



Vehicle Sales Authority
of British Columbia

Investigation File No. 19-10-067
Hearing File No. 19-12-001

Neutral Citation: 2019 -BCRMD-030

**IN THE MATTER OF THE *MOTOR DEALER ACT*, R.S.B.C. 1996, C. 316 and
BUSINESS PRACTICE AND CONSUMER PROTECTION ACT S.B.C. 2004, c.2**

RE:

DIAN GREENE

Consumer Complainant

MOTOR VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA

Complainant

And

AFFORDABLE AUTO SALES AND SERVICES INC.

(Motor Dealer Registration # 40114)

Respondent Dealer

And

MOHAMMED NADIR GHANI ZADEH

(Salesperson Licence # 201376)

Respondent Dealer Principal

**DECISION OF THE REGISTRAR OF MOTOR DEALERS
on COMPLIANCE AND COSTS**

Date and location of Decision: August 12, 2020 at Langley, British Columbia

By way of written submissions

I. Introduction

[1] On March 13, 2020, I rendered a decision finding that Affordable Auto Sales and Services Inc. ("Affordable Auto") and its owner and salesperson Mohammed Nadir Ghani Zadeh ("Mr. Zadeh") committed deceptive acts or practices and an unconscionable act or practice in a consumer transaction with Dian Greene. Generally, Affordable Auto and Mr. Zadeh failed to declare the Nissan Frontier sold to Ms. Greene was a rebuilt vehicle and took advantage of Ms. Greene's ignorance of that fact. I ordered Affordable Auto and Mr. Zadeh to take back the Nissan Frontier and provide Ms. Greene a refund of \$10,930.

[2] Given my findings of fact, I ordered a process for the Authority, Affordable Auto and Mr. Zadeh to provide written submissions on what compliance action, if any, was appropriate and to speak to costs. That process is complete and this decision addresses compliance and costs.

II. Position of the Parties

[3] The Authority advances that Affordable Auto's registration as a motor dealer should be cancelled and Mr. Zadeh's licence as a salesperson be cancelled.

[4] The Authority notes that under section 8.1(4)(b) of the *Motor Dealer Act* ("MDA"), a licensee found to have committed a deceptive act or practice or an unconscionable act or practice is grounds to cancel a registration or a licence. The Authority recognizes this is the first complaint against the dealer. However, the investigation uncovered that Affordable Auto had sold the Nissan Frontier to another previous consumer and did not declare the rebuilt status of the Nissan to that customer either. The Authority also raises governability concerns providing evidence of failed dealer inspections and that the dealer was not open and present on a few of those occasions.

[5] Initially, Affordable Auto did not respond to the written submissions of the Authority on time. The son of the owner then got involved and provided a short, written submission. I was concerned that the son may not be aware of the type of information I needed to make an informed decision. I wrote to the parties granting Affordable Auto additional time to provide further written submissions if they wished and indicated the type of information that was important to address. The time to provide those submissions has passed.

[6] Generally, the son of the owner of Affordable Auto advises there were a few things happening that made Affordable Auto and Mr. Zadeh slow to respond to the Registrar's order to compensate the consumer and respond to the Authority's

submissions. I am advised that Mr. Zadeh was facing some recent health issues and the onset of the COVID-19 pandemic and operating restrictions caused revenues to dry up. The son advises that he is now involved in helping his father. Ms. Greene has now received her compensation. I am advised that the dealership has new policies and procedures in place to ensure consumers are fully aware of the facts in a transaction. The request is for leniency given this is the first transgression by the dealership and the dealer did comply with the Registrar's order, albeit late, due to extenuating circumstances. Affordable Auto does not make any specific submissions on the appropriate compliance action, or object to the submissions of the Authority regarding costs.

