



**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**

**DELTA WELL (CANADA) LTD. DBA NEW STAR MOTORS
(Dealer #9958)**

Motor Dealer

AND:

**ARTHUR TONG
(Salesperson #105428)**

Salesperson/Dealer Principal

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Date and Place of Hearings: April 21, 2016, at Surrey, British Columbia

Appearances for:

The Motor Dealer	Arthur Tong, Dealer Principal & Owner
Arthur Tong	In person
Vehicle Sales Authority	Daryl Dunn, Manager of Compliance and Investigations Ross Cote, Compliance Officer

Introduction

[1] On November 13, 2015, a hearing was held where allegations were heard that Delta Well (Canada) Ltd. *dba* New Star Motors ("Delta Well") and Arthur Tong tampered with the odometers, rolled back mileage, on 39 motor vehicles.

[2] Compliance Officer Ross Cote for the Authority stated he had inspected the dealership after receiving a consumer complaint. Mr. Cote looked at the odometer readings on purchase agreements going back one year. He compared the declared odometer readings when the vehicles were sold by Delta Well to documents with declared odometer readings before the motor vehicles went into Delta Well's name. He noted discrepancies on the vehicles and Mr. Cote did some further checks to confirm there were discrepancies. Compliance Officer Cote then sent letters to consumers who may be affected. At the date of the November hearing, Compliance Officer Cote was still waiting for a response from all the consumers.

[3] Compliance Officer Cote also noted that some of these vehicles were sold away from the dealership and in a manner suggesting to the purchaser that they were private sales and not a sale by a registered motor dealer. Given the concern that Delta Well may continue to roll back odometers, the Authority called the hearing of November 13, 2015, alleging that Delta Well and Arthur Tong had rolled back odometers contrary to the *Motor Dealer Act* and had committed a deceptive act contrary to the *Business Practices and Consumer Protection Act*.

[4] At the November 13, 2015, hearing, Arthur Tong on his own behalf and for Delta Well admitted to rolling back odometers. Arthur Tong said he would work with the Authority and follow the directions of Compliance Officer Cote to try and resolve any harm to the consumers. Mr. Tong said he needed to continue to operate his dealership in order to raise revenue to address any harm to consumers. Mr. Tong said he rolled back odometers in order to be competitive with other dealers.

[5] At the conclusion of the November 13, 2015, hearing I found it was in the public interest to suspend the motor dealer registration of Delta Well and the salesperson licence of Mr. Tong pending the conclusion of the investigation. If Delta Well needs to roll back odometers to compete, it is more likely than not that Delta Well and Arthur Tong would continue to roll back odometers to raise even more revenue in order to address the concerns of the 39 consumers.

[6] On April 21, 2016, the hearing was reconvened to review whether Delta Well's motor dealer licence should be cancelled or its suspension lifted. The same review was made of Mr. Tong's salesperson licence.

Evidence at the April 21, 2016 Hearing

(a) Compliance Officer Cote

[7] Compliance Officer Cote's evidence can be summarized as follows:

- (a) Compliance Officer Cote was able to identify 46 vehicles sold by Delta Well in the year prior to the November 13, 2015, hearing,
- (b) Of those, it was determined that 39 motor vehicles had their odometers rolled back. That is 85% of the vehicles Delta Well was identified as having sold in that past year,
- (c) Letters were sent to the 39 consumers to contact Arthur Tong and Compliance Office Cote to discuss a possible discrepancy with the odometer readings on their motor vehicles,
- (d) Of the 39 consumers with rolled back odometers, 30 contacted Arthur Tong and Compliance Officer Cote. Nine consumers have not

responded to the two letters sent to each and other attempts at communications by the Authority,

- (e) Delta Well and Arthur Tong purchased back vehicles from four consumers at a combined cost of \$60,000,
- (f) Delta Well and Arthur Tong paid compensation to the 26 other consumers at a combined cost of \$58,100,
- (g) Compliance Officer Cote noted that Delta Well had received a violation ticket in March 2013, for an odometer roll back. Mr. Cote said he believed Arthur Tong at that time, that it was a one-time error,
- (h) Compliance Officer Cote is now concerned that there have been other odometer roll backs, but so far there is no evidence of that, and
- (i) The original complainant that triggered Mr. Cote's inspection had his vehicle bought back by Delta Well and Arthur Tong before this process. That complainant would be the 40th person to have been affected by an odometer roll back.

