



Neutral Citation: 2016-BCRMD-012

Hearing File No. 15-11-235
Investigation File No. 16-05-005

**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:

LAUREN FELLNER

Complainant

AND:

**PINNACLE CAR SALES & LEASING LTD. DBA PINNACLE MOTORS
(Dealer #30793)**

Motor Dealer

AND:

**PIONEER GARAGE LIMITED DBA PIONNER CHRYSLER JEEP
(Dealer #5224)**

Motor Dealer

AND:

**THOMAS RAYSON
(Salesperson #114104)**

Salesperson

AND:

**RAYMOND HAYES
(Salesperson #100603)**

Salesperson

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Date and Place of Hearing:

July 20 and September 28, 2016, at Surrey,
British Columbia

Appearances for:

The Complainant

In person

Pinnacle Motors

Carmine Risi

Pioneer Chrysler Jeep

Paul W. Schwartz, Legal Counsel

Ray Van Empel

Arlene Sater

Thomas Rayson

In person

Raymond Hayes

In person

Vehicle Sales Authority

Robert Hrabinsky, Legal Counsel

Daryl Dunn, Manager of Compliance and
Investigations

Carrie VanDokkumburg, Compliance Officer

Introduction

[1] This hearing was called to review allegations against Pinnacle Car Sales & Leasing Ltd. *dba* Pinnacle Motors ("Pinnacle"), Pioneer Garage Limited *dba* Pioneer Chrysler Jeep ("Pioneer"), Thomas Rayson and Raymond Hayes (collectively the "Respondents") in relation to the sale of a 2008 Ford F350 (the "F350") to Lauren Fellner (the "Complainant"). Pioneer and Pinnacle were operating a joint venture in this consumer transaction where Pinnacle would market, show and represent the F350 to the Complainant while Pioneer would ultimately sell and secure financing for the transaction. The allegations are detailed in the hearing notice. In summary, it was alleged that:

- (a) Representations were made to the Complainant regarding the F350's quality, which included stating that the F350 was clean and safe, and that it had undergone a comprehensive third party inspection.
- (b) The representations were untrue and the F350 had various issues making it non-compliant with the safety requirements of the *Motor Vehicle Act*, particularly, the failure of the track bar relocating bracket which caused the vehicle to be unable to turn left.
- (c) Representations about the F350's history and condition to the Complainant were derived from the file of a completely different vehicle.
- (d) Due to misrepresenting the F350's VIN to the Complainant, the Complainant insured a completely different vehicle and drove the F350 uninsured.
- (e) After becoming aware of the misrepresentation of the VIN, the Respondents called the Complainant to advise her of this error and to try and have the issue rectified. The Respondents are alleged to have altered the VIN represented on the purchase agreement to show the correct VIN, and placed the Complainant's initials on that document.
- (f) Even after the Respondent's admitted they represented to the Complainant a completely different vehicle than the one purchased, the Respondents refused to unwind the transaction until the first hearing date on July 20, 2016.
- (g) Finally, the Respondents failed to provide the Complainant with copies of the purchase agreement and finance documents.

[2] This hearing occurred over two days. On July 20, 2016, Pioneer requested an adjournment so they could obtain the assistance of a lawyer. The lawyer for the Authority raised concerns that the Complainant's financial concerns should be addressed before an adjournment. It was argued that the Complainant had been

waiting some time for a resolution of their complaint. After hearing some submissions on that point, Pinnacle agreed they would accept the return of the F350 and issue a refund to the Complainant. I added conditions to the registration of Pinnacle that all vehicles being offered for sale would be inspected prior to sale by an inspection facility approved by Jim McMillan, the area manager for the Commercial Vehicle Safety Enforcement Branch of the Ministry of Transport ("CVSE").

[3] When the hearing resumed on September 28, 2016, Pioneer and the Authority had agreed to address Pioneer's role in this matter by way of an Undertaking. I heard evidence that Pioneer was the dealership that issued the Complainant a refund and the F350 was returned to Pioneer. Pinnacle admitted that it did not contribute to the refund to the Complainant. The Undertaking was signed by Pioneer and me at the commencement of the hearing. This removed Pioneer as a respondent for the remainder of the hearing. In order to provide fairness to the proceedings, I invited the lawyer for Pioneer, Paul W. Schwartz, to question the witnesses if evidence arose during the hearing that was contrary to the interests of his client.

