



Neutral Citation: 2017-BCRMD-008

Investigation File No. 17-07-164
Hearing File No. 17-08-002

**IN THE MATTER OF 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:

VEHICLE SALES AUTHORITY

Complainant

AND:

**BEST IMPORT AUTO LTD.
(Dealer #30670)**

Motor Dealer

INTERIM ORDER OF THE REGISTRAR

Appearances for:

The Authority

Hong Wong, Manager of Licensing
Dan McGrath, Compliance Officer
Kim Murphy, Licensing Officer

Best Import Auto Ltd.

Ahmad Rezaei
Mahyar (Matthew) Anvari

INTRODUCTION

[1] The Authority seeks an interim order suspending the dealer registration of Best Import Auto Ltd. Dealer #30670 ("Best Import").

[2] The main concern raised is that Best Import is selling unsafe motor vehicles to consumers and continues to do so in disregard for conditions placed on its registration.

[3] At the outset it is important to note that for the purpose of an interim suspension order, I am not adjudicating whether in fact Best Import is in fact selling unsafe vehicles. My role in this hearing is to determine if there is sufficient evidence that, if believed and are not contradicted, establishes a *prima facie* case in support of that allegation. If the answer is yes then should the registration of Best Import be suspended until the full hearing in this matter is completed?

[4] Mr. Wong noted that the accountant for Best Import, a Mr. Sid Iranzad, had requested this hearing be adjourned to September 13, 2017, when the owner, Bob Shokohi was back in Canada. Mr. Wong said he denied the request due to the concern that Best Import was selling unsafe vehicles. Mr. Wong submitted that an interim order was necessary now to protect the public interest.

AUTHORITY'S POSITION

[5] Mr. Dan McGrath, Compliance Officer with the Authority, provided the following overview of the investigation and follow up inspection and the current findings as follows:

- (a) On July 17, 2017, the Authority initiated an investigation on its own volition due to repeated consumer complaints that Best Import was offering for sale and selling motor vehicles that were not suitable for transportation and not advising consumers of that fact.
- (b) On July 17, 2017, the Authority along with the B.C. Ministry of Transportation and Infrastructure's Commercial Vehicle Safety Enforcement Division (CVSE)¹ attended Best Import's lot and inspected six motor vehicles. The results of those vehicle safety inspections were:
 - (i) three vehicles were noted as having safety violations and were ordered to be inspected by a designated inspection facility.²
 - (ii) two vehicles were noted as having significant safety issues and were ordered removed from the highway until such time as the vehicles complied with the *Motor Vehicle Act* and its regulations.
 - (iii) one vehicle passed the inspection.
- (c) During the inspection, the Authority determined other concerns such as:
 - (i) three vehicles being sold which appeared to be on consignment (Best Import is not authorized to sell consigned motor vehicles),
 - (ii) vehicle prices advertised on the lot were higher than on active internet advertising,
 - (iii) vehicle advertisements were describing vehicle as in "excellent condition, clean inside and out", in "excellent running condition" and "low kilometers" when these vehicles were:

¹ The CVSE is responsible for administering and enforcing the safety standards in the B.C. *Motor Vehicle Act*.

² A designated inspection facility is a CVSE approved and recognized facility capable of inspecting motor vehicles for compliance with the *Motor Vehicle Act*.

- (A) salvage and then rebuilt vehicles, and
- (B) the "low kilometer" vehicle had 240,532 km on it.

[6] A hearing into these allegations was set for September 21, 2017. In the interim, on July 24, 2017, the Authority placed the following conditions on the registration of Best Import:

- (a) motor vehicles at Best Import had to be inspected by a red seal mechanic or a designated provincial vehicle inspection facility, and
- (b) consumers who purchased vehicles from Best Import were to be given a copy of the inspection report.

