

Investigation File: C-23-07-336
Hearing File: H-23-10-002

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

BETWEEN:

THE VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA

THE AUTHORITY

AND

AARON MACKENZIE

RESPONDENT/SALESPERSON

DECISION OF THE REGISTRAR OF MOTOR DEALERS OF BC

Date and place of Decision June 12, 2024, at Langley, BC

1. A Hearing Notice dated October 5, 2023, was sent to the Respondent by the Vehicle Sales Authority (the "Authority") recommending a penalty be imposed on the Respondent for his admitted misappropriation of a substantial sum of money from his employer, Buy Direct Truck Centre owned by the Kot Auto Group and licensed by the Authority as a Motor Dealer.
2. On January 2, 2024 the Authority submitted that the Respondent was in breach of section 33(2)(a) and (f) of the Motor Dealer Act Regulation and therefore a penalty hearing ought to be conducted.

3. On April 9, 2024 following a review of submissions of the Authority, the Registrar of Motor Dealers of BC invited written submissions from the Authority and from the Respondent as to the appropriate penalty.
4. On April 23, 2024 the Authority provided a written submission on the issue of the “appropriate compliance action”, as follows:

Compliance Action Requested

10. Based on the Registrar’s findings in the Interim Decision and the Supplementary Decision that the Respondent breached the MDAR as set out above, the Authority seeks the following compliance action:
 - a. Cancellation of the salesperson’s license (#201634) of Aaron MacKenzie;
 - b. Refusal by the Registrar to accept any application for licensing from Mr. MacKenzie for a period of six years from the date of the decision cancelling his license;
 - c. An Order that the Respondent compensate Buy Direct Truck Centre in the amount of \$15,571.03 representing its net loss caused by the Respondent’s misappropriation of funds; and
 - d. An Order that the Respondent pay to the Authority its investigation costs in an amount to be assessed.

Compliance Order

31. In addition to the cancellation of Mr. MacKenzie’s license, the Authority also seeks a compliance order.
32. Section 26.02 of the MDA provides the Registrar with the authority to order a person to comply with the MDA and the regulations if satisfied the person has contravened, is about to contravene or is contravening the MDA and regulations. After giving a person an opportunity to be heard, the compliance order must include the information set out in section 26.02(2) and may include one or more of the orders as described in section 26.02(4) as follows:

- (4)The registrar may include one or more of the following orders in a compliance order: (a)that a person reimburse any money or return any other property or thing received to a consumer or class of consumers;
- (b)that a person compensate other persons or a class of persons

who have suffered loss or damage as a result of a contravention of this Act or the regulations;

(c) that a person take specified action to remedy an act or practice by which the person is contravening, is about to contravene or has contravened this Act or the regulations;

(d) that a person reimburse to the registrar all or part of the actual costs, including actual legal costs, incurred by the registrar for

(i) any inspection or investigation of the person, or

(ii) the appointment of a receiver, receiver manager or trustee

in respect of the contravention referred to in the compliance order.

5. In support of its submission on the question of “compliance action”, the Authority first addresses “licence cancellation”

License Cancellation

11. Section 5(b) of the MDA provides as follows:

5. If the financial responsibility or past conduct of an applicant or person registered, or its officers or directors if the applicant or person registered is a corporation, is, in the opinion of the registrar, such that it would not be in the public interest for the applicant or person to be registered or continue to be registered, the registrar may,
- (a) if the application is made under section 4, refuse to register, or refuse to renew registration, or
 - (b) if a person is registered,
 - (i) cancel the registration, or
 - (ii) suspend the registration for a period of time and subject to conditions the registrar considers necessary.

12. The Authority takes the position that the Respondent’s past conduct, specifically, misappropriating funds from his employer and their customers, is such that it would not be in the public interest for him to continue to be registered and that it is appropriate that his license be cancelled under section 5(b)(i) of the MDA.

13. Beyond the misappropriation of funds, the Authority submits that there are a variety of other factors to consider in the context of license cancellation. These include the breach of trust by the Respondent while serving as finance manager and having access to the funds, the Respondent’s failure to repay any or any meaningful amount that he misappropriated, the fact that the motivation for the misappropriation was a reduction in his employment remuneration by Buy Direct, and the fact that the Respondent has taken what may best be described as tepid participation in the

hearing process.

14. Support for the Authority's position on cancellation can be found in the following previous Registrar's decisions:

Re: Ivan Lara 2018-BCRMD-002: The salesperson, Mr. Lara, did not give a \$3,000.00 cash deposit received from a customer to his dealer/employer. The money was kept due to a financial dispute with the employer but was ultimately re-paid. Mr. Lara did not attend the hearing and was found to be untrustworthy, unwilling to participate in the hearing, unwilling to follow legal processes to address disputes and unwilling to address his conduct. His license was cancelled.

