



Vehicle Sales Authority  
of British Columbia

**Hearing File No. 19-12-002**

**Neutral Citation: 2019-BCRMD-031**

**IN THE MATTER OF THE *MOTOR DEALER ACT*, R.S.B.C. 1996, C. 316**

**Re:**

**Vehicle Sales Authority of British Columbia**

the "Authority"

**And:**

**A&A Auto Sales Ltd. dba Auto Clearance Downtown Hastings  
(Dealer # 40660)**

Respondent

**Aykut Bilgin  
(Salesperson # 201174)**

Respondent

**DECISION OF THE  
REGISTRAR OF MOTOR DEALERS**

**Date and Place of Decision:** December 24, 2019, at Langley, British Columbia

**By way of written submissions**

**Introduction**

[1] A&A Auto Sales Ltd., Dealer # 40660 ("A&A"), requested an emergency hearing to review the decision of Hong Wong, Manager of Licensing, in his letter of December 10, 2019 (the "Letter"). In the Letter, Mr. Wong states that he cannot make a final decision on A&A's application to renew registration until certain allegations of misconduct are reviewed and "have been dealt with by the Registrar at an upcoming hearing."

[2] I ordered a process for A&A and the Authority to provide written submissions on short notice so A&A's application could be heard quickly. The reason for this is that A&A cannot operate as its registration as a motor dealer has expired. This process is now complete.

## **Position of the Parties**

### **(a) The Authority's Position**

[3] In its written submissions and the Letter, the Authority notes the following concerns (paraphrasing):

- (a) A&A's application to renew registration was received at the Authority via email on Saturday, November 30, 2019. However, payment was not received until December 9, 2019.
- (b) By operation of the law, A&A's registration as a motor dealer expired at midnight on November 29, 2019.
- (c) There are public interest concerns of a significant nature necessitating holding off on renewing A&A's registration as a motor dealer until the allegations are resolved, the basis of which are the following reasons:
  - (i) Aykut Bilgin is the authorized spokesperson and guiding mind of A&A and is also the sole owner of LGN Enterprises Inc. dba LGN Auto Clearance Center, Dealer # 40289 ("LGN").
  - (ii) LGN and A&A have recently received Warning Notices and had conditions imposed on their registrations on May 24, 2019.
  - (iii) The core concerns related to the Warning Notices and conditions imposed are:
    - (1) allowing an individual to act as a salesperson while not licensed contrary to section 13.1 of the *Motor Dealer Act*, R.S.B.C. 1996, c. 316 ("MDA");
    - (2) advertising vehicles for sale that are not compliant with the *Motor Vehicle Act* ("MVA"), contrary to that Act, the MDA or its regulations, and the *Business Practices and Consumer Protection Act*, SBC 2004, c. 2 ("BPCPA");
    - (3) sold at least one motor vehicle that was not compliant with the MVA;
    - (4) conditions added to registration to have all vehicles advertised for sale and sold inspected by a red seal mechanic or a Provincial Private Vehicle Inspection facility with passed inspection reports provided to consumers;

- (5) conditions added to disclose vehicles as “not suitable for transportation on all advertising, and
- (6) conditions added to maintain two years of records on site including all inspection and repair invoices.
- (iv) A Notice of Hearing naming LGN, A&A and Bilgin are expected within two weeks.
- (v) The specific allegation for the hearing is that LGN sold a vehicle to a consumer that did not meet the MVA standards contrary to the legislation. That LGN purchased that vehicle back from the consumer and subsequently resold the vehicle from A&A’s location in a manner contrary to the legislation. There is another allegation that A&A and Bilgin made a false police report against the investigating Compliance Officer.

[4] The Authority relied on two Registrar decisions in support of its arguments:

- Re: *VSA v. One West Auto Ltd.* 2019-BCRMD-024
- Re: *Pioneer Garage Ltd. dba Greenlight Auto Sales et al*, 2017-BCRMD-007

**(b) A&A’s position**

[5] A&A submits that it applied for renewal within the legislative time required. While admitting its payment was late, it notes the Authority’s Payment Policy had changed, which it says it was not aware of. Further, A&A states there were other circumstances which distracted the dealer from applying sooner and paying on time. A&A notes that the VSA has a Late Renewal Policy and A&A complied with these requirements. A&A submits that “Canadian law” from the Supreme Court of Canada states that a person is deemed to receive something the date it is received electronically. A&A did not provide the citation for that case or a copy for my review.