[7] On August 18, 2017, the Authority did a follow-up inspection of Best Import to assess its compliance with the conditions imposed on July 24, 2017. Compliance Officer McGrath gave evidence that the dealer was not in compliance with the conditions imposed on July 24, 2017, and was not in compliance with the CVSE orders. A summary of that evidence is as follows:

- (a) motor vehicles ordered to be inspected by the CVSE to be completed within 30 days were being offered for sale without those inspections being completed,
- (b) Best Import has not maintained records of repairs done to motor vehicles on site and in the dealer files. Subsequent to the August 18, 2017, inspection, Best Import has provided some repair invoices,
- (c) Three consumers were contacted to see if they received inspection reports with one consumer reporting they did not,
- (d) CVSE reports motor vehicles that were ordered inspected were not inspected within the required time,
- (e) Best Import is not having its vehicles inspected by a red seal mechanic or designated provincial vehicle inspection facility,
- (f) The inspection being done and the report does not fully assess a motor vehicle for compliance with the *Motor Vehicle Act*,
- (g) One specific vehicle, a 1999 Nissan Altima, indicated on the inspection report of Best Import that it had a loose ball joint, and Best Import stated they did not repair this item before they sold it to the consumer. The

Altima was subsequently inspected by a red seal mechanic at a Nissan dealership who noted safety concerns. Best Import provided the consumer with a vehicle to use while they repaired the 1999 Nissan Altima.

- Testimony of Dan McGrath
- Affidavit of Dan McGrath sworn August 8, 2017
- Licensing Hearing Report of Dan McGrath of August 29, 2017
- Testimony of Peace Officer James McMillan, Area Manager of the CVSE
- Testimony of consumer G.M. of their purchase of the 1999 Nissan Altima
- Testimony of Ms. C. who assisted G.M. during the purchase of the Nissan Altima. I give little weight to Ms. C.'s testimony as much of it was hearsay. It does aid in understanding the sequence of events.

BEST IMPORT'S POSITION

[8] Best Import's position can be summarized as follows:

- (a) As of August 31, 2017, Mr. Mahyar Anvari is no longer the spokesperson or representative of Best Import. That role is now with Mr. Ahmad Rezaei.
- (b) Mr. Rezaei indicated Mr. Anvari agreed there was mismanagement of Best Import on the part of Mr. Anvari. I stated that that evidence must come from Mr. Anvari, and Mr. Anvari never confirmed that this was his view.
- (c) Mr. Anvari noted that he tried to put in place processes to ensure Best Import's compliance with the conditions of its registration. Specifically, Mr. Anvari noted that the owner, Bob Shokohi, over-ride his decision of inspection facility and directed the use of Auto Service Depot who were cheaper but did not provide a thorough vehicle inspection.
- (d) Mr. Anvari stated Bob Shokohi directs all processes at Best Import. Mr. Anvari also noted Bob Shokohi was away from Canada for an extended period of time.
- (e) Mr. Rezaei noted that the inspection report for the Nissan Altima was initialed by the consumer. If the consumer did not receive a copy of the report, that was in error but consumer G.M. did see the report.

[9] In summary, Best Import indicates that there was mismanagement on the part of Mr. Anvari leading to its failure to comply with the conditions on its registration.

THE LAW

(a) Positive duty on a motor dealer regarding vehicle safety

[10] A motor dealer has a positive duty to ensure a motor vehicle meets the minimum safety requirements of the *Motor Vehicle Act* before it displays, advertises, offers for sale or sells that motor vehicle.

Motor Vehicle Act

Sale of motor vehicle contrary to regulations

222 A person must not sell, offer for sale, expose or display for sale or deliver over to a purchaser for use a motor vehicle, trailer or equipment for them that is not in accordance with this Act and the regulations.

Motor Vehicle Act Regulations

Motor vehicles

8.01 No person who is engaged in the business of selling motor vehicles shall keep for sale, or sell or offer for sale, any new or used motor vehicle unless the motor vehicle is equipped as required by these regulations.

[11] A motor dealer has a positive duty to declare to a consumer that a used motor vehicle they are purchasing is compliant with the safety requirements of the *Motor Vehicle Act*: section 21(2)(e).

