



Neutral Citation: 2018-BCRMD-002

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

RE:

**IVAN DIAZ LARA
(Salesperson Licence #121895)**

Salesperson

**DECISION OF THE
REGISTRAR OF MOTOR DEALERS**

Date and Place of Hearing: March 1, 2018 at Surrey, British Columbia

Date of Decision: March 7, 2018

Appearances for

The Authority
Ivan Diaz Lara

Hong Wong, Manager of Licensing
No One

Introduction

[1] This hearing was called to review the salesperson licence of Ivan Diaz Lara, # 121895. The reason for the review is an allegation that Mr. Lara took \$3,000 from a consumer as part of a down payment on a motor vehicle purchase and kept the money instead of giving it to the dealership. Further, Mr. Lara was alleged to have charged the consumer an additional \$500 for the cost of delivering the motor vehicle that the dealership had not authorized. The hearing was to determine if the alleged conduct had occurred and – if so – what should be the appropriate regulatory response.

Non-Attendance of Ivan Diaz Lara

[2] Mr. Lara did not attend the hearing. I heard evidence that Mr. Lara was sent the Hearing Notice, Compliance Investigation Report, and the Licensing Hearing Report by registered mail and by email. The registered mail was returned to the Authority. Kim Murphy, Licensing Officer, gave evidence of how she sent the noted email with attachments to Mr. Lara. Ms. Murphy provided an email where Mr. Lara indicates he would not be attending the hearing.

[3] I found that Mr. Lara had been properly served the Hearing Notice, Compliance Investigation Report, and the Licensing Hearing Report in this matter: sections 30(b)(ii) and (iii), and 30.1(a) and (b) of the *Motor Dealer Act*. In accordance with section 7(e) of the *Salesperson Licensing Regulation*, B.C. Reg. 241/2004, I elected to continue with the hearing.

Interim Suspension

[4] After the hearing, there was sufficient evidence to establish a *prima facie* case that Mr. Lara had taken the \$3,000 and had charged the consumer an additional \$500 for delivery of the vehicle. Mr. Lara has since repaid the consumer this amount. I was also concerned that Mr. Lara had not attended the hearing, even after having acknowledged receipt of the Hearing Notice. That Mr. Lara would disregard the requirements of his licence in this way speaks to his governability. I was advised that Mr. Lara's current salesperson licence expires March 31, 2018. Given this evidence and Mr. Lara's conduct, I found it necessary to suspend Mr. Lara's salesperson's licence immediately, as an interim measure to protect the public, pending this written decision.

Discussion

(a) Basic Facts

[5] Ivan Diaz Lara was a salesman and finance manager at a Metro Vancouver dealership. Mr. Lara sold a 2011 BMW 3 series to consumer L.C. There was a \$5,000 deposit provided paid by way of two \$1,000 e-transfers (\$2,000) and \$3,000 cash provided to Mr. Lara at the time of delivery. The dealership was not given the \$3,000 and confronted Mr. Lara about this.

[6] After being confronted by his employer, Mr. Lara contacted the consumer in the transaction to see if they could find a way to address this issue. The consumer recorded the call and sent a copy to the dealership. In the recording, Mr. Lara admits to keeping the \$3,000 because the dealership had not paid Mr. Lara commissions on prior sales. The dealership and Mr. Lara came to an agreement for Mr. Lara to repay the money over time. As of the date of the January 26, 2018, Compliance Investigation Report, the dealer has not been repaid.

[7] The consumer was interviewed by Compliance Officer Carrie Vandokkumburg. In the interview, the consumer stated Mr. Lara offered to assist the consumer with a vehicle warranty in relation to the \$3,000 non-payment to the dealer. Why Mr. Lara would need to do this for the consumer was not clear. The

consumer confirmed that Mr. Lara told the consumer he kept the money because the dealership had not paid Mr. Lara commissions on prior sales.

[8] Mr. Lara was interviewed by Licensing Officer Kim Murphy and Compliance Officer Carrie Vandokkumburg. In the interview Mr. Lara stated that he was repaying the money to the dealer because the dealer threatened to have his licence taken away. Mr. Lara did not admit to having taken the \$3,000 during that interview.

(b) Legal Considerations

[9] This licence review is pursuant to section 6 of the *Salesperson Licensing Regulation*, where I am charged to review the conduct of Mr. Lara and consider whether that conduct poses a risk to the public interest. If that is the case, I then must consider a regulatory response to address that risk. I may add conditions to Mr. Lara's licence, suspend that licence, or – if necessary – cancel that licence. In considering conduct, the overarching considerations were described by the Registrar in *Re: Peter Fryer* and affirmed by Madama Justice Sharma of the BC Supreme Court:

[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
(Supreme Court)

[10] To be governable means that a licensee will respond to and abide by the lawful orders of its regulator. This includes attending a hearing to review the licensee's licence when ordered to do so.

