



Neutral Citation: 2017-BCRMD-007

Hearing File No. 17-06-002

**IN THE MATTER OF THE *MOTOR DEALER ACT* R.S.B.C. 1996 C. 316**

**RE:**

**PIONEER GARAGE LIMITED *DBA* GREENLIGHT AUTO SALES**

**AND**

Hearing File 17-07-003

**IN THE MATTER OF THE *MOTOR DEALER ACT* R.S.B.C. 1996 C. 316**

**RE:**

**PIONEER GARAGE LIMITED *DBA* PIONEER PRE-OWNED**

**DECISION OF THE REGISTRAR OF MOTOR DEALERS**

**Date and Place of Hearing:** July 27, 2017 at Surrey, British Columbia

**Appearances for:**

The Authority	Robert Hrabinsky, Legal Counsel
Pioneer Garage Ltd. <i>dba</i> Greenlight Auto Sales	Raymond Van Empel, Dealer Principal Larry Barteski
Pioneer Garage Ltd. <i>dba</i> Pioneer Pre-Owned	Raymond Van Empel, Dealer Principal Larry Barteski

**INTRODUCTION AND THE AUTHORITY'S POSITION**

[1] This hearing was to review the applications by Pioneer Garage Limited *dba* Greenlight Auto Sales and by Pioneer Garage Limited *dba* Pioneer Pre-Owned to register each under the *Motor Dealer Act*, R.S.B.C. 1996, c.316 (the "MDA"). Pioneer Garage Limited is one legal entity applying for two registrations at two new locations. Within these reasons I will refer to Pioneer Garage Limited as Pioneer.

[2] By agreement of the parties, the two hearings were combined as they essentially raised the same issues for consideration.

[3] The staff of the Authority raised the following concerns in granting the two requested registrations due to the recent compliance history of Pioneer:

1. Since August 19, 2015, Pioneer has entered into five Undertakings for breaches of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 (the "BPCPA").
2. There is a consumer complaint against Pioneer for alleged breaches of the BPCPA scheduled for a Registrar's hearing on September 20, 2017. The allegations also include that Pioneer is in breach of previous Undertakings.
3. There is another consumer complaint against Pioneer for breaches of the BPCPA that is at the investigation stage.

[4] Essentially, the Authority is concerned that Pioneer has operated and continues to operate in a non-compliant manner, such that it would no be in the public interest to issue these two registrations. Alternatively, the Authority says these registrations should be refused temporarily until the outcome of the September 20, 2017, hearing is known.

### **PIONEER'S POSITION**

[5] From the evidence presented and the submissions and case law cited by Mr. Barteski on behalf of Pioneer, Pioneer's position can be summarized as follows:

- (a) Pioneer has implemented several internal checks and balances, ongoing training and modified hiring practices to ensure future compliance by staff members with the legislation,
- (b) In June of this year, Pioneer instigated a check list to be completed by sales staff for each vehicle sale with a monetary penalty for failing to complete the check list,
- (c) In May of this year, Pioneer hired a Vice-President of Sales and Marketing to focus on many aspects of the business including increased communication with consumers,
- (d) Pioneer hired Larry Barteski to help with compliance with the legislation. Mr. Barteski is a former Compliance Officer previously with the Authority,
- (e) Much of Pioneer's clientele are sub-prime consumers and some complaints are a case of buyer's remorse and consumers manufacturing issues to get out of deals,

- (f) Pioneer has a high volume of sales which will lead to more complaints,
- (g) One recent new hire spoke of how they moved to B.C. from Ontario due to the prospects available at Pioneer and how several others in Ontario are poised to come to B.C. to work for Pioneer,
- (h) Mr. Van Empel emphasised the financial investments made to get these two stores established to be registered and the financial earnings of, and the related government tax revenue generated by the current Pioneer group of dealers.

[6] While Pioneer is not claiming bad faith against the Authority or its staff, it feels the compliance actions against it in the recent past appear disproportionate. Mr. Van Empel said that the compliance actions published on the VSA website indicates that Pioneer is responsible for 10% of the compliance actions against dealers in the recent past but Pioneer does not appear responsible for 10% of all consumer complaints against dealers. Mr. Van Empel further noted that Pioneer has only been in court once on an issue in 2002, which is very low when compared to other dealerships.