III. Legal considerations

[7] I have detailed in prior decisions, the legal principles governing the selection of compliance action. I will summarize those here:

- (a) As a regulator, compliance selection is to ensure a regulated person complies with the laws in the future in order to protect the public,
 - (b) The regulator does not punish past conduct, that is left to the courts applying the criminal law process,
 - (c) The tools at my disposal are used to deter future misconduct, this includes administrative penalties. Such penalties are used to deter future misconduct and must not drift into the realm of punishing past misconduct,
 - (d) Any selected penalty amount must also not be seen as the cost of doing business as that does not have a deterring effect,
 - (e) Compliance selection must be proportionate to the specific non-compliance, in consideration of the licensee's specific circumstances and history while balanced with the need for general deterrence and to protect the public,
 - (f) Past precedences are useful guides but are not binding authority. It may be that a penalty amount needs to be increased to reflect a changed marketplace or where prior penalties have shown to be ineffective at either specific or general deterrence, and
 - (g) Where there can be no assurance of future compliance applying any of the statutory tools and the public would be at risk if the person remained in the industry, the Registrar has a duty to remove the person from the industry, and thus remove the risk to the public.
- *Motor Vehicle Sales Authority v. Barnes Wheaton (North Surrey) Chevrolet Buick GMC Ltd. et al* (April 16, 2020, Hearing file 19-07-004, Registrar)
 - *Guindon v. Canada*, 2015 SCC 41, [2015] 3 S.C.R. 3 (Supreme Court of Canada) at paragraphs 75 to 81

- *Cartaway Resources Corp. (Re)*, 2004 SCC 26, [2004] 1 S.C.R. 672 (Supreme Court of Canada)
- *Hogan v. British Columbia Securities Commission*, 2005 BCCA 53 (Court of Appeal)
- *Re: Best Import et al.* (November 28, 2017, File 17-08-002, Registrar) varied by *Best Import Auto Ltd. v Motor Dealer Council of British Columbia*, 2018 BCSC 834 (BC Supreme Court)
- *Harris & Harris v. Windmill Auto Sales & Detailing Ltd.* (April 10, 2013, File 12-030, Registrar), affirmed in *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers*, 2014 BCSC 903 (BC Supreme Court)
- *Knapp v. Crown Auto Body and Auto Sales Ltd.* (September 21, 2009, File 08-70578, Registrar) and affirmed in *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894 (BC Supreme Court)

[8] The Authority is generally entitled to its costs to investigate non-compliance and for any legal and hearing costs: section 155(4)(d) of the *Business Practices and Consumer Protection Act* (“BPCPA”) and section 26.02(4)(d) of the MDA. The costs must show a realistic connection to the work done and the allegations brought forward. As a matter of public policy, the person whose conduct required investigating and a hearing process should pay the related costs. Those costs should not be borne by other licensees through their licensing fees; especially those who are compliant.

IV. Discussion

(a) Compliance selection – Request to cancel registration and licence

[9] The Authority recommends that Affordable Auto’s registration and Mr. Zadeh’s salesperson licence be cancelled even though this is Affordable Auto’s first transgression. The Authority cites the decision in *Scott v. Lake Country Motor Sports Ltd. et al.* (August 10, 2018, File 18-01-004, Registrar).

[10] The case of *Lake Country* involved a dealer selling a consumer’s vehicle on consignment and failing to remit the proceeds of sale to the consumer. The dealer took the position that the consumer owed the dealer a debt and withheld the funds. It was determined that there was another personal and unrelated transaction between the consumer’s boyfriend and the owner of Lake Country regarding buying grow-op equipment and renting a house. The dealer was attempting to withhold the proceeds of sale for that other agreement. Lake Country is unique in that the proceeds of sale were being held in trust by a second dealer. During the hearing process, Lake Country advised the second dealer to pay the proceeds to Lake

Country without advising anyone that it had done so. Also, Lake Country had ceased occupying its premises as a dealer. For these reasons, Lake Country was found ungovernable and that it was not currently using its motor dealer registration and therefore it was appropriate to cancel its registration. Those facts are not applicable to Affordable Auto.

[11] In the case of *Crown Auto Body, supra*, the dealer's registration was cancelled, and a \$20,000 administrative penalty was issued. The conduct of concern was the dealer had rebuilt a Toyota Prius to a sub-standard state that was hidden from normal inspection, and the vehicle was unsafe to drive. The owner of the dealership was also the declared rebuilder. The vehicle was sold to the consumer with the dealer declaring the rebuilt status, but not the substandard repairs. There was also an issue of an incorrect odometer declaration. It was that dealer's first transgression.

