



Neutral Citation: 2019-BCRMD-020

**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**

RE:

HASSAN MAHFOUZ

(Proposed salesperson licence # 210569)

Salesperson Applicant

Registrar's Decision

Date and Place of Decision: October 11, 2019 at Langley, British Columbia

By way of written submissions

I. Introduction

[1] Hassan Mahfouz applies for a salesperson licence. In its review of his application, the Authority uncovered information of concern and proposes that he be refused a licence. On July 10, 2019, the Authority served Mr. Mahfouz a Notice of Hearing and the Licensing Hearing Report the Authority intended to rely on by way of email. Email is the manner in which the Authority and Mr. Mahfouz had been corresponding regarding his salesperson application.

[2] On August 20, 2019, this matter came before me and in reviewing the correspondence and records of service, I noted Mr. Mahfouz had, by email, requested any formal documents related to the hearing be served at a physical address for service. Mr. Mahfouz was very much aware that a hearing to review his application was being called. I declined to make a decision and directed the Authority to re-serve Mr. Mahfouz at the address for service he identified.

[3] The Authority executed that service by sending the Notice of Hearing and evidence it was relying on to the physical address provided by Mr. Mahfouz. It did so by registered mail on August 26, 2019. In accordance with section 30.1(a) of the *Motor Dealer Act*, R.S.B.C 1996, c. 316 ("MDA"), Mr. Mahfouz is deemed to have

been served 5 days after the Notice was mailed – September 1, 2019. The registered letter has since been returned to the Authority, unclaimed.

[4] I am satisfied that the Authority has executed proper service. Mr. Mahfouz was aware the Authority intended to call a hearing and ask the Registrar to review his application with a recommendation that it be refused. It was after receiving that email that Mr. Mahfouz asked for formal service at a physical address. I find that Mr. Mahfouz is now avoiding service and is electing to not participate in this review of his application. Under these circumstances, I may continue in Mr. Mahfouz's absence.

II. Concerns raised by the Authority

[5] I identified the Authority's concerns in my decision of August 20, 2019. In summary:

- (a) Mr. Mahfouz has a criminal record of concern and at the time of applying for a salesperson licence, he had several outstanding criminal charges before the courts,
- (b) The motor vehicle sales regulator in Alberta has taken several disciplinary actions against Mr. Mahfouz's licence in that province, and
- (c) Mr. Mahfouz was not truthful with the Authority in his application and in answering questions.

III. Legal Principles

[6] In *Re: Peter Fryer* (December 13, 2013, Registrar, File 13-11-005) I set out, in some detail, the various legal principles applied when reviewing an applicant with a criminal record and past conduct of concern. To summarize:

- (a) The paramount concern is the protection of the public from potential risks of harm.
- (b) The desire of someone to be licensed in an industry is an important consideration but yields to the societal need of public protection.
- (c) The person's criminal record must be assessed in context looking at the person's history, any extenuating reasons for the misconduct, any steps to rehabilitate, any signs of remorse, family and community support, support of a prospective employer and a history of good conduct since the criminal convictions.
- (d) Assessing past conduct for suitability to be licensed is not bound by type, time or geography. What matters is if the conduct is a concern to the public interest.
- (e) Important considerations are whether the applicant will act with honesty and integrity and will be governable.

[7] In upholding the Registrar's decision in *Re: Peter Fryer* the B.C. Supreme Court noted:

[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

IV. Discussion on the conduct of concern

[8] The following facts are not challenged.

(a) Criminal record

[9] Hassan Mahfouz has a criminal history going back to 1999. Since that time, he has had 13 convictions of varying nature including, driving while disqualified, obstructing a peace officer, fail to comply with a recognizance (an order), and assault with a weapon. Hassan Mahfouz's lawyer confirmed in a letter that Mr. Mahfouz has 16 outstanding charges including failing to attend court, fail to comply with a recognizance, break and enter, theft under \$5,000 and arson causing damage, with 2019 court dates.

[10] From the evidence before me, it does not appear that Mr. Mahfouz is remorseful of this past conduct. There is no indication he has taken or will take steps to rehabilitate himself. There is an assault conviction which raises concern for public safety when interacting with Mr. Mahfouz at a dealership. The failures to abide by lawful orders, driving while he was disqualified, and obstructing a peace officer shows a disregard for laws and lawful orders indicating a future difficulty in governing his conduct as a licensee.

(b) Discipline history in Alberta

[11] Hassan Mahfouz was a licensed vehicle salesperson, and at one time, an owner and operator of a licensed motor dealership in Alberta. The Authority was able to obtain records of Mr. Mahfouz's discipline proceedings from the Alberta regulator, the Alberta Motor Vehicle Industry Council ("AMVIC"). In summary, The

Director of Fair Trading of Alberta found, and which was upheld on appeal, that Mr. Mahfouz (paraphrasing)

- (a) Had his dealership licence cancelled after a complaint had been received,
- (b) Continually allowed his salesperson licence to lapse but continued to act as a salesperson while unlicensed,
- (c) Worked at his brother's dealership as a salesperson while unlicensed and his conduct and that of the dealership led AMVIC to cancel the licence of the dealer and having to pay restitution to a consumer,
- (d) Failed to attend hearings when ordered,
- (e) Once reinstated as a salesperson, as one last chance to prove himself suitable, he breached a condition of being licensed, and ultimately had his licence revoked, and
- (f) Sold motor vehicles as a motor dealer without being licensed (called curbing in the industry).