[4] The Complainant received a refund and returned the F350. Pioneer's conduct in this matter has been addressed by way of an Undertaking. What follows is a review of the evidence, findings of fact and a review of the conduct of Pinnacle, Mr. Rayson and Mr. Hayes.

The Position of the Parties

(a) The Vehicle Sales Authority (the "Authority")

[5] The Authority finds the conduct of Pinnacle to have been egregious by allowing the Complainant to operate the F350 when it was not safe to do so and while the F350 was uninsured. In closing submissions, the Authority noted that Carmine Risi, the principal operator of Pinnacle, did not appear to accept that the dealership was ultimately responsible for what occurred. They point out how Mr. Risi was blaming his staff for what occurred. The Authority was also concerned that Mr. Risi did not show remorse. The Authority believes the serious nature of the misrepresentations coupled with Pinnacle's apparent refusal to accept its responsibility in this matter requires the cancelation of Pinnacle's registration as a motor dealer.

[6] The Authority believes Mr. Rayson's role in the misrepresentations is deserving of him retaking and successfully completing the salesperson licensing course at his own cost. The Authority does not seek any other sanctions against Mr. Rayson, including no administrative penalty. The evidence shows it was Mr. Rayson who obtained the wrong dealer file, which led to the cascade of misrepresentations in this case.

[7] The Authority believes that Mr. Hayes should not be sanctioned for his role in these proceedings. The Authority says Mr. Hayes completed the transaction based on the information provided to him from Mr. Rayson. Further, Mr. Hayes had no authority to rectify the misrepresentations that occurred, including by issuing a refund to the Complainant. Finally, evidence shows Mr. Hayes did provide some assistance to the Complainant after the misrepresentations were discovered.

(b) Pinnacle

[8] Mr. Risi, speaking for Pinnacle, stated they think they did all they could for the Complainant. Pinnacle attempted to repair the F350. Pinnacle was concerned that the Complainant had abused the F350 based on the condition it was in when the Complainant returned it to Pinnacle. Mr. Risi explained that the delay in the completion of the repairs was due to waiting for parts to become available. Mr. Risi noted that he was not initially made aware of this issue as he was away from the dealership. The Complainant's concerns were being addressed by the then General Manager, John Bond. Mr. Risi says once he was aware of the Complainant's concerns, Pinnacle tried to resolve them. In the end, Mr. Risi said Pinnacle's fate was in the registrar's hands.

(c) Mr. Rayson

[9] Mr. Rayson admitted it was his error that led to the misrepresentations. Mr. Rayson also noted he was powerless to rectify the situation after it was discovered. Mr. Rayson testified that he recommended to Mr. Risi that the transaction be unwound. I note Mr. Rayson's evidence on this point was not challenged. Mr. Rayson argues it would be unfair to take away his licence for this error as he was powerless to rectify the situation. Mr. Rayson testified that after the sale occurred, he had no real contact with the Complainant.

(d) Mr. Hayes

[10] Mr. Hayes was apologetic for his role in this case. Mr. Hayes stated he wonders if he had done something differently, then this whole issue would not have occurred. Mr. Hayes testified that it was a recent policy of Pinnacle that the salesperson, Mr. Rayson in this case, was to confirm that the VIN on the vehicle matched the paperwork being submitted to the business office (to Mr. Hayes) for processing. Mr. Hayes' evidence on this point was not challenged. Mr. Hayes was clearly remorseful and his evidence showed he attempted to assist the Complainant after the sale, such as obtaining her a loaner vehicle from another dealership.

The Law

(a) *declarations and deceptive acts or practices*

[11] I have detailed the legal principles to be applied in past decisions of the registrar regarding declarations under the *Motor Dealer Act* (the “MDA”) and deceptive acts or practices under the *Business Practices and Consumer Protection Act* (the “BPCPA”). To summarize:

- (a) A motor dealer and a salesperson are suppliers under the BPCPA while conducting a consumer transaction.
- (b) Suppliers are to refrain from committing deceptive acts or practices under the BPCPA: section 5(1) of the BPCPA.
- (c) If there is some evidence to say a supplier committed a deceptive act or practice, the onus then shifts to the supplier to prove otherwise: section 5(2) of the BPCPA.
- (d) A deceptive act or practice can occur before, during or after a consumer transaction: section 4(2) of the BPCPA.
- (e) Motor dealers are required to make certain declarations under the *Motor Dealer Act Regulation* (“MDA Regulation”). Included in these, is a declaration that a motor vehicle meets the requirements of the *Motor Vehicle Act*, or if it does not, the motor vehicle is advertised and declared as “Not Suitable for Transportation”: sections 21(2)(e) and (f), 22, and 27(b) of the MDA Regulation.
- (f) These statutory declarations are representations of a motor vehicle and the manner in which they are made must be compliant with the BPCPA.
 - [*Harris v. Windmill Auto Sales & Detailing Ltd.*](#) (April 10 and August 20, 2013, Hearing File No. 12-030, Registrar) affirmed by [*Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers*](#), 2014 BCSC 903 (BC Supreme Court)
 - [*Knapp v. Crown Auto Body and Auto Sales Ltd.*](#) (September 21, 2009, File 08-70578, Registrar), 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*](#) (October 5, 2015, Hearing File 14-12-002, Registrar)

