



Neutral Citation: 2017-BCRMD-009

**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:

**ELISABETH KRISTINA KOVACS
(Salesperson Licence #206825)**

Salesperson

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Date and place of Hearing: October 19, 2017 at Surrey, British Columbia

Date and Place of Decision: October 25, 2017 at Surrey, British Columbia

Appearances for:

The Vehicle Sales Authority of B.C.

Hong Wong, Manager of Licensing
Chris Coleman, Compliance Officer
Tina Grant, Licensing Officer

Elisabeth Kristina Kovacs

No one

INTRODUCTION

[1] A hearing was called to review allegations that Elisabeth Kristina Kovacs, salesperson licence #206825, took a significant sum of money from her then employer, Milani and Norman Auto Sales and Leasing, Dealer Registration #31067 ("Milani").

[2] The hearing commenced at 10:00 a.m. and Ms. Kovacs was not in attendance. I heard evidence from the Vehicle Sales Authority of B.C. ("Authority") that Ms. Kovacs was mailed a copy of the Notice of Hearing; the Licensing Hearing Report of Tina Grant (Licensing Officer with the Authority); and the Compliance Investigation Report of Chris Coleman (Compliance Officer with the Authority). I was provided evidence in the form of a Canada Post tracking document that the package of documents was received at the address, but was later returned to the Authority stating Ms. Kovacs had moved. I was also provided a copy of an email from the Authority advising Ms. Kovacs of the date and time of the hearing with an embedded web-link to download the documents.

[3] I adjourned the hearing for 15 minutes to see if Ms. Kovacs was running late. Ms. Kovacs never showed up for the hearing.

[4] In accordance with sub-sections 30.1(a) and (b) of the *Motor Dealer Act*, I found Ms. Kovacs was served the Hearing Notice and the two reports and deemed to have received them. I elected to continue with the hearing under sub-section 7(3) of the *Salesperson Licensing Regulation*.

[5] The evidence presented to me was uncontested.

BASIC FACTS

[6] Ms. Kovacs was first granted a salesperson licence on February 24, 2017. She was employed at Milani as a junior business manager. In this industry, the business manager finalizes a sale of a motor vehicle by going over the purchase agreement with a consumer; locates financing for those consumers who need financing which entails taking a credit application from the consumer and submitting it to various lenders; offers consumers additional products such as warranties for purchase; and takes payment for the sale.

[7] The Compliance Investigation Report of Chris Coleman states that on June 29, 2017, he was advised by Milani that they had evidence showing Ms. Kovacs had taken a significant sum of money from Milani over the past few months. The money came from cash payments made to Milani by consumers for the purchase of motor vehicles. In civil law, this is called conversion. That is Ms. Kovacs converted Milani's money for her own purposes. No evidence was placed before me that any money was taken from consumers.

[8] As part of Mr. Coleman's investigation he interviewed Ms. Kovacs. That interview occurred on August 25, 2017, with Licensing Officer Tina Grant also in attendance. The interview was recorded and was transcribed and a copy of the transcript was an exhibit to Mr. Coleman's Report. Mr. Coleman gave Ms. Kovacs an opportunity to review the evidence presented by Milani including a text message Ms. Kovacs sent to Milani where it appears Ms. Kovacs confessed to taking the money.

[9] At the beginning of the interview, Ms. Kovacs denies taking any money from Milani. Later, Ms. Kovacs admits to taking the money. Ms. Kovacs confirmed the text message she sent to Milani was correct. During the interview, Ms. Kovacs described the personal circumstances she was under, which she says caused her to take the money. Those circumstances need not be repeated here. Ms. Kovacs

stated she has communicated with Milani that she intends to repay them as soon as she can.

[10] During the interview Ms. Kovacs made some allegations about the conduct of staff members at Milani when they confronted her about the missing money. I will not comment on those allegations here as Milani was not present at the hearing and able to respond. Those allegations are also irrelevant to a review of Ms. Kovacs' conduct.

[11] Ms. Kovacs also stated in the interview she was pretty sure she would lose her licence. Ms. Kovacs indicated she could get another job somewhere else. Mr. Coleman commented that he could not say one way or the other whether she would lose her licence. Mr. Coleman noted that was a decision for the Registrar to make. Mr. Coleman and Ms. Grant did advise Ms. Kovacs that there is a process to be followed in order to ensure it is a fair process. They also advised Ms. Kovacs that a hearing before the Registrar could occur where Ms. Kovacs could also explain her view of the events to the Registrar.

[12] Ms. Tina Grant advised me that she made inquiries with other regulatory bodies under which Ms. Kovacs was previously licensed. Ms. Grant stated those bodies indicated no past issues with Ms. Kovacs.

THE LAW

[13] The requirement to review a licensed salesperson's conduct to see if that conduct is contrary to the public interest is found in section 6 of the *Salesperson Licensing Regulation*. The type of conduct that can be reviewed is not confined by type, time or by geographic location. It is an assessment undertaken to ensure a licensee does not pose an unacceptable risk when dealing with the public:

[23] The Registrar states that the requirement to examine a person's past conduct demonstrates an overarching concern with public safety. Past conduct is 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. Salespersons are in a position of trust with the buying public who rely on them to give clear and honest information about buying motor vehicles. The public also expects safety to be a priority if taking a test drive with a salesperson. Lastly, integrity is important because salespersons may be privy to customer's confidential personal information including home address and financial information.

