



Neutral Citation: 2017-BCRMD-005

**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:

**A VANCOUVER AUTO LTD.
(Proposed Dealer Licence #40336)**

AND:

**SHAHRAM MOGHADDAM
(Proposed Salesperson Licence #101801)**

Applicants

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Date and Place of Hearing: March 16, 2017 at Surrey, British Columbia

Appearances For

| | |
|-----------------------|---|
| A Vancouver Auto Ltd. | Shahram Moghaddam |
| Shahram Moghaddam | In person |
| The Authority | Hong Wong, Manager of Licensing Kim Murphy, Licensing Officer Ross Cote, Compliance Officer |

INTRODUCTION

[1] This is a review of an application submitted by Shahram Moghaddam to register A Vancouver Auto Ltd. as a motor dealer and an application by Shahram Moghaddam personally for a salesperson licence.

[2] On October 15, 2008, I rendered a decision involving Vancouver Auto Leasing Ltd. (Dealer 30407) and Mr. Moghaddam. In that case, I found Vancouver Auto Leasing Ltd. and its owner and salesperson Mr. Moghaddam, had committed a deliberate deceptive act contrary to the *Business Practices and Consumer Protection Act* (the "BPCPA"). The essential facts of the 2008 decision are as follows.

[3] A consumer purchased a vehicle from Vancouver Auto Leasing Ltd. with Mr. Moghaddam as the salesperson. Vancouver Auto Leasing Ltd. and Mr. Moghaddam had deliberately down played the prior damage of the vehicle the consumer

purchased. Based on the facts of that case, the appropriate remedy was to have the dealer unwind the transaction and provide the consumer a refund. Vancouver Auto Leasing Ltd. was ordered to pay a \$7,500 administrative penalty and Mr. Moghaddam a \$750 administrative penalty. Both were liable to pay costs of the investigation. Vancouver Auto Leasing Ltd.'s dealer registration and Mr. Moghaddam's salesperson licence were to remain suspended. If they wished to be reinstated, there had to be a hearing before the registrar.

[4] Vancouver Auto Leasing Ltd. and Mr. Moghaddam did not honour the order to unwind the consumer transaction. They remained out of business. My order was eventually turned into a BC Supreme Court order and the consumer received restitution of \$17,273.74 from the Motor Dealer Customer Compensation Fund. A judgement lien was placed on Mr. Moghaddam's home.

[5] Vancouver Auto Leasing Ltd. and Mr. Moghaddam filed a challenge against my decision in B.C. Supreme Court. An arrangement was reached where Mr. Moghaddam would pay his personal administrative penalty and the costs of the investigation and the court challenge was discontinued and the lien on his home was removed.

[6] Mr. Moghaddam left the industry and has been away from the industry for some eight years. He has now applied to be licensed as a salesperson and to operate a motor dealership.

LEGAL PRINCIPLES

[7] The Registrar may look at the past conduct of a motor dealer, its officers and directors in order to assess any possible risk to the public interest. It is well established that a licensing body may look behind a corporation's structure in order to carry out its duty of protecting the public from potential future harm.

- Sections 5 and 7 of the *Motor Dealer Act*
- *Key Track Auto Sales & Detailing Ltd.* (May 11, 2010, File 10-013, Registrar)

[8] Conduct is not limited by time, geography or subject type. It merely needs to be conduct which creates a concern that the applicant will not carry on business, or act as a salesperson, with honesty and integrity and in accordance with the law. The conduct may also create a concern that the person will not be governable.

- *Re: Peter Fryer* (December 13, 2013, File 13-11-005, Registrar) affirmed by *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279 (BC Supreme Court)

- *Prestige Toys Ltd. v. Registrar, Motor Vehicle Dealers Act*, 2009 CanLII 43657 (ON SCDC)
- *Re: Bruce George Ironside* (May 27, 2011, File 11-025, Registrar)

[9] The conduct of a person while they were the owner of and operating a dealership is a consideration when reviewing that person's application to be licensed as a salesperson.

- *7825 v. Registrar, Motor Vehicle Dealers Act*, 2002, 2014 CanLII 23589 (ON LAT)

[10] The desire of a person to be licensed to carry on a livelihood in a chosen industry is to be balanced against the need to protect the public from the risk of future harm. The protection of the public is the paramount concern.