[6] Mr. Bilgin states that he has had only one issue with the Authority in the past. He infers this makes his situation different than the two cases relied on by the Authority. Mr. Bilgin emphasizes the economic impact the non-renewal has on his business.

[7] Mr. Bilgin affirms his concerns of the VSA investigation resulting in the Police Report. Mr. Bilgin provided submissions and a related audio recording he says supports that position.

## Legal Principles

### (a) Unsuitable for transportation

[8] Most of the applicable legal principles regarding advertising and selling motor vehicles that are “not suitable for transportation” were canvassed in detail in:

- *Re: VSA v. One West Auto Ltd.* 2019-BCRMD-024
- *Re: Pioneer Garage Ltd. dba Greenlight Auto Sales et al*, 2017-BCRMD-007
- *Re: Best Import Auto Ltd.* (September 1, 2017 Suspension Order, File 17-08-002, Registrar), additional reasons on main allegations (November 28, 2017) and varied but not on these legal principles, *Best Import Auto Ltd. v Motor Dealer Council of British Columbia*, 2018 BCSC 834 (BC Supreme Court)

[9] I summarize those key principles in what follows.

[10] A motor dealer may not advertise for sale, display for sale or sell a motor vehicle intended for use on the highway unless its safety components meet the minimum standards in the *Motor Vehicle Act* and all its regulations. If it intends to sell a *Motor Vehicle Act* non-compliant motor vehicle, it must advertise it, declare it on the purchase agreement and declare on the motor vehicle itself that it is “not suitable for transportation” and sold for a purpose other than for transportation such as for parts.

[11] A dealer failing to abide by the legal requirements noted in paragraph 10 in respect of a consumer transaction, fails to disclose a material fact contrary to section 5(1) of the BPCPA. Breaching these provisions of the BPCPA is deemed to be grounds to suspend or cancel a motor dealer registration: section 8.1(4)(b) of the MDA. If it is grounds to revoke a registration, it is grounds to refuse a registration.

### (b) Consideration of past conduct and dealer suitability

[12] The Registrar is not blinded by the “corporate veil” as that term is known in law. The Registrar may look behind the corporation to see the realities of how a dealership is being operated and those who are operating it. The conduct of a corporation can reflect on its Officers and Directors and vice versa. This has been codified in the legislative scheme. See sections 5, 26.05(5) and 35(5) of the MDA; and see sections 164(5) and 189(8) of the BPCPA; and also see *Re: Best Import* (Suspension Order).

[13] In considering issuing a registration or renewing a motor dealer registration, the Registrar's paramount consideration is to protect the public from potential harm. In assessing that risk, the Registrar may consider the past conduct of a licensee including allegations of past conduct yet to be adjudicated. Refusing or revoking a registration is not a punishment, but an expression that the applicant does not meet the minimum legislative requirements to be given the privilege of operating as a motor dealer.

[14] When considering suspending a licensee for past conduct or alleged past conduct, the Registrar:

- (a) Considers the available evidence, and if the evidence was considered true (establishes a *prima facie* case), would the continued operation of the motor dealer pose an unacceptable risk to the public,
- (b) Considers what measures are already in place to protect the public,
- (c) Considers the reliability of the evidence as presented, and
- (d) Considers any prejudice to any person.

[15] These same considerations appear appropriate for considering whether to refuse to renew a registration, even temporarily, until any alleged past conduct is proven or refuted.

[16] The Registrar is empowered to stay any application for registration or renewal of registration until another application, which includes a consumer complaint, is dealt with: section 7.1(l) of the MDA incorporating section 37 of the *Administrative Tribunals Act* into the MDA legislative scheme.

### **(c) Renewing a motor dealer registration**

[17] Another consideration is the expiry of a motor dealer registration and the time in which a renewal application is to be made. Section 4(3) of the MDA states:

(3) A registration or renewal of registration expires at midnight on the day before the anniversary of the day in the previous year that it came into effect.

[18] Section 4(1) of the MDA speaks of the form of an application for registration and the requirement that it be accompanied with the prescribed fee. This provision applies to both new applicants for registration and those seeking to renew their registration.

[19] The legislation is silent on when an application to renew registration is due. Certainly, if a dealer does not want to experience an interruption in its business, the application must be made before the time required in section 4(3) of the MDA.