Re: Kenneth McKinnon 09-70325: In three separate transactions, the salesperson received \$27,500.00 in cash from customers but failed to remit approximately \$7,200.00 of that to his employer, converting it to his own use. This conduct was found to be "of grave concern to the public interest." He was also found to have been less than truthful at his hearing and he attempted to mislead the investigation. Mr. McKinnon's license was cancelled.

15. Turning to the present case, Mr. MacKenzie breached the trust of his employer and its customers. He did this by devising and implementing a scheme whereby he accessed Buy Direct's computer systems, created false invoices and issued multiple payments to four different bank cards. Mr. MacKenzie took advantage of the position that he had with Buy Direct that others did not have.
16. Over the course of six months, Mr. MacKenzie created 25 false transactions which he used to misappropriate \$30,451.46 from Buy Direct and its customers. Buy Direct was left to notify each of the effected customers that their employee had taken their money and subsequently offer them reimbursement. After taking into consideration the amounts taken from Buy Direct as well as the amounts that they paid to reimburse their customers (two refused the offer), their net loss was \$15,571.03.
17. Mr. MacKenzie admitted to the thefts from Buy Direct. He admitted that he did so because he was unhappy with his remuneration. Rather than pursue legal options concerning his employment, he stole from his employer and its customers. Were it not for one customer whobrought the matter to the attention of Buy Direct, it is reasonable to assume that the thefts would have continued and the losses would have grown.
18. The Authority submits that this is not a case where a license suspension is warranted. Mr. MacKenzie has shown no remorse and he has not paid back any of the money that he stole from Buy Direct. When confronted by Jordan Kot in June of 2023, Mr. MacKenzie responded with unfulfilled promises of repayment, anger, and threats.

Cancellation of Mr. MacKenzie's salesperson's license is warranted and necessary. It is not in the public interest that he continue to be licensed as a salesperson.

6. In support of its submission on the "reapplication prohibition", the Authority writes as follows:

Reapplication Prohibition

19. In the event that the Respondent's license is cancelled, he would be able to reapply for licensing as a salesperson the next day under the *Salesperson Licensing Regulation*. Because of that, the Authority seeks a period during which a salesperson application or renewal application would not be accepted from Mr. MacKenzie by the Registrar.
20. The authority to set a time period that a licensee must wait to reapply following a license cancellation can be found in *Pugliese v. Clark*, 2008 BCCA 130. In that case, the appellant sought a declaration that the Registrar of Mortgage Brokers did not have jurisdiction to refuse to consider a licensing application until a specified time period had elapsed.
21. The Court dismissed the appeal, concluding at paragraph 38 that "the Registrar had implicit jurisdiction under the Act to refuse to consider a further application for registration for a stated period as being practically necessary to the exercise of his powers under s.4 of the Act."
22. For these same reasons, the Authority submits that the Registrar has the same authority here. Section 5 of the MDA provides a legislative framework by which the Registrar may refuse to register or renew the registration of an applicant where to do so would not be in the public interest. Setting a period of time that must elapse before the Respondent can apply for licensing is practically necessary to the exercise of the Registrar's powers under the MDA.
23. As to the question of what an appropriate waiting period is, the Authority submits that a variety of factors must be considered. These include the following:
- a. Mr. MacKenzie devised and implemented a scheme by which he stole more than \$30,000.00 from his employer and its customers;
 - b. The scheme involved accessing his employer's computer systems and the creation of false records;
 - c. The thefts occurred over a period of six months and included twenty-five transactions;
 - d. None of the funds misappropriated have been paid back by the Respondent; and
 - e. The thefts were motivated by the Respondent's dissatisfaction with the change in his employment arrangement.

24. As noted above, when confronted by his employer and an investigator with the Authority, the Respondent admitted to the thefts. However, Mr. MacKenzie engaged in a significant breach of trust in respect of his employer and its customers. As a finance manager, Mr. MacKenzie had access to computer systems and money that others did not. He was trusted with that access and he took advantage of it for his own benefit. In the ten months that have passed since the thefts were discovered, despite assurances that he would, Mr. MacKenzie has repaid none of the amounts taken. The Authority takes the position that
25. In *Re: Kevin Douglas Lench* (April 14, 2011), the licensee was found to have created a false document that had the potential to deprive a customer of \$500.00. The dealership Mr. Lench worked for was made whole and as such there was no compensation order. Mr. Lench's license was cancelled and he was prohibited from reapplying for a license for a period of three years.
26. In *Re: Elisabeth Kristina Kovacs* 2017-BCRMD-009, the Registrar was asked to review the license of a salesperson who was alleged to have taken "a significant sum of money" from her employer while serving as a junior business officer. Ms. Kovacs was found to have admitted to the thefts and had no history of other transgressions. She also provided some measure of assurance that the money taken would be repaid. In that case, the Registrar cancelled Ms. Kovacs' license and held that he would not accept an application for licensing from her for a period of four years from the date of the decision. It is important to note however, that the right to re-apply after four years was conditional on her repayment of the money that she took from her employer.
27. In *Re: Ivan Diaz Lara* 2018-BCRMD-002, the salesperson, Mr. Lara, was found to have taken \$3,000.00 from a customer which was part of a down payment on a vehicle purchase. In addition, he charged the customer an additional \$500.00 as a delivery fee which was not authorized by the dealership. Mr. Lara did not attend the hearing but did reimburse the customer. Mr. Lara cited a financial dispute with his dealership as the reason for taking the customer's money. Mr. Lara's license was cancelled and he was prohibited from reapplying for licensing for a period of four years.
28. In the present case, the Authority submits that the Registrar should not accept an application for licensing from Mr. MacKenzie for a period of six years from the date of the decision in this matter and that the receipt of any application must be conditional upon Mr. MacKenzie providing proof, the satisfaction of which is to be determined by the Registrar, of repayment of the amount included in the compensation order to Buy Direct along with payment of the Authority's investigation costs.
29. In both *Kovacs* and *Lara*, four-year waiting periods were ordered but the Authority

