



Neutral Citation: 2018-BCRMD-021

**IN THE MATTER OF THE *MOTOR DEALER ACT*, R.S.B.C. 1996, C. 316 and
THE SALESPERSON LICENSING REGULATION, B.C. Reg. 202/2017**

ASIF ASLAM

(Proposed salesperson licence # 208154)

Salesperson Applicant

Registrar's Decision

Dates and place of Hearing: May 14 and July 18, 2018 at Surrey, British Columbia

Appearances for

The Vehicle Sales Authority of
B.C.

Hong Wong, Manager of Licensing

Asif Aslam

By teleconference on May 14, 2018 and no one
appearing on July 18, 2018

I. Introduction

[1] This hearing was called to review Asif Aslam's application for a salesperson licence. The staff of the Authority raise concerns with Mr. Aslam's criminal record and recent history, while on parole. Mr. Aslam is on parole until February of 2019. Mr. Aslam pled guilty in the Yukon, Canada to trafficking in a controlled substance.

[2] A copy of an agreed statement of facts presented at the Yukon Territorial Court was entered into evidence. That agreed statement of facts includes other conduct of concern, such as the seizure of a sizeable number of restricted weapons, ammunition, some cash, and narcotics.

A. The May 14 – Hearing

[3] When the May 14 hearing started, Mr. Aslam was not in attendance (by teleconference). After a short adjournment, Mr. Aslam appeared by phone. The Authority started presenting its case. Licensing Officer Juwll Ireland and Compliance

Officer Bill Manhas gave their evidence. Mr. Aslam had an opportunity to ask questions of both.

[4] The Authority then called its next witness, Whitehorse RCMP Constable Jason MacDonald. Mr. Aslam objected. The Authority also advised me that it intended to call Mr. Aslam's then current parole officer, Ricardo Thomas. Mr. Aslam became upset, stating that, had he known those two would be called as witnesses, he would have asked his lawyer to attend. The telephone connection then went dead.

[5] Given that Mr. Aslam indicated that he wanted to speak to a lawyer and that there was no prejudice to anyone in delaying the hearing, I adjourned it to a date to be set between the Authority and Mr. Aslam so as to allow Mr. Aslam time to retain a lawyer.

B. The July 18 Hearing

[6] When the hearing resumed on July 18, 2018, Mr. Aslam was not in attendance. I was provided evidence that Mr. Aslam had been given notice of the hearing as allowed under section 30 of the *Motor Dealer Act*. I was also advised that the Authority could not reach Mr. Aslam to reschedule the hearing date and so called the hearing after giving Mr. Aslam the above noted notice. I recessed the hearing for 10 minutes to allow time for Mr. Aslam to phone into the hearing.

[7] When the hearing reconvened, Mr. Aslam was still not present. I heard submissions from Mr. Wong as to why the hearing should continue instead of treating the application as abandoned. Mr. Wong noted that there were witnesses calling in from the Yukon and personally present at the hearing waiting to testify. Mr. Wong noted that, unless the Registrar made an order prohibiting Mr. Aslam from applying for a licence, Mr. Aslam could apply at any time and that the Authority would have to reconvene the hearing and recall the witnesses. Mr. Wong argued that, administratively, it would be prudent to proceed with the hearing and have a definitive decision from the Registrar. I agreed that the circumstances favoured proceeding with the hearing to provide certainty as to Mr. Aslam's suitability to be licensed. I found that Mr. Aslam was given an opportunity to participate in this hearing process and elected not to do so. On balance, the public interest required proceeding with the hearing.

II. The Law

[8] The legal principles applied in reviewing an applicant with a criminal record were discussed in *Re: Peter Fryer* (December 13, 2013, Hearing File No. 13-11-005, Registrar) and affirmed by *Fryer v. Motor Vehicle Sales Authority of British*

Columbia, 2015 BCSC 279 (BC Supreme Court). After identifying the requirements of the *Human Rights Code*, Madame Justice Sharma in *Re: Peter Fryer* stated the following:

[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.

[9] As between the interest of an individual to be licensed and protecting the public interest, the public interest is paramount: *Pacific International et al v. B.C. Securities Commission* 2002 BCCA 421 (B.C. Court of Appeal) at paragraph 12.

[10] While there is no automatic right to be licensed under the legislation, the onus is on the Authority to show why Mr. Aslam should not be granted a license: *F.H. v. McDougall* [2008] 3 SCR 41, 2008 SCC 53 (Supreme Court of Canada).