- *British Columbia (Securities Commission) v. Pacific International Securities Inc.*, 2002 BCCA 421 (BC Court of Appeal)

THE EVIDENCE

(a) Authority's evidence

[11] Kim Murphy is a Licensing Officer with the Authority. She submitted a Licensing Hearing Report at the hearing and provided oral evidence. In summary:

- (a) Vancouver Auto Leasing Ltd.'s registration was renewed three times between 2006 and 2008 and the renewal was late each time.
- (b) Mr. Moghaddam completed his education requirements as a salesperson and was issued a salesperson licence in 2004. Mr. Moghaddam maintained his salesperson licence in good standing between 2004 and 2008.
- (c) The Authority had to take Vancouver Auto Leasing Ltd. and Mr. Moghaddam to a hearing before the Registrar for a consumer complaint as described previously in these reasons.
- (d) The application for A Vancouver Auto Ltd. to be registered as a motor dealer had the following discrepancies:
 - (i) Mr. Moghaddam did not declare that he had ever applied for or had been registered as a motor dealer. Mr. Moghaddam corrected this at the request of the Licensing Department.

- (ii) The first business plan provided with the application inferred it was the business plan of another company. Ms. Murphy queried Mr. Moghaddam on the discrepancies and Mr. Moghaddam said a friend at a bank wrote it and Mr. Moghaddam never read it closely. Mr. Moghaddam submitted a second business plan for A Vancouver Auto Ltd.
- (iii) Mr. Moghaddam was going to use Matrix Auto Repair as its repair facility. The Authority raised concerns with this arrangement as it had previous dealings of concern with Matrix when it ran a dealership. Mr. Moghaddam then stated he would use a different repair center, and identified a new repair center in A Vancouver Auto Ltd.'s application materials.
- (e) Mr. Moghaddam was asked to provide a statement of why he wanted to return to the industry, and how things would be different if he operated a motor dealership today. Mr. Moghaddam provided a statement in the form of an email.
- (f) Mr. Moghaddam's application for a salesperson licence did not note prior experience working in the industry, but otherwise was complete. I would note the application asks for five years of work history, and Mr. Moghaddam has been absent for eight years.
- (g) In January 2016, Mr. Moghaddam successfully completed the salesperson education requirements.

[12] Ross Cote, Compliance Officer with the Authority investigated the 2008 consumer complaint that resulted in the consumer ultimately receiving restitution from the Motor Dealer Customer Compensation Fund. Mr. Cote interviewed Mr. Moghaddam on two occasions regarding his two new applications and did some follow-up investigations and reference checks. Mr. Cote's evidence can be summarized as follows:

- (a) Mr. Cote explained the outcome of the hearing with Vancouver Auto Leasing Ltd.
- (b) Mr. Cote noted Mr. Moghaddam had been out of the industry and out of the country. This included time in Italy operating a coffee shop.

- (c) Mr. Cote asked Mr. Moghaddam for references in the industry. Mr. Cote reported that those individuals he spoke to either did not really know Mr. Moghaddam or did not speak favourably of Mr. Moghaddam.
- (d) Mr. Cote asked Mr. Moghaddam what would be different if he were to operate a dealership. Mr. Cote stated Mr. Moghaddam's response was basically that he had learned his lesson.
- (e) Mr. Cote's written report indicates Mr. Moghaddam believes the decision involving Vancouver Auto Leasing Ltd was unfair and that the whole problem was because of ICBC.

(b) Mr. Moghaddam's evidence for himself and for A Vancouver Auto Ltd.

[13] Mr. Moghaddam gave very little evidence. His oral evidence and statement can be summarized as follows:

- (a) Mr. Moghaddam continues to believe the original decision involving Vancouver Auto Leasing Ltd. was unfair.
- (b) Mr. Moghaddam was depressed after the Vancouver Auto Leasing Ltd. decision so he left the industry because of the way he says he was treated and punished.
- (c) Mr. Moghaddam has learned that more information is now available to assist him with running his business and providing consumers with disclosures.
- (d) Mr. Moghaddam will have the assistance of his family to guide him, and help him with customers. Mr. Moghaddam especially noted the assistance of his sons in researching and obtaining vehicle history reports from the internet.
- (e) Mr. Moghaddam stated he will have the assistance of a motor dealer in helping him to do it right. In the second business plan submitted by Mr. Moghaddam, he identifies an individual at an Infinity dealership named Roger.

(c) The documentary evidence

[14] The first business plan submitted by Mr. Moghaddam for A Vancouver Auto Ltd. notes that "there is a need in Lane County"... for a selection of used cars. That

A Vancouver Auto Ltd. has an excellent team and determined owners (plural) to bring a unique buying experience to "Willamette Valley". I am unaware of a Lane County or Willamette Valley in B.C. The first business plan states the company office is to be located in New Westminster, B.C. Mr. Moghaddam is the only owner.

