



Neutral Citation: 2017-BCRMD-002

**IN THE MATTER OF THE *MOTOR DEALER ACT* R.S.B.C. 1996 C. 316
AND THE *SALESPERSON LICENSING REGULATION* B.C. REG. 241/2004**

RE:

**AIDA SABA
(Proposed Salesperson Licence #110012)**

Applicant

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Date and Place of Hearing: January 19, 2017 at Surrey, British Columbia

Appearances For

Aida Saba

In Person
Sasan "Sam" Shaghghi

For the Authority

Hong Wong, Manager of Licensing
Kim Murphy, Licensing Officer
Ross Cote, Compliance Officer

INTRODUCTION

[1] A hearing was called to review the salesperson licence application of Aida Saba. Ms. Saba was previously licensed as a salesperson as well as the owner and operator of Vancouver Top Cars Ltd., motor dealer licence #30635, between 2006 and 2011. The Authority is concerned of Ms. Saba's prior management of Vancouver Top Cars Ltd., which suddenly closed in late 2011. Stemming from that closure were five consumer claims made against the Motor Dealer Customer Compensation Fund. Two of those claims were approved with a total payout of \$19,000.

POSITION OF THE AUTHORITY

[2] The Authority's position is as noted in the hearing notice and described in the above paragraph. During questioning by the Manager of Licensing, Hong Wong, it became evident the Authority is also concerned that Ms. Saba is actually going to be running Auto Max Motors Ltd.

POSITION OF MS. SABA

[3] The evidence of Ms. Saba identified how Vancouver Top Cars Ltd. essentially went bankrupt and the financial fall-out that occurred from that business failure. Ms. Saba provided details of her management of Vancouver Top Cars Ltd., how she started the business at the wrong time (inferring the economic downturn of 2009), and how the dealership became over-extended on credit and could not recover.

[4] Ms. Saba explained how she tried to raise capital by sending vehicles to the USA for sale and how that failed. Ms. Saba explained how she assisted the finance company to locate assets in the USA when they came and called up the debt. Ms. Saba also explained how the dealership failure also impacted her personal financial situation.

[5] Ms. Saba intends to work at Auto Max Motors Ltd. that was first registered in 2016. The dealership is owned by Ms. Saba's mother and Ms. Saba's sister is managing the business. Ms. Saba's husband is also working for Auto Max Motors Ltd. Ms. Saba's evidence is that she is doing marketing and other duties at the dealership and will not be involved in managing the dealership. Ms. Saba stated she wanted her salesperson licence so that if a customer asks her any questions about a motor vehicle, she has the required licence to speak to that customer.

THE LAW

[6] When considering an applicant for a salesperson licence, their past conduct is considered as "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": *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279 (BC Supreme Court) at paragraph 23.

[7] Conduct is not limited by topic, geography or time. What matters is if the prior conduct of a person raises a concern that licensing them may place the public at risk of future harm: *Re: Bruce Ironside* (File 11-025); and *Re: Stephen Ironside* (file 11-026); decision date for both of May 27, 2011 (Registrar).

[8] How an owner and operator of a dealership exercised control of the dealership's day-to-day operations may be considered in relation to their application for a subsequent salesperson licence: *Prestige Toys Ltd. v. Registrar, Motor Vehicle Dealers Act*, 2009 CanLII 43657 (ON SCDC) and see also *Registrar, Motor Vehicle Dealers Act, 2002 v. Zabian*, 2013 ONSC 6647(ON SCDC). The facts

of each applicant's specific case are important. Sometimes, the oversight and direction provided may be a concern requiring refusal of a licence: see *Prestige Toys*. In other cases, the oversight and direction provided may not be of a concern: see *Zabian*.

[9] Under section 24 of the *Motor Dealer Act*, at the time applicable to Vancouver Top Cars Ltd., where compensation is paid to a consumer from the Compensation Fund due to a motor dealer's conduct, that motor dealer must repay the fund. If they do not repay the Compensation Fund, their registration may be cancelled. Once cancelled, the registration of the motor dealer may not be reinstated until the Compensation Fund is repaid.

