



Vehicle Sales Authority  
of British Columbia

**Investigation File: 20-04-230**

**Hearing File: 20-08-001**

**Neutral Citation: 2019-BCRMD-030**

**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**

**MOTOR VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA**

**(the "Authority")**

**AND**

**JOSHUA LEA TIBBO**

(Salesperson License No.: 210659)

**(Salesperson)**

**DECISION OF THE REGISTRAR OF MOTOR DEALERS**

**Date and place of decision:** October 16, 2020 at Langley, British Columbia

**By way of written submissions**

## **I. Introduction**

[1] This hearing was convened to review the salesperson licence of Joshua Lea Tibbo. The facts are not in dispute.

[2] On March 11, 2020, the Authority received a consumer complaint from Consumer 1. Consumer 1 stated they purchased a Dodge truck from Cranbrook Kia. Consumer 1 stated they dealt with Mr. Tibbo during that sale. Consumer 1 alleged that they had not received \$3,000 cash back from Cranbrook Kia, which was part of the Agreement. As part of the Authority's complaint intake process, Cranbrook Kia was advised of the complaint and required to provide a response and their dealer record of the transaction.

[3] Cranbrook Kia responded to the complaint on April 14, 2020. The dealership had interviewed Mr. Tibbo and found discrepancies in his responses and confronted him about those discrepancies. The dealership had issued a cheque for \$3,000 payable to Consumer 1 and gave it to Mr. Tibbo to deliver it to Consumer 1. Instead of delivering the cheque, Mr. Tibbo managed to deposit it to his own bank account. Cranbrook Kia immediately took steps to pay Consumer 1 the \$3,000 and had Mr. Tibbo pay the dealership.

[4] Mr. Tibbo provided Cranbrook Kia assurances that this was a one-time occurrence. Not satisfied with that response, Cranbrook Kia audited all sales by Mr. Tibbo where a cash back was involved. They called each consumer to ensure they had received their cash back. One consumer (Consumer 2) said they had only received \$1,500 of the \$3,000 cash back, and that Mr. Tibbo was making payments. Cranbrook Kia obtained the remaining \$1,500 from Mr. Tibbo and directly paid Consumer 2 the balance owing on the same day.

[5] Based on a statement from Consumer 2, Mr. Tibbo told them, and they believed him, that the cash back was by way of payments from the bank and there was an issue with the bank. The consumer believed Mr. Tibbo was trying to help them and had expressed appreciation for Mr. Tibbo transferring money to Consumer 2, from Mr. Tibbo's personal bank account. See text messages from Consumer 2 that are in evidence and the transcript of an interview conducted by the Authority's investigator with Consumer 2.

[6] On its own initiative, Cranbrook Kia undertook a review of its internal policies and procedures to see how it can prevent this from happening again. I am satisfied Cranbrook Kia's new policies and procedures are adequate. Cranbrook Kia also ended its relationship with Mr. Tibbo.

[7] During the investigation, Mr. Tibbo was asked for a statement by the Authority's investigator. There was a long delay, a letter from Mr. Tibbo's lawyer, but Mr. Tibbo did provide a statement admitting to this conduct. Mr. Tibbo accepted his responsibility, places his fate in my hands and will accept the consequences of his actions. Mr. Tibbo wrote letters of apology to both consumers and noted his actions are his alone and should not reflect negatively on Cranbrook Kia. The evidence before me is not clear whether those letters were received by the consumers. Mr. Tibbo says he did send them.

[8] I would comment that Cranbrook Kia was responsive to the complaint, quick to review its employees conduct, quick to review and change its own internal policies and procedures, quickly ameliorated any harm to Consumer 1 and Consumer 2 and dealt with its then employee. Most, if not all, of Cranbrook Kia's actions took place before it sent its response to the Authority. I am satisfied this was not conduct condoned or directed by Cranbrook Kia and that they took quick

and appropriate action. It was correct for the Authority to bring its complaint only against Mr. Tibbo and to not include Cranbrook Kia in this complaint.

## **II. Allegations**

[9] The Authority advances the following allegations (paraphrasing):

(a) Mr. Tibbo's conduct took advantage of Consumer 1's and Consumer 2's inability to protect their own interests and is unconscionable conduct contrary to section 9(1) of the *Business Practices and Consumer Protection Act*, S.B.C., 2004, c. 2 (BPCPA);

(b) Mr. Tibbo:

- (i) Did not act with honesty and integrity contrary to section 33(2)(a) of the *Motor Dealer Act Regulation*, B.C. Reg. 447/78 (the "Code of Conduct"),
- (ii) Adversely affected the reputation of Cranbrook Kia, contrary to section 33(2)(f) of the Code of Conduct, and
- (iii) Caused Cranbrook Kia to contravene a law of British Columbia or Canada, contrary to section 33(2)(i) of the Code of Conduct.

[10] The Authority requests I consider:

- (a) Suspending or canceling Joshua Lea Tibbo's salesperson licence,
- (b) Placing conditions on Joshua Lea Tibbo's salesperson licence,
- (c) Imposing an administrative penalty on Joshua Lea Tibbo, and
- (d) Awarding the Authority its investigation and hearing costs.