Compliance Officer Cote's evidence is contained in two hearing reports and in oral testimony. Contained in his April 14, 2016, Hearing Report are letters and emails from the consumers confirming they have received compensation and are satisfied.

(b) Arthur Tong personally and for Delta Well

[8] Arthur Tong's evidence for himself and Delta Well can be summarized as follows:

- (a) Delta Well did roll back the odometers on the identified vehicles,
- (b) The only vehicles Delta Well rolled back odometers on are those identified by Mr. Cote,
- (c) Delta Well has provided compensation or bought back the vehicles as noted by Compliance Officer Cote,
- (d) Delta Well has followed the directions of Compliance Officer Cote, and
- (e) Mr. Tong needs to continue to operate Delta Well in order to earn income.

[9] I asked Mr. Tong some questions. Mr. Tong's responses were as follows:

- (a) There was the other time he rolled back the odometer in 2013. That was an error. The odometer had been repaired and the new reading had not been properly recorded [as required by section 34 of the *Motor Dealer Act* and section 25 of the *Motor Dealer Act Regulation*].
- (b) Mr. Tong clearly inferred that he was assisted in rolling back odometers. Mr. Tong refused to identify who was assisting him, saying the responsibility rested with him.

- (c) The roll backs were achieved by way of digital manipulation in some cases and by physical replacement of the odometers in other cases.
- (d) Mr. Tong was asked if he understood what led him to commit the odometer roll backs. Mr. Tong's response was that he was spending too much money on reconditioning the vehicles he bought for the purpose of resale. He had high standards for the vehicles he sold and the cost to acquire vehicles plus Delta Well's reconditioning costs exceeded the market value of the vehicles.

[10] During the hearing, Mr. Tong for himself and Delta Well did not come across as apologetic for the roll backs. The clear impression was this was a business issue; that Delta Well got caught in violation of the Act; and was now fixing the issue to the extent identified by the Authority.

The Law

(a) Licence review

[11] It is an offence under section 35 of the *Motor Dealer Act* to roll back odometers. The liability for doing so for an individual is a fine of up to \$100,000 and/or jail for up to six months. The liability for a corporation is a fine up to \$200,000.

R v. Karamali 2006 BCPC 454 (BC Prov. Ct.)

[12] Rolling back an odometer is also a federal offence under the *Weights and Measures Act*.

R. v. Parker, (1978) B.C.J. 771 (BC Court of Appeal)

[13] Rolling back an odometer can constitute fraud under the *Criminal Code* of Canada.

R. v. McGuire, 2005 ABCA 211 (Alberta Court of Appeal)

[14] The registrar is not empowered to adjudicate any of these provisions. However, the fact odometer roll backs constitute offences is a permissible consideration in my review of Delta Well's registration and Arthur Tong's salesperson licence.

[15] Section 5 of the *Motor Dealer Act* and section 6 of the *Salesperson Licensing Regulation* are the conduct review provisions for motor dealers and salespersons

respectively. Madame Justice Sharma of the B.C. 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

[16] These same principles are applicable to a review of a motor dealer's conduct.

Re: Parkwood et al (August 6, 2010, Files 07-70285A, 07-70263A, 08-70631A, and 08-70997A, Registrar).

Prestige Toys Ltd. v. Ontario (Registrar, Motor Vehicle Dealers Act) 2009 CarswellOnt 4743 (Ont. S.C.J. (Div. Crt.)) at paragraphs 32-34.

[17] The purpose of regulation is to prevent future harm from occurring. While it may be important to a business or an individual to have a licence in order to earn income and a livelihood, that interest must yield to the greater public interest of preventing future harm.

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).