[12] Adding conditions to the dealer and salesperson licence were considered *in Crown Auto Body*. However, no conditions could be devised to protect the public interest covering the issues in *Crown Auto Body, supra* – rebuilding vehicles to an unsafe state. Further, the hidden nature of the sub-standard repairs made it virtually impossible to provide any assurances that future sub-standard repairs would not occur as the Authority could not oversee each vehicle being rebuilt. It was administratively impossible for the Registrar and the Authority to oversee the dealer to ensure future compliance. Given the grave risk to the public of unsafe vehicles on the road, the Registrar was left with no choice but to cancel the dealer's registration. In upholding the decision, in *Crown Auto Body, supra*, the BC Supreme Court noted the sanctions were heavy ones but justified in that context: paragraph 125.

[13] In the case of *Best Imports, supra*, it was alleged and ultimately found that the dealer was offering *Motor Vehicle Act* ("MVA") non-compliant motor vehicles for sale and selling such vehicles. Conditions were added to the dealer's registration prohibiting that conduct. Follow up inspections showed the dealer was not abiding by those conditions, so its registration was suspended. At the conclusion of the hearing, I found the dealer disobeyed the orders of the Registrar, disobeyed the orders of vehicle inspectors of the B.C. Ministry of Transportation, sold unsafe vehicles, and attempted to mislead the Registrar during the hearing. The dealer was found ungovernable and their registration was canceled. In a subsequent decision where the owner applied to be a wholesaler, they were denied a licence for those same reasons.

[14] In the case of *Webster v. Pioneer Garage Limited dba Fraser Valley Pre-Owned et al* (April 27, 2018, File 17-07-002, Registrar) the dealer was found to

have committed deceptive acts and practices and unconscionable acts or practices in arranging financing for the consumer, taking advantage of the consumer's ignorance. The dealer had a prior history of non-compliance which included undertakings to correct their behaviour. There was some history of cooperation by the dealer in this case. The dealer quickly resolved the consumer's harm and the dealer undertook to change its policies and procedures having hired a new Vice-President of Operations for that specific purpose.

[15] In deciding on the compliance action in *Webster, supra*, there was no risk of physical harm to consumers. The risks were financial. There was a history of non-compliance, but also evidence to show attempts to become compliant. The result was compliance action involving conditions on the dealer and salesperson's licence, a suspension for both and administrative penalties for both. In short, there were legislative tools that could be used to reduce the risk to the public that could be overseen by the Authority and the Registrar, along with evidence from the dealer of a willingness to comply and be compliant in the future.

[16] In the case of *Affordable Auto*, my decision on liability was made on March 13, 2020. This was the time when public health officials in British Columbia imposed certain restrictions to combat the spread of COVID-19 that affected commerce in the province. The fact that *Affordable Auto* took as long as it did to provide compensation to the consumer can be understood given the then and now commercial climate in British Columbia for a small car dealer. The fact remains, the dealer did obey the Registrar's order, although tardy in doing so.

[17] I also have the submissions of the son that he is now more involved in *Affordable Auto's* operations and has implemented new policies and procedures to ensure proper disclosures to consumers. This shows a desire to be cooperative and compliant. Even so, I am cautious as I was in the *Best Imports, supra* case, because a licensee's assurance of compliance after a hearing outcome can be truthful or mere window dressing to avoid liability. The difference with *Best Import, supra*, is that dealer showed a concerted and sustained disregard to abide by the lawful orders of its regulator. While I do take into consideration the Authority's concern that *Affordable Auto* has failed an inspection in the past and it appeared someone was acting as a salesperson while unlicensed, there was no formal investigation or finding. When told to close the dealership office because no licensed person was on the premise, it appears the dealership personnel did just that.

[18] The Authority notes *Affordable Auto* was closed when it went to inspect the dealer on two occasions. There is no legal requirement that a dealer be open all the time. If a dealer wishes to close on any day of the week, that is a business decision

they are entitled to make. If the Authority has made an appointment to inspect the dealer and the dealer is not present, that is a different matter. If the dealer is open and then abruptly closes to avoid an inspection, that is also a different matter.