[10] A licensing body is not blinded by the legal concept of the "corporate veil". The registrar can look behind the corporation of a motor dealership to see who is operating it and their past conduct: section 5 of the *Motor Dealer Act*. This is necessary as a person may use the corporation as a means to hide their true intentions or prior conduct. For instance, a dealer that was sanctioned may choose to wind down and then re-invent itself as a different corporation with a new name in order to avoid the sanctions: see *Re: Key Track Sales & Detailing Ltd.* (May 11, 2010, File 10-013, Registrar).

DISCUSSION

[11] During the hearing I found Ms. Saba's evidence to be credible. Ms. Saba answered questions without hesitation and her answers were logically tied to the facts of the case. Ms. Saba's evidence on the main issues was not really contradicted by the Authority.

[12] The Authority noted that Ms. Saba has offered to pay back the \$19,000 and on a payment plan that would retire that amount fairly quickly. Ms. Saba re-confirmed that agreement to me and said if she can pay it back sooner, she would. She said while Vancouver Top Cars Ltd. is the one liable for that amount, she feels a sense of responsibility and wants to do what is right.

[13] I heard from Compliance Officer Ross Cote. Mr. Cote was the regional compliance officer where Vancouver Top Cars Ltd. was located. Mr. Cote also conducted an interview of Ms. Saba prior to this hearing. Mr. Cote noted that there were complaints by consumers about Vancouver Top Cars Ltd. Mr. Cote said of those complaints he investigated, they mostly involved misrepresentations but the complaints were able to be resolved. Mr. Cote did not elaborate whether the

misrepresentations were innocent, negligent or deliberate, or their impact on consumers. Mr. Cote says that during the interview, Ms. Saba indicated she wanted to manage Auto Max Motors Ltd.

[14] I asked Ms. Saba if she would be amenable to conditions on a salesperson license such as (a) not allowed to be in a management position without the prior approval of the Authority, and (b) not to handle consumer money. Ms. Saba said she would. I also asked if her mother would consider Auto Max Motors Ltd. being a guarantor of Ms. Saba's agreement to repay the \$19,000. Ms. Saba said she would ask her mother. On January 23, 2017, I was provided a letter from Auto Max Motors Ltd. agreeing to pay any outstanding Compensation Fund amount owing should Ms. Saba fail to repay that amount.

[15] Ms. Saba reconfirmed that she did not intend to manage Auto Max Motors Ltd. Management was done by her sister who reported to Ms. Saba's mother on a daily basis. Ms. Saba provided details of how management of Auto Max Motors Ltd. is working as did Ms. Saba's sister.

DECISION

[16] I am satisfied on all the evidence that if Ms. Saba is granted a salesperson licence on conditions, the risk of future harm to consumers dealing with Ms. Saba while at Auto Max Motors Ltd. can be managed.

[17] I am granting a salesperson licence to Aida Saba on the following conditions:

- (a) To be employed as a salesperson only at Auto Max Motors Ltd. unless prior written approval from the Authority is obtained to change employment as a salesperson to another motor dealer;
- (b) Not to be in a management position without the prior written approval of the Authority;
- (c) Not to handle consumer money; and
- (d) To repay the \$19,000 to the Motor Dealer Customer Compensation Fund in the manner agreed to by Aida Saba.

After six months' time, the Manager of Licensing is authorized to review, to amend, to continue or to remove conditions (a), (b) and (c). Condition (d) may not be removed until the full amount is repaid.

FURTHER REVIEW

[18] If there is disagreement with this decision, it 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 the issuance of this decision: section 7.1(t) of the *Motor Dealer Act* and section 57 of the *Administrative Tribunals Act*.

Date: January 27, 2017



Ian Christman, Registrar