(b) Deceptive Acts – Business Practices and Consumer Protection Act

[18] Section 5(1) of the BPCPA prohibits committing deceptive acts or practices. Section 4 of the BPCPA broadly defines what is a deceptive act or practice, while sub-section 4(3) deems certain conduct to be deceptive acts or practices. Sub-section 4(3)(b)(vi) deems failing to state a material fact about a good to be a deceptive act or practice. In other words, it is possible to commit a deceptive act or practice by remaining silent about a material fact.

Stanway v. Wyeth Canada Inc., 2012 BCCA 260 (BC Court of Appeal)

Applewood Motors Inc. v. Ratte & The Registrar of the Motor Dealer Council of British Columbia (April 13, 2010, S.C.B.C. Action #S094126, Vancouver Registry) (BC Supreme Court).

(c) Deceptive acts – a review of licence

[19] If a motor dealer is found to have committed a deceptive act or practice contrary to the BPCPA, that is grounds for the registrar to consider cancelling their registration as a motor dealer: section 8.1(4)(b) of the *Motor Dealer Act*.

Discussion

(a) Odometer roll backs – deceptive conduct

[20] The act of rolling back odometers in order to falsely increase the market value of a motor vehicle is conduct not deserving of a motor dealer registration or of a salesperson licence. It is a deemed deceptive act within a consumer transaction under the *Business Practices and Consumer Protection Act* as it misleads a person about the prior history of the motor vehicle. The odometer reading on a motor vehicle is a material fact to a buyer. To not advise a consumer of the true distance travelled by a motor vehicle is also a deceptive act by silence: sections 4(3)(a)(iii), 4(3)(b)(vi) and *Stanway v. Wyeth Canada Inc.* (BCCA). Arthur Tong's evidence makes it clear that he and Delta Well deliberately manipulated the odometers.

[21] In an Ontario case involving a motor dealer in that province, it was said:

[10] As for the seriousness of odometer tampering and misrepresentation, the Tribunal said this:

50. Counsel for the Applicant argued that the Applicant had made full restitution in many cases and that the financial sacrifices made by the Applicant are evidence of the Applicant carrying on business with honesty and integrity thereby protecting the public interest. However, I disagree. Although restitution is evidence of positive conduct of the Applicant, this does not exonerate him from the serious offence of non-disclosure of odometer readings. **Odometer tampering is a grave and serious offence by a dealer and the Tribunal must rule in favour of protecting the public.** Many consumers base their assessment of value on the odometer readings and must rely and trust the dealer to disclose any known odometer readings. The Applicant made restitution when he was caught misrepresenting the odometers. The concern and intent of the legislation is to protect the innocent consumers who do not have knowledge of possible misrepresentations.

Registrar, Motor Vehicles Act v. Jacobs, 2004 CanLII 9450 (ON SCDC)

[22] The Court in *Jacobs* went on to say:

[81] While Mr. Jacobs' improved business practices cannot, in this court, be given the same weight mistakenly accorded them by the Tribunal by reason of its error, that improvement cannot be ignored and must be given appropriate weight. The evidence of improved business practices would weigh heavily in favour of reinstatement if accompanied by some evidence of repentance or remorse by Mr. Jacobs, some acceptance that there is a difference between fraudulent and honest conduct, and some insight into his fraudulent behaviour.

[82] The problem here is that the latter evidence is missing. Mr. Jacobs' unrepentant insistence that his criminal fraud was nothing more than bad business practice shows that he still fails to appreciate the difference between fraudulent conduct and honest conduct. That failure does not bode well for future customers of this convicted fraudsman.

...

[84] **The controlling principle in this case must be the promotion of integrity and honesty in the motor vehicle sales industry.** The need to protect the public from dishonest salesmen like Mr. Jacobs, who fail to appreciate the difference between fraudulent conduct and honest conduct, requires that the Registrar's proposal [to refuse registration as a motor dealer] be upheld.