[7] Pioneer noted that of its five Undertakings, one is related to an advertising issue that was based on a Chrysler Canada national advertising program. Mr. Van Empel noted other Chrysler dealers also entered into Undertakings for that issue.

[8] Mr. Van Empel stated that Pioneer entered into the five Undertakings because the Manager of Compliance and Investigations, Mr. Daryl Dunn, suggested to him that this was the best way to deal with the issues and Pioneer relied on Mr. Dunn.

[9] Finally, Mr. Barteski, for Pioneer, cited the cases of *Prestige Toys Ltd. v. Ontario (Registrar, Motor Vehicle Dealers Act)* 2009 CanLII 43657 (ON SCDC) ("Prestige Toys"), often referred to by the B.C. Registrar, and that case's application in *Re: Landsberg* (Registrar, File 10-054, June 27, 2011). Mr. Barteski applied these decisions and offered that there is no evidence against Mr. Van Empel personally, of any wrongdoing within these Undertakings. Mr. Barteski noted the mere fact that Mr. Van Empel is the owner of Pioneer does not mean he personally did anything wrong.

## THE LAW

### (a) Registration as a motor dealer - considerations

[10] Under section 5 of the MDA, the considerations to review an applicant for registration as a motor dealer are the financial responsibility or past conduct of the applicant, and where the applicant is a corporation, whether the financial responsibility or past conduct of its officers or directors is a concern to the public interest.

[11] As noted in previous decisions, conduct is not confined to a specific time, place or type of conduct. It is conduct that is of concern to the public interest in registering a person as a motor dealer given the consumer protection purposes of the MDA. Generally speaking, the concern is whether the applicants will carry-on business with integrity, with honesty and in accordance with the law. A further concern is whether the applicants will be governable. That is, will they abide by the directions of its regulating body.

- *Re: A Vancouver Auto Ltd.* (April 3, 2017, Hearing File 17-02-002, Registrar).
- *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)

[12] As the MDA is consumer protection legislation, it must be interpreted and applied in favour of consumers and consumer protection.

- *Seidel v. TELUS Communications Inc.*, 2011 SCC 15 (Supreme Court of Canada)
- *Fireman's Fund Insurance Co. of Canada v. Shoreline Auto Sales Ltd.* [1986] B.C.J. No. 1745 (B.C. Supreme Court).

[13] The desires of a person to be registered as a motor dealer are weighed against any concerns to the public interest in granting the registration. The public interest is paramount.

- *British Columbia (Securities Commission) v. Pacific International Securities Inc.*, 2002 BCCA 421 (BC Court of Appeal)
- *Re: A Vancouver Auto Ltd. et al.* (April 3, 2017, Hearing File 17-02-002, Registrar).

**(b) Application for Registration**

[14] Under the MDA, where a motor dealer intends to operate from more than one location in B.C., they must register each location from which they will operate.

4 (2) If an applicant carries on business at more than one location in British Columbia, the applicant must apply for registration for each location.

[15] In the case of Pioneer Garage Ltd. *dba* Greenlight Auto Sales and Pioneer Garage Ltd. *dba* Pioneer Pre-owned, the former will operate in Chilliwack while the later will operate in Mission close to the main dealership. Ray Van Empel is identified as the President and 100% shareholder<sup>1</sup> on both applications. I would note that in the case of Pioneer Garage Ltd., it is one legal entity operating in multiple locations necessitating multiple registrations as required by the MDA.

**(c) The importance of abiding by the BPCPA**

[16] In this case, the concern relating to the five undertakings for breaches of the BPCPA triggers the Registrar's considerations under section 8.1(4)(b) of the MDA, which says:

(b) contravention of a prescribed provision of Part 2 or 5 of the *Business Practices and Consumer Protection Act* by a person is grounds for the registrar or director, as the case may be, to determine that it is not in the public interest for the person to be registered or to continue to be registered under this Act and, without limiting paragraph (a) of this subsection, the registrar or director, as the case may be, may exercise the rights and powers of the registrar under Part 1 of this Act that may be exercised in the event of that determination

[17] The Legislature's direction to the Registrar under section 8.1(4)(b) of the MDA is that if a motor dealer has breached the deceptive or unconscionable act provisions of the BPCPA, or has not complied with the Disclosure of the Cost of Consumer Credit provisions of the BPCPA, the Registrar can consider that as grounds to cancel the motor dealer's registration. There needs to be only one transgression to trigger this provision. This indicates to the Registrar the seriousness the Legislature places on motor dealer's abiding by these provisions of the BPCPA.