[19] I also note that in this case, there was no proven issue with how the Nissan Frontier was rebuilt or that it was unsafe, as was the case in *Crown Auto Body, supra*.

[20] I find the specific facts of Affordable Auto fall more in line with the decision of *Pioneer Garage, supra*. Both have findings of a deceptive act and unconscionable act. Both have indications of attempting to be compliant after the fact and no real indications of being ungovernable. The difference in the two is their previous compliance history. In *Pioneer Garage, supra*, there were several prior instances of non-compliance that required a very decisive and serious compliance response to act as a deterrent. In the case of Affordable Auto, this is its first transgression. These facts suggest to me that the cancelation of Affordable Auto's registration would not be proportionate to the transgression and Affordable Auto's overall history of compliance, coupled with the steps Affordable Auto is taking to ensure its future compliance.

[21] I find the above rationale equally applicable to Mr. Zadeh's conduct, such that cancelation of his salesperson licence would also not be a proportionate response to the transgression and the compliance history of his licence.

(b) Compliance selection – conditions on registration and licence

[22] Affordable Auto has provided assurances that it now has policies and procedures in place to ensure similar conduct does not happen again. To protect the public, that statement must be verified to ensure these steps have been taken by Affordable Auto. To achieve this, a condition is added to the registration of Affordable Auto that within 30 days of the date of this decision, Affordable Auto is to provide a copy of the policies and procedures it has referred to, for my review. If I do not find them adequate, Affordable Auto will be required to re-write and re-submit those policies and procedures.

[23] The issue in this case was Affordable Auto not advising a purchaser that the motor vehicle offered for sale was a rebuilt vehicle. To mitigate any future risk of that happening again, I am adding a condition to Affordable Auto's registration that they provide a written disclosure to a consumer of the rebuilt status of any rebuilt vehicle offered for sale and keep a copy of the disclosure that is signed by the consumer in the dealer records. When the Authority inspects Affordable Auto, the Authority can review these disclosures.

[24] Mohammed Nadir Ghani Zadeh is the owner and the licensed salesperson at Affordable Auto. The importance of disclosing material facts to consumers, not committing deceptive or unconscionable acts or practices, and the subject of rebuilt vehicles are contained in the salesperson licensing course he would have completed. Clearly, Mr. Zadeh has not fully considered those concepts in operating his dealership. If he is to continue operating a motor dealership, he must be aware of his legal obligations and incorporate processes and procedures to ensure he is compliant with the law. I believe it is in the public interest that Mr. Zadeh retake the salesperson licensing course and to incorporate the learnings of that course into his dealership operations. A condition is added to the salesperson licence of Mohammed Nadir Ghani Zadeh that he retake at his own cost, and successfully complete the Salesperson Certification Course within 45 days of the date of this decision.

(c) Compliance selection – administrative penalty

[25] Administrative penalties are used to deter future misconduct of a similar nature. I am required to consider the legislative factors in section 164(2) of the BPCPA along with various common law principles, such as proportionality, the need for specific and general deterrence, that the penalty amount not be punitive but also not be seen as the cost of doing business.

[26] The starting point is to first consider whether the facts suggest an administrative penalty is even needed for deterrent purposes. An administrative penalty is not “automatic” because there has been a transgression. I must consider whether the above conditions, the dealer providing a refund and my below order for costs will suffice as a deterrent given the specific facts of this case and of the dealer.

[27] The Authority’s regulatory philosophy and enforcement principles speak of using progressive enforcement coupled with education to address non-compliance. Generally, a first-time transgression results in warnings, education and maybe conditions on a licence. Even so, the regulatory philosophy and enforcement principles reserve the right to “jump” to more stringent compliance options for a first-time transgression where necessary to protect the public interest. Such was the case in *Crown Auto Body, supra*.

[28] In reviewing recent cases, I note the case of *Barnes Wheaton, supra*. In that case, the dealer was found to have deliberately participated in a scheme to have a vehicle pass a provincial vehicle inspection, when it was not compliant with legislative standards. It was the dealer’s first infraction and the dealer also

purchased the vehicle back from the consumer. However, the conduct was considered deliberate and deterring deliberate non-compliance is crucial to protect the public and the reputation of the industry. This was applied equally to the dealer business and the salesperson.

