



FILED

By the Office of the Registrar of Motor Dealers
on November 20, 2024

Investigation File No.: C-24-07-043

Hearing File No.: **H-24-11-002**

UNDERTAKING

**IN THE MATTER OF THE *MOTOR DEALER ACT*, RSBC 1996, c 316 and the
BUSINESS PRACTICES AND CONSUMER PROTECTION ACT, SBC 2004, c 2**

BETWEEN:

Nissan of Nanaimo
(DL# 40591)

(the "Respondent")

AND:

The Registrar of Motor Dealers

WHEREAS:

1. The Respondent is a Motor Dealer as defined in the *Motor Dealer Act* ("the **MDA**"), incorporated in accordance with the laws of British Columbia operating under the name, Nissan of Nanaimo, and registered with the Vehicle Sales Authority of B.C. ("**VSA**") under Motor Dealer Licence No. 40591.
2. The Registrar of Motor Dealers is the Registrar as defined in the MDA, ("the **Registrar**"), and is responsible for the administration and enforcement of the MDA, its regulations, and the prescribed provisions of the *Business Practices and Consumer Protection Act* ("the **BPCPA**").
3. The Respondent is the subject of an investigation launched by the VSA in response to a complaint made by a consumer, Randi Billy ("**Billy**"). The complaint and investigation findings are outlined in VSA File No. C-24-07-043 and the investigation reports of VSA investigator Daryl Dunn ("**IO Dunn**") dated September 18, 2024.

AND WHEREAS:

4. On April 13, 2023, Billy purchased a 2023 Nissan Kicks ("the **Kicks**") from the Respondent for a price agreed upon by the parties.
5. Billy required financing for the purchase of the Kicks [REDACTED]. To ensure completion of the transaction, the Respondent and Billy [REDACTED] of the Kicks [REDACTED] by the lender and [REDACTED] of Extended Vehicle Warranty ("the **Warranty**") to the total purchase price [REDACTED].
6. A purchase agreement dated April 13, 2023 ("the **Agreement**") was prepared by the Respondent and provided to Billy. The Warranty was included in the total purchase price at an [REDACTED].

Withheld in accordance with s. 22(3)(f) of FOIPPA

7. The [REDACTED] Warranty cost was made up of four different insurance products as follows:
- a) A mechanical warranty for [REDACTED]
 - b) An exterior Autoguard protection policy for [REDACTED]
 - c) A tire and rim warranty for [REDACTED] and [REDACTED]
 - d) A key replacement policy for [REDACTED]

These four costs were not itemized in the Agreement.

8. The Respondent completed a credit application on behalf of Billy which included [REDACTED] purchase price for the Kicks and the added Warranty cost. Billy was approved for financing at which time, the purchase of the Kicks was completed.
9. The Registrar asserts that Respondent has contravened the following legislation:
- a. Section 5(1) of the *BPCPA* by engaging in a deceptive act or practice in respect of a consumer transaction by misrepresenting the purchase price of the Kicks to the lender to ensure that Billy's financing application would be approved and that the purchase would complete;
 - b. Section 21(1)(h) of the *Motor Dealer Act Regulation*, BC Reg. 447/78 ("**MDAR**") for failure to include the actual selling price of the Kicks in the Agreement;
 - c. Section 21(1)(l) of the MDAR for failure to include an itemized list of the cost of the additional insurance products which were to be added to the contract price and for which Billy was responsible; and
 - d. Section 33(2)(e) of the MDAR for making false or misleading representations with respect to the amounts charged for the price of the Kicks and the price of the insurance products charged in respect of the consumer transaction.

NOW THEREFORE the Respondent undertakes, acknowledges, and agrees with the Registrar:

- 1. To comply with the MDA, MDAR, BPCPA, and the sections thereunder;
- 2. To pay an Administrative Penalty in the amount of **\$25,000** in relation to the subject matter of this Undertaking as per the Notice of Administrative Penalty which will be provided to the Respondent upon receipt of the fully executed and filed Undertaking;
- 3. ~~To reimburse the Registrar~~ a total of **\$330.14** representing 100% of the investigation costs incurred to date in relation to the subject matter of this Undertaking within thirty (30) days of the Registrar signing this Undertaking;
- 4. That this Undertaking is binding on the Respondent until such time as it is either terminated in writing by the Registrar or terminated by Order of the Supreme Court of British Columbia;
- 5. That in addition to rendering the Respondent liable to further penalties and proceedings as provided for under the BPCPA, it is an offense under the BPCPA to fail to comply with any part of this Undertaking that has not been previously terminated;

- Registrar of Motor Dealers
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) Kenneth Affleck, K.C.
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