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<sup>1</sup> In the case of the application for Pioneer Pre-owned, the actual share amount is not listed, but no other shareholder is listed in the application.

[18] Section 8.1(4)(b) of the MDA can also be considered in determining if the past conduct of a motor dealer is such that they should not be granted any new registrations, where that past conduct involves breaches of Part 2 or 5 of the BPCPA. It raises a concern that the motor dealer will not operate in accordance with the law. The discretion to cancel or refuse a registration due to past breaches of parts 2 or 5 of the BPCPA is left for the Registrar to decide.

**(d) The general purpose of regulation and of licensing**

[19] The general purpose of regulation is to ensure a regulated industry adheres to a minimum standard of conduct and care to prevent harm from occurring to those persons interacting with that industry. A licensing regime is used to allow a regulator to review applicants for registration/licensing (and those already registered/licensed) to ensure they do not pose an unacceptable risk if allowed in the industry. This pro-active approach is consistent with the purpose of preventing future harm from occurring and is central to a regulatory regime.

- *R. v. Wholesale Travel Group Inc.*, [1991] 3 S.C.R. 154, 1991 CanLII 39 (Supreme Court of Canada) per Justice Cory
- *R v. Fitzpatrick*, [1995] 4 S.C.R. 154, 1995 CanLII 44 (Supreme Court of Canada)
- *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers*, 2014 BCSC 903 (BC Supreme Court)

**(e) Corporate personality**

[20] A regulator is not blinded by the corporate veil, as it is known in law, when it is conducting its review of an applicant. A regulator may look behind the corporate veil to ensure those within the company do not pose a risk to the public interest if the company were granted registration. It would defeat the very purpose of preventing future harm if a regulator could not look past the corporate identity to view the realities of who will be running the company. Section 5 of the MDA expressly authorizes and contemplates this type of review.

- *Key Track Sales & Detailing Ltd.* (May 11, 2010, File 10-013, Registrar)

## **(f) Onus**

[21] The onus is on the Authority to show that there is concern for the public interest in granting the two registrations. The onus is on a balance of probabilities: *F.H. v. McDougall*, [2008] 3 S.C.R. 41, 2008 SCC 53 (Supreme Court of Canada)

## **DISCUSSION**

### **1. There is a concern for the public interest**

[22] I am satisfied on the evidence presented that there is a concern for the public interest in granting the two registrations.

[23] There are five undertakings involving breaches of the BPCPA by Pioneer within a two-year span. There is a pending hearing where allegations are that Pioneer breached the BPCPA and its past Undertakings. These allegations are said to have occurred after the last of the five Undertakings was signed. If the allegations in the pending hearing are proven, then it appears the five past Undertakings have not had their desired effect of regaining and maintaining Pioneer's compliance with the law. If the registrations were granted, consumers could be exposed to breaches of their rights under the BPCPA.

[24] Also, if the allegations are proven in the September 20, 2017, hearing then section 8.1(4)(b) of the MDA will be triggered and the Registrar will be required to determine whether it is in the public interest that Pioneer continues to be registered as a motor dealer. Mr. Hrabinsky advised that if the allegations are proven he intends to seek, at a minimum, the suspension of Pioneer's registration as a motor dealer. If the two registrations are granted now, and the determination after the September 20, 2017, hearing is to revoke Pioneer's registration, then the two applicants must stop selling to consumers. This may negatively impact consumers who have already transacted business. For example, where would consumers go for warranty or repair issues on recently purchased vehicles? What if a vehicle has been ordered but not yet delivered to a consumer? What about any deposits left by consumers to secure a pending sale?

[25] Finally, from the evidence provided by Mr. Van Empel, and from the other witnesses for Pioneer such as Daniel Cook and Anthony Singleton, it is clear that Pioneer has had tremendous growth in the past three years, but their internal checks and balances to ensure compliance has not yet caught up to that growth. It appears more time is needed for Pioneer's internal checks and balances to mature and be proven effective before it expands further. I will discuss this in more detail along with other issues raised by Pioneer below.

## 2. Pioneer's submissions

[26] For efficiency, wherever possible I have grouped Pioneer's submissions.

