



Neutral Citation: 2016-BCRMD-007

**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: April 20, 2016, at Surrey, British Columbia

Appearances for:

| | |
|-----------------------------------|--|
| The Complainant | Not present |
| 0695949 B.C. Ltd. dba K.F.M. Auto | Farshad (Fred) Sharifpour by teleconference |
| Farshad (Fred) Sharifpour | Himself by teleconference |
| Vehicle Sales Authority | Daryl Dunn, Manager of Compliance and Investigations |
| | Christopher Hoy, Compliance Officer, by teleconference |

Introduction

[1] On March 29, 2016, I issued a decision regarding 0695949 B.C. Ltd. dba KFM Auto (KFM) and Farshad (Fred) Sharifpour, for making reckless misrepresentations to the Complainant in this matter as per the *Business Practices and Consumer Protection Act* (the "BPCPA"). The facts of that matter are contained in that decision.

[2] The result of the March 29, 2016, hearing was KFM and Mr. Sharifpour were to reimburse the Complainant for their proven loss, and pay the VSA investigation

and hearing costs up to and including the March 29, 2016, hearing. In that decision, I expressed concern that the prior history of KFM, a recent suspension of KFM's registration for non-compliance of the *Motor Dealer Act*, plus its conduct in this case gave me concern about KFM continuing to operate as a motor dealer. My concern was that KFM did not appear to be abiding by the laws applicable to its operations and there was evidence to suggest KFM was ungovernable. As a result, I ordered a second hearing to give KFM an opportunity to provide evidence about its operations and that the suspension it received recently, along with any other compliance action I may yet decide, would be sufficient to deter future non-compliance by KFM. These reasons address those concerns and the evidence presented at the hearing.

The Evidence

[3] None of the evidence presented was controversial or in conflict.

(a) *The Authority –Chris Hoy*

[4] Chris Hoy, Compliance Officer, provided the majority of the evidence on behalf of the Authority. Mr. Hoy provided evidence of KFM and Mr. Sharifpour's compliance history and general comments as follows:

- (a) Mr. Hoy met Mr. Sharifpour in about 2001-2002 in Kelowna when he was investigating Mr. Sharifpour for operating as a motor dealer without a licence – a "curber". Mr. Sharifpour was apparently fairly new to Canada, did not speak English well, and was not aware of the licensing requirements. Mr. Hoy reluctantly issued Mr. Sharifpour a violation ticket. Mr. Hoy states Mr. Sharifpour was cooperative with the investigation. Mr. Hoy also advised Mr. Sharifpour of the legal requirements to register as a motor dealer and Mr. Sharifpour complied and registered in 2005.
- (b) Mr. Hoy noted Mr. Sharifpour's English is much improved and he is able to communicate with Mr. Sharifpour on an ongoing basis.
- (c) Mr. Hoy advised that he has conducted 27 formal inspections of KFM since 2005. Of those, 10 resulted in a fail, with outstanding issues subsequently corrected by KFM.
- (d) Mr. Hoy has done 13 liaison visits at KFM since 2007. A liaison visit is an opportunity for the Authority to call on a motor dealer and discuss their business or concerns. There are no formal inspections during a liaison visit.

- (e) Mr. Hoy has conducted 22 investigations of KFM. Of those 11 were eventually abandoned complaints by the consumer. One was closed as insufficient evidence, one remains unresolved, restitution was obtained with three consumers, violation tickets on two others and the remainder were closed no action necessary.
- (f) Since 2013, the bulk of the complaints were regarding vehicle safety concerns discovered after sale. Mr. Hoy noted KFM sells lower end used cars, those around \$5,000 in value.
- (g) Since 2009, Mr. Hoy has issued six violation tickets on KFM for a variety of reasons. Most notable is operating away from KFM's registered business premises. This same reason resulted in the suspension of KFM's motor dealer registration on December 3, 2015.
- (h) Mr. Hoy states that whenever he interacts with Mr. Sharifpour, he has been cooperative.
- (i) Mr. Hoy stated Mr. Sharifpour has been compliant with the condition of KFM's licence imposed on December 3, 2015, that the dealership be closed if there is no licensed salesperson on duty.
- (j) Mr. Hoy stated it has always been difficult to examine the records of KFM at the dealership. Mr. Sharifpour takes the dealer records home as he is concerned about break-ins and theft at the dealership. Mr. Hoy says the files are often disorganized, but Mr. Sharifpour always produces the records Mr. Hoy requests.
- (k) Two violation tickets remain unpaid. However, as part of the licensing process, they would have to be repaid upon the next dealer renewal.