[20] The MDA does not compel the Registrar to issue a registration or renewal of registration within a specific time frame. The MDA does not compel that someone be registered or that their registration be renewed if they meet certain criteria. The MDA requires that the Registrar only register or renew registration of a motor dealer if they are not a potential risk to the public. What this means is that the renewal of a motor dealer's registration is not automatic simply by submitting the required form and prescribed fee. The renewal must be authorized by the Registrar, or their delegate, after determining the applicant is not a potential risk to the public.

[21] While the MDA is silent on the time in which a dealer must apply to renew their registration, the Registrar is empowered under statute and at common law to create rules that are necessary and ancillary to carrying out their legislative duty. See section 27(2) of the *Interpretation Act*, R.S.B.C. 1996, c. 238 ; *Best Import*, supra (BC Supreme Court) at paragraph 60; and see *Pugliese v. Clark*, 2008 BCCA 130 (CanLII) (BC Court of Appeal).

[22] In the application for renewal of a motor dealer registration, it notes that such an application must be submitted one week prior to the expiry of the motor dealer's registration: page 4 of 4 on the Renewal Application, and page 11 of the Appendix to the Authority's submissions. The Renewal Application Form also notes it may take up to five (5) days to process a renewal application. This provides the opportunity to do the legislatively required review of the applicant and consider their suitability to be renewed as a motor dealer.

## **Discussion**

### **(a) Did A&A renew on time?**

[23] Did A&A renew their motor dealer registration on time? The answer to this is, no.

[24] A&A's registration expired at midnight on November 29, 2019 by operation of the law: section 4(3) of the MDA. A&A has admitted and accepted that their application for renewal was submitted on November 30, 2019, a day later. This is sufficient to dispense with the arguments around whether A&A submitted their renewal application on time. Even if I am wrong in this, A&A did not submit the prescribed fee until December 9, 2019 and their application would be considered

incomplete until then by section 4(1) of the MDA. The Renewal Application Form explained the way payment was to be made and this was also communicated to the industry on March 20, 2019.

[25] Even if A&A had submitted their completed Renewal Application Form with the prescribed fee on time, that did not mean they would automatically be renewed. The Registrar has a duty to assess A&A's suitability to be renewed as a motor dealer and may either decline renewal outright under section 5 of the MDA or "stay" the processing of their renewal application until another application is dealt with: section 7.1(l) of the MDA incorporating section 37(1)(d) of the *Administrative Tribunals Act*. I take Hong Wong's Letter of December 10, 2019, to be the latter. It specifically states that he cannot decide on renewing A&A's motor dealer registration until the allegations of past conduct are dealt with by the Registrar.

[26] I cannot comment on A&A's submission on the Supreme Court of Canada case A&A says speaks about "Canadian law" on the delivery of notices, without seeing the case. I can only speculate A&A is speaking of the common law "postal acceptance rule" also called the "mailbox rule"; and the "instantaneous communications rule" applicable to the common law of contracts.<sup>1</sup> Those are common law rules that determine when a person is "deemed" to have accepted an offer in relation to the formation of a contract. Those are not common law rules about when someone has delivered a legislatively required form to the Registrar under the *Motor Dealer Act*.

[27] Regardless, it is trite law that statute law trumps the common law decisions of the courts, including common law rules established by the Supreme Court of Canada. Sections 30 and 30.1 of the *Motor Dealer Act* deal with when notices and orders are deemed as being served. For instance, a notice or order in an email is deemed to be served on the third day after the notice is sent: section 30.1(b) of the MDA.

### **(b) Past conduct and potential public risk**

[28] The real issue here is whether A&A poses a potential risk to the public if it were registered as a motor dealer.

[29] At the core of this concern is the past conduct of A&A and the allegations that A&A is continuing to sell motor vehicles that are not compliant with the *Motor Vehicle Act* in a way that breaches its legal obligations under the legislation and

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<sup>1</sup> The law regarding both rules are discussed in *Key Pile Camp (2008) Ltd. v. Donaghy*, 2016 BCSC 2226 (BC Supreme Court) at paragraph 35.

conditions on its registration. The main concern is if any evidence suggests, and the allegations to be adjudicated by the Registrar, indicate that LGN sold a motor vehicle that was not compliant with the *Motor Vehicle Act*, repurchased that vehicle from the consumer to resolve a complaint, and then resold it through A&A while it was still not compliant. The connection between LGN and A&A is Mr. Bilgin.