- (a) **Pioneer has implemented several internal checks and balances, ongoing training and modified hiring practices to ensure future compliance by staff members with the legislation**
- (b) **In June of this year, Pioneer instigated a check list to be completed by sales staff for each sale with a monetary penalty for failing to complete the check list**

[27] Pioneer gave evidence that they have implemented a check list that must be completed for each sale to ensure consumers have received the documents and reviewed the disclosures consumers are entitled to under the legislation. Under questioning, Ms. Arlene Sater for Pioneer noted that the check list was first distributed for comments to staff. On June 1, 2017, it was implemented with associated financial penalties for not completing the check list. Mr. Perrin in his evidence noted seeing the check list in January of 2017.

[28] Daniel Cook noted that the Undertakings and Hearings with the Authority have brought a heightened awareness to employees of the Pioneer group. They understand that words matter and the reverse onus on the dealer regarding allegations under the legislation. Notably, Mr. Cook commented on the fast growth of the Pioneer group and it is good that they brought Mr. Barteski on board to help them with compliance. Mr. Cook noted proactive steps need to be taken and are being taken. Mr. Cook spoke of Pioneer Groups' rapid expansion along with these various proceedings, has made it is clear that Pioneer needed to address its internal processes. For example, Mr. Cook noted Pioneer is ensuring they get rid of any "bad apples"; Pioneer realizes it needs managers to manage the managers; and Pioneer is striving to not "have a mess" and come back "here" again.

[29] I also heard evidence of how Pioneer now has someone making follow-up calls with consumers to ensure they received all the documents they are entitled to. I expect that person would also check on the consumer's satisfaction with the transaction and with the vehicle purchased.

[30] Jason Field gave evidence of how he came into one dealership (not Pioneer) to help clean it up and how he increased that dealership's star rating on Google. Mr. Field noted he was looking forward to running his own dealership with "Tony" within the Pioneer group. Mr. Field has been with Pioneer for one month.



[31] The fact that Pioneer has recognized it needs better internal checks and balances to ensure compliance is good sign and a necessary step, given its rapid growth. The internal checks and balances when operating one dealership location is different than when operating a dealer group. The “hands-on” approach employed at most solo dealerships is simply no longer good enough in a large dealership group. You need good management, managers to manage managers for oversight and processes to ensure compliance. My concern is the lateness in which Pioneer came to this realization.

[32] The first Undertaking for breaches of the BPCPA was August 19, 2015. That Undertaking included failing to disclose prior damage to a vehicle and failure to provide a consumer with a copy of the purchase agreement. That Undertaking is about 16 months prior to Mr. Perrin first seeing the check list in January 2017 and 22 months prior to Pioneer implementing an “enforced” check list on June 1, 2017. This is also four and eight months, respectively, after the last Undertaking was signed on September 27, 2016.

[33] To Pioneer’s credit, they requested the Authority’s staff attend the dealership to discuss compliance concerns with Pioneer and their staff. I do take this into consideration.

[34] In my view, the mere fact that checks and balances have been implemented is not sufficient to say Pioneer will be compliant in the future. Given Pioneer’s (a) recent non-compliant issues in a relatively short time, and (b) the lateness in putting these new measures into place; I believe the more appropriate thing to do is to wait and see if these measures have the desired effect of regaining Pioneer’s compliance with the legislation.

[35] To grant registration to the two Pioneer applicants to potentially realise later that the checks and balances have not had the desired effect, places consumers dealing with those two stores at an unnecessary risk. Pioneer should first demonstrate it can properly control the compliance of its existing number of stores before it expands.

**(c) In May of this year, Pioneer hired a Vice-President of Sales and Marketing to focus on many aspects of the business including increased communication with consumers**

[36] Mr. Gordon Spence was hired as V.P. of Sales and Marketing for the Pioneer group. He started May 1, 2017. Mr. Spence noted he would focus on group wide policies and procedures, a new CRM (Customer Relations Management) system for the group to automate customer follow-ups and a website pop-up chat box to

enhance consumer communications. Mr. Spence also spoke about his unique perspective of coming from outside the industry.

[37] Mr. Gordon Spence had been with Pioneer for three months at the time of the hearing. He started with Pioneer 21 months after the first Undertaking was signed and seven months since the last Undertaking was signed.

[38] Again, it is good that Pioneer has recognized the need for someone in the position of Mr. Spence and the need to have group wide policies and procedures in place. By Mr. Spence's evidence, I infer that those group-wide policies are not yet in place or if they are, they are only recently in place given his arrival at Pioneer only three months ago.