## **III. Legal Principles**

### **(a) Unconscionability**

[11] Committing an unconscionable act is contrary to section 9(1) of the BPCPA. Determining whether a transaction is unconscionable requires assessing the entire transaction and to consider the legislated factors noted in the BPCPA: sections 8(2) and (3) of the BPCPA. The existence of a legislated fact in section 8(3) of the BPCPA does not mean that the transaction is unconscionable. All the factors must be taken together to determine if the consumer's inability to protect their own interests was taken advantage of by the dealer and that the transaction was "commercially immoral". For instance, the amount the consumer paid within the consumer transaction was inordinate compared to prices paid for the same item in the rest of the market.

- *Bain v. The Empire Life Insurance Company*, 2004 BCSC 1577 (BC Supreme Court)
- *Webster v. Pioneer Garage Ltd. dba Fraser Valley Pre-owned* (April 27, 2018, Hearing File 17-07-002, Registrar)

[12] Unconscionability is concerned with a commercially immoral contract such that it should not be binding on the consumer: section 10(1) of the BPCPA. The fact that there has been inappropriate conduct during the transaction, does not mean the entire transaction is unconscionable. Unconscionability focuses on the equity of the deal arrived at: *Bain, supra*.

**(b) Code of Conduct**

**(i) Acting with honesty and integrity: section 33(2)(a) Code of Conduct**

[13] Section 33(2)(a) of the Code of Conduct states:

(2) A licensee or registrant, in the course of business,

(a) must act with honesty and integrity,

[14] This provision is straight forward, and Madame Justice Sharma confirmed the following about salespersons acting with honesty and integrity:

[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 (BC Supreme Court), affirming *Re: Peter Fryer* (December 13, 2013, Hearing File No. 13-11-005, Registrar)

**(ii) Negatively impacting the reputation of the motor dealer (registrant): s. 33(2)(f) Code of Conduct**

[15] Section 33(2)(f) of the Code of Conduct states the following:

(f) must not adversely affect the reputation of the authority, a licensee, a registrant or the registrar,

[16] One of the industry concerns leading to this provision becoming law was licensees speaking negatively about a competitor in order to entice a consumer to purchase from them and not the competitor. There have also been instances where a licensee under investigation will speak negatively about the Authority in order to convince a complainant to abandon their complaint. This type of conduct does not build trust with or enhance consumer confidence in the industry, with the industry regulator and the regulatory regime. A professional salesperson knows that their reputation and the reputation of their employer (motor dealer) is the key to a successful career as well as a profitable business and industry.

**(iii) *Caused Cranbrook Kia to contravene a law of British Columbia or Canada: s. 33(2)(i) Code of Conduct***

[17] Section 33(2)(i) of the Code of Conduct states a licensee or registrant, in the course of business:

- (i) must not aid, abet or cause a person to contravene
  - (i) the Act or the regulations under the Act,
  - (ii) the *Business Practices and Consumer Protection Act* or the regulations under that Act,
  - (iii) any other law of British Columbia or of another jurisdiction,
  - (iv) a condition of registration, or
  - (v) a condition of a licence authorized under the regulations.

[18] This provision is like section 85 of the Offence Act. It requires all licensees to act lawfully, not cause anyone else to break the law, as well as not counsel or assist someone to break the law. By bringing this provision into the *Motor Dealer Act Regulation*, it allows the Registrar to assess and address this type of conduct using the varied available legislative tools.

[19] The Registrar must be mindful when considering an allegation that a licensee or registrant aided, abetted or caused someone to contravene a criminal law. The burden of proof in that situation is beyond a reasonable doubt.

[20] To aid someone in the commission of an offence is to assist them (including by not doing something) in committing the offence or in evading capture after its commission. To abet someone in the commission of an offence is to actively encourage them to do so or to procure its commission: *R v. Blackmore* 2018 BCCA 324 (BC Court of Appeal). To cause someone to commit an offence often relates to guiding minds of a business committing an offence which causes the business to

commit an offence. For example, under section 35(5) of the MDA, if a corporation commits an offence; an employee, officer, director or agent of the corporation that permitted, acquiesced in or authorized the offence is also guilty of that offence.

[21] Finally, this provision is very broad. It prohibits assisting in some way the breaking of any law. For a licensee to defend themselves when this allegation is made, there needs to be enough particularity so that a licensee knows what case they must meet. Sometimes, facts will support a breach of various laws. For instance, making a deliberate misrepresentation about payments causing a person to pay more than they should, could be a breach of the BPCPA and could also be criminal fraud.

#### **(iv) The purpose of regulation**

[22] When considering allegations of misconduct, the duty of a regulator is to assess that conduct, its impact on the public interest, and determine if there is a future risk of harm. Thus, regulation is forward looking. Its aim is to prevent future harm occurring. To achieve this end, the Registrar has various legislative tools available to deter future misconduct. The Registrar is not empowered to punish past conduct. Punishment is left for the courts following a different process. If the Registrar is of the opinion that a person poses an unacceptable risk to the public, that cannot be managed, the Registrar's duty is to remove the licensee from the industry to protect the public. This requires an assessment of the individual licensee, the licensee's past conduct and the facts of the specific case to arrive at a proportionate response to address the potential future risk of harm.