(b) Compliance

[12] The role of a regulator is to try and prevent future harm from occurring by administering legislative minimum standards of conduct and care applicable to the industry. When there is non-compliance, the general goal is to (a) ameliorate any harm, (b) regain compliance of the licensee, and (c) ensure with some degree of certainty the future compliance of the licensee. In trying to ensure future compliance, deterrence against the licensee and the industry as a whole is a consideration. If there is no reasonable assurance of the licensee's future compliance, then a regulator revokes their privilege of operating in the industry in order to protect the public from future harm. The goal is deterrence and the protection of the public from future harm, and not to punish the licensee.

- [Walker v. British Columbia \(Securities Commission\)](#), [2011] 312 BCAC 91 (Court of Appeal)
- [Knapp v. Crown Auto Body and Auto Sales Ltd.](#) (September 21, 2009, File 08-70578, Registrar), affirmed by [Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia](#), 2014 BCSC 894 (BC Supreme Court)
- [Harris v. Windmill Auto Sales & Detailing Ltd.](#) (April 10 and August 20, 2013, Hearing File No. 12-030, Registrar) affirmed by [Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers](#), 2014 BCSC 903 (BC Supreme Court)
- [Bunyak v. Darryl's Best Buys](#) (October 5, 2015, Hearing File 14-12-002, Registrar)

[13] The Legislature has emphasised the importance of a motor dealer abiding by those provisions of the BPCPA dealing with deceptive acts or practices; unconscionable acts or practices; and the disclosure of the cost of consumer credit. The *Motor Dealer Act* specifically provides that if a motor dealer breaches any of these provisions, even once, that is grounds for the Registrar to revoke the motor dealer's registration: section 8.1(4)(b) of the *Motor Dealer Act*.

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

Discussion

(a) Misrepresentation of the F350's safety and compliance with the Motor Vehicle Act

(i) The F350 was represented as suitable for transportation and in compliance with the Motor Vehicle Act

[14] I am satisfied from the evidence that the F350 was represented as suitable for transportation and compliant with the *Motor Vehicle Act*. On the purchase agreement for this transaction, the declaration that "the vehicle is suitable for transportation in compliance with the *Motor Vehicle Act*" is marked yes.

[15] The Complainant gave evidence that when she viewed the advertisement for the F350 on Pinnacle's website, the website noted the F350 went through a comprehensive third party mechanical inspection. In support of this testimony are sample advertisements from Pinnacle's website which state that to be the case. In response, Mr. Risi noted the actual advertisement for the F350 was not in evidence. However, Mr. Risi's evidence was not sufficient to displace that of the Complainant's, as supported by the other advertisements.

(ii) The representation was untrue

[16] I am satisfied from the evidence that at the time of sale, the F350 was not compliant with the *Motor Vehicle Act*.

[17] The Complainant noted the F350's inability to turn left without some difficulty occurred the day after the F350 was purchased. The Complainant gave evidence on how the F350 was sluggishly returned to her husband's uncle's back yard garage where pictures of the tear to the track bar relocating bracket were taken. They obtained the assistance of a friend, Collin, who is a welder and who temporarily repaired the track bar relocating bracket with a weld.

[18] Jim McMillan of the CVSE was asked to look at pictures of the tear on the track bar relocating bracket. Mr. McMillan provided a letter with his opinion and gave evidence at the hearing regarding that opinion. I accept that Jim McMillan of the CVSE has the requisite skills, knowledge and expertise to provide an opinion regarding motor vehicle safety. Mr. McMillan has provided expert testimony before the courts regarding motor vehicle safety and motor vehicle accidents.