[12] If a motor vehicle offered for sale does not meet the *Motor Vehicle Act* requirements, the motor dealer has a positive duty to declare:

- (a) on any advertisement or written representation about the motor vehicle,
- (b) on the purchase agreement, and
- (c) on the vehicle itself,

that the vehicle is “not suitable for transportation”. That is, the vehicle is not to be used on the highways.

- Sections 21(2); 22 and 27(b) of the *Motor Dealer Act Regulation*

[13] A failure to advise a consumer that a vehicle does not meet the safety requirements of the *Motor Vehicle Act* is a deceptive act or practice by failing to state a material fact: section 5(1) of the *Business Practices and Consumer Protection Act* as deemed by section 4(2)(b)(vi) of that Act.

- *Stanway v. Wyeth Canada Inc* 2012 BCCA 260 at para. 80 [deception by omission]

[14] A failure to disclose a material fact is a breach of part 2 of the BPCPA. Such a breach is grounds for the registrar to cancel a motor dealer's registration. This provides guidance to the registrar of the importance the Legislature places on motor dealers abiding by Part 2 of the BPCPA.

- Section 8.1(4)(b) of the *Motor Dealer Act*

(b) Interim Suspensions

[15] The registrar is empowered to suspend a motor dealer pending the outcome of an investigation: sections 4(6) and 5 of the *Motor Dealer Act*.

[16] While it was decided under the *Health Professions Act*, the BC Court of Appeal decision in *Scott v. College of Massage Therapists of British Columbia*, 2016 BCCA 180 provides guidance regarding interim suspensions. A review of that decision notes the following principles:

- (a) at this stage I am not "trying" the facts. I am determining whether the evidence if believed true, indicates the public would be placed at risk of harm if Best Import continued to operate,
- (b) the test is whether a *prima facie* case has been made out in support of the allegations,
- (c) the three main considerations are:
 - (i) the seriousness of the allegations,
 - (ii) what measures are currently in place to protect the public, and
 - (iii) the probability of harm;
- (d) in reviewing the evidence I am to be mindful and consider its reliability, plausibility, internal and external consistency and any motivation, and

- (e) I am to balance the interests of Best Import to continue to operate with that of the public interest and the protection of the public from harm. The public interest is paramount.

DISCUSSION

(a) *Seriousness of the allegations*

[17] The selling of unsafe vehicles by a motor dealer is extremely serious. It places occupants of the motor vehicle and those on the highway and pedestrians off the highway at risk of loss of life, personal injury and financial damages. The failure of one of a motor vehicle's safety components can have catastrophic effects on multiple persons. It is no wonder that the Legislature saw fit to impose the above noted positive duties. There is ample evidence, if believed, to show Best Import did offer vehicles for sale that were not compliant with the *Motor Vehicle Act*. Best Import did not provide evidence to suggest the findings of the CVSE on July 17, 2017, were incorrect.

(b) *What measures are currently in place*

[18] In balancing the need to protect the public interest with Best Import's right to answer the allegations against them, the Authority imposed conditions on Best Import's registration. Those conditions required Best Import to take steps to ensure motor vehicle's they were offering for sale were compliant with the *Motor Vehicle Act* and consumers were to be given a copy of the inspection report to provide written assurance of that fact.

(c) *The probability of harm*

[19] There is sufficient evidence, if believed, of the probability of harm:

- (a) Best Import has advertised for sale those vehicles CVSE order inspected within 30 days due to safety concerns before they were so inspected,
- (b) The vehicles ordered inspected have not been inspected within those 30 days,
- (c) Evidence suggests one consumer was not provided a copy of the inspection report. Consumer G.M. produced her documents which were bundled and stapled together and which did not include a safety inspection report. I note Best Import evidence is that G.M. appears to have initialed it, but that is a "he said she said" analysis I need not

undertake at this time: *Scott v. College of Massage Therapists of British Columbia*, 2016 BCCA 180 at paragraph 88. The fact that there is controversy in this evidence is noted, and

- (d) Best Import's choice of inspection facility did not use a red seal mechanic or was a designated inspection facility as required by the conditions of its licence. The type of inspection done did not assess compliance with the *Motor Vehicle Act*.