- *R. v. Wholesale Travel Group Inc.*, 1991 CanLII 39 (SCC), [1991] 3 SCR 154 (Supreme Court of Canada) per Cory, J.
- *Motor Vehicle Sales Authority of British Columbia v. Barnes Wheaton (North Surrey) Chevrolet Buick GMC Ltd.* (April 16, 2020, Hearing File 19-07-004, Registrar) at paragraphs 11 to 15.

## **IV. Discussion on the Facts**

### **(a) Unconscionability**

[23] The two key components to find a claim of unconscionability under the BPCPA are:

- (a) The consumer was taken advantage of by the dealer, and
- (b) The transaction was commercially immoral such that it is inequitable and should not be binding on the consumer.

[24] The problem I have with the facts is there is no evidence that the deals reached in the case of Consumer 1 or Consumer 2 were commercially immoral. Yes, Mr. Tibbo held back the \$3,000 cash back from each, paying about half back to Consumer 2. However, there is no evidence before me that:

- (a) the dealer subjected Consumer 1 or Consumer 2 to undue pressure to enter the transaction: s.8(3)(a) of the BPCPA,
- (b) the dealer took advantage of the inability of Consumer 1 or Consumer 2 to protect their interests due to any infirmity, their age, ignorance, a mental infirmity or any other listed characteristic: s.8(3)(b) of the BPCPA,
- (c) the total price paid grossly exceeded the total price in the market for the vehicles purchased: s.8(3)(c) of the BPCPA,
- (d) Consumer 1 or Consumer 2 would not be able to fully pay the total price: s.8(3)(d) of the BPCPA, or
- (e) the terms and conditions in the consumer transactions were so harsh as to be considered inequitable: s.8(3)(e) of the BPCPA.

[25] It cannot be said that the two transactions were inequitable requiring that they be cancelled. The claim of unconscionability under the BPCPA against Mr. Tibbo is dismissed.

***(b) Did not act with honesty and integrity contrary to section 33(2)(a) of the Code of Conduct***

[26] Mr. Tibbo was asked to deliver the cash-back cheque for \$3,000 to Consumer 1. Instead, Mr. Tibbo withheld that cash back. We also have evidence that Mr. Tibbo managed to deposit the cash back cheque destined for Consumer 1 into his own bank account. Mr. Tibbo endorsed the cheque by providing an illegible signature, passing it off as Consumer 1's signature.

[27] Mr. Tibbo advised Consumer 2 that there was an issue with the bank providing her with her cash bank. Mr. Tibbo then arranged to make payments to Consumer 2 and correspondence in evidence suggests Consumer 2 was thankful for Mr. Tibbo's assistance. Mr. Tibbo withheld funds from Consumer 2, then deceived Consumer 2 into a payment plan.

[28] I also note that Mr. Tibbo gave Cranbrook Kia his assurances that there was only one affected consumer. That was not true.

[29] The above conduct is clearly not acting with honesty and integrity. Integrity would have Mr. Tibbo delivering the \$3,000 cash back, regardless of any temptations he had due to his own financial situation. Honesty and integrity would see Mr. Tibbo obey the law. If he did make an error in judgement, honesty and integrity would require Mr. Tibbo quickly confess to the issues and quickly work

towards a resolution. Mr. Tibbo did not do so, and Cranbrook Kia discovered Consumer 2 because they did not trust Mr. Tibbo's assurances.

[30] I find that Mr. Tibbo clearly did not act with honesty and integrity and is in breach of section 33(2)(a) of the Code of Conduct.

**(c) *Negatively impacting the reputation of the motor dealer (registrant) contrary to section 33(2)(f) of the Code of Conduct***

[31] There are communications between Mr. Tibbo and the General Manager at Cranbrook Kia raising concern about the impact of Mr. Tibbo's conduct on the reputation of the dealer.

[32] Mr. Tibbo's apology letter to Consumer 1 and Consumer 2 both indicate Mr. Tibbo built a trusting relationship with each and took advantage of that trust. Mr. Tibbo also recognizes that his conduct could negatively impact the two consumers' views of the "system" (motor dealer industry) and on Cranbrook Kia. Consumer 1's complaint to the Authority clearly indicates a lack of trust in Cranbrook Kia.

[33] The type of conduct Mr. Tibbo exhibited most certainly brings the reputation of the industry into disrepute. It also negatively impacted the reputation of Cranbrook Kia in the eyes of Consumers 1 and 2. Further, business reputations spread quickly by word-of-mouth and by social media. A negative reputation is particularly impactful in smaller communities such as Cranbrook, where your customer is truly also your neighbour and probably a friend or a friend's friend. This type of conduct can be damaging on a business and for the people dependant on that business for a livelihood.

[34] Mr. Tibbo's conduct is in breach of section 33(2)(f) of the Code of Conduct by negatively impacting Cranbrook Kia's reputation.