[39] Again, in my view this step has also not been timely given when the Undertakings were signed. It is a recent change and in my view the more appropriate thing to do to protect consumers is to see if Mr. Spence and the work he has started to do have the desired effect of keeping Pioneer in compliance with the legislation, before new registrations are granted.

**(d) Pioneer hired Larry Barteski to help with compliance with the legislation**

[40] Pioneer hired Larry Barteski to assist them with compliance with the legislation as noted above. Mr. Barteski is a former compliance officer with the Authority.

[41] I was not provided evidence of when Mr. Barteski started with Pioneer or what he has specifically contributed to Pioneer. Without any evidence, I cannot determine the effectiveness of Mr. Barteski's work towards compliance within Pioneer. I do note that hiring a person to ensure Pioneer's compliance with the legislation is a positive point in my deliberations.

**(e) Much of Pioneer's clientele are sub-prime consumers and some complaints are a case of buyer's remorse and consumer's manufacturing issues to get out of deals**

**(f) Pioneer has a high volume of sales which will lead to more complaints**

[42] Pioneer focuses on the fact that many of its clientele are sub-prime and that its volume of sales will lead to more complaints. In regards to the sub-prime consumers, Pioneer believes many complaints are really just buyer's remorse.

[43] It does not matter whether a dealer's clientele is sub-prime or prime, luxury vehicle purchaser or the purchaser of older under \$5,000 vehicles, or any other "type" of consumer. Each consumer is entitled to the same protections from the same consumer protection laws in British Columbia, and a motor dealer must respect those consumers' rights.

[44] The fact that some consumers want to "get out of a deal" is a fact understood by this Registrar. However, that will be borne out in the evidence of each case. In the four Pioneer Undertakings involving consumers, there were very real breaches of the legislation such as:

- (a) Failing to provide consumers with a purchase agreement in breach of section 21(3) of the *Motor Dealer Act Regulation*,
- (b) Failing to declare prior damage on a motor vehicle in breach of section 23(b) of the *Motor Dealer Act Regulation* and which is a failure to state a material fact in breach of section 5(1) of the BPCPA,
- (c) Misrepresenting the cost of consumer credit in breach of section 5(1) of the BPCPA, and
- (d) Failing to provide a consumer with any paperwork regarding the financing of a motor vehicle in breach of sections 66 and 67 [Part 5] of the BPCPA.

[45] Generally speaking, the more a dealer sells the greater is the potential for complaints. However, that does not have to be the case if the dealer is compliant with the legislation, transparent with its customers and strives for excellence in customer service.

[46] I think the more important point is that the Authority staff has not brought to my attention the volume of complaints against Pioneer. The Authority has brought before me the number of compliance actions taken against Pioneer in the past two years. By doing so, what is being considered are substantiated non-compliance by Pioneer and a concern that it may be continuing as evidenced by the upcoming hearing on one complaint and another complaint under investigation.

[47] The evidence Pioneer has provided explains the steps it is taking to ensure compliance with the law. However, I heard no evidence that those steps are working, which is probably due to the recency of the changes at Pioneer.

**(g) One recent new hire spoke of how they moved to B.C. from Ontario due to the prospects available at Pioneer and how several others in Ontario are poised to come to B.C. to work for Pioneer**

[48] Michael Perrin gave evidence on behalf of Pioneer. Mr. Perrin recently came from Ontario to join Pioneer because the opportunities available at Pioneer are not available in Ontario. Mr. Perrin also noted four or five other persons in Ontario are potentially moving to B.C. to join Pioneer. Mr. Van Empel also emphasized the importance these stores have on other peoples' lives as they employ quite a number of people.

[49] Given Mr. Perrin's evidence, it seems more appropriate to provide certainty to those in Ontario who may be thinking of moving to B.C. to join Pioneer. That certainty is not achieved by granting registrations now only to have to consider their potential revocation in a few months' time. Certainty is better achieved by a process that first considers the outcome of the September 20, 2017, pending hearing and any impact it may have on the registration of Pioneer Garage Ltd., before these two applications for registration are considered.