[19] Mr. McMillan noted clear signs of oxidization (rust) and discoloration at the leading edge of the tear in contrast to the rest of the tear. In his opinion, this meant the leading edge of the tear had been there for some time and then there was a more sudden failure enlarging the tear. There is a short letter from Pav Mahal dated January 27, 2016, indicating he is the owner of JP Transmission. Pav Mahal opines that this tear is a fresh tear. However, Pav Mahal's letter provides no underlying rationale for arriving at that opinion. There is no evidence that Pav Mahal inspected the tear on the track bar relocation bracket after it was discovered. Pav Mahal was not present at the hearing for questioning, and there is no indication in the letter of Pav Mahal's credentials and skills other than being the owner of JP Transmission. Mr. McMillan's evidence was not successfully challenged.

[20] The track bar relocation bracket was not the only non-compliant issue with the F350. In the Complainant's written complaint, she said she noticed an issue with the high beams not working properly on her drive home to Princeton the day the F350 was purchased. After the track bar relocation bracket failed, the F350 was taken to Kal Tire in Princeton on November 16, 2016, for an inspection. There, the technician at Kal Tire noted other issues with the F350 that made it unsafe, such as the radius arm bushing being worn out. There were also electrical problems with the wipers and the radio running even with the keys out of the ignition.

[21] The F350 was eventually returned to Pinnacle to make further repairs so that it would pass the Private Vehicle Inspection ("PVI"). There are several invoices from different repair shops from December 2015 and January 2016. Included is one from JP Transmission dated December 21, 2015, showing wiring repair for the radio and two new batteries. After all these repairs, the PVI inspection report dated February 10, 2016 (Exhibit X to the Affidavit) notes the Ford F350 failed with 12 violations. Included in these were (a) right side inoperative high beams (as stated by the Complainant), (b) wrong types of headlight bulbs installed, (c) no left or right turn signals on front of vehicle as the bulbs were missing, (d) no catalytic convertor (missing), (e) both batteries not secured, and some other steering and suspension issues.

[22] In direct evidence, Mr. Risi testified that the F350 had been inspected when it was imported into B.C. as is required by B.C. law. This inspection is called a Private Vehicle Inspection or PVI. Mr. Risi stated he should be able to rely on a pass of a PVI as indicating a vehicle meets the *Motor Vehicle Act* standards. Mr. Risi questioned Mr. McMillan on this very point and Mr. McMillan agreed that a pass on a PVI indicates the vehicle meets the standards set by the *Motor Vehicle Act*. Mr. Risi gave further evidence that because the F350 was a raised vehicle, he could visually see there was nothing wrong with the front suspension and steering.

[23] Mr. Risi was generally evasive in answering questions. Mr. Risi says Pinnacle took the F350 in on trade around June of 2015. When asked when the importation PVI on the F350 occurred, he said the owner told him it happened around January of 2015. Mr. Risi was taken to documents which show the F350 was first registered in B.C. in May of 2014. If an importation PVI was done on the F350, then it would have occurred at or just prior to May of 2014. As part of the investigation, Pinnacle was asked for all its documents related to this transaction. Pinnacle never provided documents to show the results of a third party inspection for the F350 prior to Pinnacle putting it up for sale and selling it to the Complainant. Pav Mahal's letter from JP Transmission dated January 27, 2016, suggests that JP Transmission had inspected the F350 prior to its sale to the Complainant. However, no actual inspection report was provided and there is no evidence of what JP Transmission actually inspected, if that inspection in fact occurred.

[24] Based on the evidence from Mr. Risi, Pinnacle relied on a PVI that was conducted some 17 months prior to the sale of the F350, and on Mr. Risi's personal visual inspection of the F350, to say the F350 was compliant with the *Motor Vehicle Act*.

[25] Mr. Hayes gave evidence that the F350 sat on the Pinnacle lot for several months before it was offered for sale. Mr. Hayes stated that he knew that Pinnacle was having some sort of mechanical issue with the F350; it was having a difficult time starting, but Mr. Hayes was never told exactly what the issue was. Mr. Hayes said the driver's seat for the F350 was out of it for about a month for repairs. Mr. Hayes's evidence on the mechanical issues with the F350 while at Pinnacle and prior to the sale to the Complainant was not successfully challenged.

[26] The evidence shows the F350 had mechanical issues while in the possession of Pinnacle and prior to it being put up for sale and being sold to the Complainant. There is no acceptable evidence of an inspection on the F350 to verify it was compliant with the *Motor Vehicle Act*, except one that was about 17 months old. The evidence shows the F350 had mechanical issues making it non-compliant with the *Motor Vehicle Act*, in addition to the tear on the track bar relocating bracket. These included parts that were missing on the F350, such as the catalytic converter and front turn signal bulbs, or were wrong for the F350 such as the headlight bulbs. I am satisfied on a balance of probabilities that those issues making the F350 non-compliant with the *Motor Vehicle Act* existed at the time the F350 was sold to the Complainant.

