



Hearing File No.: H-24-11-004

**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**

**VEHICLE SALES AUTHORITY OF BC (VSA)**

The Authority

And

**TREVA STUBBS**

Complainant

And

**0851845 B.C. LTD. dba VERNON KIA**  
(Dealer License #30973)

Respondent Dealer

---

**DECISION OF THE ACTING REGISTRAR OF MOTOR DEALERS**

---

[1] This hearing raises the question of whether a motor dealer can be found liable in breach of section 33(2)(i)(iii) of the *Motor Dealer Act Regulation*, B.C. Reg 447/78 (the "MDAR") for aiding, abetting or causing a purchaser to contravene section 219 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 (the "MVA") in circumstances where the purchaser has not been found to have contravened section 219 of the *MVA* but where the dealer's representatives have acknowledged that the purchaser should not have been permitted to drive the vehicle off the lot.

[2] As set out below, I find that a breach of section 33(2)(i)(iii) of the MDAR has been established in this case but that in the particular circumstances of this case, the appropriate disposition is limited to an order that the Dealer pay the Authority's investigation and hearing costs.

**Factual Background**

[3] The primary facts that give rise to this matter are uncontroversial:



- On January 28, 2023, Heather Stubbs and Robert Melanik attended at Vernon Kia looking for a car for Ms. Stubbs' mother, the complainant Treva Stubbs, to drive.
- They inquired about a 2004 Nissan Maxima (the "Vehicle") that was offered for sale by Vernon Kia and were advised that the Vehicle had not undergone a safety inspection and that it was being sold for parts only.
- Notwithstanding that advice, they were permitted to test-drive the Vehicle with Robert Melanik at the wheel and a Dealer salesperson as a passenger.
- Ultimately the Vehicle was purchased by the Complainant Treva Stubbs. The sales documentation prepared by the Dealer states that the Vehicle was sold "as is" and "for parts".
- Ms. Treva Stubbs signed an addendum to the Purchase Agreement dated January 30, 2023, which indicated that the Vehicle had not undergone a safety or mechanical assessment and "may not be safe for transportation" and in which Ms. Stubbs agreed to have the Vehicle's battery removed and towed away from Vernon Kia.
- Despite this, when Ms. Stubbs attended the dealership with insurance documents to complete the purchase, a Dealer employee installed plates on the car and she was permitted to drive off the lot.
- Ms. Stubbs drove the for a week until, on February 7, 2023, she had the Vehicle inspected in Lumby, BC. There are a number of findings of the inspection which suggest the Vehicle was not suitable for transportation, including:
  - Warped rotors
  - Loose front sway bar
  - Large hole in the floor under driver footwell
  - Inoperative license plate lights
  - Inoperative fog lights
  - Right front head light on intermittently
  - Leaking power steering rack and engine oil pan.

- Ms. Stubbs complained to the Dealer that the Vehicle was not safe to drive and on March 31, 2023, the Dealer rescinded the Purchase Agreement, refunded the purchase price and arranged to have the Vehicle picked up and towed back to its lot.

[4] Daniel Loewen, general manager of the Dealer, candidly acknowledges in his evidence that the transaction in which the Vehicle was sold to Ms. Stubbs was in breach of the Dealer's own policies. The incident is described as a "one-off". Mr. Loewen deposes that he has conducted a review of the Dealer's sales records and believes that this was the only occasion where a traded-in vehicle which was uninspected by Vernon Kia was sold to a consumer who was permitted to drive it off the lot.

[5] Mr. Loewen's evidence makes clear that the Dealer took this matter seriously as soon as it came to the attention of senior management. The transaction was rescinded and the purchaser was made whole. Mr. Loewen deposes that "the moment" he learned of the breach he "communicated with all salespersons and other employees about the seriousness of the policy breach" and that he has carefully monitored the Dealer's sales ever since.

[6] While the Dealer acknowledges the seriousness of the breach and the potential safety risk it created, Mr. Loewen deposes that having looked into the matter, he believes there was "no malicious intention" on the part of the Dealer. Rather what occurred, Loewen says, was a mistake.

