



Vehicle Sales Authority
of British Columbia

Investigation File #19-02-077

Hearing File #19-05-004

Neutral Citation: 2019-BCRMD-017

**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:

Justin Kyle Plosz

Salesperson Applicant

Application for Reconsideration

Registrar's Decision

Date and Place of Decision: April 9, 2020, at Langley, British Columbia

By way of written submissions

I. Introduction

[1] Justin Kyle Plosz applies for reconsideration of my decision of October 22, 2019 denying him a salesperson licence and refusing to accept an application from him for three years from that date. That application was received by email on March 19, 2020.

[2] The crux of my October 22, 2019 decision considered:

- (a) Mr. Plosz's past criminal convictions,
- (b) Mr. Plosz's then criminal charges,
- (c) Mr. Plosz's administrative review for a salesperson licence in Alberta, and
- (d) Mr. Plosz's failure to advise the Authority of key information to be considered in relation to his suitability as a licensee.

[3] In the October 22, 2019 decision I noted:

[19] Given all the above, I would refuse to grant Mr. Plosz a salesperson licence at this time. His past criminal convictions, his being refused a salesperson licence in Alberta, and his failing to advise the Authority of his then forthcoming administrative review by AMVIC indicates he cannot be trusted to act with honesty and integrity, and this also raises a concern about his governability. These reasons would suffice to refuse him a salesperson licence at this time: *Registrar, Motor Vehicle Dealers Act v Vernon*. It is unnecessary for me to consider his outstanding criminal charges to arrive at this decision.

...

[21] Mr. Plosz's failure to advise the VSA of his administrative review in Alberta is most recent and concerning. Mr. Plosz has not cooperated with the VSA's requests for information of the AMVIC administrative review. The VSA needs to know the details of AMVIC's decision so it can do its own review. This requires Mr. Plosz's cooperation. This is recent behaviour of hiding information from a regulator or proposed regulator. There needs to be some history of good behaviour on the part of Mr. Plosz. That history must show he can be trusted to be forthright and honest with his regulator, can be trusted to deal with the public and not be a concern to the public interest within the motor vehicle sales industry.

II. New Evidence

[4] Justin Plosz submits two new pieces of evidence for my consideration. First is that the Alberta Motor Vehicle Industry Council ("AMVIC") has issued him a conditional salesperson licence on terms and conditions as of March 6, 2020. Justin Plosz provides a letter on AMVIC letterhead to that effect. Second, in his email requesting the reconsideration, Mr. Plosz says his criminal charges were stayed and submits the judge in the case advised him the Registrar should never have considered those charges. There is no documentation supplied in support of the stay or the judge's comments.

III. Legal Principles

[5] Once a statutory decision maker has made a decision, the principle of *functus officio* applies. That is, the decision maker's authority is spent, and they cannot revisit the decision. As noted by the BC Supreme Court in relation to the Registrar:

[46] Lastly, Mr. Fryer complained that the respondent would not “let him appeal” and he had no option but to come to court. He thinks this is unconstitutional. There is certainly no basis for me to consider such a constitutional challenge but more to the point, the issue does not arise. The statute does not provide for an appeal and so the respondent has no ability to perform one. Once a decision is made, the Registrar is functus and the recourse for someone wanting to challenge the decision is, as stated in the decision itself, an application for judicial review.

[Underlining added]

- *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279 (BC Supreme Court)

[6] There are three exceptions to the *functus officio* rule. First, is where the tribunal makes grammatical corrections to a decision or has noted the wrong name of a party. The second is where an administrative tribunal has failed to complete its mandate when rendering its decision. These two exceptions are discussed in *Chandler v. Alberta Association of Architects*, 1989 CanLII 41 (SCC), [1989] 2 SCR 848 (Supreme Court of Canada) and do not apply to this case.

[7] The third exception is when legislation empowers a statutory decision maker to revisit their decision. If legislation allows this to occur, then the procedures required by the legislation must be followed.

[8] Since the decision in *Fryer, supra*, the B.C. Legislature has empowered the Registrar to reconsider a decision to refuse a licence. However, the ability to do so is limited by the legislation, which must be respected.