(iii) a deceptive act or practice

[27] There is clear evidence that Pinnacle represented the F350 as meeting the requirements of the *Motor Vehicle Act*, when that was not true. This is a misrepresentation regarding the F350's quality, which is deemed to be a deceptive act or practice: section 4(3)(a)(ii) of the BPCPA.

[28] Having established evidence that a deceptive act or practice occurred, the burden shifted to Pinnacle to prove that there was no deceptive act or practice: section 5(2) of the BPCPA and *Crown Auto Body and Auto Sales Ltd. (BCSC)* at paragraphs 26 - 27. Pinnacle has failed to meet that burden.

(b) Altering the documents after sale

[29] The purchase agreement shows alterations to the VIN for the F350. The Complainant's evidence is that the alterations were not made while she was at the dealership. The Complainant also noted that the initials purporting to be hers beside the altered VIN number are not hers.

[30] Under questioning, the Complainant agreed that she demanded the dealer take the necessary steps to correct all the documents to show the correct VIN and so that she could properly insure the F350 in her name. This would necessarily include the purchase agreement. No evidence was placed before me to say who placed the initials of the Complainant on the document.

[31] I am satisfied on the evidence that the changes made to the documents were with the full knowledge of the Complainant, and at her request. I am not satisfied that any deception occurred after the consumer transaction on this issue.

(c) Failure to provide documents after the sale

[32] The Complainant gave evidence that she did not receive the purchase agreement or finance documents right after the purchase of the F350. The Complainant says she only received copies of the finance documents by way of fax on November 18, 2015, some 18 days after the purchase. The Complainant was asked if she recalled receiving an envelope of documents at the dealership. The Complainant could not recall.

[33] Mr. Hayes was very clear that he provided the Complainant the documents at the conclusion of the transaction. Mr. Hayes said he had placed them in an envelope, which the Complainant left behind at the dealership. Mr. Hayes's evidence was very straight forward and his recollection of giving the documents to the Complainant was firm and unwavering.

[34] In evidence are text messages between the Complainant and Pinnacle: see Exhibit R in the Affidavit. A text message dated October 31, 2015, the day of the transaction, shows "Thomas", being Mr. Rayson, advising the Complainant there was a problem with the paperwork. In that same text message conversation the Complainant asks for the "books to the truck". Mr. Rayson responded that the Complainant left them on the counter when she left the dealership. The Complainant responds saying Lordco (where the Complainant worked) would come and pick them up.

[35] Mr. Hayes's evidence on this point is clearer than that of the Complainant's and his evidence is supported by the text messages. I am satisfied on the evidence presented that it is more likely than not that the Complainant left the documents behind at Pinnacle.

Compliance

(a) Mr. Hayes

[36] I have reviewed the text messages between Mr. Hayes and the Complainant; considered his testimony, the testimony of the Complainant and of others.

[37] I am satisfied that Mr. Hayes was following the then policy of Pinnacle by relying on the information given to him by Mr. Rayson to complete the paperwork on the F350. I am also satisfied that Mr. Hayes tried to assist the Complainant after the issues with the F350 became apparent. Even though Mr. Hayes was no longer with Pinnacle when the Complainant returned the F350 to Pinnacle demanding the repairs, Mr. Hayes arranged a loaner vehicle from the dealership where he was then working for, so the Complainant could get back home to Princeton. Mr. Hayes's evidence, as supported by the text messages, was that the transaction should have been completely unwound. However, based on his evidence, and as supported by Mr. Rayson's evidence, Mr. Hayes was powerless to provide the Complainant with any remedy.

[38] While Mr. Hayes is responsible for the paperwork and the declarations on the purchase agreement, I believe his representations were innocent. He truly believed in what he was stating and was following the policy set by his employer regarding confirmation of vehicle VIN's. Further, Mr. Hayes is apologetic, tried to assist the Complainant where he could, and does feel bad for what occurred. In these circumstances, I am in agreement that no compliance action is necessary to ensure Mr. Hayes will be compliant in the future.