(c) Analysis & Disposition

[11] The evidence supports that Mr. Lara took \$3,000 from a consumer and did not give it to his employer, during a consumer transaction. Mr. Lara says the reason for this was that he was owed money by the dealership. Once confronted with the missing \$3,000, the evidence shows Mr. Lara contacted the consumer and offered him assistance with a vehicle warranty.

[12] If Mr. Lara is having an issue with compensation from his employer, that is an issue to be addressed between them. It is not an opportunity for a salesperson to take money, during a consumer transaction and involve the consumer after the fact. There are venues established under B.C. law to address employment issues, such as being properly paid. Mr. Lara instead chose a self-help approach not authorized by law.

[13] Mr. Lara's conduct strikes at the core of a salesperson's trustworthiness and severely impacts on the confidence consumers would have in salespersons and in the industry. Mr. Lara's failure to attend the hearing as ordered, compounds the issue. Mr. Lara's conduct says that he is (a) not trustworthy, (b) unwilling to participate in the review of his conduct, (c) unwilling to follow legally established processes to address disputes, including employment disputes, and (d) is unwilling to admit to and address his conduct. Consumers in British Columbia would not feel safe and comfortable transacting a motor vehicle sale with a salesperson acting in this way.

[14] Given Mr. Lara is not willing to respond to a hearing notice and be accountable for his past conduct, I find that adding conditions to his licence would not sufficiently deter Mr. Lara from engaging in similar conduct in the future. For the same reasons, I find that suspending Mr. Lara's licence for a time would not deter him from similar future conduct. I find that to protect the public, who would otherwise interact with Mr. Lara, his licence as a salesperson should be cancelled and that is so ordered.

(d) Reapplying for a Salesperson Licence

[15] Under the *Salesperson Licensing Regulation*, Mr. Lara could reapply as a salesperson the day after his licence is cancelled. To provide clarity and protect the Registrar's process, I find I should set a time in which I would not accept a salesperson application or a renewal application from Mr. Lara.

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

[16] The wait period is an opportunity for Mr. Lara to address his conduct noted here, to atone for that conduct, to show he will abide by the law and the lawful orders of his regulator, and to build a history of good conduct to show he again can be trusted as a licensed salesperson in this industry. Evidence of rehabilitative steps taken by Mr. Lara must also be shown.

[17] In *Re: A Vancouver Auto Ltd. and Shahram Moghaddam* (April 3, 2017, File 17-02-002, Registrar) a two year wait period was ordered. In that case, the salesperson, who was also the owner, had made prior misrepresentations about the damage on the motor vehicle. There was no issue of ungovernability or having taken money from the employer or involving the consumer after the fact.

[18] In *Fellner v. Pinnacle Car Sales & Leasing Ltd. dba Pinnacle Motors et al.* (November 7, 2016, File 16-05-005, Registrar) the dealer was barred from re-applying for six years. The issues in that case were that the dealer was ungovernable and had contravened previous undertakings. The dealer was also found to have sold a vehicle that was not suitable for transportation (unsafe).

[19] In *Re: Elisabeth Kristina Kovacs* (October 25, 2017, File 17-09-001, Registrar), the salesperson was barred from applying for four years. The salesperson was found to have taken a sum of money from the dealer she was employed with, initially denied doing so, then admitted to it, and subsequently failed to attend the hearing before the Registrar.

[20] I find Mr. Lara's conduct closely resembles that found in the *Kovacs* decision. I find that setting a four-year wait period before accepting an application for a salesperson licence or renewal of licence from Ivan Diaz Lara is appropriate and is so ordered. Whether a salesperson licence will be granted in the future will depend on the facts that exist at the time of any future application.

Hearing Costs

[21] I have found that Mr. Lara has breached section 6 of the *Salesperson Licensing Regulation* in that his conduct is such that it is not in the public interest for him to continue to be licensed. In accordance with section 26.02(4)(d) of the *Motor Dealer Act*, a Compliance Order is made requiring Ivan Diaz Lara to pay the Authority's investigation and hearing costs in an amount yet to be assessed.

Review of this Decision

[22] The Compliance Order to pay costs and the decision to revoke Mr. Lara's salesperson licence may be reviewed by requesting a reconsideration of that decision under section 26.11 of the *Motor Dealer Act*. The request must be in writing and received within 30 days of receiving these reasons or a copy of the Compliance Order. The request must describe the grounds for seeking the reconsideration and the new or newly discovered evidence in support of the reconsideration request: see sections 26.11(2) and 26.12 of the *Motor Dealer Act*.

[23] The entirety of this decision may be reviewed by petitioning the B.C. Supreme Court for a judicial review pursuant to the *Judicial Review Procedure Act*. Such a petition must be filed with that Court within 60 days of this decision being issued: section 7.1(t) of the *Motor Dealer Act*.

Dated: March 7, 2018

Original Signed
Ian Christman, Registrar