[9] For the Registrar to cancel or vary a decision, the following must apply:

(a) The request for reconsideration must occur within 30 days of the aggrieved person receiving notice of the decision or the reasons for the decision, which ever is latest. This time limit may be abridged in certain circumstances and where an injustice would otherwise occur if it was not abridged.

(b) The request for reconsideration must be accompanied by new evidence that:

- Did not exist at the time of the original decision, or
- Did exist at the time of the original decision but could not be discovered with reasonable diligence in searching for that evidence, and

(iii) The new evidence must be substantial and material that it may affect the original decision.

- Sections 26.11 and 26.12 of the *Motor Dealer Act*

[10] As noted in previous decisions on reconsideration, the Registrar reviews that these statutory pre-requisites exist, before deciding to order a new hearing.

IV. Discussion

[11] First, I would note that the request for reconsideration was not filed within the legislatively required 30 days. The decision was issued on October 22, 2019 and there is ample evidence that Mr. Plosz was aware of that decision since at least November 22, 2019, as Mr. Plosz called the Authority asking about appealing the decision. I would note that the recent Government order suspending limitation periods at the discretion of tribunals due to the COVID-19 pandemic was issued well after the 30-day period to apply for reconsideration in this case expired. That Government order does not apply to this case.

[12] I accept that the decision by AMVIC to reissue Mr. Plosz a salesperson licence in Alberta was only made in March of 2020 and was not available to Mr. Plosz within the 30-day period. As noted in my decision of October 22, 2019, it was not necessary to consider his then pending criminal charges in rendering my decision to refuse him a licence. Therefore, the stay of those charges has no bearing on my considerations here.

[13] I believe Mr. Plosz misses the point of my October 22, 2019 decision as highlighted by paragraphs 19 and 21 of that decision, noted above. The fact that AMVIC has now decided to issue him a licence in Alberta, does not change my assessment of him on the facts that existed when I rendered my decision. Mr. Plosz still has a prior criminal record, had been refused a salesperson licence in Alberta, was under review by AMVIC, and he failed to advise the Authority of that administrative review and to cooperate with the Authority's review of his application in B.C. As noted by the BC Supreme Court in the *Fryer* case:

[37] Mr. Fryer was licensed at one time in Alberta. His license lapsed for non-payment of fees. That fact, however, is not relevant to the decision the Registrar has to make under s. 6 of the *Regulation*. The Registrar is obliged to look at an applicant's past conduct and is not bound in any way by the fact that at one time the applicant was properly licensed in another jurisdiction...

[14] Even if I were to grant an extension of time to apply for reconsideration, the fact that Mr. Plosz is now licensed under certain conditions in Alberta and his

pending criminal charges were stayed does not materially or substantially impact my decision of October 22, 2019. The finding was Mr. Plosz's conduct of hiding information of his administrative review and failing to cooperate with the Authority on his application, coupled with his past criminal convictions gives sufficient concerns that he is not governable and will not act with honesty and integrity as required by the *Code of Conduct*: section 33(2)(a) of the *Motor Dealer Act Regulation*. Time needs to pass with evidence that Mr. Plosz can be so trusted. Mr. Plosz has been given that opportunity in Alberta under conditions. Once the three years has passed, as noted in my October 22, 2019 decision, Mr. Plosz can apply for licensing in British Columbia. His application will then be reviewed based on all of Mr. Plosz's past conduct that exists at that time.

[15] Mr. Plosz's request for reconsideration is denied.

V. Review of this Decision

[16] My decision of today's date and my original decision of October 22, 2019 cannot be further reconsidered. If there is disagreement with this decision, it may be reviewed by petitioning the B.C. Supreme Court for judicial review pursuant to the *Judicial Review Procedure Act*. The time in which to do so is 60 days from the date of this decision: section 7.1(t) of the *Motor Dealer Act*. Whether the B.C. Supreme Court will abridge that time period during the COVID-19 pandemic is for that court to decide, applying the applicable law.

"original is signed"

Ian Christman, J.D.
Registrar of Motor Dealers