[15] Mr. Moghaddam said he provided the first business plan to Licensing Officer Tara Klassen, but told her he would provide another later. While using another business plan as a template is fine, these errors of substantive detail are concerning. I am concerned whether the sales projections are accurate. It does speak to a potential lack of attention to detail by Mr. Moghaddam in the operation of a dealership, especially as he has admitted to having a friend write the business plan which he did not review closely.

[16] The second business plan submitted appears specific to A Vancouver Auto Ltd. My concerns in the plan and from Mr. Moghaddam's evidence are his reliance on his family and the other "dealer" to assist him run the business. In Mr. Moghaddam's written statement as requested by Licensing Officer Murphy, Mr. Moghaddam emphasizes he had run a car dealership for 20 years; it is what he knows and what he wants to do. One would expect a person with 20 years in the industry and having run a dealership, should be able to do so without assistance.

[17] I am concerned that some of the cost projections in the second business plan are also not realistic. For instance, Mr. Moghaddam projects to have two full-time salespersons by the ninth month of operations. In the second year of operations, he has projected salaries at \$18,000 each and a commission pool of \$40,000. This means that if the commission pool is shared equally, the salespersons will earn about \$38,000 annually. This seems a low number in this industry, especially if Mr. Moghaddam wishes to retain staff.

[18] Mr. Moghaddam projects start-up costs of \$141,000 which he will personally provide with access to a very small line of credit (\$10,000). The second business plan does not consider contingencies in the first few months of operations and does not indicate any concern that the dealership may run in the negative for a month or so before it starts to break even and then profit. The second business plan projects profit in each month from the time of start-up. The three year projection does indicate slow growth over the three year period. I am concerned that no planning is in place to cover the dealership costs in its first few months of operations. While the projected profit in the first month is low (less than \$2,000), the second business plan lacks a proper contingency plan should there be no profit in the first few months or a slow period during the year; other than a very small line of credit being noted: see *Re: LCB Autos Ltd.* (April 1, 2010, File 10-009, Registrar) at para. 27.

[19] The personnel structure at the dealership shows Mr. Moghaddam operating solo for the first two months with the addition of a full-time salesperson in month three and a second salesperson in month nine. Mr. Moghaddam would be responsible for all dealer operations and oversight of the two salespersons.

DISCUSSION

[20] When Mr. Moghaddam closed his dealership in 2008, the world economic crisis was just starting. One major result coming out of that crisis was how the motor dealer industry adapted and changed in response to the crisis. In 2008, the number of registered motor dealers in BC (new, used, motorcycle and RV combined) was about 1665 which dropped by over 200 dealers in subsequent years. This significant drop is mostly related to the closure of used car dealers. It has slowly risen in the past years with 1457 registered motor dealers today.

[21] The local used car market has changed since 2008. The supply of used cars in British Columbia is very competitive. Franchise dealers hold on to their used cars (trade-ins from customers) more than they did in the past, including older vehicles they once would sell to used car dealers. Franchise dealers are more active in purchasing used cars from the dealer wholesale auto auction. Many of the vehicles at the dealer wholesale auction are being purchased by USA dealers who lack supply in that country. The US dollar dominance also makes purchasing vehicles in Canada for resale in the USA more attractive. It is harder for local dealers (new and used) to compete on price with their USA counterparts. These factors have reduced used car supply for local used car dealers, increased the cost of obtaining used cars, and reduced their margins to a degree. For this reason, a used car dealership, and especially a start-up, needs to have contingency plans in place to deal with slow months.

[22] Mr. Moghaddam states he has 20 years' experience in running dealerships but also states he will rely on Roger to help run the dealership correctly. This gives me concern that Mr. Moghaddam recognizes that he does not fully understand and have the necessary experience to operate a dealership successfully and in compliance with all legal requirements in today's market. Regardless, Mr. Cote was not able to locate a Roger at the identified Infiniti dealership. I also note that Mr. Moghaddam's industry references were not positive.

[23] Mr. Moghaddam intends to rely on his sons to help with finding information on the internet about vehicles and those vehicles' history. A dealer has a positive duty imposed by the *Motor Dealer Act Regulation* to research vehicle histories and make the required statutory declarations to consumers. Mr. Moghaddam himself needs to be aware of all legal requirements of operating a dealership and how to

meet that duty. If not, Mr. Moghaddam cannot provide proper oversight of the dealership and oversight for his proposed two salespersons or his two sons.

