



Neutral Citation No. 2018-BCRMD-033

**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**

AMY BOUCHARD and INGRID MUNRO

Complainants

And

N.W. AUTO DEPOT LTD.
(Dealer Licence #10578)

Respondent Dealer

And

WESTMINSTER MOTORS LTD.
(Dealer Licence #40469)

Respondent Dealer

And

GORDON VALENTE (Salesperson Licence: #101221)

**DECISION OF THE REGISTRAR OF MOTOR DEALERS
Re: RECONSIDERATION**

- [1] By 15-page single spaced letter dated November 22, 2020, Mr. Valente requests reconsideration of my decision dated November 5, 2020 on the basis of what he describes as "new evidence".
- [2] Mr. Valente did not deliver his letter to Mr. Hrabinsky who has acted counsel for the Vehicle Sales Authority throughout this latter. At my direction, the letter was forwarded to Mr. Hrabinsky on December 14, 2020 and the VSA's response was delivered January 6, 2021.
- [3] The VSA in their response outlines the common law principle that subject to exceptions, once an administrative decision maker has rendered a decision, the decision-maker is *functus officio* such that "the decision maker has no jurisdiction to go back and change the decision".

- [4] In my November 5, 2020 decision, I granted leave to Mr. Valente to apply to vary the condition on his salesperson's license that would prohibit him from engaging in consignment sales within 30 days of the decision: November 5, 2020 decision at para. 67 and 84(b). While Mr. Valente's application was delivered within 30 days of the decision, I do not understand it to address the imposition of this condition.
- [5] The VSA notes that there is an exception to the principle of *functus officio* where legislation empowers a decision-maker to change the decision, but only to the extent allowed and under the conditions set by the legislation: *Chandler v. Alberta Association of Architects*, [1989] 2 S.C.R. 848
- [6] As I noted in the November 5, 2020 decision:
- [86] If there is disagreement with this decision, it may be reviewed by requesting reconsideration in accordance with section 180-182 of the BPCPA. The request must be made in writing within 30 days of receiving the decision. The request must be accompanied by the required new evidence as defined in those sections of the BPCPA if the request is to cancel or vary the order.
- [7] Mr. Valente invokes that reconsideration process. The *Business Practices Consumer Protection Act*, SBC 2004, c. 2, which provides in respect of reconsideration on the basis of new evidence at s. 182(2) that I may "vary or cancel a determination" only if I am satisfied that "new evidence has become available or has been discovered that (a) "is substantial and material to the determination" and (b) "did not exist at the time of the review or did exist at the time but was not discovered and could not, through the exercise of reasonable diligence, have been discovered."
- [8] Accordingly, it is a pre-condition to any reconsideration on the basis of new evidence that the applicant establish the existence of new evidence that was not before me at the hearing, could not have been discovered through reasonable diligence and meets the materiality threshold. Only if that pre-condition is met do I have the jurisdiction to exercise a discretion to reconsider the decision. I am otherwise *functus officio*.
- [9] The Registrar of Motor Dealers has described the process in considering such an application as a "two-step process":
- [8] First, the Registrar reviews the request for reconsideration and the evidence submitted to see if they meet the statutory requirements. The submitted evidence presented must, on its face and if believed to be true, be substantial and material to the decision. If the request for reconsideration does not meet the statutory requirements, then the registrar has no authority to continue with the reconsideration. If the presented evidence does not, on its face, establish that it is substantial

and material to the decision, then continuing with the reconsideration would not be administratively beneficial and cost effective.

[9] Second, if the request for reconsideration passes the first step, the Registrar proceeds with the actual reconsideration, after putting those who may be affected by a change in the decision on notice. Those persons may then make their own submissions. Once this occurs, a decision can then be made to cancel, vary or affirm the original decision.

[10] The VSA's position is that the pre-condition to reconsideration is not met because the application "is not accompanied by any evidence" and "is entirely in the nature of a submission", nor does it "identify any evidence that did not exist at the time of the hearing, or evidence that was discovered after the hearing and could not have been discovered through the exercise of reasonable diligence". I agree.

[11] Mr. Valente's application while in places using the term "new evidence" does not identify any evidence that was not before me at the hearing and could be material to my decision. The submissions in the application address primarily matters that were canvassed at length at the evidentiary hearing before me and are the subject of findings in my decision. To the extent matters are raised in the application that may not have been before me previously, I do not consider them material to my decision.

[12] Accordingly, I dismiss the application for reconsideration.

Dated: January 30, 2021

"Original is signed"

Claire E. Hunter, Q.C.
Acting Registrar of Motor Dealers