**(d) *Caused Cranbrook Kia to contravene a law of British Columbia or Canada: s. 33(2)(i) Code of Conduct***

[35] The Authority's Notice of Hearing only identifies the unconscionability provisions of the BPCPA and the Code of Conduct as laws Mr. Tibbo breached for which Cranbrook Kia may also be held accountable. It may be that Mr. Tibbo breached other laws, such as theft under the Criminal Code of Canada, but that was not highlighted with enough clarity so that Mr. Tibbo knew he would have to defend such an allegation. To ensure procedural fairness to Mr. Tibbo, I will confine my discussion under this point to whether he aided, abetted or caused Cranbrook Kia to breach the unconscionability provisions or the noted Code of Conduct provisions.



[36] For reasons already stated, I found Mr. Tibbo did not breach the unconscionability provision of the BPCPA. Therefore, Cranbrook Kia could not be held liable.

[37] There is no evidence to suggest Mr. Tibbo aided, abetted or caused Cranbrook Kia to breach sections 33(2)(a) and (f) of the Code of Conduct.

[38] The Authority specifically chose not to pursue Cranbrook Kia regarding the conduct in these transactions because it determined that Mr. Tibbo acted alone and not on any direction of Cranbrook Kia. Mr. Tibbo did not aid Cranbrook Kia to withhold the money or abet (encourage) Cranbrook Kia to do so. In fact, the evidence shows Cranbrook Kia initially issued a cheque in the name of Consumer 1 to pay him his \$3,000 cash back. It is clear Cranbrook Kia's intention was to honour the cash-back arrangements for each consumer.

[39] On the evidence before me, I do not find Mr. Tibbo was in breach of section 33(2)(i) of the Code of Conduct.

**(e) Summary of findings on the facts**

[40] I have found that Joshua Lea Tibbo has breached sections 33(2)(a) and (f) of the Code of Conduct. That is, Mr. Tibbo did not act with honesty and integrity as well as Mr. Tibbo negatively impacted the reputation of Cranbrook Kia.

**V. Discussion on Compliance**

**(a) Suitability for one hearing on liability and on compliance**

[41] Under the legislative scheme anchored by the *Motor Dealer Act*, the Registrar may deal with both liability and compliance in one hearing: *Best Import Auto Ltd. v Motor Dealer Council of British Columbia*, 2018 BCSC 834 (BC Supreme Court). In some situations, it is more procedurally fair to separate a hearing into a liability phase and a penalty/compliance phase. This usually occurs when the findings on liability are sufficiently divergent from the breadth of allegations in a Notice of Hearing: *Re: Barnes (North Surrey)*, *supra* at paragraphs 63 to 69.

[42] In this case, the facts are uncontroverted. The Authority's position on compliance was clearly articulated. My findings are not that divergent from the Authority's allegations. Importantly, Mr. Tibbo has noted he will accept whatever comes in terms of compliance action. I, therefore, find this is a case where I can make findings on liability and on compliance in one hearing.

**(b) Compliance selection**

**(i) Individual facts of the case and of Mr. Tibbo**

[43] Compliance selection must be proportionate to the transgression and the individual licensee's history with the goal of deterring future misconduct and future harm. If employing legislative tools cannot provide reasonable assurances of future good conduct and a reduced risk of harm, my duty is to remove Mr. Tibbo from the industry. Guidance can be taken from prior cases and cases of a similar nature in other jurisdictions in Canada.

[44] Mr. Tibbo took money from consumers. Mr. Tibbo then manufactured a story to justify making payments to Consumer 2. When confronted by Cranbrook Kia about other impacted consumers, Mr. Tibbo said there were none, when there was. These are serious transgressions of the trust relationship between a licensed salesperson and their customers as well as a licensed salesperson and their employer. It negatively impacts the public's view of salespeople and by extension, the motor dealers that employ them. Customers and future employers must be able to trust that what Mr. Tibbo says to them is honest, transparent and lawful: *Fryer, supra*. The fact that Mr. Tibbo was willing to hide the truth from his employer also raises concerns about his governability. His conduct raises concerns that Mr. Tibbo will not be open and honest with his regulator so that the Authority can fully and properly regulate the industry in the public's interest.

[45] To Mr. Tibbo's credit, he paid the required restitution and wrote letters of apology to the two consumers. From the text messages between Mr. Tibbo and the General Manager at Cranbrook Kia, Mr. Tibbo was quick to address restitution, but based on threats of contacting the police if he did not. Some of these text messages suggest Mr. Tibbo was still trying to delay payments. I also note that Mr. Tibbo did provide a statement to the Authority's investigator admitting to his conduct and accepting whatever consequences come from this review of his salesperson licence.<sup>1</sup>

[46] Joshua Tibbo's history as a licensed salesperson is short. He received his licence in November of 2018. About that time, he would have completed the salesperson certification course describing his legal duties to customers. I do not see any other history of non-compliance since Mr. Tibbo's license was first issued.

[47] Finally, I note that Cranbrook Kia ended their employment of Joshua Tibbo. Mr. Tibbo is now employed at another dealership and the registry indicates he has been there since April of this year. I have no evidence of inappropriate conduct by Mr. Tibbo in the past 6 months.