- *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894 (BC Supreme Court) paragraphs 37 – 52 [positive duty].
- *Ontario (Registrar, Motor Vehicle Dealers Act) v. Unity-A-Automotive Inc.* 2009 CarswellOnt 7553 (OSCDC) [importance of understanding legal requirements]

[24] I also have concerns about Mr. Moghaddam's understanding of his legal duties to consumers, even after he recently took the salesperson certification course. The evidence from Mr. Moghaddam is that he still feels that the 2008 decision was unfair and that it was ICBC's fault. I heard no evidence of how Mr. Moghaddam has changed his views or behaviour. From the evidence before me, it is apparent Mr. Moghaddam does not understand that a dealer and a salesperson are responsible for the representations they make to a consumer. If they have relied on someone else for the information they represent to a consumer, the dealer and salesperson remain responsible to their consumer.

DECISION

(a) Application to register A Vancouver Auto Ltd. as a motor dealer

[25] Much has changed since Mr. Moghaddam has operated a dealership in B.C. On the evidence, I am satisfied that Mr. Moghaddam does not have the requisite knowledge and abilities to successfully operate a dealership in compliance with the law in today's market. Mr. Moghaddam admitted he needed assistance to write the first business plan and that he did not actually read it before submitting that plan. This indicates a lack of attention to detail required to operate a dealership in this competitive market. I find the second business plan lacks an appropriate contingency for a dealer start-up. Mr. Moghaddam has admitted he would need the assistance of others to operate the dealership properly, but the Authority was not able to locate "Roger".

[26] I am also satisfied that Mr. Moghaddam would not be in a position to provide appropriate oversight of the proposed two salespersons to ensure their conduct is lawful. In 2008, Mr. Moghaddam was found to have deliberately misrepresented a vehicle to a consumer. The evidence before me is that Mr. Moghaddam does not appreciate that fact and continues to say the decision was unfair and blames someone else.

[27] I am satisfied on a balance of probabilities that the public would be at an unacceptable risk if Mr. Moghaddam was allowed to operate a motor dealership. I am denying his application to register A Vancouver Auto Ltd. as a motor dealer.

[28] If Mr. Moghaddam wants to operate a dealer in the future, he needs time as a salesperson in a dealership that provides oversight of his salesperson conduct, followed by progressive exposure to managing a dealership. This will afford Mr. Moghaddam time to gain knowledge of dealer operations in the current market environment and his legal obligations in running a dealership. It will also allow Mr. Moghaddam an opportunity to rebuild trust in him.

(b) Application for license as a salesperson

[29] My concern in granting Mr. Moghaddam a salesperson licence is his continued misunderstanding of his legal obligations to consumers, especially regarding misrepresentations. This is the case even after Mr. Moghaddam successfully completed the salesperson certification course in January 2016. If this is his continuing belief, than there is a possibility of him repeating the non-compliant conduct of 2008. This could place consumers at risk if they were to deal with Mr. Moghaddam as a salesperson.

[30] Given I found Mr. Moghaddam's misrepresentation was deliberate in 2008, which caused harm to a consumer, there needs to be some history and evidence of good behaviour on the part of Mr. Moghaddam, to show he can be trusted in the industry, and before he is issued a salesperson licence. The fact that eight years has gone by with no indication of wrongful conduct by Mr. Moghaddam is insufficient evidence: *Alfa Motors Inc. and Amrish Gathani v. Registrar Motor Vehicle Dealers Act, 2002*. (December 6, 2011; Ont. Licence Appeal Tribunal).

[31] I am therefore refusing Mr. Moghaddam a salesperson licence.

[32] I had considered issuing Mr. Moghaddam a salesperson licence with conditions designed to try and mitigate any risk to consumers. However, Mr. Moghaddam first needs to show with some evidence that he can be trusted as a salesperson in the industry. Currently there is no such evidence and even his own industry references do not appear to trust him.

[33] I would consider receiving an application for a salesperson licence from Mr. Moghaddam once he has rebuilt a history of good behaviour that can be verified by evidence. Given the findings in 2008, I would want to see two years of history with verifiable evidence of good behaviour starting from the date of this decision, before I would consider such an application: *Pugliese v. Clarke*, 2008 BCCA 130 (BC Court

of Appeal). Whether a salesperson licence would be issued will depend on the facts at the time an application is received.

REVIEW OF DECISION

[34] If there is disagreement with this decision, it may be reviewed by petitioning the BC Supreme Court for judicial review. Such a petition must be filed within 60 days of this decision being issued: see section 7.1(t) of the *Motor Dealer Act*.

Date: April 3, 2017

'Original is signed'

Ian Christman J.D., Registrar