III. Discussion

A. The facts based on the evidence presented

[11] The following facts were established on the evidence:

- (a) Mr. Aslam pled guilty to trafficking in a controlled substance. The trafficking was accomplished by creating secret compartments in motor vehicles to hide the controlled substance.
- (b) Mr. Aslam is on parole until February 2019.
- (c) One parole officer, who was assigned to Mr. Aslam, found Mr. Aslam to be less than forthright in their interactions. The parole officer said that Mr. Aslam is "economical with the truth."
- (d) Mr. Aslam told Compliance Officer Bill Manhas that he was enticed by another person to participate in the illegal acts. In fact, Mr. Aslam was a leader in the gang that orchestrated the trafficking of controlled substances. Mr. Aslam was not a dupe or a "foot soldier."

- (e) Mr. Aslam was required to report his sources of income as a condition of his parole. Mr. Aslam reported to the parole officer the sale of two motor vehicles. The transfer/tax forms and records that Mr. Aslam submitted were incomplete and did not identify the buyers of the motor vehicles. The parole officer investigated and found Mr. Aslam's answers to be unconvincing. Apparently, Mr. Aslam purchased the vehicles for a few hundred dollars each (around \$500) and sold them for several thousand dollars each (around \$7,000). Disciplinary measures were taken by the parole officer in response to Mr. Aslam's not having been forthright with respect to these sales.
- (f) Mr. Aslam's parole officer noted that Mr. Aslam's dealing in motor vehicles was a concern, because that had been a part of Mr. Aslam's index offence – creating secret compartments for trafficking in controlled substances.
- (g) The parole officer believed that Mr. Aslam may be targeted for gang violence, although there was no "duty to warn" imposed on Mr. Aslam. A duty to warn means that there is serious concern that the subject person will be a target of violence; and those interacting with the person are to be warned of that danger by the subject person.

B. Suitability to be licensed as a salesperson under the Motor Dealer Act

[12] Mr. Aslam's criminal conviction and related conduct is relevant to his obtaining a salesperson licence for the following reasons:

- (a) Mr. Aslam's index offence involved using motor vehicles for an illegal purpose.
- (b) Mr. Aslam's criminal conviction shows a disregard for obeying the law.
- (c) Mr. Aslam's having been recently disciplined for not fully meeting the conditions of his parole is a concern for his governability: salespersons must abide by the conditions of their licence.
- (d) Mr. Aslam provided false information to Compliance Officer Bill Manhas, during his interview: Mr. Aslam was a leader of the gang and not a dupe.
- (e) Mr. Aslam's being "economical with the truth" is inconsistent with the duties of a salesperson under the legislative scheme. "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:" *Re: Fryer*.

[13] I also note that Mr. Aslam may be the target of gang violence. In the unreported Registrar's case of *Re: C.J. (2016, Registrar)*¹, the salesperson applicant

¹ Publication ban and closed hearing as C.J. was the subject of a duty to warn and witnesses at the Registrar's hearing required a closed hearing and publication ban for their and predominantly C.J.'s protection: section 7.1(n)

was a gang member and was involved in trafficking of controlled substances. C.J. was convicted. C.J. had a duty to warn as C.J.'s sibling, who was also involved with the gang and was also arrested, had been killed. In that decision I noted how public a dealership is and that everyone is invited on to a dealer's lot to look at vehicles and conduct business. In such a circumstance, if a person were the target of gang violence, anyone at a dealer's lot would be in danger. Protecting the safety of consumers and dealer staff is a concern for the Registrar. In the case of *Re: C.J.*, the applicant was denied a salesperson licence. A few months after C.J. was denied a salesperson licence, C.J. was killed in a public setting, during the day. The danger is very real.

[14] I also note that there is no evidence that Mr. Aslam has been or will be rehabilitated. There is no evidence that Mr. Aslam is remorseful. Mr. Aslam's conduct, while on parole indicates otherwise, on both points.

[15] I find that Mr. Aslam's past conduct and criminal conviction make him unsuitable to be licensed as a salesperson.

C. Ban on re-applying for a licence from the Authority

[16] Recently, the B.C. Supreme Court confirmed the Registrar's authority to issue a forward-looking ban on a person, who is applying for licensing under the *Motor Dealer Act: Best Import Auto Ltd. v Motor Dealer Council of British Columbia*, 2018 BCSC 834 (CanLII) (BC Supreme Court) citing *Pugliese v. Clark*, 2008 BCCA 130 (CanLII) (BC Court of Appeal).