(b) Mr. Rayson

[39] Mr. Rayson admits that he got the wrong file for this transaction. The information he provided to the Complainant to answer her questions were for a white F350 and not the red F350 the Complainant was purchasing. Mr. Rayson also provided the wrong information to Mr. Hayes to finalize the paperwork. If Mr. Rayson had followed the policy of Pinnacle and verified the VIN on the vehicle itself, then the issues may have been avoided. At least the issue of insuring the wrong vehicle. By Mr. Rayson's own evidence, his conduct was negligent. I also accept his evidence that once the error was discovered he was powerless to rectify the issues. Mr. Rayson did give evidence that he too felt the best resolution to this issue would have been to unwind the transaction.

[40] The Authority says Mr. Rayson should retake and successfully complete the Salesperson Certification Course at his own cost. The course teaches salespersons their basic responsibilities to consumers. The course offers case studies as practical examples of what can go wrong. The current cost of the course is \$420 and takes two days to complete in a classroom. That financial cost, plus the time away from the sales floor for a commissioned salesperson is deterrence. The course itself will also allow Mr. Rayson to reflect on his role in this transaction and what he can do in the future to try and avoid similar issues. I am satisfied that adding a condition to the licence of Mr. Rayson to retake and successfully complete the Salesperson Certification Course within 60 days of being served this decision is appropriate and is so ordered.

(c) Pinnacle

[41] The Authority seeks the cancellation of Pinnacle's motor dealer registration because:

- (a) Of the gravity of the misrepresentation,
- (b) Of the potential for harm to the Complainant driving an unsafe and uninsured vehicle,
- (c) The delay in addressing the Complainant's complaint. The Authority believes the dealer having sold the Complainant the wrong vehicle should have unwound the transaction immediately,
- (d) The lack of concern or acknowledgement by Pinnacle (Mr. Risi) for the gravity of this matter,
- (e) Pinnacle did not acknowledge its responsibility in this matter and attempted to blame the issue on the conduct of its staff, and
- (f) The impact this case has on the reputation of the industry.

[42] As I have found that Pinnacle breached section 5(1) of the BPCPA, section 8.1(4)(b) of the *Motor Dealer Act* also provides legislative direction on the seriousness of this matter.

[43] As noted above, my role here is not to punish. I first should satisfy myself that no other regulatory tool is available to provide reasonable assurance of obtaining and maintaining Pinnacle's future compliance. If no such tool is available, then I must consider revoking Pinnacle's motor dealer registration in order to protect the public: [Knapp v. Crown Auto Body and Auto Sales Ltd.](#) (September 21, 2009, File 08-70578, Registrar), affirmed by [Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia](#), 2014 BCSC 894 (BC Supreme Court).

[44] In making these considerations, I may consider Pinnacle's compliance history as a whole as it is an indicator of how Pinnacle responds to orders from its regulator – to assess Pinnacle's governability: [Re: Peter Fryer](#) (December 13, 2013, Hearing File No. 13-11-005, Registrar) affirmed by [Fryer v. Motor Vehicle Sales Authority of British Columbia](#), 2015 BCSC 279 (BC Supreme Court).

[45] Finally, in making my assessment, I keep in mind that Pinnacle was reckless in the manner it advertised the F350 as having been inspected and declaring it compliant with the *Motor Vehicle Act* when it was sold. It was reckless because Pinnacle had knowledge the F350 had some mechanical issues prior to selling it, yet

it relied on a 17 month old PVI and Mr. Risi's personal observations of the F350 when it advertised the F350 as having been inspected and sold the F350 declaring it as meeting the requirements of the *Motor Vehicle Act*. A reckless misrepresentation is sufficient to consider it as a fraudulent or deliberate act: [Casillan v. 565204 B.C. Ltd. dba Daewoo Richmond](#), 2009 BCSC 1335 (BC Supreme Court) at paragraph 20.

(i) Conditions on registration

[46] I have placed a temporary condition on the registration of Pinnacle to have motor vehicle's it offers for sale pass an independent inspection conducted by a designated inspection facility acceptable to Jim McMillan of the CVSE. This was put in place as a means to protect the public while balancing the right of Pioneer and Pinnacle to seek the assistance of a lawyer. Could this be extended on a more continuing basis?

[47] This type of continuing condition was placed on the registration of [Massive Truck Sales Ltd.](#) (August 18, 2008, File 08-70288, Registrar) after a hearing before the Registrar, where the dealer was found to have sold a vehicle that was not compliant with the *Motor Vehicle Act*. The condition could be revisited in a year's time and would require monitoring for compliance by the Authority. Instead of complying with order, the dealer ended its operations. In deciding to place that condition on the dealer, it was noted the dealer had no significant history of non-compliance.