[30] I find this case most similar to the *Re: Best Import* suspension decision as they both have similar allegations. Their conduct placed consumers at potential physical risk if allowed to continue operating as motor dealers. In both cases, similar conditions had been placed on their motor dealer registrations to attempt to protect the public interest. In both these cases, the allegations are that the dealers are not abiding by those conditions and continuing to sell motor vehicles that were not compliant with the *Motor Vehicle Act*, placing consumers at considerable potential risk of future harm. The allegations for both dealers is that they are not abiding by the lawful orders of their regulator by not abiding by the conditions placed on their registration.

[31] I do find A&A's case has similarities to the decisions in *Pioneer Garage Ltd.* and the *One West Auto Ltd.* In both those cases and this one, the legal issues are the same; whether to register or renew registration, while the adjudication of allegations of past misconduct are pending.

[32] I find there are also dissimilarities between this case and *Re: Best Import*, *Pioneer Garage Ltd.* and *One West Auto Ltd.* cases. In those three cases there were existing Notices of Hearing and Investigation Reports with attached evidence which I could refer to and assess the existing evidence to see if it would establish a *prima facie* case of risk to the public. In this case, I have been advised of the allegations in the Letter and provided some emails of the potential allegations that will be advanced. I do not have a formal Notice of Hearing. I also do not have a copy of any Investigation Report to consider the veracity of the allegations or consider the weight of the evidence to see if it would establish a *prima facie* case of the alleged non-compliance. I am left to accept the written allegations of the Authority's staff as contained in the Letter and emails.

[33] This case is also dissimilar to *Pioneer Garage Ltd.* and *One West Auto Ltd.* as in those two cases the dealerships were not yet established. A&A is an established dealer who is not currently registered by operation of the law. I must take this difference into consideration.

[34] The legal test before me is to see if the evidence establishes a *prima facie* case of potential consumer risk of harm and to intervene if necessary. What I have before me are only allegations that A&A is not abiding by the conditions of their



registration. I have seen no evidence as yet. I therefore find I cannot legally intervene to stay the application for renewal due to the allegations that A&A, LGN and Mr. Bilgin may have breached the imposed conditions.

[35] The Authority found it suitable for LGN and A&A to continue to operate subject to the conditions placed on their respective registrations on May 24, 2019. The Authority may have evidence that establishes a *prima facie* case that these conditions have been breached – such as in the form of an Investigation Report. However, such evidence was not placed before me for consideration. Absent that evidence, I cannot say a *prima facie* case has been made that A&A is in breach of its conditions of May 24, 2019, potentially placing consumers at risk.

[36] I am alive to the fact that I must also consider the protection of the public, even based on the allegations. The question for me then is what measures I can employ to balance A&A's desire to continue operating as a motor dealer with the protection of the public. In this regard, I would allow A&A to be registered, but on the following terms, conditions and restrictions:

- (a) A&A's registration is renewed effective January 1, 2020: section 4(7) of the *Motor Dealer Act*. This will allow the Authority sufficient administrative time to finalize the renewal;
- (b) A&A's registration is restricted to a term of four (4) months ending April 30, 2020, subject to any further order of the Registrar. A&A will have to apply for renewal at least 14 days before April 30, 2020<sup>2</sup>;
- (c) A&A's fee for the period January 1, 2020 to April 30, 2020 is to be prorated to be four of twelve months – 25% of the full fee; and
- (d) The conditions placed on A&A's registration on May 24, 2019, continue until removed by the Registrar.

### **Review of this Decision**

[37] If there is disagreement with my decision, including the conditions I have imposed, the decision may be reviewed by requesting reconsideration in accordance with sections 26.11 and 26.12 of the MDA. Such a request must be in writing and received within 30 days of receipt of this decision. The request must be accompanied with any new evidence as defined in those sections, if the request seeks to cancel or vary this decision.

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<sup>2</sup> 14 days is consistent with a similar condition provided for in section 6(1)(a) of the *Salesperson Licensing Regulation*, section 7(1)(a) of the *Wholesaler Licensing Regulation*, and sections 7(1)(a) and 16(1)(a) of the *Broker Licensing Regulation* under the MDA.

[38] This decision may also be reviewed by petitioning the BC Supreme Court for judicial review pursuant to the *Judicial Review Procedure Act*. Such a petition is to be filed with that court within 60 days of this decision: section 7.1(t) of the MDA.

“original is signed”

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Ian Christman, J.D.  
Registrar of Motor Dealers