(b) A dealer acting as a private seller – deceptive conduct

[23] In relation to Delta Well and Arthur Tong arranging sales to look as if they were private sales rather than a sale by a registered motor dealer, the B.C. Provincial Court has found that to be a misrepresentation, and therefore deceptive conduct:

[22] Ms. Parsons has proven it is more likely than not, that Mr. Zagrodzki intentionally misrepresented the car's background in order to facilitate the sale to her. **He should have told Ms. Parsons these material facts:**

- **Mr. Zagrodzki is a licensed car dealer**
- The car was stolen, recovered and declared Salvage by a California insurance company
- Mr. Zagrodzki's export-import company bought the car from the California insurance company in April 2003 and imported it into Canada
- The car theft resulted in repairs worth more than \$2,000
- As a result, the car must be declared Rebuilt
- **The odometer reading is not accurate**

[23] **Mr. Zagrodzki's withholding this information and telling Ms. Parsons that it was his personal car that he was selling to buy a minivan for his family, amounts to fraudulent misrepresentation.**

[24] Although a fraudulent misrepresentation has been proven, I have not concluded that Mr. Zagrodzki is guilty of the crime of fraud.

Parsons v. Zagrodzki, 2005 BCPC 384 (BC Prov. Ct.)

[24] I would note that Judge Tweedale's decision in *Parsons v. Zagrodzki* has support in the BC Court of Appeal's decision in *Stanway* and its interpretation and application of the *Business Practices and Consumer Protection Act*. This is so especially for sub-section 4(3)(b)(vi), [a failure to state a material fact] and sub-section 4(3)(b)(iv) [that a consumer transaction involve rights, remedies or obligations that differ from the fact]. It is important for a consumer to know they are buying from a motor dealer (a "supplier" under the BPCPA) as that triggers additional rights for the purchaser as enumerated in the *Motor Dealer Act*, its regulations and in the BPCPA. A motor dealer representing that they are a private person is an attempt to deprive a consumer from knowing they have these additional rights, as much as it is an attempt to hide the transaction from its regulator.

[25] An example of how the *Motor Dealer Act* and the BPCPA apply to the sale of a motor vehicle by a registered motor dealer and not to a private sale is highlighted in the decision of Judge Gedye in *Balderston v. Cheng et al.* 2006 BCPC 0064. The case of *Balderston* involved misrepresentations in the private sale of a motor vehicle. There Judge Gedye noted:

[9] The claimant provided excerpts from the Motor Dealer Act, the Trade Practices Act [predecessor to the Business Practices and Consumer Protection Act], and the Sale of Goods Act. **The Motor Dealer Act is not relevant to these facts because Patrick Cheng was not a motor dealer acting "in the course of business" when he sold this vehicle.** He described himself as a university student trying to sell a vehicle from his parents' driveway where he was a neighbour to the claimant. He had no special knowledge of the mechanical condition of the vehicle. He described how he hired others to complete approximately \$3000 worth of "improvements" to the vehicle. **Similarly, he does not fit the definition of "supplier" in the Trade Practices Act, in that the sale of this vehicle was not "in the course of the person's business".**

[26] Enhanced rights, including access to a motor dealer compensation fund, exist for a consumer who purchases a motor vehicle from a motor dealer versus when they purchase a motor vehicle privately from an individual. A motor dealer failing to advise a consumer that they are buying from a motor dealer is a material fact

because it deprives the consumer from knowing that they have these additional rights within the “consumer transaction.” It is in part for this reason that section 21 of the *Motor Dealer Act Regulation* requires a motor dealer to identify themselves on purchase agreements, and section 13(1) of the *Motor Dealer Act* which requires a motor dealer to include their name, the word “dealer” and their registration number on advertisements, sale or purchase agreements, or any written representation regarding a motor vehicle. It is an offence not to do so: section 35(2) of the *Motor Dealer Act*.

(c) Overall consideration of Delta Well and Arthur Tong – revocation of registration and licence

[27] Delta Well and Arthur Tong were unapologetic in admitting they rolled back the odometers of 39 motor vehicles. They have recompensed consumers of 30 of those vehicles. This occurred only after being caught. Delta Well and Arthur Tong stated this is the extent of the odometer roll backs. I have difficulty in believing this evidence.¹ Mr. Tong effectively said he needed to cheat in order to compete. Arthur Tong stated he was particular about the standard of vehicle he sold and spent too much on reconditioning costs. It does not make any common sense that this high standard leading to over spending only occurred in the past year. However, I have no direct evidence of there being additional cases of odometer roll backs.