[48] If I were to place a similar condition on Pinnacle, it would require the Authority to closely and continuously monitor compliance with the condition. I have concerns with Pinnacle's compliance with such a condition as it has a history of not complying with conditions of its past Undertakings. For example, on June 16, 2014, Pinnacle entered into an Undertaking to ensure it paid off liens on motor vehicles in a timely manner and not engage in consignment sales. Pinnacle also agreed to pay an administrative penalty in that case. Then on September 15, 2015, Pinnacle entered into another Undertaking agreeing to pay off liens in a timely manner and was again issued an administrative penalty.

[49] On July 22, 2016, I conducted a hearing and issued reasons on September 26, 2016, in a case ([McRae v. Pinnacle](#), Hearing File 16-06-001) where Pinnacle was again found to not have paid off a lien on a vehicle as it had undertaken to do so in its two previous undertakings. I also issued a notice of administrative penalty for \$7,500 which as of the date of this decision has not been paid and is overdue. Pinnacle has a history of not complying with Undertakings it makes or orders issued by the registrar. I also note that the Authority has issued Bulletins to the industry of the legal requirement that dealers only sell vehicles to consumers for use on the roads that are compliant with the *Motor Vehicle Act*.

[50] A consumer should be able to trust that a motor dealer is abiding by the law and is only selling motor vehicles that are compliant with the *Motor Vehicle Act*. As noted by Judge Gulbransen in [*Sugiyama v. Pilsen dba Southgate Auto Sales Ltd.*](#) 2006 BCPC 265 (BC Prov. Ct.):

[70] Most people who buy a car from a used car dealer rely on his skill or judgment in that they assume that the dealer has been selective in choosing which cars he will acquire and sell. They also rely upon the dealer to disclose relevant information about the vehicles.

[71] It is also reasonable to assume that most purchasers of used cars want to buy a reliable vehicle for use in driving in safety on the roads. Used car dealers know this without a need for a customer to specifically state it as a specific purpose. [underlining added]

[51] Given the real concern for public safety, and Pinnacle's history of non-compliance with its own voluntary Undertakings, I find that imposing the above noted condition would not be viable as it would require continuous and very close oversight by the Authority which is administratively unachievable. Importantly, what the condition would say is what the law already requires of a motor dealer – to ensure vehicles being offered for sale for use on the roads are compliant with the *Motor Vehicle Act*: see section 222 of the *Motor Vehicle Act* and section 8.01 of the *Motor Vehicle Act Regulation*.

(ii) Compliance Order

[52] A compliance order made under section 154 of the BPCPA is issued to; generally speaking, compel a person to abide by that Act, to remedy a breach of that Act and to take steps to reimburse the costs to inspect/investigate a complaint. At best, a compliance order could impose a requirement on Pinnacle to inspect vehicles prior to sale in a similar manner as placing a condition on its registration as noted in the above paragraphs. For the same reasons I have noted above, a compliance order requiring Pinnacle to inspect motor vehicles on a go forward basis would not be an administratively viable option.

[53] I would make the following Compliance Order:

- (a) Pinnacle is to pay 50% of the investigation and hearing costs in this case, which is \$12,032.84; and
- (b) Pinnacle is to abide by the *Business Practices and Consumer Protection Act* of B.C.

(iii) Administrative Penalty

[54] Based on the past history of Pinnacle, I do not believe an administrative penalty would have the desired deterrent effect. As noted above, Pinnacle was issued two administrative penalties for making misrepresentations regarding lien payouts, and it continued to breach its undertakings resulting in my compliance order and administrative penalty of September 26, 2016. The last administrative penalty remains outstanding and overdue. I have considered issuing an administrative penalty as a means to deter the industry as a whole. However, on these unique facts, I believe my decision regarding Pinnacle's registration as a motor dealer with the above cost order is sufficient deterrence on the industry.