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<sup>1</sup> While Mr. Tibbo was a bit tardy in providing that statement, he was seeking legal advice and should not be faulted for doing so.

**(ii) Past cases**

[48] In *Re: Kevin D Lench* (April 14, 2011, Case File 10-70943, oral decision of the Registrar), Mr. Lench's salesperson licence was under review for deceitful conduct in taking a consumer deposit. Mr. Lench took a \$2,500 deposit from a consumer. Mr. Lench created an internal receipt to show he took a \$2,000 deposit and gave that amount to the dealer. Mr. Lench kept the \$500. Mr. Lench's deceit was discovered when the consumer asked for a refund of the deposit and the dealer issued a \$2,000 refund, to which the consumer produced a receipt from Mr. Lench for \$2,500. Mr. Lench eventually admitted to the deceit and the dealer terminated his employment. The dealer paid the consumer the remaining \$500 and obtained reimbursement from Mr. Lench. The dealer then brought Mr. Lench's conduct to the attention of the Authority.

[49] The Registrar considered the specific facts of Mr. Lench's case. Mr. Lench did not attend the hearing. The Registrar noted the disrepute Mr. Lench's conduct would bring on the industry. Further, his conduct could have created a claim against the Motor Dealer Customer Compensation Fund into which all dealers pay. Mr. Lench did not attend the hearing and so, did not provide evidence of how he has learned from his transgression and how he will not do so again in the future. The Registrar found Mr. Lench's conduct was contrary to the public interest and Mr. Lench's salesperson licence was cancelled and he was barred from re-applying for a licence for three years.

[50] In *Smith v. Ontario (Registrar, Motor Vehicle Dealers Act)*, 2011 ONSC 829 (Ontario Superior Court), the court considered the refusal to renew Steven Smith's salesperson licence. Mr. Smith had a customer who leased a vehicle one week prior and realized they made a mistake in entering the lease. Mr. Smith tried to assist the customer but could not get any different financing. The customer being desperate, Mr. Smith counseled the customer to make the vehicle disappear and even suggested someone who could assist the customer to do that. The idea was for the vehicle to be destroyed by arson. This came to the attention of Mr. Smith's employer who demoted Mr. Smith. It also came to the attention of the police and Mr. Smith was charged and convicted of counselling to commit an indictable offence [arson].

[51] The Ontario Court in *Smith, supra* agreed with the tribunal's decision that Mr. Smith's conduct was in relation to his employment as a salesperson and provided great doubt on whether Mr. Smith would act lawfully and with honesty and integrity in the future. The fact it was an isolated incident and Mr. Smith had a 13-year unblemished record was considered, but the Court noted even an isolated incident may be enough to deny a licence:

24 I see no merit to this ground of appeal. The past conduct referred to in s. 5(1) of the *Act* may, in certain circumstances, consist of one isolated mistake, if

it is of such a nature and in circumstances that there are reasonable grounds for belief that the person applying to be registered would not carry on business in accordance with law and with integrity and honesty. See *Ontario (Registrar of Motor Vehicle Dealers and Salesman) v. Clermont*, [1974] O.J. No. 1028 (Ont. S.C.) at para. 7. Given the serious nature of the appellant's conduct and how directly it arose out of his work as a motor vehicle salesperson, this is a case where one isolated mistake could reasonably support the belief that the appellant would not carry on business in accordance with law and with integrity and honesty.

...

26 While some particular passages of evidence might have supported different findings of fact, that is no basis to interfere with the result. The Tribunal heard the evidence and made findings of fact that are fully supported by the evidence. The Tribunal was entitled to base its finding on the whole of the evidence, including the appellant's finding of guilt for a serious industry related criminal offence, and the decision was not unreasonable on the evidence before it.

[52] The Ontario Superior Court of Justice upheld the decision of the tribunal to refuse to renew Mr. Smith's salesperson licence. There was no evidence that Mr. Smith would not commit the same conduct in the future.

[53] In the case of *Webster v. Pioneer Garage Ltd. dba Fraser Valley Pre-owned*, the business manager was found responsible for falsifying credit application information to a bank in order to get their customer qualified for financing. The business manager was also found to have structured the financing in a confusing way so the consumer did not understand what they were agreeing to, and which placed the consumer into a debt obligation they would not be able to service. The Registrar noted the business manager had made misrepresentations in respect of a consumer transaction and arrived at a deal that was unconscionable as defined by the BPCPA. At the time of the transgression and hearing, there was no Code of Conduct.

[54] The business manager in *Webster, supra* had no prior compliance issues. The business manager took the position that they did nothing wrong, necessitating a hearing and findings on liability. Their conduct was such that the Registrar ordered a 30-day suspension of the business manager's licence, added conditions on their licence to restrict their dealings with customers, imposed a \$750 administrative penalty and ordered they pay investigation and hearing costs.

