] At the hearing continuation, the motor dealer and the salesperson may be liable for the costs of that hearing.

[92] If there is disagreement with the compliance order, a request for reconsideration may be made to the Authority, attention Daryl Dunn, Manager of Compliance and Investigations. That request must be made within 30 days of receiving a copy of the Compliance Order. The requesting party must provide new evidence that is substantial and material to the determination. New evidence means it did not exist at the time of the hearing or if it did exist during the time of the hearing, it could not have been found using due diligent steps to locate that evidence and bring it before the hearing: Sections 180-183 of the BPCPA.

[93] If no reconsideration is made, then this decision may be reviewed by way of petitioning the BC Supreme Court for judicial review pursuant to the *Judicial Review Procedure Act*. A petition must be filed within 60 days of this decision being issued: section 7.1(t) of the *Motor Dealer Act* and section 57 of the *Administrative Tribunals Act*.

[94] Given the concerns I have raised here, the continuation of the hearing should occur by the end of April, if scheduling permits.

Dated: March 29, 2016



Ian Christman J.D.
Registrar of Motor Dealers