Fryer v. Motor Vehicle Sales Authority of British Columbia, 2015 BCSC 279 (BC Supreme Court); affirming *Re: Peter Fryer* (Registrar, December 13, 2013, Hearing File No. 13-11-005)

[14] The desire of a person to be licensed in the motor dealer industry must be balanced with protecting the public from potential 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)

A Vancouver Auto Ltd. and Shahram Moghaddam (Registrar, Hearing File 17-02-002, April 3, 2017).

DISCUSSION

[15] The uncontested evidence is that Ms. Kovacs took a significant amount of money from her employer during the course of her work as a licensed salesperson in the position of junior business manager. While Ms. Kovacs has an explanation for doing so, that explanation is not justifiable. Ms. Kovacs had made poor decisions that led her to the personal situation she found herself in. There were other options to address that personal situation. Ms. Kovacs' actions demonstrate that she believes dealing with her own personal situation takes precedent over the rights of other people. In this case the rights of her employer. This raises a concern that Ms. Kovacs may also breach the rights of consumers if she was in a similar situation.

[16] Ms. Kovacs' position as a junior business manager with its corresponding duties and responsibilities is a position of trust within a dealership. Ms. Kovacs' conduct was a breach of that trust.

[17] Ms. Kovacs initially denied taking the money when questioned by Compliance Officer, Chris Coleman. It was only after she was confronted with her text message and other evidence did she admit to taking the money. This shows a willingness to provide false information to her regulator. This conduct brings into question her governability as a licensee.

[18] Ms. Kovacs did not attend the hearing. Based on her interview, Ms. Kovacs may have believed it was a foregone conclusion that she would lose her licence and it was a waste of time to attend the hearing. Even so, it would have been better for her to have respected the process demanded of her salesperson licence by attending the hearing. The fact that Ms. Kovacs chose to ignore the process demanded of her licence is also conduct calling into question her governability.

[19] I take into account that Ms. Kovacs did eventually admit to taking the money. I also take into account that she has stated she is willing to repay Milani the money she took. I have also considered the personal situation Ms. Kovacs described in her interview leading to her taking the money. I take into account that past regulatory bodies with which Ms. Kovacs was licensed indicated no concerns about her conduct when licensed with them. I consider the recency of the transgression and that there is no history of good behavior or indication that rehabilitative steps have been taken by Ms. Kovacs. I also consider that Ms. Kovacs was only licensed for a few months before these transgressions occurred. It appears the importance of having a salesperson licence and its corresponding duties and responsibilities was not top of mind to her even though she only recently obtained that licence.

[20] I have also considered the following cases:

- *Re: Anwar Badshah* (Registrar, File 09-71010, September 24, 2010)
- *Re: Neil Sudra* (Registrar, Hearing File 14-12-001, June 26, 2015)
- *Fellner v. Pinnacle Car Sales & Leasing Ltd. dba Pinnacle Motors* (Registrar, Hearing File 15-11-235, November 7, 2016)
- *Re: Wen Li Xu dba Golden Year Auto Broker & Bo Pan* (Registrar, Hearing File 14-11-004, April 28, 2015)

[21] Overall, I find that the public would be concerned if Ms. Kovacs was allowed to continue to be licensed as a salesperson. Ms. Kovacs has demonstrated a willingness to breach the rights of other people for her own benefit and to take advantage of her being in a position of trust. I also find Ms. Kovacs has a willingness to withhold the truth from her regulator which is contrary to the public interest. There is no evidence of rehabilitation or of good behavior by Ms. Kovacs since the transgression to weigh against her admitted conduct.

[22] I find it is necessary to protect the public interest by cancelling Ms. Kovacs' salesperson licence #206825 effective the date of this decision.

FUTURE APPLICATIONS

[23] The *Motor Dealer Act* and the *Salesperson Licensing Regulation* would allow Ms. Kovacs to re-apply for a licence at any time. In order to protect the Registrar's process, to save administrative time and costs, and provide certainty regarding the cancelation of Ms. Kovacs salesperson licence, I find it necessary to set a length of time in which the Registrar would not accept such an application from Ms. Kovacs: *Pugliese v. Clark*, 2008 BCCA 130 (BC Court of Appeal), and *B.C. College of Optics*

Inc. v. The College of Opticians of British Columbia, 2016 BCCA 85 (BC Court of Appeal).

[24] In setting that time period I take into consideration those factors noted in paragraphs 19 and the decisions noted in paragraph 20. I also consider that Ms. Kovacs needs to repay the sum of money she had taken, as noted in the evidence, before she could re-apply to be licensed as a salesperson. Further, Ms. Kovacs would need to demonstrate with evidence that she understands the gravity of her actions, is remorseful, has taken steps to rehabilitate, and has arranged her life in order to avoid the type of personal circumstances that she says led her to taking the money.

[25] Based on the forgoing, the Registrar would not accept an application from Ms. Kovacs for a minimum of four years from the date of this decision, so long as Ms. Kovacs has repaid the money she took. The fact that the Registrar would accept an application from Ms. Kovacs in the future does not mean she will be granted a licence. Whether a licence would be granted in the future will depend on the facts that exist at the time such a future application is made.

REVIEW OF THIS DECISION

[26] 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. A person has 60 days from the date this decision is issued to file such a petition: section 7.1(t) of the Motor Dealer Act.

Date: October 25, 2017

“Original is signed”

Ian Christman, J.D.
Registrar of Motor Dealers