[7] In his second affidavit, Mr. Loewen provides some additional observations about the manner in which the Dealer dealt with the mistake with reference to the advice contained in VSA course materials. His affidavit concludes as follows:

Finally, as noted, within the VSA course materials, "mistakes happen". This was a mistake, and a potentially serious mistake. As noted in my first affidavit, it is my belief that there was no malicious intention to sell a potentially unsafe vehicle to Ms. Stubbs, and Vernon Kia is fully aware that safety must come first.

[8] Section 219(1) of the *MVA* provides:

**219** (1)A person must not drive or operate a motor vehicle or trailer on a highway or rent a motor vehicle or trailer unless it is equipped in all respects in compliance with this Act and the regulations.

[9] I find that the evidence, in particular the Lumby vehicle inspection report, supports the VSA's submission that the Vehicle was not a motor vehicle "equipped in all respects" as required by the *MVA* at the time it was inspected, just over a week after Mr. Malanik was permitted to test-drive it and Ms. Stubbs to drive it off the lot. I infer that it is more likely than not that when Mr. Malanik test-drove the Vehicle and when Ms. Stubbs drove the Vehicle off the Dealer's lot, they did so in breach of section 219 of the *MVA*.

[10] I accept Mr. Loewen's evidence that there was no malicious intent on the part of the Dealer either to breach the MDAR or to permit Mr. Malanik or Ms. Stubbs to drive a vehicle off the lot that was not in compliance with the *MVA*.

[11] In those circumstances, is the Dealer liable under s.33(2)(i)(iii) of the MDAR? And if so, what is the appropriate disposition?

[12] The Dealer raises two preliminary objections: jurisdiction and procedural fairness. In my view neither objection has merit.

### **Jurisdiction**

[13] With respect to jurisdiction, the Dealer argues that without a conviction of Mr. Malanik or Ms. Stubbs for contravention of section 219 of the *MVA*, the Registrar lacks jurisdiction to sanction the Dealer for aiding, abetting or causing a breach of the *MVA*.

[14] The argument is that a "plain reading" of section 33(2)(i)(iii) of the MDAR as well as the structure of the statutory scheme precludes a finding of breach of section 33(2)(i)(iii) arising out of a "hypothetical breach" of the *MVA*. Section 33(2)(i)(iii) provides that a Dealer:

(i) must not aid, abet or cause a person to contravene

...

(iii) any other law of British Columbia or of another jurisdiction,

[15] The Authority, in arguing that the Registrar does have the necessary jurisdiction, describes the language of section 33(2)(i)(iii) as "notably broad" referring to the a 2020 decision in *Re: Tibbo* which characterized section 33(2)(i) of the MDAR as "very broad", prohibiting "assisting in some way the breaking of any law" and empowering the Registrar to "assess and address this type of conduct using various legislative tools".

[16] In my view the question of whether section 33(2)(i)(iii) is engaged in the context of a case where there is no conviction is not a matter of jurisdiction but rather a question of construction of the provision.

[17] The Hearing Notice sets out the legislative authority pursuant to which it was issued. Reference is made with respect to motor dealers to sections 4(4), 4(6), 5, 6, 26.02, and 26.04. Some of these provisions provide a general authority to the registrar to cancel, suspend or impose terms or restrictions on licenses. Others provide specific authority to make orders arising from contravention of specific statutory provisions.

[18] Section 33(2)(i)(iii) is contained within a section of the MDAR entitled the "code of conduct". The *Motor Dealer Act*, RSBC 1996, c. 316 ["MDA"] and the MDAR provide expressly that the Registrar is empowered to make findings in respect of and impose various forms of sanction arising from contravention of the code of conduct set out in section 33(2).

[19] For example, section 26.04 of the *MDA* empowers the registrar to impose an administrative penalty for contravention of a prescribed provision of the Act or the regulations. Section 32(2)(o) of the MDAR provides that for the purpose of section 26.04 of the Act, section 33(2) [code of conduct] is a prescribed provision. From a jurisdiction perspective, there can be no serious question of the Registrar's authority to made orders for breach of section 33(2).

[19] While framed as a question of jurisdiction, the issue raised by the Dealer is better understood as a question of the appropriate construction of the words "to contravene any other law of British Columbia". The Dealer effectively argues that in order to establish a breach of section 33(2)(i)(iii), conviction (or another form of finding of liability) is a required element.