[29] In this case, I do believe there needs to be some administrative penalty to deter similar misconduct by Affordable Auto in the future and deter the industry generally. I am not satisfied that paying costs, writing new policies and the owner of Affordable Auto taking and successfully passing a course is enough. There needs to be something more to ensure Affordable Auto follows their new policies and procedures, ensure Mr. Zadeh takes seriously the learnings and incorporates them into his dealership operations, and remains vigilant that similar conduct is not repeated.

[30] In considering the appropriate administrative penalty amount, I start by considering the statutory factors in section 164(2) of the BPCPA.

i. previous enforcement actions for contraventions of a similar nature by the person;

I. Affordable Auto

[31] There is no evidence before me of any previous enforcement actions for contraventions of a similar nature involving Affordable Auto.

II. Mohammed Nadir Ghani Zadeh

[32] There is no evidence before me of any previous enforcement actions for contraventions of a similar nature involving Mohammed Nadir Ghani Zadeh.

ii. the gravity and magnitude of the contravention;

[33] The gravity of the contravention means how impactful it was on the public. In this case the gravity of the situation would be viewed as medium. Taking advantage of the ignorance of a consumer and committing an unconscionable act is of concern to the public. In this case, the evidence showed a financial impact and not one of safety. There would be a negative impact on the industry's reputation.

[34] On the evidence, the harm caused by the non-compliance was confined to this one transaction. The non-compliance did not have a province-wide or even a regional impact. It is possible this type of conduct would continue had it not been

discovered. There is some evidence suggesting Affordable Auto did not advise a previous purchaser of the Nissan Frontier of its rebuilt status.

[35] Paragraphs 33 and 34 apply equally to Affordable Auto and Mr. Zadeh.

iii. the extent of the harm to others resulting from the contravention;

[36] The evidence before me is that only one consumer was harmed during the transaction – Dian Greene. The amount of that harm was \$10,930. This applies equally to Affordable Auto and Mr. Zadeh.

iv. whether the contravention was repeated or continuous;

[37] There is no evidence that the contravention was continuous, such as in an advertisement. The best evidence I have is that this contravention was confined to this one case. There is some evidence that a prior owner also was not advised of the rebuilt status of the Nissan Frontier. However, I have insufficient evidence to determine if that would have been a deceptive act or practice or an unconscionable act or practice. It is merely a statement from the prior owner whose transaction was not investigated in any meaningful way, such as documents of that transaction obtained to see what may have been declared. I therefore put no weight on the statement of the prior owner in considering this particular factor.

[38] The above discussion applies equally to Affordable Auto and Mr. Zadeh.

v. whether the contravention was deliberate;

[39] I found the conduct in this case to have been deliberate. That determination applies equally to Affordable Auto and Mr. Zadeh.

vi. any economic benefit derived by the person from the contravention;

[40] There is very little evidence to identify, with any certainty, the economic benefit Affordable Auto and Mr. Zadeh would have received from the contravention. I found that the sale price of the Nissan Frontier was \$10,930. Factored into that is Affordable Auto's costs to purchase the Frontier as salvage, the costs of all the parts and labour, and the costs for inspections. The Impact Auto invoice shows Affordable Auto purchased the Nissan Frontier as salvage for \$10,221.75. There

was the economic benefit of the sale prior to Ms. Greene's. That sale was declared as being \$12,000. The prior owner said they traded in the Nissan Frontier but there is no evidence of the trade-in credit they received.

[41] Using just these numbers it appears the initial sale at best provided Affordable Auto an economic benefit of \$1,778.25 (\$12,000 sale price - \$10,221.75 price to purchase Nissan Frontier as salvage). This does not factor in any other costs for additional parts, labour or inspection costs in rebuilding the Nissan Frontier. How much credit Affordable Auto gave to the previous owner of the Frontier as a trade-in allowance is unknown. The difference between that amount and the amount Affordable Auto sold the vehicle to Dian Greene would be the approximate economic benefit Affordable Auto would have received in the Dian Greene transaction. In my opinion, the economic benefit Affordable Auto would have received in the sale of the Nissan Frontier is less than \$10,000 and probably closer to \$5,000 when factoring in some allowance for parts, labour and inspection costs for the initial rebuild. This would also apply to Mr. Zadeh as the sole owner of Affordable Auto.