[5] The general tenure of Mr. Hoy's evidence was that while KFM and Mr. Sharifpour do require much of Mr. Hoy's time to oversee, they both have continuously grown compliant and have always been cooperative. Mr. Hoy believes much of what has occurred in the past is attributable in part to Mr. Sharifpour's then poor English. Mr. Hoy found Mr. Sharifpour and KFM needed less oversight in recent times and especially since KFM's short licence suspension in December of 2015.

(b) The Authority - Ashley Farmer

[6] Ashley Farmer, Legal Administrative Assistant, gave evidence that as of the date of the hearing, the VSA had not received payment for its investigation and hearing costs.

(c) The Authority - Daryl Dunn

[7] Daryl Dunn, Manager of Compliance and Investigations, spoke to the complainant before the hearing. As of the date of the hearing, the complainant had not received their restitution.

(d) Mr. Sharifpour – for himself and KFM

[8] Mr. Sharifpour was aided by his brother in making submissions.

[9] Mr. Sharifpour's submissions can be summarized as follows:

- (1) He and KFM have been compliant with the Registrar's conditions since they were imposed December 3, 2015.
- (2) He has been growing into the business these past years and has always complied with the directions provided by Compliance Officer Chris Hoy.
- (3) He needs to operate his business for his livelihood.
- (4) He and KFM have cooperated with the VSA and Compliance Officer Chris Hoy in the past.
- (5) He accepts that an administrative monetary penalty may be necessary to address his and KFM's conduct and deter future non-compliance.
- (6) He and KFM have paid the consumer and could provide evidence that the money was mailed to the consumer. I would note that since the hearing, the consumer has confirmed being paid.
- (7) He is paying the VSA for its investigation and hearing costs on a payment plan. I have since confirmed this to be the case.
- (8) KFM is not open to the public when no salesperson is present.

- (9) He and KFM are agreeable to a condition on their licence that all vehicles are to be inspected by a third party inspection facility.
- (10) He would ensure he is listed as a salesperson authorized to sell motor vehicles at his son's dealership.

[10] I note that Compliance Officer Chris Hoy stated the major cause of consumer complaints is the mechanical condition of the vehicles purchased. This is not unusual for a dealer selling lower value used vehicles. However, such vehicles must still meet the minimum safety requirements of the *Motor Vehicle Act* before they are offered for sale: section 222 of the *Motor Vehicle Act* and sections 8.01 and 8.02 of the *Motor Vehicle Act Regulation*.

The Law

(a) Review of a license generally

[11] Section 5 of the *Motor Dealer Act* (the "MDA") and section 6 of the *Salesperson Licensing Regulation* require a review of motor dealers and salespersons, respectively, to ensure they are not a risk to the public interest if they were or continue to be licensed. The purpose of such reviews, as is the purpose of regulations and licensing, is to determine if on a balance of probabilities, licensees operating in the industry may cause harm to consumers.

