



Investigation File 17-08-016
Hearing File 18-10-001

Neutral Citation: 2018-BCRMD-043

**IN THE MATTER OF THE *MOTOR DEALER ACT* R.S.B.C. 1996, C. 316
AND THE *WHOLESALE LICENSING REGULATION*, B.C. REG. 203/2017**

Re:

**Wild Grizzly Transport Ltd.
(proposed Wholesaler # W40583)**

Applicant

And

Pasquale Angelino Zampieri

Applicant Associate/Representative

And

Jennifer Lynn Aiken

Applicant Associate

**DECISION OF THE REGISTRAR
ON APPLICATION FOR WHOLESALE LICENCE**

Date and place of decision: December 28, 2018 at Langley, British Columbia

By way of written submissions

I. Introduction

[1] Wild Grizzly Transport Ltd. ("Wild Grizzly") applies for licensing as a wholesaler, pursuant to the *Wholesaler Licensing Regulation*, B.C. Reg. 203/2017 ("WL Reg.").

[2] The application form and business plan accompanying the wholesaler application identifies Pasquale Zampieri and Jennifer Aiken as directors and shareholders of Wild Grizzly. Therefore, Pasquale Zampieri and Jennifer Aiken are by definition, "associates" of Wild Grizzly: section 1 definition of "associate" of the WL Reg. The application materials also identify Pasquale Zampieri as the only person who will be carrying out the day-to-day operations of Wild Grizzly. Thus, Pasquale Zampieri is also, by

definition, to be the sole “representative” of Wild Grizzly: section 1 definition of “representative” WL Reg.

[3] The staff of the Authority raise concerns about granting Wild Grizzly a wholesaler licence, based on my decisions and compliance orders in *Re: Wild Grizzly, Pasquale Zampieri and Jennifer Aiken* (May 10, 2018 and May 31, 2018 Hearing File 18-04-003). Further, the Authority believes this case is appropriate for me to issue a ban on Wild Grizzly, Pasquale Zampieri, and Jennifer Aiken applying for any licence for a period of time. The important considerations from my prior decisions are:

- (a) My findings of fact that Wild Grizzly acted as a motor dealer while not registered;
- (b) My findings of fact that Wild Grizzly rolled back odometers on motor vehicles;
- (c) My findings of fact that Wild Grizzly misrepresented to various consumers the odometer readings on motor vehicles;
- (d) My findings of fact that Pasquale Zampieri condoned, participated, or acquiesced in the conduct noted in (a), (b), and (c);
- (e) My order for Wild Grizzly and Pasquale Zampieri to cease and desist the activity in (a) and (b); and
- (f) Wild Grizzly and Pasquale Zampieri have not complied with a Registrar’s order, since becoming BC Supreme Court order, to pay the Authority’s costs.

[4] The Authority further advances that Wild Grizzly has another court order to pay a supplier of motor vehicles for debts owed. Finally, the Authority brings to my attention evidence to suggest Wild Grizzly continues to sell vehicles to consumers while not registered as a motor dealer in breach of my order of May 10, 2018. I would note that my order of May 10, 2018 has been filed in B.C. Supreme Court and is therefore deemed a court order.

[5] Wild Grizzly, Pasquale Zampieri, and Jennifer Aiken did not file any written submissions to the Authority’s investigation report and allegations in the Notice of Hearing. Those documents were provided by way of email in accordance with section 30 of the MDA and deemed good service by section 30.1 of the MDA. Wild Grizzly, Pasquale Zampieri, and Jennifer Aiken have not provided a response in the required time.

II. The Law

[6] The WL Reg. became law on April 1, 2018.

[7] Section 6(1) of the WL Reg. grants authority to refuse a wholesaler licence if it would not be in the public interest to issue such a licence having regard to:

(a) the financial responsibility of the applicant and, if applicable, the applicant's associates; or

(b) the conduct of the applicant, and, if applicable, the applicant's associates and representatives.

[Underlining added.]

- See *Re: Bahman ("Bob") Shokohi & Best Import Auto Sales Ltd.* (October 12, 2018, Hearing 18-06-005, Registrar)

[8] If the intention is to refuse the wholesaler application, the applicant has a right to be heard and to receive written reasons regarding the refusal: s. 6(2) of the WL Reg. The right to be heard can be any of a written, electronic, or oral hearing, or combination thereof, as determined by the Authority: section 12 of the W.L. Reg.

[9] In considering granting or refusing a licence, I am to be mindful of the applicant's desire to earn a livelihood as a wholesaler. However, if there are concerns for the public interest in granting the licence, the public interest is paramount. In reviewing past conduct, I am not limited by time, type of, or location in which the conduct occurred. The issue is whether the conduct is a concern to the public interest, such that the licence should be refused: *Re: Best Import Auto Ltd. et al.* (Hearing file 17-08-002, Registrar, November 28, 2017) at paragraphs 32 to 34; varied but not on this point by *Best Import Auto Ltd. v Motor Dealer Council of British Columbia*, 2018 BCSC 834 (BC Supreme Court), and see *Re: Best Import Auto Ltd. et al.* (October 12, 2018, Hearing File 18-06-005 – refusal of wholesaler licence)

[10] In reviewing the conduct of a corporation, I am to have regard to the conduct of its directing minds to understand the realities of the corporation's operations. Corporations make decisions and act through people: *Re Best Import Auto Ltd. et al.* This principal is embodied in sections 6(1) and 11(2) of the WL Reg.