[55] In *Re: Barnes Wheaton (North Surrey) Chevrolet Buick GMC Ltd. and Devron Quast* (April 16, 2020, File 19-07-004, Registrar), Mr. Quast was found to have arranged a vehicle to pass a provincial vehicle inspection when it did not qualify to pass, as certain emission components had been removed, making the vehicle not

compliant with the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318. The facts showed Mr. Quast used the assistance of a broker to locate a facility who could assist with the required repairs and reinspection of the vehicle. There was no direct evidence that Mr. Quast instructed the facility to not perform the repairs (estimated at \$7,000). However, the facility returned the vehicle with a pass inspection for a cost of only \$152. Mr. Quast was found to have been willfully blind to this endeavour which in law is sufficient to say his conduct was deliberate.

[56] There was some prior criminal history with Mr. Quast, but no compliance history with the Authority. Mr. Quast's licence was also very recently issued as with Mr. Tibbo. Mr. Quast maintained he did not deliberately do anything wrong but admitted he should have made more inquiries about the vehicle's repairs and passed inspection. Like Mr. Tibbo, Mr. Quast was willing to do whatever it took to retain his salesperson licence and accepted any disciplinary action deemed appropriate. The Registrar ordered Mr. Quast pay an administrative penalty of \$3,000, pay costs, restricted his salesperson licence to protect consumers and to retake the salesperson certification course as well as a course on ethics. The \$3,000 administrative penalty was related to the specific facts of that case. I would note there was no identified consumer harm in the case of Mr. Quast's conduct.

[57] The commonalities of these decision is those who have admitted their wrongdoing, took positive steps to rectify harm associated with the wrongdoing, and showed signs they could be governed and would rehabilitate their behaviour, were allowed to remain in the industry with sufficient deterrents and conditions on their licence to protect the public. This was the case for Mr. Quast and the business manager in *Webster, supra*. Those who did not exhibit these behaviours, especially around rehabilitation and governability, were removed from the industry. This was the case with Mr. Lench and in the case of Mr. Smith. Mr. Smith was also convicted for a crime.

[58] I now turn to the Authority's suggested compliance actions.

**(iii) *Should Mr. Tibbo's salesperson licence be cancelled?***

[59] To start, the facts of Mr. Tibbo's case and his conduct after being caught are more inline with the cases involving Mr. Quast and the business manager in *Webster, supra*. There is evidence of Mr. Tibbo's insight into what he did. Mr. Tibbo admitted to his misconduct. Mr. Tibbo provided restitution for the consumers and will accept whatever disciplinary action believed appropriate. I note Mr. Tibbo's stated reason for retaining the funds was a sudden financial need related to the care of a family member. On his own initiative, Mr. Tibbo was repaying Consumer 2 in installments, which is suggestive that he did not intend to permanently keep the funds from the consumer. This conduct suggests Mr. Tibbo can be rehabilitated and

will be governable. Again, my job is not to punish past conduct but assess any risks to the public should Mr. Tibbo remain in the industry.

[60] Given the specific facts of Mr. Tibbo's case and past precedents I do not believe cancelation of his licence is necessary to protect the public. I am of the view that other statutory tools can be used to provide an appropriate and proportionate deterrence to Mr. Tibbo's transgression and to protect the public.

**(iv) Should Mr. Tibbo's salesperson licence be suspended?**

[61] Mr. Tibbo's misconduct was very serious and I must ensure he and others in the industry are deterred from committing similar misconduct. I have already noted that Mr. Tibbo's case is like that of Devron Quast and that of the business manager in *Webster, supra*. Mr. Tibbo's case is more like the business manager in *Webster supra*, because there was consumer harm that case, which was absent in *Quast, supra*. With this in mind, and considering the specific facts of Mr. Tibbo's case as already described above, I am of the opinion that Mr. Tibbo's salesperson licence should be suspended for 30 days in order to deter his and other industry members from committing similar misconduct. This time will also allow Mr. Tibbo to reflect on his actions and the impact they had on the industry and the two consumers. Further, that time will allow Mr. Tibbo to complete course work which I will be adding as a condition to his salesperson licence as will be discussed below. The suspension will commence 7 days after the date of this decision.

**(v) Conditions on Mr. Tibbo's salesperson licence?**

[62] The evidence shows Mr. Tibbo used his position of trust with consumers for his own personal gain. Mr. Tibbo allowed his personal situation to influence his decisions to the detriment of his customers, his employer and to the reputation of this industry. Mr. Tibbo requires further training on his obligations to his customers and training to address ethical dilemmas he may again face in his role as a salesperson. Further, Mr. Tibbo needs some time working under supervision and some history of good behaviour before he should be entrusted with consumer's money. Mr. Tibbo must also demonstrate good behaviour before he should be allowed to supervise or manage others. The above can be achieved by adding the following conditions to Mr. Tibbo's salesperson licence:

- (a) Joshua Tibbo's sales are to be reviewed and approved by a manger or supervisor before being finalized with a consumer,
- (b) Joshua Tibbo must not handle consumer's money, including taking deposits, providing refunds to consumers, providing cash back cheques, or assisting a consumer to obtain credit for a purchase/lease,
- (c) Joshua Tibbo is not to be in a supervisor or management position without the prior written approval of the Registrar,

- (d) Within 60 days of this decision's date, Joshua Tibbo must retake and successfully complete the salesperson certification course at his own cost, and
- (e) Within 60 days of this decision's date, Joshua Tibbo is to take and successfully complete a course on ethics (in-person or online) at his own cost, at an institute acceptable to the Registrar.<sup>2</sup> A British Columbia accredited post-secondary institute is acceptable. Mr. Tibbo must provide proof of successfully completing the ethics course.