submits that the circumstances were less serious than that in the present case. In *Lara*, the amount taken was far less than that taken by Mr. MacKenzie. Further, Mr. Lara's theft appears to have been a one-time occurrence while working as a salesperson and he paid the customer back. In *Lara*, the Registrar relied on the *Kovacs* decision, stating at paragraph 20 that "Mr. Lara's conduct closely resembles that found in the *Kovacs* decision."

30. In the present case, Mr. MacKenzie carefully and deliberately crafted a scheme by which he could misappropriate money from Buy Direct and its customers. He did this because he was unhappy with his employment remuneration. Rather than address that through legal means, he chose to steal from others. He has provided no meaningful response in these proceedings and he has paid none of the amount taken back. He abused his position as a finance officer on 25 occasions. On this basis, the Authority submits that a six-year prohibition on reapplying for licensing is appropriate and that any application made after that period be conditional upon the payment of the full amount in the compensation order and the Authority's Investigation Costs, both of which will be discussed below.
7. In addition, under the heading "Compensation Order", the Authority submits the following:

Compensation Order

33. The Authority submits that it is appropriate that the requested Compliance Order include an order under section 26.02(4)(b) requiring the Respondent to compensate Buy Direct for the losses that they suffered as a result of the Respondent's breaches of the MDAR.
34. In determining the amount of the compensation order, the Authority submits that the evidence of Jordan Kot and Doris Chamberlain should be preferred over that of the Respondent. Ms. Chamberlain is the Senior Group Controller with the Kot Auto Group. In her affidavit she provided evidence including detailed records from Buy Direct that supported the total amount misappropriated by the Respondent. Mr. Kot is the Vice-President of the Kot Auto Group. In his affidavit he provided evidence about the amounts reimbursed to the various customers who were affected by the thefts including those customers who refused reimbursement. He further gave evidence that the net loss to Buy Direct was \$15,571.03 and that the Respondent had not repaid any portion of that amount to Buy Direct. This evidence was not challenged by Mr. MacKenzie in his submissions.
35. Conversely, in his response to the Notice and in his submissions, Mr. MacKenzie admitted to the thefts and confirmed that the amount that he owed to Buy Direct was \$14,959.05 less \$2,000.00 which he paid to John Kot on July 23, 2023 towards that

amount. The Respondent provided no documentation to support his position of the amount owing however and again, the Authority submits that the figure presented by Mr. Kot, \$15,571.03, is the actual amount owed.

36. The evidence of Mr. MacKenzie's payment to John Kot is simply a photo of a bank e-transfer. There is no evidence to support the Respondent's contention that this payment was made towards the amount owed to Buy Direct. In his affidavit, which was sworn after the Respondent's purported \$2,000.00 payment, Jordan Kot stated that the Respondent had paid nothing towards the amount owing. The Authority submits that Jordan Kot's evidence should be preferred over that of the Respondent and that the Respondent should be ordered to compensate Buy Direct by way of payment of \$15,571.03.
8. Lastly the Authority seeks "Investigation Costs' in the amount of \$2,848.41.
9. On April 9th, 2024 I made an interim decision in this matter, in which I concluded the Respondent dishonestly took money from his employer Buy Direct Truck Centre. I invited the parties to provide written submissions as to the appropriate penalty to be imposed on the Respondent.
10. The Authority has responded in writing. The Respondent has remained silent.
11. I agree with the Authority that the Respondent must compensate Buy Direct Truck Centre by paying it the sum of \$15,571.03 and paying the investigation costs in the sum requested.
12. 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 and be accompanied with the required new evidence (as defined in those sections) and meet any other requirements of those two provisions.
13. 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 being issued: section 7.1(t) of the MDA.

"Original signed"

A solid black rectangular box redacting the signature of the Registrar of Motor Dealers.

Kenneth Affleck, KC
Registrar of Motor Dealers