[28] Even so, these 39 incidences of odometer roll backs alone is sufficient to trigger the public interest and is conduct of such a grave nature that there is no confidence that Delta Well and Arthur Tong can be trusted to act with honesty, integrity or in accordance with the law in the future. This especially since Delta Well received a violation ticket in 2013 for odometer roll back. Delta Well and Arthur Tong certainly knew odometer roll backs were illegal when they committed these 39 roll backs. The motor dealer registration of Delta Well Canada Ltd. *dba* New Star Motors, dealer registration 9958, and the salesperson licence of Arthur Tong, licence 105428 are hereby cancelled effective immediately.

(d) Time bar from reapplying – Lifetime Ban

[29] In accordance with the principles in *Pugliese v. Clark*, 2008 BCCA 130 (BC Court of Appeal), I now consider whether the Registrar would accept an application

¹ Applying the principles in *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); and in *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)

for Delta Well or Mr. Tong to be again licensed, and if so, if there should be a waiting period before the registrar will accept such an application.

[30] The conduct of Delta Well and Mr. Tong significantly impacts the public's ability to trust them in the sale of a motor vehicle. They knew rolling back odometers was unlawful, as they had received a violation ticket in 2013 for an odometer roll back. They choose to knowingly reengage in that unlawful activity. Delta Well and Arthur Tong took steps to hide these sales from its regulator's oversight, by making them appear as private sales. It is clear they were not deterred from engaging in odometer rollbacks, and this incidence is significant.

[31] The question is would the public interest accept the risk of allowing Mr. Tong to ever operate a motor dealership in the future? I find it important to note Mr. Tong was not apologetic and compensated consumers only after being caught. There is no indication of remorse or any evidence of rehabilitation or insight into the impact of his actions.

[32] Given:

- (a) Delta Well and Arthur Tong has showed a propensity to knowingly violate the law on two occasions,
- (b) Delta Well and Arthur Tong took steps to hide these sales from the regulator's oversight, making any future oversight difficult to guarantee with any certainty,
- (c) the magnitude of the most recent 39 cases of odometer roll backs in the span of only one year,
- (d) those breaches having a significant impact on the public's ability to trust Arthur Tong within this industry in the future,
- (e) the very real potential of economic harm to consumers should Mr. Arthur Tong be allowed to again sell while licensed,
- (f) the impact Arthur Tong's conduct has had and will have on the industry's reputation,
- (g) there being no indication or expression of remorse,
- (h) that past enforcement action has not deterred Arthur Tong, and
- (i) in order to protect the registrar's process and the public interest,

it is appropriate in this case to issue a life-time ban on Arthur Tong applying for registration as a motor dealership, having any affiliation with a motor dealership, operating a motor dealership or being licensed in any capacity under the *Motor Dealer Act* and its regulations.

Summary

[33] The following is ordered:

- (a) The motor dealer registration of Delta Well Canada Ltd. *dba* New Star Motors, dealer registration 9958 is cancelled effective immediately,
- (b) The salesperson licence of Arthur Tong, licence 105428, is cancelled effective immediately,
- (c) Delta Well Canada Ltd. *dba* New Star Motors and Arthur Tong are banned for life from applying to be registered as a motor dealer, or licensed in any capacity under the *Motor Dealer Act* and its regulations. Arthur Tong may have no affiliation with a motor dealer in B.C.

Review

[34] If there is disagreement with this decision it may be reviewed by petitioning the B.C. Supreme Court to conduct a judicial review pursuant to the *Judicial Review Procedure Act*. Such a petition must be filed with that court within 60 days of this decision being issued: section 7.1(t) of the *Motor Dealer Act* incorporating section 57 of the *Administrative Tribunals Act*.

Date: May 24, 2016



Ian Christman, Registrar