Zenner v. Prince Edward Island College of Optometrists, [2005] 3 S.C.R. 645 (Supreme Court of Canada)

R. v. Fitzpatrick [1995] 4 SCR 154 (Supreme Court of Canada)

R. v. Wholesale Travel Group [1991] 3 S.C.R. 154 (Supreme Court of Canada)

[12] Reviewing the past conduct of a licensee is the legislative tool the Registrar has to assess future risk. Madame Justice Sharma of the BC Supreme Court noted the following regarding section 6 of the *Salesperson Licensing Regulation*:

[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 (BC Supreme Court), affirming *Re: Peter Fryer*, (December 13, 2013; Hearing File 13-11-005, Registrar)

[13] The factors of being governable, acting honestly and with integrity, and in accordance with the law are equally important factors when assessing motor dealers and their businesses. The categories of conduct of concern to the public interest are broad and not a closed list. Further, section 5 of the MDA also requires assessing the financial viability of a motor dealer as consumers may be impacted if a dealer goes out of business for any reason including bankruptcy.

Knapp v. Crown Autobody & Auto Sales Ltd. (September 21, 2009, File 08-70578, Registrar) at paragraphs 92-93; affirmed by *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894 (BC Supreme Court).

Southwest R.V. v. Motor Dealer Council of British Columbia, 2007 BCSC 1140 (BC Supreme Court).

Vehicle Sales Authority v. 0831522 B.C. Ltd. dba Street Trendz Auto Sales and Customization et al (Registrar, File 15-02-002, November 26, 2015)

(b) Business Practices and Consumer Protection Act (BPCPA) – deceptive acts and practices

[14] In my decision on liability dated March 29, 2016, I described in detail the law of determining deceptive acts or practices. Section 164 of the BPCPA provides that an administrative monetary penalty may be ordered if a supplier (motor dealer and a salesperson) commits a deceptive act or practice. Before issuing a penalty, the factors in section 164(2) of the BPCPA must be considered along with a consideration of the entire facts of the case.

[15] It is important to remember that a regulator does not punish past conduct, as that is left to the criminal courts. A regulator issues administrative penalties to deter future non-compliance by the regulated person (motor dealer and salesperson) and to deter the industry generally. If the registrar believes the motor dealer or salesperson will be non-compliant in the future regardless of any regulatory sanction, the registrar then cancels the licence of the motor dealer or

salesperson and removes them from the industry in order to protect consumers and preserve the public interest.

Guindon v. Canada, 2015 SCC 41, [2015] 3 S.C.R. 3 (Supreme Court of Canada)

Knapp v. Crown Auto Body and Auto Sales Ltd. et al. (Registrar, File 08-70578, September 21, 2009) affirmed by *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894 (BC Supreme Court)

Bunyak v. Darryl's Best Buys Auto Sales Ltd. et al. (Registrar, File 14-12-002, October 5, 2015).

Discussion

[16] For the reasons that follow, I am allowing KFM to continue as a registered motor dealer and Mr. Sharifpour as a licensed salesperson. In order to protect consumers and the public interest I believe adding conditions to KFM's motor dealer registration and Mr. Sharifpour's salesperson licence is in order, which I will describe below. In order to deter future non-compliance by the dealer and by Mr. Sharifpour and as a deterrent on the industry generally, I also believe an administrative penalty is necessary.

(a) Conditions on licence – understanding legal obligations

[17] KFM's past compliance history is of concern. According to Mr. Sharifpour, and somewhat supported by Compliance Officer Chris Hoy's testimony, this is due in large part to Mr. Sharifpour's language skills and past unfamiliarity with the laws applicable to him operating a motor dealership.

[18] In *Ontario (Registrar, Motor Vehicle Dealers Act) v. Unity-A-Automotive Inc.*, 2009 CanLII 67420, the Ontario Superior Court of Justice (Divisional Court) was reviewing a decision of the Ontario Licence Appeal Tribunal. The Tribunal had disagreed with the decision of the Ontario Registrar of Motor Dealers in refusing to licence the dealership in that case due to their past conduct. The Tribunal said the past conduct was excusable due to the owner's ignorance of the law and poor English. The Ontario court disagreed with the Tribunal and ordered the continued review of the motor dealer's registration. The Court noted:

[27] The MVDA [Motor Vehicle Dealers Act of Ontario] is consumer protection legislation and, therefore, it is important for an applicant for registration to know his obligations under the governing legislation. However, the respondent testified that he did not understand the legal side of the

business. The Tribunal's reasons fail to address the public policy implications of granting registration to a person who does not understand the statutory requirements and who will have serious difficulty in doing so.