[17] My main concern is that Mr. Aslam's prior conduct is such that there must be some verifiable history that Mr. Aslam is remorseful, has been rehabilitated, is not a physical danger to customers and co-workers, can be trusted to act with honesty and integrity, will abide by the law, and be governable. From the evidence I have heard, Mr. Aslam is not displaying any of these. Therefore, I agree with the Authority staff that imposing the requirement that a clear indication of Mr. Aslam's future suitability to be licensed is appropriate to protect the Registrar's licensing process.

[18] In determining an appropriate length of time, I have considered the following Registrar decisions in banning salespersons or motor dealers from applying for licensing under the legislative scheme:

of the *Motor Dealer Act* incorporating section 41 of the *Administrative Tribunals Act* [sub-section 41(2) closed hearings].

- *Best Import*
- *Re: Peter Fryer* (File 13-11-005, December 13, 2013, Registrar) affirmed by *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279 (CanLII)
- *Re: Bassett* (File 09-108822, December 2, 2009, Registrar)
- *Re: Badshah* (File 09-111523, February 16, 2010, Registrar) and *Re: Badshah* (File 14-05-001, May 21, 2014, Registrar)
- *Re: Stephen Ironside* (File 11-026, May 27, 2011, Registrar) and *Re: Stephen Ironside* (File 16-01-004, February 23, 2016, Registrar)

[19] Mr. Aslam's prior conduct is serious. The main concerns are governability, trustworthiness, and public safety.

[20] Mr. Aslam does not have a past criminal history like that of Mr. Fryer, which warranted a lifetime-ban on Mr. Fryer.

[21] Mr. Aslam's conduct is more serious than that of Mr. Badshah, who was found guilty of securities fraud and falsifying his application for licensing to the Registrar. There was no concern of public safety in the case of Mr. Badshah. Mr. Badshah received a three-year ban.

[22] The same is true, when comparing Mr. Aslam with the conduct of Mr. Ironside, who received a two-year ban.

[23] In the case of Mr. Bassett, a five-year ban was imposed, due to his recent convictions of nine counts of fraud, his having deliberately misled the Authority, and his having been on parole without having fulfilled all conditions, such as his restitution order. Mr. Bassett had not shown any rehabilitation or remorse for his conduct.

[24] The ten-year ban on Best Import was due in large part to the dealer's endangerment of consumers, by knowingly selling them motor vehicles that were not compliant with the *Motor Vehicle Act*, as well as being ungovernable by disobeying the lawful orders of its regulator and officials from the Ministry of Transport.

[25] On balance, I find the circumstances of Mr. Aslam to be close to that of Mr. Bassett. Both were recently convicted and both on parole. Both had failed to show remorse or take any steps to rehabilitate, at the time that they applied to be licensed. Both provided false statements to the Authority in relation to their licence applications – specifically, attempting to diminish their prior criminal conduct. Mr. Aslam has the added concern of posing a risk to the physical safety of the public. In

considering these past precedents and the public interest, I believe that Mr. Aslam should be viewed as unacceptable until there is a significant and verifiable history that he is remorseful, has been rehabilitated, can be trusted, and is no longer a physical danger to the public. I also keep in mind the spirit of the *Human Rights Code*, which is that a person with a criminal record should have another chance, where appropriate. Accordingly, I set a seven (7) year prohibition on Mr. Aslam from re-applying for licensing or registration under the *Motor Dealer Act* legislative regime. Whether Mr. Aslam will be viewed as suitable to be licensed or registered will depend on the facts that exist at the time Mr. Aslam applies, should he do so.

IV. Summary

[26] The application of Asif Aslam to be licensed as a salesperson is denied.

[27] Asif Aslam is prohibited from applying for licensing or registration under the *Motor Dealer Act* for a period of seven (7) years.

[28] Whether Asif Aslam would be granted a licence or registration in the future, if he should apply, is dependent on the facts that exist at that future date.

V. Review of Decision

[29] The decision to refuse Asif Aslam a salesperson licence and the corresponding seven (7) year ban may be reviewed by requesting a reconsideration of that determination under section 26.11 of the *Motor Dealer Act*. Such a request must be made in writing, within 30 days of this decision's having been issued. The written request must identify the error that was made or the grounds for the reconsideration. The written request must also be accompanied with the new evidence that is required by section 26.12 of the *Motor Dealer Act*. The written request for reconsideration is to be directed to the attention of the Registrar of Motor Dealers at the Authority.

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

Dated: August 14, 2018

Original Signed
Ian Christman, J.D., Registrar