[12] The above noted conduct shows Mr. Mahfouz is not inclined to obey laws and the lawful orders of his regulator. This picks up on the same theme as his criminal convictions, giving grave concern about his future governability. Further, and importantly, consumer harm in the motor vehicle sales industry has been directly attributed to Mr. Mahfouz's conduct. The evidence indicates Mr. Mahfouz blames all his misconduct in the Alberta industry on the financial failure of his dealership or that he was unaware of certain conditions on his licence. In short, Mr. Mahfouz does not take responsibility for his conduct or takes the duties associated with his licence seriously. This is consistent with his lacking remorse for his criminal offences and, again, there being no indication Mr. Mahfouz has taken or will take steps to rehabilitate himself.

(c) Not truthful with the Authority's questions

[13] Compliance Officer Adam Reynolds and Licensing Officer Amanda Bhopal interviewed Mr. Mahfouz. The Licensing Hearing Report (page 7) notes the following discrepancies in the information provided by Mr. Mahfouz (paraphrased):

- (a) Mr. Mahfouz advised the Authority that he did not attend the AMVIC review hearing of July 26, 2018 and moved to B.C. instead. The record obtained from AMVIC shows he did attend the hearing, which resulted in his Alberta salesperson licence being revoked.
- (b) Mr. Mahfouz stated he opened a dealership with his brother in Alberta where he engaged in sales including with consumers. He failed to note that at that time, he was not licensed as a salesperson in Alberta. That was discovered by the Authority from AMVIC records.

(c) Mr. Mahfouz appears to have advised AMVIC and Compliance Officer Reynolds that his current outstanding charges stem from one incident, when there are multiple offence dates noted in the official charges.

[14] Mr. Mahfouz has shown a propensity to hide the truth from his past regulator, AMVIC, and his proposed new regulator in B.C. In order to carry out their regulatory function, regulators need access to information that is truthful and timely in order to meet their duty of protecting the public interest within the industry they regulate. Mr. Mahfouz withholding information or providing misinformation reflects negatively on Mr. Mahfouz's future governability.

V. Decision

[15] Based on the forgoing past conduct with no evidence to suggest Mr. Mahfouz has rehabilitated himself or is remorseful about that conduct, with no evidence that suggests Mr. Mahfouz can be trusted to interact with consumers, that he continues to pose a risk to consumers if he were to be licensed, that he has willingly breached rules that govern this specific industry, and a very clear concern that he would be ungovernable, I am refusing to licence Mr. Mahfouz as a salesperson.

[16] I would note that in making this decision I did not consider, nor would need to consider, the outstanding criminal charges. Mr. Mahfouz's criminal convictions with their continuing nature and recency of the last conviction is sufficient to find he would not be suitable to be licensed under the *Motor Dealer Act*. The AMVIC disciplinary proceedings including their recency on their own would also be sufficient to find Mr. Mahfouz as unsuitable for a salesperson licence. Together, they indicate a pattern of conduct of grave concern to the public that shows no sign of abatement or reform.

[17] Overall, I find Mr. Mahfouz's conduct very similar to that of Peter Fryer in *Re: Peter Fryer*. While I recognize that Mr. Fryer's then criminal history of some 38 years is more expansive than Mr. Mahfouz's current 18 years (1999 to 2017 - first and last known convictions), Mr. Mahfouz also has a more extensive and concerning discipline history with AMVIC than did Peter Fryer, who was also formerly licensed with AMVIC when he applied to be licensed in B.C.

[18] Given:

- (a) the length and nature of Mr. Mahfouz's criminal history,
- (b) the length and nature of Mr. Mahfouz's discipline history with AMVIC,
- (c) no indication of remorse,
- (d) no indication of past or any intended future rehabilitation,

- (e) AMVIC's attempt at giving Mr. Mahfouz one last chance to prove himself worthy of being licensed in Alberta having failed,
- (f) the need to protect the public now and in the future,
- (g) Mr. Mahfouz has participated in operating a dealership while unlicensed and without the knowledge and consent of the Alberta regulator, and
- (h) the need to protect the Registrar's process and administrative efficiency,

I find it is in the public interest that Mr. Mahfouz be refused any type of a licence or registration under the *Motor Dealer Act* of British Columbia indefinitely.

- *Re: Peter Fryer* (December 13, 2013, Registrar, File 13-11-005) affirmed by *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279 (BC Supreme Court)
- *Best Import Auto Ltd. v Motor Dealer Council of British Columbia*, 2018 BCSC 834 (BC Supreme Court) at paragraph 60.

[19] Any registrant (motor dealer) or licensee who allows Mr. Hassan Mahfouz to operate with or be associated with them and or their business that is licensed or registered under the *Motor Dealer Act*, risks their registration and/or licence being reviewed and suspended or revoked.

VI. Review of this Decision

[20] If there is disagreement with this decision, it may be reconsidered in accordance with sections 26.11 and 26.12 of the *Motor Dealer Act*. The request for a reconsideration is to be in writing and must be made within 30 days of receiving these reasons. The request for reconsideration must be accompanied by the new evidence required by section 26.12(2) of the *Motor Dealer Act*.

[21] 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 within 60 days of the date of this decision: section 7.1(t) of the *Motor Dealer Act* and section 57 of the *Administrative Tribunals Act*.

"original is signed"

Ian Christman, J.D.
Registrar of Motor Dealers