**(h) Mr. Van Empel emphasised the financial investments made to register these two locations and the financial earnings of, and the related government tax revenue generated by, the current Pioneer group of dealers.**

[50] When a motor dealer is not compliant with the law, it does not matter how much the dealer earns, how much money it invests in the community, how many people it employs or the tax revenue it creates for governments. The dealer must still comply with the law and the protection of consumers is the paramount public interest consideration under the MDA scheme.

[51] These types of factors may affect how a regulator carries out a decision. For instance, if the decision is to revoke the motor dealer's registration, the Registrar may apply to the court to have a trustee put in place to operate the business until a new owner can be found and a new registration issued. This protects employees at the dealership while also protecting consumers by requiring a controlled change in ownership and management. The decision to revoke the current registration does not change. How that decision is implemented may.

[52] I think it is important to emphasize that a person is not guaranteed registration as a motor dealer just because they apply. That privilege and right is conferred when the regulator is satisfied the motor dealer does not pose a risk to

the public while operating the dealership. In the case of a franchise dealership, that privilege or right is also subject to the approval of the manufacturer. Mr. Van Empel gave evidence that he lost the opportunity to buy into a Ford dealership. Mr. Van Empel noted that Ford (the manufacturer) refused his being a part of a Ford dealership due to the compliance action against Pioneer noted on the Authority's website.

[53] The fact that Ford would not grant Mr. Van Empel a Ford franchise due to Pioneer's past conduct is a factor I can take into consideration. It is not a determinative factor, but a factor nonetheless. In upholding the Registrar's decision to revoke the registration of a motor dealer, Mister Justice Blok stated:

[125] It is important to remember that the MVSA is, in essence, a body created by the industry itself for the purposes [sic] regulating motor dealers, promoting public confidence in the industry and protecting the public interest...

- *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894

### **3. Compliance actions against Pioneer appears disproportionate to other dealers**

[54] Mr. Van Empel raised a concern that it appears compliance actions taken against Pioneer are disproportionate when compared to other dealers. In response to Mr. Hrabinsky's direct question on this point, Mr. Barteski on behalf of Pioneer stated it is not alleging bad faith against any of the Authority's staff.

[55] Mr. Van Empel stated it appears that Pioneer accounts for 10% of compliance actions by the Authority in the past few years, yet it does not get 10% of the consumer complaints. Pioneer noted that the Authority received 3600 inquiries last year and Pioneer was not the subject of 10% of the complaints, otherwise it would have received 360 complaints. Mr. Van Empel says that "numbers don't lie". In further support of this submission, Mr. Van Empel produced print-offs from what appears to be B.C. Court Services Online showing only one court case involving Pioneer (in 2002), where other dealers have numerous court cases.

[56] Mr. Van Empel also suggested that in conducting investigations the Authority appears to go "too deep".

[57] To understand statistics, one must understand their underlying context. The number of consumer enquiries involving Pioneer was not produced in evidence. The

fact remains that four of the five Undertakings involved consumers who made complaints with serious allegations including forgery.

[58] A dealer could receive numerous complaints none of which are substantiated breaches of the law. Others may receive numerous complaints all of which are substantiated breaches of the law. Still others will receive no complaints. There will be dealers that fall somewhere in the middle of these extremes. The volume of consumer complaints does not dictate the quality or seriousness of those complaints, nor the volume of compliance actions. There does not have to be a one-to-one ratio of complaints to compliance actions as Mr. Van Empel suggests.

[59] As for the number of court cases involving Pioneer versus other dealers, there is insufficient evidence to comment. Names and dates of court actions do not provide the context necessary to comment. What is missing is who is suing who and for what reason. Without that context, I am not sure of the relevance of this evidence in this particular case as the Registrar is reviewing Pioneer's past non-compliance with the legislation administered by the Registrar within the MDA licensing scheme and the relationship of that past conduct to the two applications for registration.

[60] As to the concern about the Authority appearing to go "to deep" when investigating, the Authority is required to complete a "thorough" investigation before taking compliance action or before closing a file.

