

IN THE MATTER OF THE *MOTOR DEALER ACT*, RSBC 1998, c. 316 and THE *BUSINESS PRACTICES AND CONSUMER PROTECTION ACT*, SBC 2004, c. 2

BETWEEN:

THE VEHICLE SALES AUTHORITY OF BC (VSA)

COMPLAINANT

AND:

TRAVELAND RV SUPERCENTRE LANGLEY
(Dealer License #9588)

RESPONDENT/MOTOR DEALER

AND:

ADAM MOORE
(Salesperson License #122264)

RESPONDENT/SALESPERSON

AMENDED DECISION OF THE REGISTRAR OF THE MOTOR DEALERS

Date and place of Decision: June 8, 2022 at Langley, British Columbia

By way of written submissions

This is a ruling on whether the hearing in this matter, on the question of whether the Respondents ought to be subject to a penalty, should be conducted orally, or in writing.

On February 9, 2022, the then Acting Registrar of the VSA received a Hearing Notice in this matter. The Notice advises that Traveland RV Supercentre Langley ("Traveland RV") has an opportunity to be heard by providing a written response and providing any evidence it wished to provide for the Registrar's consideration. The Notice also advised:

If this Hearing Notice states the hearing will be conducted in writing, any person who is a party to the hearing may apply to the Registrar to instead have an oral hearing conducted in person or electronically through teleconference or videoconference. If you make such a request, you must state the reasons why you are requesting an oral hearing and provide any evidence to support that request.

The Registrar will consider the following factors in reviewing your request:

- (a) Whether there is a disagreement in the evidence that requires examination and cross-examination of the parties or any witnesses under oath or affirmation;
 - (b) Whether the allegations are such that a licensee may be in jeopardy of having their licence revoked;
 - (c) Whether an oral hearing is preferable to ensure fairness in the process;
 - (d) The balance of convenience and the cost to the parties and the VSA in having an oral hearing;
 - (e) Any factor that will affect the fair, timely and cost-effective resolution; and
 - (f) The circumstances of the particular issues.
- *Registrar's Rules*, Rule 30

On April 13, 2022, Brad Howes of Traveland emailed "VSA Hearings" as follows:

"Please schedule an oral hearing. Notes attached."

The notes cover about 18 pages. Mr. Howes comments that because he is "unfamiliar with the process, I am submitting some arguments ahead of time to make sure they are entered into the record". I agree with Mr. Howes that his notes are arguments. Evidence must be found in sworn affidavits.

On April 21, 2022, Patrick Poyner of the VSA wrote to the Registrar's Office requesting direction from the Acting Registrar, "on next steps".

On April 28, 2022, the Acting Registrar wrote to Traveland RV to the attention of Brad Howes, to Patrick Poyner of the VSA and to Adam Moore, the Respondent/Salesperson, advising that in "the absence of any written reasons and evidence to support the request for an oral hearing, the request for an oral hearing will be denied".

Under the heading "Next Steps", the Acting Registrar wrote:

The Registrar's office has yet to receive from any of the Respondents, a written request *with supporting evidence* [my emphasis] of why an oral hearing should be granted.

I therefore direct the following process:

1. The Respondents will have 7 days after receipt of this letter of direction to submit their written request and evidence outlining the reasons for the request for an oral hearing.
2. The Authority will have 7 days from when the Respondents submit their written request, to provide a response.

The Acting Registrar had been provided with the email of April 13, 2022, of Mr. Howes with its notes and clearly had not treated that document as containing evidence.

On May 2, 2022, Mr. Howes emailed VSA Hearings, Patrick Poyner and Adam Moore concerning the proposed hearing which email reads:

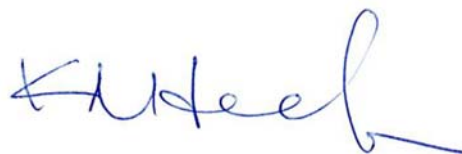
We request an oral hearing on the following grounds relating to “Rule 30.4 of the Registrar of Motor Dealers Rules of Practices and Procedure”:

- a) Traveland intends to subpoena testimony from Ian Christman and Daryl Dunn of the VSA as well as any written correspondence or evidence the VSA has pertaining to the issues of oversize 5th wheels and their use on the road in Canada.
- c) As the VSA and members of the VSA are implicated in this case through their actions or lack thereof, an oral hearing is necessary to ensure fairness in the process.
- e) Again, to ensure fairness and give Traveland an opportunity to review the evidence from the VSA in this matter as well as cross examine employees who were involved. It would be more timely for the VSA to facilitate an oral hearing. The VSA was complicit in this issue and to not provide a defendant the opportunity to examine all evidence (emails, statements, bulletins etc..) would not give credence to a fair and transparent process. Traveland will be exploring further legal options if these concerns are not addressed.
- f) The circumstances of this particular issue involve several government entities including the CBSA, ICBC, Department of Transportation Canada, VSA and RVDA. Only 1 (the CVSE) has deemed this enforceable but have yet to enforce on it anywhere in Canada.

The email contains no “evidence” as required by the *Registrar’s Rules of Practice and Procedure* nor as directed by the Acting Registrar.

For that reason alone, it is apparent the request for an oral hearing must be denied. I add that Mr. Poyner, in his written submissions, drew attention to Rule 30 of the *Registrar’s Rules of Practice and Procedure* and submitted that this matter is not complex. I agree. There may be some disagreement on the evidence but that is usually the case in these matters and the presence of some disagreement cannot justify ordering an oral hearing. If it did, almost all hearings would be conducted orally. I will also add that the VSA does not anticipate seeking licence revocation.

I am not persuaded the hearing should be oral. There will be a hearing, in writing.



Kenneth Affleck, Q.C.
Registrar of Motor Dealers