III. Discussion

A. Wholesaler's work and duties

[11] As defined, a wholesaler engages in the sale, exchange, or other disposition of motor vehicles to other wholesalers or motor dealers, as part of their business: section 1(1) of the MDA.

[12] A wholesaler is required to make the same motor vehicle history declarations in an agreement of purchase and sale that a motor dealer must make to a consumer under section 23 of the *Motor Dealer Act Regulation*, B.C. Reg. 447/78: section 9(e) of the WL Reg. This includes making declarations about the accuracy of the odometer reading.

[13] As of April 1, 2018, a wholesaler now operates within a regulatory framework and is required to meet the requirements of the legislation, as well as the lawful directions of its Regulator.

B. Past Conduct of Wild Grizzly

[14] My concerns about Wild Grizzly's being licensed as a wholesaler are noted in paragraphs 3 and 4 above. Wild Grizzly has been found to be in breach of laws that govern this industry and, specifically, the obligations of a wholesaler under the legislation – conduct noted in paragraph 3. Wild Grizzly continues to disobey the Registrar's and Supreme Court's orders to pay costs. These facts alone are a clear concern to the public interest in granting Wild Grizzly a wholesaler licence. This is also very recent history, with no history of rehabilitation or cooperation by Wild Grizzly. The public would be placed at risk of Wild Grizzly's conduct of rolling back odometers; and there is currently no way to assure it will abide by the law in the future.

[15] I would deny Wild Grizzly a wholesaler licence for these reasons alone.

C. Request for a ban on applications

[16] To protect the public, to protect the Registrar's administrative process, and to provide certainty as to when Wild Grizzly, Pasquale Zampieri, and Jennifer Aiken may apply for registration or licensing under the MDA legislative scheme, I may issue a forward-looking ban on accepting such applications.

- *Pugliese v. Clark*, 2008 BCCA 130 (BC Court of Appeal)
- *Best Import Auto Ltd. v Motor Dealer Council of British Columbia*, 2018 BCSC 834 (BC Supreme Court) at paragraphs 60 – 61

1. Wild Grizzly

[17] Given that Wild Grizzly has not abided by the Registrar's and the B.C. Supreme Court order on costs, it would not be appropriate to licence or register Wild Grizzly under the MDA legislative scheme. Issuing a licence or registration in such a case would be condoning and encouraging disobedience of lawful orders. This would lead to a break-down in the ability to regulate the industry and would not be in the public interest.

[18] Further, the recent findings against Wild Grizzly of acting as a motor dealer, while unregistered and with rolling back odometers on several motor vehicles is conduct of concern to the public interest. Before Wild Grizzly could be considered for registration or licensing under the MDA, there would need to be evidence of rehabilitation and re-establishing its trustworthiness. There must be significant amount of time showing evidence of good behaviour. The passage of time alone is insufficient evidence of rehabilitation and trustworthiness.

- *Re: Best Import Auto Ltd. et al* (Hearing File 17-08-002, November 28, 2017, Registrar) varied but not on this point *Best Import Auto Ltd. v Motor Dealer Council of British Columbia*, 2018 BCSC 834 (BC Supreme Court).

[19] Wild Grizzly was found to have rolled back odometers. Apart from administrative action that I have taken, that conduct could constitute an offence under section 35(2) of the MDA, and a breach of section 380 of the *Criminal Code* (fraud). In *Registrar, Motor Vehicles Act v. Jacobs*, 2004 CanLII 9450 (ON SCDC), the Court agreed with the Ontario Registrar to refuse Mr. Jacob's registration as a salesperson, for past convictions for odometer tampering. The Court noted:

[83] Mr. Jacobs is a fraudulent, unpardoned and unrepentant used car salesman who failed to pass off his defence to the criminal court but succeeded in doing so before the Tribunal. As a result, he has been able, with the exception of about 10 1/2 months between 1998 and 2002, to continue in business ever since he intentionally defrauded his trusting customers in the summer of 1997.

[84] The controlling principle in this case must be the promotion of integrity and honesty in the motor vehicle sales industry. The need to protect the public from dishonest salesmen like Mr. Jacobs, who fail to appreciate the difference between fraudulent conduct and honest conduct, requires that the Registrar's proposal be upheld.

[20] The above case shows the significant impact on the public's faith in an individual, who has been found to have tampered with odometers. The same concern applies to a corporate entity.