- *El-Helou v. Court Administration Service et al.*, 2012 FC 1111 (Federal Court Trial Div.)
- *Rathje v. Business Practices and Consumer Protection Authority*, 2007 BCSC 1191 (BC Supreme Court)
- *Tahmourpour v. Canada (Solicitor General)*, 2005 FCA 113 (Federal Court of Appeal)

[61] How "deep" the investigation goes depends on the allegations against the dealer or salesperson and where the evidence leads the investigation. Evidence may be found of other breaches of the law, taking the investigation in another direction or in more than one direction. More importantly, protecting the public from future harm will require a regulator to "go deep" at times. This is recognized by the statutory powers conferred on the Registrar by the MDA and its legislative scheme. For example:

- (a) Requiring financial statements and records be produced: section 32 of the MDA,

- (b) Issuing administrative production orders on third parties including financial institutions: section 150 and 151 of the BPCPA,
- (c) Ordering an audit of the motor dealer: sections 150(1)(c) and 151 of the BPCPA
- (d) Requiring motor dealers produce records: section 25 of the MDA and sections 150 and 151 of the BPCPA,
- (e) Ordering a dealer or a third party to freeze any property of the motor dealer; section 27 of the MDA and section 159 of the BPCPA, and
- (f) Having a trustee or receiver-manager appointed to take control of a motor dealer: section 28 of the MDA and section 158 of the BPCPA.

[62] Unless there is evidence otherwise, the fact that Pioneer comprises 10% of the compliance actions of the Authority in the past two years means just that.

#### **4. Pioneer's submission that one of the five Undertakings is based on a national ad program of Chrysler Canada**

[63] Pioneer says one of the five Undertakings is based on a Chrysler Canada national advertising program. This, I am assuming as it was not fully articulated, is a submission that this particular Undertaking was not unique to Pioneer and should not be weighed against Pioneer. The national advertising program was referred to at the hearing as the "CRA" program, where mail outs from Chrysler dealers looked like official government mail outs and misleading contrary to the BPCPA: see Undertaking, File #16-04-004 dated May 9, 2016, in the Authority's Notice of Hearing.

[64] Pioneer called the Manager of Compliance Daryl Dunn as a witness. Mr. Barteski on behalf of Pioneer asked Mr. Dunn about the Chrysler Canada national "CRA" advertising program. Mr. Dunn confirmed that two other dealers had submitted similar undertakings as Pioneer. Mr. Dunn further stated that he is aware that other Chrysler dealers refused to participate in Chrysler Canada's national "CRA" advertising program. From Mr. Dunn's evidence, it appears that Pioneer elected to participate in the Chrysler national "CRA" advertisement program although they were not required to do so. This was not contradicted. I would further point out that no franchise agreement may require a franchisee to break the law, and especially their legal obligations as a licensee under a statute.

## **5. Pioneer entered into the five Undertakings at the suggestion of Mr. Dunn**

[65] Mr. Van Empel states it was Manager of Compliance, Daryl Dunn, who suggested that entering into the five Undertakings was the best option. Mr. Dunn denies that he said Undertakings were the best option. Mr. Dunn noted that Pioneer completely re-wrote an Undertaking and submitted it to the Registrar which the Registrar rejected.

[66] In the case of the September 27, 2016, Undertaking involving Pioneer Garage Ltd., Hearing File 16-05-005, that Undertaking was entered into in my presence just prior to a hearing involving allegations against Pioneer Garage Ltd. and Pinnacle Car Sales and Leasing Ltd. Because of that Undertaking, the hearing proceeded against Pinnacle only. At the time Pioneer Garage Ltd. presented the Undertaking, it was represented by a lawyer who was allowed to question witnesses during the hearing. Pioneer Garage Ltd. appears to have entered into that Undertaking with the advice of its own lawyer.

[67] It does not appear that Pioneer entered into Undertakings because Mr. Dunn said they should. Pioneer has offered an Undertaking different than the one suggested by the Authority, Mr. Dunn, and had the advice of an independent lawyer regarding at least one Undertaking.

## **6. Relevance of the *Prestige Toys* and *Re: Landsberg* decisions**

[68] Mr. Barteski cited *Prestige Toys* and *Re: Landsberg* to say the mere fact that Mr. Van Empel is the owner of Pioneer does not mean his conduct is in question. Mr. Barteski further states there was no evidence to suggest Mr. Van Empel is implicated in these prior transgressions.

[69] There are two legal principles in *Prestige Toys*. First is that the conduct of a person while they owned and operated a dealership may be considered when considering their personal salesperson licence.

[70] The second legal principal is that the failure to properly supervise employees who commit fraudulent conduct may also be grounds to revoke the dealer's registration.

[71] *Prestige Toys* and other cases cited within that decision speak of the need for evidence of the operational involvement by the dealership's officers and directors where a dealership is large:



[32] In *Allright Automotive Repair*, above, the Court found that the failure of a manager to effectively supervise the activities of a salesperson who entered into a number of fraudulent transactions justified revocation of both the dealership's licence and the manager's own salesperson licence.