Conditions (a), (b) and (c) may be reviewed after 12 months from this decision's date. Mr. Tibbo has leave to apply to the Registrar to remove those conditions sooner, if special circumstances arise.

#### **(vi) Administrative Penalty**

[63] Is an administrative penalty necessary in order to deter Mr. Tibbo from committing similar misconduct in the future? It is my opinion that an administrative penalty proportionate to the specific facts of this case is warranted. Like in *Quast, supra* and the business manager in *Webster supra*, Mr. Tibbo's misconduct was driven by financial gain. As in those two cases, an administrative penalty would serve to deter Mr. Tibbo and the industry generally by making it economically unpalatable to commit similar misconduct in pursuit of financial gain.

[64] In considering an appropriate penalty amount, I am to consider the factors in section 26.04(2) of the *Motor Dealer Act*. I must consider those factors in relation to all the circumstances of the case. I am also mindful of the common law principles regarding applying administrative penalties, such as:

- (a) The administrative penalty is to be proportionate to the conduct being deterred,
- (b) The amount of an administrative penalty is to deter future misconduct, and not drift into the realm of being penal,
- (c) The amount of the administrative penalty should not be seen as the cost of doing business,
- (d) General deterrence against the industry is also to be considered and can cause an administrative penalty to exceed the licensee's ability to pay, and
- (e) Past penalty amounts in similar cases are useful guides but are not binding on the Registrar. For instance, past penalty amounts may have proven ineffective at deterring the conduct necessitating a penalty amount be increased.

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<sup>2</sup> See for example, LinkedIn Learnings "Business Ethics for Sales Professionals" <https://www.linkedin.com/learning/business-ethics-for-sales-professionals>. See also Skye Learning's HR Ethics Series: Ethical Decision Making <https://skyelearning.com/courses/1710/hr-ethics-series-ethical-decision-making>

- *Re: Barnes, supra*, at paragraphs 11 to 15

[65] I start by considering the legislative factors in section 26.04(2) of the *Motor Dealer Act*.

**(A) *previous enforcement actions for contraventions of a similar nature by the person;***

[66] The record before me does not indicate Mr. Tibbo has had any prior enforcement action.

**(B) *the gravity and magnitude of the contravention;***

[67] The gravity equates to the seriousness of the contravention and the risk to the public. The Authority has identified four main harms in this industry (a) physical harm (unsafe vehicles), (b) financial harm, (c) informational harm (risk of misuse of personal information) and (d) reputational harm. In this case, the conduct was sufficiently grave as it impacted consumers financially and Cranbrook Kia and the industry's reputation. From the evidence before me, the magnitude appears to have been confined to the two consumers. The potential financial impact could have been \$6,000, and the reputational impact on Cranbrook Kia and the industry appears confined to these two consumers' viewpoints. Thus, the magnitude can be considered small, relative to other cases cited in this decision.

**(C) *the extent of the harm to others resulting from the contravention;***

[68] The extent of the harm was confined to the two consumers and the reputations of Cranbrook Kia and of the industry.

**(D) *whether the contravention was repeated or continuous;***

[69] Mr. Tibbo's misconduct was repeated, with two consumers being the recipients of the same misconduct. The misconduct was also continuous in that Mr. Tibbo made up a story to convince Consumer 2 to accept payments over time.

**(E) *whether the contravention was deliberate;***

[70] The conduct was deliberate. Endorsing a cheque not payable to you and managing to have it deposited into your own account takes deliberation. That is not a mistake or negligent conduct.



**(F) any economic benefit derived by the person from the contravention;**

[71] At the time Mr. Tibbo was caught in his transgression, he held \$4,500 of consumers' money. Had he not been repaying Consumer 2 the economic benefit would have been \$6,000.

**(G) the person's efforts to correct the contravention.**

[72] Once discovered, Mr. Tibbo provided restitution for the two consumers. Mr. Tibbo admitted to the misconduct and is willing to accept the consequences of his actions. Mr. Tibbo also wrote letters of apology to each of the two consumers. While Mr. Tibbo provided an explanation for his misconduct, he did not try and use it as an excuse for the misconduct.

[73] I have noted in previous decisions the need for administrative penalties to make misconduct economically unpalatable. In the case of the business manager in *Webster supra*, there was very little evidence of his personal financial gain in the case, or of the dealer's financial gain. The administrative penalty of \$750 issued there was based on past precedents and recognition that the suspension would have a financial impact on the business manager, as they would not be earning an income. In the case of *Quast*, there was no suspension and their personal financial gain was also unknown, but their conduct was trying to save the dealer about \$7,000.