[21] In setting an appropriate amount of time for which Wild Grizzly will be banned from applying to be registered as a wholesaler, I have considered the following cases:

- (a) *Re: Best Import Auto Ltd.*: Ten-year ban on the dealership for not abiding by lawful orders and selling vehicles that were not suitable for transportation in a deceptive manner.
- (b) *Re: Bahman ("Bob") Shokohi & Best Import Auto Ltd.*: Denied wholesaler licence and ten-year ban on Mr. Shokohi personally for his prior conduct noted in the case cited at paragraph (a).
- (c) *Re: A Vancouver Auto Ltd. and Shahram Moghaddam* (April 3, 2017, File 17-02-002, Registrar): Two-year ban on the dealer company and Mr. Moghaddam for causing compensation fund payments and Mr. Moghaddam not understanding or appreciating his legal obligations as a licensee.
- (d) *Re: Asif Aslam* (August 14, 2018, Hearing 18-04-002, Registrar): Seven-year ban for prior criminal convictions.

- (e) *Re: Peter Fryer* (December 13, 2013, Hearing 13-11-005, Registrar) *affirmed Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279 (BC Supreme Court): Life-time ban for continuous history of criminal convictions.

[22] In consideration of Wild Grizzly's continued failure to abide by the Registrar's and the Court's order; the serious nature of multiple odometer roll-backs, deception against consumers, and operating a dealership without registration, I find the appropriate ban on applying for registration or licensing under the *Motor Dealer Act* legislative scheme is ten years. As Wild Grizzly is not operating within the licensed part of the industry, my ban will not impact on it financially.

[23] Wild Grizzly's conduct most closely parallels the conduct of Best Import. Both disobeyed lawful orders. Both misrepresented a motor vehicle condition to multiple consumers. Wild Grizzly has the addition of operating as a motor dealer while not registered. As with Best Import, Wild Grizzly has not shown any evidence of remorse, rehabilitation, or having taken any steps to remedy its past breaches. All these transgressions significantly impact the public's confidence in Wild Grizzly operating within a licensed industry.

[24] The above ten-year ban will provide Wild Grizzly the time to build up evidence of good behaviour and show it can again be trusted. Whether a registration or a licence will be issued in the future will depend on the facts that exist, if or when a future application is made. At a minimum, Wild Grizzly will have to have abided by the Registrar's and Court's Order, as well as to provide evidence that it has addressed the harm caused by its conduct, that it is trustworthy and that it will abide by the law.

2. Pasquale Zampieri

[25] In my past decision, I have found Pasquale Zampieri to have participated, condoned, or acquiesced in Wild Grizzly's conduct noted at paragraph 3 of this Decision. Effectively, the conduct of Wild Grizzly has been that of Mr. Zampieri. I see no principled reason on the evidence before me to distinguish the conduct of Wild Grizzly from Mr. Zampieri. Mister Zampieri is one of two listed directors of Wild Grizzly; and he is failing to direct Wild Grizzly to abide by the Registrar's and Court's orders.

[26] I find a ten-year ban on Pasquale Zampieri from applying for a licence or a registration or where he is a part of any licensed or registered entity under the *Motor Dealer Act* legislative scheme is also in appropriate, for the reasoning noted in paragraphs 22 to 24 above.

3. Jennifer Aiken

[27] In my prior decision, I found insufficient evidence to show Ms. Aiken participated, condoned or acquiesced in the conduct of Wild Grizzly noted in paragraph 3(a) through (e) above. As one of two listed directors in Wild Grizzly, Ms. Aiken is failing to direct Wild Grizzly to abide by the Registrar's and Court's orders.

[28] I would refuse to accept an application from Ms. Aiken for registration or licensing under the *Motor Dealer Act* legislative scheme or where she is involved with a registrant or licensee until the Registrar's and Court's orders are obeyed and Wild Grizzly has remediated any harm due to its conduct. Whether or not a licence or registration would be issued will depend on all the facts that exist if or when a future application is made by Ms. Aiken.

IV. Summary of Decision

[29] I have made the following findings and orders:

- (a) I have refused to licence Wild Grizzly Transport Ltd. as a wholesaler.
- (b) I have banned Wild Grizzly Transport Ltd. from applying for a registration or a licence under the *Motor Dealer Act* legislative scheme for ten years.
- (c) I have banned Pasquale Zampieri from applying for registration or a licence under the *Motor Dealer Act* legislative scheme or being involved in a registrant or licensee for ten years.
- (d) I have banned Jennifer Aiken from applying for registration or a licence under the *Motor Dealer Act* legislative scheme, or being involved in a registrant or licensee, until Wild Grizzly Transport Ltd. has abided by the Registrar's and B.C. Supreme Court's order noted in this decision.

V. Review of this decision

[30] This decision may be reconsidered under the provisions of sections 26.11 and 26.12 of the MDA. A request for reconsideration must be made in writing within 30 days of receiving these written reasons. The request for reconsideration must identify the grounds for reconsideration, be accompanied with the required new evidence (as defined in those sections) and meet any other requirements of those two provisions.

[31] This decision may also be reconsidered 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's being issued: section 7.1(t) of the MDA.

Dated: December 28, 2018

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