[28] ...However, the Tribunal also said shortly thereafter that failure to observe legal requirements, once those requirements are known, cannot be condoned...

And further,

[30] While the Tribunal expressed the expectation that the respondent would get legal advice on his responsibilities under the Act and regulations, it fails to deal with the central issue before it - does the lack of knowledge of legal responsibilities, coupled with the past convictions, the lack of disclosure of those convictions, the selling of three cars after a conviction for curbsiding in 2005, as well as the respondent's continuing problems with understanding and reading English give reasonable grounds to believe that the respondent will not carry on his business in accordance with law, integrity and honesty in the future? That question was not addressed in the reasons.

[19] This decision makes clear that a motor dealer's past non-compliance coupled with a lack of understanding about legal obligations and an inability to understand those legal obligations can be a concern to a regulator. If such issues arise, a motor dealer must be able to address those issues in order to continue to be licensed so that the public interest is protected.

[20] More recently and in this province, Justice Skolrood stated this about a motor dealer:

[59] In my view, it is incumbent upon a party that operates within a regulated industry to develop at least a basic understanding of the regulatory regime, including its obligations under the regime, as well as the obligations, and the authority, of the regulator.

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

[21] Mr. Sharifpour must understand the legal obligations contained in the MDA and those provisions of the BPCPA administered by the Registrar in order to operate a dealership. It is clear he does not. Therefore, to protect the public interest, I place the following condition on his salesperson licence:

- Mr. Sharifpour must retake and successfully complete the Salesperson Certification Course at his own cost within 60 days of this decision being issued.

(b) Conditions on licence – vehicle mechanical condition and safety

[22] Compliance Officer Chris Hoy discussed the past complaints against KFM. It is clear many complaints arise out of the types of used vehicles sold by KFM, \$5,000 and under, and complaints about their mechanical condition and safety. The complaint in this case is also about misrepresentations about the mechanical condition of a vehicle.

[23] As a temporary measure to obtain compliance and protect the public interest, the Registrar has imposed conditions on motor dealers regarding safety inspections of all motor vehicles they offer for sale. Sections 21(2)(e) and (f); 22; and 27(b) of the *Motor Dealer Act Regulation* inferentially incorporate the requirements of section 222 of the *Motor Vehicle Act* and sections 8.01 and 8.02 of the *Motor Vehicle Act Regulations* and the *Vehicle Inspection Regulation* B.C. Reg. 256/2010. These provisions work together to protect consumers and the driving public in relation to motor vehicle sales.

Naples v. River City Auto Sales Ltd. et al (Registrar, File 12-022, February 18, 2013)

Re: Key Track Auto Sales & Detailing Ltd. (Registrar, File 10-013, June 8, 2010)

[24] Mr. Sharifpour for KFM was given an opportunity to comment on the potentiality of my imposing such a condition. Mr. Sharifpour was accepting of such a condition.

[25] As a means to protect consumers and the public interest regarding vehicle safety, given the history of complaints at KFM regarding vehicle mechanical and safety concerns, I place the following conditions on KFM's motor dealer registration:

- (a) All motor vehicles offered for sale by 0695949 B.C. Ltd. *dba* KFM Auto (KFM), must pass a Provincial Private Vehicle Inspection (PVI) conducted by a designated inspection facility, or pass a mechanical and safety inspection conducted by a facility using a qualified red seal mechanic, that KFM, its officers, directors or employees, has no personal or business interest in.

- (b) KFM must provide a copy of the mechanical and safety inspection report to any person considering purchasing a motor vehicle from KFM before the sale is finalized.
- (c) Every consumer who purchases a motor vehicle from KFM must be given a copy of the mechanical and safety inspection report.
- (d) Conditions (a), (b), and (c) may be reviewed in one year's time from the date the conditions are imposed. The Manager of Licensing has authority to vary or remove these conditions at that time, or refer the matter back to the Registrar.