[20] In my view, the plain reading of the provision in context does not support the Dealer's position. I agree with the Authority that the language of section 33(2)(i)(iii) is sufficiently broad to encompass circumstances where – as here -- the facts support a contravention of "any other law of British Columbia" occurred, whether or not there was a conviction.

[21] In cases where there has been a conviction, that would be strong evidence that a contravention occurred. But in my view there are cases like this one where even in the absence of evidence of conviction, other evidence of the conduct at issue is sufficient to make a finding of contravention. I

have no difficulty in concluding that the Registrar has the jurisdiction to determine the issues raised in the Notice of Hearing.

### **Procedural Fairness**

[22] The Dealer argues that even if there is jurisdiction, the Registrar should stay the proceedings on procedural fairness grounds because the Authority has not sufficiently particularized the ways in which the Vehicle was not compliant with the *MVA*.

[23] Similar to my conclusion on the jurisdictional objection, in my view, this issue is not really a procedural fairness issue but rather, a question of what is the Authority required to establish to make out a breach of section 33(2)(i)(iii) and have they done so?

[24] As set out above, an element of section 33(2)(i)(iii) that the Authority is required to establish through evidence is that there was a contravention of a law of British Columbia.

[25] If the Authority fails to lead sufficient evidence to establish a contravention of law, the Authority will fail to establish a breach of section 33(2)(i)(iii).

[26] When – as here – the Authority does lead evidence to establish a contravention of law, the Dealer has the opportunity in the hearing process to respond to evidence tendered by the Authority.

[27] Here, the primary evidence of the defence comes from the Trail Tire Lumby invoices which identifies a number of issues with the Vehicle. The Authority argues that many of the issues identified in the Trail Tire Lumby, are safety issues that result in the Vehicle being unsafe.

[28] While Mr. Loewen states in his affidavit that when he reviewed the Trail Tire Lumby report he “was told there were no obvious safety concerns”. However, he then goes on to say that after investigation the Dealer cancelled the transaction, refunded the purchase price to Ms. Stubbs and reimbursed her for the inspection. Importantly, Mr. Loewen deposes that after cancelling the transaction he “personally arranged for the [Vehicle] to be towed from Lumby to the premises of Vernon Kia”. I infer that the reason Mr. Loewen arranged to have the Vehicle towed, after reviewing the inspection report, was because he did not believe it would be safe to have it driven back to the dealership.

[29] The content of the duty of procedural fairness invoked by the Dealer includes a right to know the case to meet and a right to be heard. The Dealer received both the Authority's evidence and ultimately in its reply submission more detailed submissions on the Authority's position on what made the car unsafe. The Dealer complained that the Authority ought to have put the information from the reply into a written argument at the outset and objected to the reply submissions. The Dealer was given – and availed itself of – a right of sur-reply. In my view the duty of procedural fairness was complied with.

### **Were other requirements of Section 33(2)(i)(iii) established?**

[30] The remaining question is whether the Authority has established the Dealer "aid[ed], abet[ted] or caus[ed]" a contravention of the MVA.

[31] Neither of the parties addressed whether the aiding and abetting provision includes any subjective fault requirement (i.e., knowledge, intent, recklessness, or willful blindness). In my view, it does not.

[32] As a general matter, regulatory offences are presumed to impose strict liability unless the legislator clearly indicates that the offence imposes absolute liability or a mens rea requirements (*Lévis (City) v Tétreault*, 2006 SCC 12 at paras 13–18; *Sault Ste Marie R v Sault Ste Marie*, [1978] 2 SCR 1299 at 1326). This is a question of statutory interpretation. The Court explained as follows in *Sault Ste Marie* (at 1326, underlining added):

Offences which are criminal in the true sense [require proof of subjective mens rea]. Public welfare offences would prima facie be [strict liability offences]. They are not subject to the presumption of full mens rea. An offence of this type would fall in the first category only if such words as "wilfully," "with intent," "knowingly," or "intentionally" are contained in the statutory provision creating the offence. On the other hand, the principle that punishment should in general not be inflicted on those without fault applies. Offences of absolute liability would be those in respect of which the Legislature had made it clear that guilt would follow proof merely of the proscribed act. The overall regulatory pattern adopted by the Legislature, the subject matter of the legislation, the importance of the penalty, and the precision of the language used will be primary considerations in determining whether the offence falls into the third category.

