



Neutral Citation: 2018-BCRMD-024

**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:

Safiollah (Safe) Youseffi
(Licence # 101011)

Salesperson

**DECISION OF THE REGISTRAR
ON AN APPLICATION FOR RECONSIDERATION**

Date and place of decision: March 5, 2019 at Langley, British Columbia

Written Submissions by

Safiollah (Safe) Youseffi	February 21, 2019
Vehicle Sales Authority of British Columbia	None

I. Introduction

[1] On January 23, 2019, I ordered the salesperson licence of Safiollah (Safe) Youseffi be revoked. I found that Mr. Youseffi had acted as a curber (unlicensed dealer), conducted unauthorized consignment sales, did not complete those consignment sales in the manner required by the legislation, and generally that Mr. Youseffi did not understand the legislative scheme governing his licence. I also found that Mr. Youseffi's conduct showed him to be an unreasonable risk to the public and revoked his licence.

[2] On February 21, 2019, Mr. Youseffi hand delivered an undated letter addressed to the Registrar. In the letter Mr. Youseffi asks that his licence be reinstated "for a last time for a probationary period." In the letter Mr. Youseffi describes some medical conditions and the pressures he was under. Mr. Youseffi states that he is unable to relearn a new job and that he and his son depend on his work in this industry. Accompanying Mr. Youseffi's letter are two letters from doctors explaining Mr. Youseffi's medical condition.

[3] Mr. Youseffi's letter does not specifically ask for a reconsideration, as the legislation describes it. Effectively, though, that is what he is requesting.

[4] On February 25, 2019, I was advised that Hong Wong, Manager of Licensing, and on behalf of the Authority, had no further submissions to make. The Authority stands by its original case.

II. The Law

[5] Once an administrative decision maker has rendered a decision, the legal principle of *functus officio* applies. That means, once the decision is made, the decision maker has no jurisdiction to go back and change the decision. There are some exceptions to this rule which are:

- (a) To correct a slip or error made in the decision. For example, if the decision references a wrong name or contains grammatical errors.
 - (b) To express the manifest intentions of the decision, where they are not clear. That is, to better and more clearly state the decision and not to change the decision.
 - (c) To correct any procedural unfairness in coming to a decision, where the decision maker becomes aware of that procedural unfairness.
 - (d) 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 (Supreme Court of Canada)
 - *Harris & Harris v. Windmill Auto Sales & Detailing Ltd.* (August 20, 2013, Hearing File 12-030, Registrar)

[6] Where a salesperson's licence has been revoked, they may request a reconsideration under sections 26.11 and 26.12 of the *Motor Dealer Act* R.S.B.C. 1996, C. 316 ("MDA"). The legislative requirements to be met under that Act are:

- (a) The request for reconsideration must be made within 30 days of the latter of either receiving the decision or the written reasons for the decision: s. 26.11(2)(a);
- (b) The request must be in writing and identify the error made or the grounds for requesting reconsideration: s. 26.11(2)(b);
- (c) For the Registrar to cancel or vary a decision, there must be new evidence that;
 - (i) Has become available or discovered;
 - (ii) Is substantial and material to the decision; and
 - (iii) Did not exist at the time of the original decision or - if it did exist at that time - the evidence could not be discovered, if someone exercised reasonable diligence to discover it: s. 26.12(b).

[7] In conducting a reconsideration, the Registrar has adopted 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.

- See *Windmill, supra*.

III. Discussion

[10] Mister Youseffi's request for reconsideration is one brought under the MDA. There has been no slip or error or alleged breach of procedural fairness. Mister Youseffi asks for a reconsideration based on new evidence that was not before me at the original hearing, which describes his personal circumstances.

[11] The request for reconsideration was brought within the 30-day legislative requirement.

[12] The request is in writing. No error is alleged, but the ground for reconsideration is to take into consideration Mr. Youseffi's personal circumstances, not originally before me, and reconsider my revocation of his salesperson licence.

[13] The evidence Mr. Youseffi has provided is not "new," as defined in the MDA. The two letters from the doctors are dated February 11 and 14, 2019, respectively. They certainly did not exist at the time of the original hearing. However, the content of the letters indicate Mr. Youseffi's medical condition has been a long-term issue. One letter (February 14) indicates it is a letter in support of disability benefits and specifically says "I have written several letters for him before...". Therefore, Mr. Youseffi could have produced one of those earlier letters. The second letter (February 11) indicates that, since his last treatment, Mr. Youseffi has been unable to work.¹ Mr. Youseffi's medical condition could have been brought to my attention at the original hearing.

¹ I would note that both doctors' letters reference the name Salar Yosefi and not Safiollah Youseffi, as noted on Mr. Youseffi's letter to the Registrar. It may be that Safiollah Youseffi also goes by Salar Yosefi or vice versa.

[14] The same can be said as to Mr. Youseffi's need to earn income in this industry and the reasons why. Mr. Youseffi's letter does not describe any change in those circumstances since the original hearing. Mr. Youseffi's stated need to work in the industry and why are not new and were discoverable before the original hearing.

[15] As the evidence Mr. Youseffi submits is not new evidence, as defined and as required by the MDA, I would have no authority to cancel or vary my original decision under the Act. Proceeding with a full reconsideration would not result in a change of the original decision.

[16] Even if I were to find that the submitted evidence was new for the purposes of the MDA, I find that the evidence would not be substantial and material to my original decision. In my original decision, the need to cancel Mr. Youseffi's salesperson's licence was to protect the public, because of Mr. Youseffi's prior violations of the law and no indication that Mr. Youseffi would abide by the law. The medical information submitted and Mr. Youseffi's dependence on earning income working in this industry do not show how those facts materially or substantially affected his decision to breach the legislation. Further, his medical condition and need to earn income do not assist in showing in a material or substantial way, how he will be compliant in the future.

IV. Disposition

[17] Mr. Youseffi's request for reconsideration, that he be reinstated as a salesperson on a probationary period, is denied.

V. Review of this decision

[18] This decision may not be reconsidered further: s. 26.12(4) of the MDA.

[19] This decision may be reviewed by petitioning the B.C. Supreme Court for judicial review, pursuant to the *Judicial Review Procedure Act* R.S.B.C. 1996, c. 241. Such a petition must be filed within 60 days of this decision being issued: section 7.1(t) of the MDA.

Dated: March 5, 2019

Original Signed
Ian Christman, J.D.
Registrar of Motor Dealers