vii. *the person's efforts to correct the contravention.*

[42] In terms of Affordable Auto's effort to correct the contravention, it would have to be viewed as poor. During the investigation Compliance Officer Hoy asked Mr. Zadeh if Affordable Auto was willing to purchase back the Nissan Frontier from Ms. Greene. The answer was no. Affordable Auto was not a very active participant in this hearing process until Mr. Zadeh's son became involved. Affordable Auto was slow to comply with the Registrar's orders. I have accepted the current COVID-19 economic environment contributed to that slow response, but Affordable Auto could have clearly communicated that earlier and did not. I find that this poor response by Affordable Auto can also be attributed to Mr. Zadeh for assessing this factor.

viii. *Considering the whole case, the need for specific and general deterrence and past precedents*

[43] Affordable Auto withheld material facts from Dian Greene and took advantage of her ignorance resulting in Affordable Auto committing both an unconscionable act or practice and a deceptive act or practice contrary to the BPCPA. When Affordable Auto failed to declare damage over \$2,000 to Ms. Greene, as required by the *Motor Dealer Act Regulation*, it deprived her of the opportunity to make further inquiries of the Frontier's suitability and to assess its fair market value: *Brook v. Wheaton Pacific Pontiac Buick GMC Inc.*, 2000 BCCA 332 (BC Court of Appeal) at paragraphs 34 to 36.

[44] The failure to make statutory declarations is of concern to the public as is taking advantage of a consumer's ignorance. The laws must be obeyed to protect the buying public and ensure a level playing field among dealers. This type of misconduct also breeds mistrust in the industry with negative impacts on the industry's reputation and on consumer confidence in the industry. Such conduct must be strongly deterred both against Affordable Auto and the industry generally.

[45] In the case of *Barnes Wheaton, supra*, a \$12,500 administrative penalty was issued to deter future similar misconduct. That case involved findings of willfully obtaining a false passed inspection report for a vehicle. It was the first time the dealership had any similar transgressions or enforcement for a similar nature. The economic benefit the dealership was trying to attain was about \$7,000 in repair cost savings. In that decision, I noted that past administrative penalties to deter misrepresentations had not deterred Barnes Wheaton and so a greater penalty was needed than in prior decisions. It is also to be noted that Barnes Wheaton is a larger franchise dealer than is Affordable Auto.

[46] In the case of *Crown Auto Body, supra*, an administrative penalty of \$20,000 was issued and their registration was cancelled. In that case, the dealer had rebuilt a vehicle to a sub-standard quality making it unsafe. It was also the dealer's first transgression and the economic benefit the dealer tried to obtain was unknown. The significant penalties were necessary to deter similar conduct of rebuilding and selling unsafe vehicles to protect public safety.

[47] In the case of *Windmill Auto Sales & Detailing Ltd., supra*, the dealer was required to take back the vehicle in that case and provide a full refund plus pay an administrative penalty of \$2,500. The conduct was a deliberate misrepresentation of prior damage to the vehicle with still existing hidden damage needing repair. It was also the dealer's first transgression. In arriving at the \$2,500 administrative penalty, the dealer having to re-purchase the vehicle from the consumer was a considered factor. *Windmill Auto Sales & Detailing Ltd., supra* was also a smaller dealer as compared to a franchise dealer. I would note that the case of *Windmill Auto Sales & Detailing Ltd., supra* was decided in 2013 and since then, the need to incrementally increase administrative penalties has been needed to act as appropriate deterrents.

[48] The conduct of Affordable Auto was deliberate and considered unconscionable. Section 8.1(4)(b) of the *Motor Dealer Act* is the Legislature's statement that such conduct is to be taken seriously and deterred. This suggests an administrative penalty in the upper half of the range for deterrent purposes.