(iv) Suspension of licence

[55] Suspending a person for a period of time is often a viable deterrence. Pinnacle has not been suspended in the past. However, the question is whether a suspension would have the necessary deterrent effect on Pinnacle to ensure it only sold vehicles that were compliant with the *Motor Vehicle Act*. I do not believe that to be the case. If a suspension were issued, it would have to be coupled with some changes in Pinnacle's operations to provide that measure of assurance that it would only sell motor vehicles that were compliant with the *Motor Vehicle Act*. Again, I return to the fact that Pinnacle has not followed its own past voluntary promises (Undertakings) regarding paying out consumer liens in a timely manner. I am not satisfied that a suspension alone would be sufficient to provide the necessary assurance that Pinnacle would only sell motor vehicles that were compliant with the *Motor Vehicle Act*. The suspension would have to be accompanied with the condition noted in the above paragraphs in order to protect the public interest. That condition has been ruled out as a viable administrative approach in the case of Pinnacle due to its past non-compliant history.

(v) Cancellation of registration

[56] The cancellation of a motor dealer's registration is a drastic step. It not only impacts the dealerships owners, but the staff working there. Pinnacle is a smaller dealership and staff members, such as Mr. Hayes, have already found employment elsewhere. Given the serious nature of having sold a motor vehicle that was not compliant with the *Motor Vehicle Act*; that the motor vehicle had a mechanical failure while being driven; the real harm that could come about should that situation be repeated; the reckless nature in which Pinnacle represented the F350; and given my findings that imposing conditions will not be sufficient given Pinnacle's past history of not complying with its own voluntary Undertakings; I find it necessary to protect the public interest and consumer's from future potential harm by canceling the registration of Pinnacle effective immediately.

(vi) Re-applying for registration

[57] Under the *Motor Dealer Act*, Pinnacle could re-apply for a motor dealer registration the day after this decision is issued. In order to protect the Registrar's administrative process and provide clarity, I believe I should specify the minimum duration of Pinnacle's cancellation: [*Pugliese v. Clark \(Registrar of Mortgage Brokers\) et al.*](#) 2008 BCCA 130 (Court of Appeal).

[58] In [*Golden Year Auto Broker*](#) (April 28, 2015, Hearing File 14-11-004, Registrar), the dealer had sold vehicles that were not compliant with the *Motor Vehicle Act*, and after it had provided a previous Undertaking not to do so. Golden Year Auto elected to surrender its motor dealer registration before the hearing to review its conduct and registration. At the hearing, Golden Year was found in breach of its previous undertaking, and in breach of the *Business Practices and Consumer Protection Act* for representing motor vehicles as compliant with the *Motor Vehicle Act* when they were not. In that case, I determined I would not accept an application for the registration of Golden Year as a motor dealer for a period of five years. I also extended that prohibition to its owners so that they could not try and register a different corporate entity.

[59] I find Pinnacle's situation similar to that of Golden Year. What is different is that Pinnacle has a longer history of non-compliance with the laws governing the conduct of motor dealers than Golden Year. Further, Pinnacle has a longer history of not abiding by its Undertakings than Golden Year. I believe a substantial amount of time must pass coupled with evidence that Pinnacle, and its principal, Carmine Risi, have changed their behaviour, have built a history indicating they can be good, trustworthy, and law abiding corporate citizens and deserving of being within the motor dealer industry.

[60] I am not willing to accept an application from Pinnacle to be registered as a motor dealer or an application from its principal Carmine Risi to register another legal entity as a motor dealer for a period of six years from the date of this decision. Whether Pinnacle or any other legal entity in which Mr. Risi wishes to register as a motor dealer, will be granted a registration in the future will depend on the facts that exist at the time an application is made.

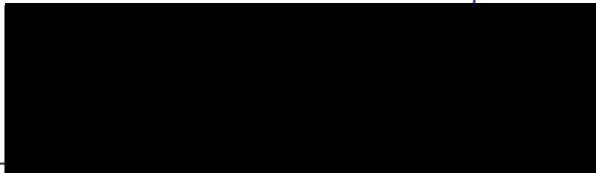
[61] I note that in this case, the Authority did not seek any action against Mr. Risi's salesperson licence. In this case, Mr. Risi was not acting as a salesperson during the consumer transaction, but as the owner of Pinnacle after the transaction occurred.

Reconsideration or Review

[62] The Compliance Order issued from these reasons may be reconsidered in accordance with the BPCPA in the manner described in the Compliance Order.

[63] The decision to revoke the registration of Pinnacle may be reviewed by petitioning the BC Supreme Court to conduct a judicial review of that decision pursuant to the *Judicial Review Procedure Act*. If Pinnacle wishes to petition the court for judicial review, it has 60 days from the date of this decision to do so: section 7(t) of the *Motor Dealer Act*, incorporating section 57 of the *Administrative Tribunals Act*.

Dated: **November 7, 2016**



Ian Christman, J.D.
Registrar of Motor Dealers