(c) *Business Practices and Consumer Protection Act – Administrative Penalty*

[26] In this case Mr. Sharifpour and KFM recklessly misrepresented the mechanical condition of the Audi to gain the benefit of the profits of its sale. As I noted in my earlier decision, a reckless misrepresentation is in law considered deliberate: *Casillan v. 565204 B.C. Ltd. dba Daewoo Richmond*, 2009 BCSC 1335 (BC Supreme Court). Such action by KFM corporately, and Mr. Sharifpour as a licensed salesperson must be deterred. I also consider the need to deter the industry in making similar reckless misrepresentations.

[27] As Mr. Sharifpour is a directing mind of KFM and clearly "authorized, permitted or acquiesced in the contravention", Mr. Sharifpour is liable in his individual capacity, apart from any liability imposed on KFM: section 164(5) of the BPCPA.

[28] I turn to a review of the section 164(2) BPCPA factors for both KFM and Mr. Sharifpour, the whole of the case and past precedents.

(i) *164(2)(a) previous enforcement actions for contraventions of a similar nature by the person;*

[29] From Compliance Officer Chris Hoy's evidence the VSA has been using its progressive enforcement process with KFM. In 2013, in case file 13-04-161, the consumer returned the vehicle to KFM for a refund and was reimbursed \$200 for repairs. KFM was given a warning as they were cooperative. Later in 2013, a similar complaint of misrepresenting mechanical condition, in case file 13-10-107, led to Compliance Officer Chris Hoy issuing a violation ticket for not declaring the vehicle as "not suitable for transportation." No similar compliance actions for a similar contravention are noted since October of 2013.

[30] Mr. Sharifpour's salesperson licence shows no previous enforcement action against him as a salesperson for a similar contravention.

(ii) 164(2)(b) the gravity and magnitude of the contravention;

[31] The specific infraction was limited to the sale of the Audi. As to the gravity, this was a serious misrepresentation which could have had a greater financial impact on the Complainant had they not purchased the extended warranty. The failure of the turbo could have been much worse had it damaged the engine requiring its repair or replacement.

(iii) 164(2)(c) the extent of the harm to others resulting from the contravention;

[32] In this case the financial harm was limited to the Complainant in this case. The reputational harm this type of conduct has extends beyond this one motor dealer. It impacts on the B.C. motor dealer industry's reputation generally.

(iv) 164(2)(d) whether the contravention was repeated or continuous;

[33] As noted in my March 29, 2016, decision, KFM and Mr. Sharifpour continuously stated the check engine light was being addressed or had been addressed and was an oxygen sensor issue. They, on at least two occasions, inferred the issue was minor, when it was not. The reckless misrepresentation was repeated.

(v) 164(2) (e) whether the contravention was deliberate;

[34] As already noted, in law a reckless misrepresentation is considered deliberate.

(vi) 164(2) (f) any economic benefit derived by the person from the contravention;

[35] While no evidence was placed before me about the extent of the economic benefit KFM and Mr. Sharifpour obtained due to the contravention, the evidence is quite clear that the consumer's decision to purchase the Audi was subject to the check engine light issue being resolved. Therefore, the entire profits of the sale were KFM's economic benefit. Also, by having the turbo fixed under the extended warranty purchased by the Complainant, KFM certainly benefited by not having to

pay for the repairs covered by the warranty company. But for the warranty company covering some costs of the repairs, KFM would be responsible for the total cost of those repairs. The evidence submitted indicates the warranty company covered \$1,679.67 of the cost to replace the turbo, which was to KFM's benefit: Exhibit A pages 13 to 18 attached to the Affidavit of Chris Hoy, exhibited at the February 17, 2016, hearing.

[36] No evidence was led as to the economic benefit directly to Mr. Sharifpour as the salesperson involved.