[49] The dealer is a smaller dealer and so the amount of the penalty needs to reflect their ability to pay and balance not being too high to be seen as a penalty but not too low to be seen as the cost of doing business - proportionality. The dealer did eventually cooperate and buy back the vehicle from Ms. Greene. This is its first transgression. These factors along with the approximate amount of the economic advantage attempted to be obtained would suggest a penalty amount in the area of \$5,000 to deter Affordable Auto from attempting to attain an economic benefit of that amount through misconduct in the future. This falls within a range of the three above cited decisions, and in consideration that the dealer is smaller than *Barnes Wheaton, supra*.

[50] A Notice of Administrative Penalty in the amount of \$5,000 is issued against Affordable Auto. Given the close connection between Mr. Zadeh and Affordable Auto, similar to a sole proprietorship, I believe that amount is sufficient to deter Mr. Zadeh as a licensed salesperson and there is no need for a separate administrative penalty against Mr. Zadeh and his salesperson licence.

(d) Costs

[51] The Authority provides submissions and evidence to show the Registrar's investigation costs in this matter were \$1,311.64. Affordable Auto has not disputed the issue of costs. In reviewing the submissions and evidence, the amount seems reasonable and in line with past cases of a similar nature. See for example *Barnes Wheaton, supra*. As earlier noted, as a matter of public policy the person whose conduct required being investigated and resulting in compliance action should bear those costs instead of the industry as a whole through their licensing fees. This direct liability regarding costs also acts as a deterrent against misconduct.

[52] A Compliance Order will issue requiring the Affordable Auto to pay to the Authority investigation costs in the amount of \$1,311.64.

V. Summary

[53] I have made the following orders:

- (a) Pursuant to section 4(6) of the *Motor Dealer Act*, a condition is added to the motor dealer registration of Affordable Auto Sales & Services Ltd. that within 30 days of the date of this decision, Affordable Auto is to provide a copy of the policies and procedures it has created to ensure consumers are aware of the rebuilt status and history of motor vehicles, for my review;

- (b) Pursuant to section 4(6) of the *Motor Dealer Act*, a condition is added to the motor dealer registration of Affordable Auto Sales & Services Ltd. that they provide a written disclosure to a consumer of the rebuilt status of any rebuilt vehicle offered for sale and keep a copy of that signed written disclosure in the dealer records;
- (c) Pursuant to section 6(3) of the *Salesperson Licensing Regulation*, a condition is added to the salesperson licence of Mohammed Nadir Ghani Zadeh that he retake at his own cost and successfully complete the Salesperson Certification Course within 45 days of the date of this decision;
- (d) Pursuant to section 166 of the *Business Practices and Consumer Protection Act*, a Notice of Administrative Penalty in the amount of \$5,000 is issued against Affordable Auto Sales & Services Ltd; and
- (e) Pursuant to section 155(4) of *Business Practices and Consumer Protection Act*, a Compliance Order is issued against Affordable Auto Sales & Services Ltd. to pay to the Authority \$1,311.64 in investigative costs.

VI. Review of Decision

[54] My order imposing conditions on Affordable Auto's motor dealer registration and Mr. Zadeh's salesperson licence may be reconsidered in accordance with sections 26.11 and 26.12 of the *Motor Dealer Act*. Such a request for reconsideration must be made in writing within 30 days of the receipt of these reasons or notice of conditions, whichever is later. A request for reconsideration must be accompanied with the required new evidence as defined in those sections of the *Motor Dealer Act*.

[55] My Compliance Order on costs and my Notice of Administrative Penalty and these associated reasons may be reviewed by requesting a reconsideration pursuant to sections 180 to 182 of the BPCPA. Such a request must be in writing and received within 30 days of the of receiving the Compliance Order, Notice of Administrative Penalty or these reasons, whichever is later. The request must be accompanied with the required new evidence, as defined in those sections of the BPCPA, for me to consider varying or canceling my Compliance Order or Notice of Administrative Penalty.

[56] Any request for reconsideration may be directed to my assistant Preet Jassal at preet@mvsabc.com.

[57] This decision and my orders may also be reviewed by petitioning the B.C. Supreme Court for judicial review pursuant to the *Judicial Review Procedure Act*. Such a petition must be filed with that Court within 60 days of the date of this decision: section 7.1(t) of the *Motor Dealer Act*.

Date: August 12, 2020

“original is signed”

Ian Christman, J.D.
Registrar of Motor Dealers