[33] Even in *Coates*, the Court noted that evidence of the nature and quality of the officer's and director's operational control would have been relevant to the issue of whether he was personally involved in the wrongdoing of the corporation. In that case, the individual operated a company with some 60 employees and it could not be presumed that the individual appellant had knowledge of the employees' activities.

[72] The Court in *Prestige Toys* found the tribunal had erred by not considering the evidence of the operational control provided by the owner of *Prestige Toys* and set aside the tribunal's decision on that point and sent the case back to the tribunal for reconsideration. The Court in *Prestige Toys* noted:

[39] There is no presumption that corporate wrongdoing is automatically attributable to the individual officer and director. The officer and director's conduct is a matter of evidence. However, Lioubimova's conduct as an officer and director should be assessed in the context of the operational circumstances, the conduct of the corporation, and her legal responsibilities as an officer and director...

[73] I disagree with Mr. Barteski that there is no evidence of Mr. Van Empel's implication in these prior transgressions. On the contrary, Mr. Van Empel and other witnesses for Pioneer made it clear that nothing happens at the Pioneer dealer group without Mr. Van Empel knowing about it. For instance,

- (a) Mr. Van Empel emphasised how involved he is with the day-to-day operations of the dealership, and
- (b) Anthony Singleton said Mr. Van Empel was hands-on and very involved in dealer operations and always reachable.

[74] Daniel Cooke, Senior Team Lead at Pioneer, stated:

Again, Ray is always available, he's always involved. You know, we try to -- there's got to be somebody that manages the managers, right? And, you know, Ray's always been that person. You know, he has the eyes of an eagle, right? I mean, he sees everything, it's just -- you know, it doesn't matter which store it's at, he'll know about it.

- Transcript of Proceedings, Page 51 lines 16 to 22.

[75] This evidence, combined with the past conduct of Pioneer, Mr. Van Empel's legal duties as the owner and as an officer and director of Pioneer and the other evidence regarding oversight within Pioneer noted in this decision could be used to review Pioneer's continued registration as a motor dealer out of concern that there is no proper supervision within the Pioneer Dealer Group to ensure compliance with the law: *Prestige Toys*.

[76] In the case of *Re: Landsberg*, the first legal principal noted in *Prestige Toys* was being considered. That is not in issue here as Mr. Van Empel's personal salesperson licence is not under review at this hearing.

## **DECISION**

[77] From the foregoing, I find that:

- (a) Pioneer Garage Ltd. has breached the BPCPA on five occasions in the past two years,
- (b) Pioneer Garage Ltd. has had significant and rapid growth in the past three years and its internal controls to ensure compliance have not caught up to that growth,
- (c) Pioneer Garage Ltd. has identified and recently instigated internal controls to attempt to ensure compliance. However, the validity and effectiveness of those internal controls have not yet been proven,
- (d) Pioneer Garage Ltd. has an upcoming hearing for alleged breaches of the BPCPA which occurred after it signed the last of the five Undertakings. If proven, this would appear to indicate the previous five Undertakings have not had their desired effect and that the Registrar will have to consider revoking Pioneer's registration to protect the public interest,
- (e) Granting these two registrations only to potentially revoke them in a few months' time could negatively impact on consumers and persons employed at those two stores. It would also be administratively inefficient, and
- (f) The more certain and appropriate step to take under these facts is to deny the registrations at this time until after the outcome of the

September 20, 2017, hearing date. This will give some additional time to prove out Pioneer's recent changes to its internal checks and balances to gain compliance with the legislation.

[78] The applications for registration of Pioneer Garage Limited *dba* Greenlight Auto Sales and by Pioneer Garage Limited *dba* Pioneer Pre-Owned are denied. They may be brought forward for another review after the conclusion of the September 20, 2017, Hearing of File #17-04-001. Whether registrations will be granted to Pioneer Garage Limited *dba* Greenlight Auto Sales and to Pioneer Garage Limited *dba* Pioneer Pre-Owned in the future will depend on the facts that exist at the time of any future review.

### **REVIEW OF THIS DECISION**

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

Dated: **August 10, 2017**

"Original is signed"

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Ian Christman, J.D., Registrar of Motor Dealers