[33] Moreover, in *Sault Ste Marie*, the Court held that the words “cause” and “permit” are indicative of strict liability (at 1327-28):

The present case concerns the interpretation of two troublesome words frequently found in public welfare statutes: “cause” and “permit.” These two words are troublesome because neither denotes clearly either full *mens rea* nor absolute liability. It is said that a person could not be said to be permitting something unless he knew what he was permitting. This is an over-simplification. ...

The conflict in the above authorities, however, shows that in themselves the words “cause” and “permit”, fit much better into an offence of strict liability than either full *mens rea* or absolute liability. Since s. 32(1) creates a public welfare offence, without a clear indication that liability is absolute, and without any words such as “knowingly” or “wilfully” expressly to import *mens rea*, application of the criteria which I have outlined above undoubtedly places the offence in the category of strict liability.

The same word, “cause”, is used in the statute here. I have not extensively researched whether there is case law specifically considering whether the words “aid” or “abet” indicate subjective *mens rea* vs strict liability, but they are arguably similar to “permit” in the sense of allowing someone to do something (although perhaps in a more active sense). See the next point for more on this.

[34] More recently, the Supreme Court of Canada held in *La Souveraine, Compagnie d'assurance générale v. Autorité des marchés financiers*, 2013 SCC 63, that an insurer who “helps or, by encouragement, advice or consent or by an authorization or order, induces [certain parties] to contravene any provision of this Act or the regulations” commits an offence. The majority found this to be a strict liability offence, rejecting the submission that the offence was a “party liability offence” such that proof of *mens rea* was required even when the principal offence was one of strict liability (see paras. 34-42).

[35] Accordingly, while I accept Mr. Loewen’s evidence that there was no malicious intent and I do not find in light of the serious good faith approach the Dealer took to remedying the situation that there is evidence of lack of care that rises to a level of recklessness, I find that the Dealer did breach section 33(2)(i)(iii) when it permitted the Vehicle to be test-driven and driven off the lot.

## **Disposition**

[36] While I have found a breach of a section of the code of conduct by the Dealer, other than a costs order, I do not consider the relief sought by the Authority to be necessary or appropriate in the circumstances.

[37] In the Notice of Hearing, the Authority sought a number of remedies including cancellation of the Dealer's license. Those remedies were not proportionate to the circumstances.

[38] In its reply submission, the Authority has significantly narrowed the proposed disposition, proposing:

- (a) The Dealer's registration should be suspended for a period of two weeks;
- (b) A condition should be imposed on the Dealer's registration requiring Mr. Loewen to successfully retake the Salesperson Licensing Course at his own expense;
- (c) The Authority should be entitled to recover its costs against the Dealer, including its legal costs on a solicitor and own client basis.

[39] In my view, neither the registration suspension or proposed condition requiring Mr. Loewen to retake a course is necessary or appropriate in the circumstances of this case. I have accepted Mr. Loewen's evidence that the unfortunate mistake in this case was a "one-off" and that he has taken steps to ensure that it will not happen again. Mr. Loewen appears from his evidence to be knowledgeable about his obligations and to be taking them seriously. In these circumstances, I will not order him to retake the Salesperson Licensing Course.

[40] I agree with the Authority that it should be entitled to recover its reasonable investigation and hearing costs. In order to bring finality to this process, I order lump sum costs to the Authority in the amount of \$15,000.

[41] 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

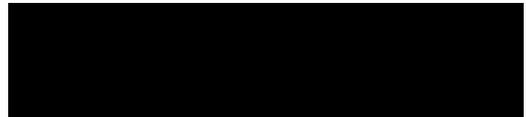


accompanied by new evidence (as defined in those sections) among other requirements.

[91] This decision is also subject to judicial review by petition filed within 60 days of this decision being issued in BC Supreme Court pursuant to the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: January 16, 2026

"Original signed"



Claire E. Hunter, K.C.  
Acting Registrar of Motor Dealers

"