(vii) 164(2)(g) the person's efforts to correct the contravention.

[37] KFM offered to reimburse the Complainant \$500 towards the repairs. At the time of the February 19, 2016, hearing, there did not appear to be any recognition by KFM or Mr. Sharifpour that their conduct was wrong.

(viii) Past precedents

[38] In the case of *Bunyak v. Darryl's Best Buys Auto Sales Ltd.* (October 5, 2015, File 14-12-002, Registrar), the dealer and salesperson were found to have deliberately misrepresented the ex-lease status of the vehicle purchased. The dealer was a smaller used vehicle dealer also dealing with lower value vehicles. The dealer was issued a \$2,500 administrative penalty and the salesperson a \$250 penalty. The dealer in the *Bunyak* case did not have the conditions imposed on their registration as is KFM. Also, the dealer in the *Bunyak* case had not recently faced a suspension of its licence.

[39] In the case of *Harris v. Windmill Auto Sales & Detailing Ltd.* (April 10, 2013, File 12-030, Registrar), affirmed by *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers*, 2014 BCSC 903 (BC Supreme Court), the dealer was found to have deliberately misrepresented the vehicle's damage history. In consideration of the dealer being ordered to buy back the vehicle for a full refund, the administrative penalties in that case were \$2,500 for the dealer and \$500 for the salesperson, who was also the owner of the dealership. The dealer in the *Harris* case did not have the conditions imposed on their registration as is KFM. Also, the dealer in the *Harris* case had not recently faced a suspension of its licence.

(ix) A consideration of all the facts of this case and KFM

[40] Apart from the consideration of the above factors, I also note that KFM was recently suspended for other non-compliance issues. I note the evidence of Compliance Officer Chris Hoy that KFM and Mr. Sharifpour have been compliant

with the conditions of their licence since that time. Specifically, KFM is closed for business if there is no licensed salesperson at the dealership.

[41] While I note the similarities between the small nature of KFM's operations and that of Darryl's Best Buys and of Windmill, I also note that KFM is not always open as those other two dealers as Mr. Sharifpour is also assisting with running his son's dealership while his son attends university.

[42] I keep in mind that an administrative penalty must be of sufficient amount to deter future non-compliance and not just be the cost of doing business, or so high as to be an insurmountable burden on the dealer. This requires consideration of KFM's unique situation and its financial ability to pay.

[43] Finally, KFM has additional conditions on its registration regarding independent vehicle inspections which will add costs to each sale of a motor vehicle for the next year, impacting KFM's profit margin. Those same conditions were not placed on the registrations of Darryl's Best Buys or of Windmill. These additional costs on KFM are taken into consideration.

[44] Overall, I find that an administrative penalty of \$1,500 on KFM and a \$500 administrative penalty on Mr. Sharifpour is appropriate to deter future non-compliance, when also considering the conditions ordered above, the refund KFM has paid to the consumer, the unique facts of KFM's ability to pay, and the impact the suspension has already had on the behaviour of the dealership.

Costs

[45] In my decision of March 29, 2016, I forewarned KFM and Mr. Sharifpour that if this hearing were to occur, they could be responsible for its hearing costs. That is appropriate in this case and I will issue a compliance order that KFM and Mr. Sharifpour pay \$761.13 towards the hearing costs in this matter.

Reconsideration or Review

[46] If there is disagreement with the administrative penalties or the compliance order to pay costs, those may be reviewed by applying for a reconsideration pursuant to sections 180 to 182 of the BPCPA within 30 days of receiving the compliance order and notices of administrative penalty. Such an application must identify the grounds for reconsideration and be accompanied by the new evidence to be considered as required by the BPCPA.

[47] The conditions on the registration of KFM and licence of Mr. Sharifpour, and the compliance order and notices of administrative penalty may be reviewed by petitioning the BC Supreme Court for judicial review pursuant to the *Judicial Review Procedure Act*. Such 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*.

Dated: May 20, 2016



Ian Christman J.D., Registrar of Motor Dealers