[20] I find that on the evidence presented, and if believed, a *prima facie* case has been made that Best Import has and is continuing to offer vehicles for sale to consumers that are not compliant with the *Motor Vehicle Act*, which places consumers and those on the highways at grave risk of death, personal injury and financial damages.

[21] Based on the evidence presented, it appears that Best Import has not been compliant with its conditions of registration imposed to balance consumer protection and the public interest with fairness to Best Import. Under these circumstances, imposing further conditions cannot provide the necessary assurances of Best Import's compliance and protecting the public from future harm.

[22] I have considered Best Import's position that these recent failures were the result of mismanagement by Mr. Anvari. Mr. Anvari does not agree with that position. Mr. Anvari gave evidence of how he initially tried to have an appropriate inspection facility conduct inspections only to be over-ruled by the owner Bob Shokohi.

[23] I have considered Best Import's position that Mr. Rezaei is now the manager of Best Import and his evidence of how he would not allow Auto Service Depot to continue to conduct inspections and would have fired them had he seen a copy of their inspection report. I view this skeptically. The decision to place Mr. Rezaei in charge took effect August 31, 2017, even though Mr. Rezaei says Mr. Shokohi made the decision several days earlier. If there was this much miss-management of concern to Best Import, why did they not replace Mr. Anvari back in July when the conditions were first put in place? In addition Mr. Anvari noted that owner Bob Shokohi makes the decisions and sets the dealer's policy. This was not contradicted by Mr. Rezaei. Regardless of whether Mr. Rezaei or Mr. Anvari are the representative or spokesperson for Best Import, the dealer's policy and direction is set by its owner Bob Shokohi. A change in Best Import's management does not mean a change in Best Import's policies, procedures or processes.

Decision

[24] There is sufficient evidence if believed that Best Import is offering for sale and selling unsafe vehicles to consumers. This is a serious concern for public safety.

[25] There is sufficient evidence to show the conditions placed on Best Import's registration has not had the desired effect of reducing risk of harm to the public. It appears Best Import has ignored at least those conditions requiring inspections be done by a red seal mechanic or a designated provincial vehicle inspection facility.

[26] There is sufficient evidence to suggest Best Import has not complied with the orders of the CVSE to inspect the vehicles noted above. I would note that a failure to abide by lawful orders raises a concern about the governability of Best Import.

[27] No further conditions can be placed on Best Import's registration regarding vehicle safety, which have not already been placed on its registration. In essence, the conditions are to emphasize Best Import's existing legal obligations regarding vehicle safety and disclosing that information to consumers.

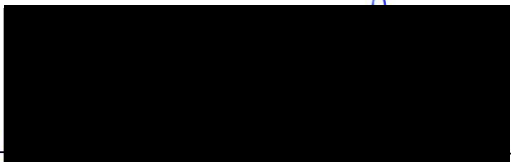
[28] I note that suspending Best Import would deprive it of making income for the business owners and for the staff who work there. However, I must make my decision based on what will best protect the public from harm. Conditions on Best Import's registration were tried and failed. This leaves the option of suspending the registration of Best Import, pending the outcome of the hearing scheduled September 21, 2017, as best to balance fairness to Best Import while protecting the public.

[29] The motor dealer registration of Best Import Auto Ltd. Dealer#30670 is suspended until further order of the Registrar and after the outcome of the September 21, 2017, hearing is known. The suspension takes effect on September 2, 2017.

[30] I would note that I have taken into consideration the request for an adjournment to September 13, 2017, made by the accountant for Best Import so the owner Bob Shokohi could attend. In my view, the potential risk of harm to consumers given the facts presented necessitated continuing today's hearing resulting in the suspension. If a dealership is open for business, it has to have someone present at the dealership that can speak for and make decisions on behalf of the dealership.

[31] If there is disagreement with this decision, it may be reviewed by petitioning the B.C. Supreme Court for judicial review pursuant to the *Judicial Review Procedure Act*: section 7.1(t) of the *Motor Dealer Act*.

Dated: **September 1, 2017**



Ian Christman, J.D., Registrar