[74] In this case, Mr. Tibbo's suspension will have an economic impact on him. Therefore, I believe the appropriate administrative penalty does not have to approximate the economic advantage he was seeking. Again, I consider that Mr. Tibbo had been repaying Consumer 2, indicating he did not intend on keeping the money permanently. However, it appears the \$750 administrative penalty on the business manager in *Webster, supra* for deceptive conduct along with a 30-day suspension has not had the desired general deterrent effect on Mr. Tibbo. Therefore, I find it necessary to order a higher administrative penalty in this case. On balance and considering the seriousness of the transgression and need for specific and general deterrence and taking into consideration Mr. Tibbo's conduct once caught, I believe a \$1,000 administrative penalty is warranted. This is an incremental increase over the administrative penalty for the business manager in *Webster, supra* and constitutes less than 25% of the potential \$4,500 that Mr. Tibbo held of consumer's money when caught. In *Quast, supra*, the penalty amount was \$3,000 and about 50% of the economic advantage attempted to be obtained, but Mr. Quast did not receive a suspension.

## **VI. Costs**

[75] The Authority requests its cost to investigate this case. An order of costs against the person who has transgressed the legislation is appropriate from a public policy point of view. First, an order of costs can aid in deterring breaches of the legislation. Second, the industry pays licensing fees to fund the regulation of the industry. It is unfair to compliant licensees that their fees pay for the investigation of a licensee who has breached the legislation. Those who transgress the legislation should be liable to pay the costs to investigate, which will help keep licensing fees down for the rest of the compliant licensees.

[76] The record before me does not state what are the Authority's investigation costs. Without an amount, I cannot make an order. Importantly, without an amount and explanation for that amount, Mr. Tibbo could not fairly make submissions on their suitability.

[77] The Authority is entitled to its costs of the investigation. If the Authority and Mr. Tibbo cannot agree as to the amount of those costs, either may request a further hearing before the Registrar to set costs.

## **VII. Summary**

[78] I have found that Joshua Tibbo has breached the following legislation:

- (a) Section 33(2)(a) of the *Motor Dealer Act Regulation* [Code of Conduct] by failing to act with honesty and integrity, and
- (b) Section 33(2)(f) of the *Motor Dealer Act Regulation* [Code of Conduct] as his conduct adversely affected the reputation of Cranbrook Kia.

[79] To protect the public from potential future risks of harm and to deter Joshua Tibbo and the industry generally, the following compliance action is ordered:

- (a) In accordance with section 7 of the *Salesperson Licensing Regulation*, B.C. Reg. 202/2017, Joshua Tibbo's salesperson licence # 210659 is suspended for 30 days commencing 7 days after the date of this decision,
- (b) In accordance with section 6 of the *Salesperson Licensing Regulation*, B.C. Reg. 202/2017, the following conditions are added to Joshua Tibbo's salesperson licence #210659:
  - (i) Joshua Tibbo's sales are to be reviewed and approved by a manager or supervisor before being finalized with a consumer,

- (ii) Joshua Tibbo must not handle consumer's money, including taking deposits, providing refunds to consumers, providing cash back cheques, or assisting a consumer to obtain credit for a purchase/lease,
- (iii) Joshua Tibbo is not to be in a supervisor or management position without the prior written approval of the Registrar,
- (iv) Within 60 days of this decision's date, Joshua Tibbo must retake and successfully complete the salesperson certification course at his own cost, and
- (v) Within 60 days of this decisions date, Joshua Tibbo is to take and successfully complete a course on ethics (in-person or online) at his own cost, at an institute acceptable to the Registrar. A British Columbia accredited post-secondary institute is acceptable. Mr. Tibbo must provide proof of successfully completing the ethics course.

Conditions (i), (ii) and (iii) may be reviewed after 12 months from this decision's date. Mr. Tibbo has leave to apply to the Registrar to remove those conditions sooner, if special circumstances arise.

(c) In accordance with section 26.04 of the *Motor Dealer Act*, I am imposing an administrative penalty in the amount of \$1,000 on Joshua Tibbo.

(d) In accordance with section 26.02(4)(d), I am ordering Joshua Tibbo to pay investigation costs with the amount to be agreed to between Mr. Tibbo and the Authority, or otherwise set by the Registrar at a future hearing.

### **VIII. Review of this Decision**

[80] If there is disagreement with this decision, it can be reviewed by requesting a reconsideration of the suspension order, conditions on licence, administrative penalty and/or the order for liability for costs. The request for reconsideration must be in writing (email suffices) and must be made within 30 days of Mr. Tibbo receiving this decision or the related orders, whichever is later. If Mr. Tibbo is seeking to cancel or varying any of the orders, he must also submit the new evidence (as defined in section 26.12(2) of the *Motor Dealer Act*) that he wishes to be considered. Mr. Tibbo may direct any request for reconsideration to [hearings@mvsabc.com](mailto:hearings@mvsabc.com).

[81] Alternatively, this decision may be reviewed by the B.C. Supreme Court by petitioning that Court for judicial review pursuant to the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241. Such a petition is to be filed with that Court within 60 days of this decisions date: section 7.1(t) of the *Motor Dealer Act*.

“original is signed”

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Ian Christman, J.D.  
Registrar of Motor Dealers