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Applewood Kia

Judgement against dealer confirmed

An application from Applewood Motors Inc. (Applewood Kia) of Langley to reconsider a ruling against it has been rejected by the Registrar of Motor Dealers, Ken Smith.

Applewood had been the subject of an investigation involving the sale of a 2004 Dodge Ram truck which was later found to have serious engine problems. Deputy Registrar Ian Christman determined, after a hearing and the consideration of evidence, that Applewood had to take the vehicle back, make complete restitution to the customer, pay the costs of the VSA's investigation and hearing, and also pay an administrative penalty of \$10,000.

The ruling was made under the provisions of the province's Business Practices and Consumer Protection Act (BPCPA). An appeals mechanism exists under this statute (the terminology in the Act is "reconsideration") and Applewood applied to have the matter "reconsidered."

Registrar Smith reviewed the proceedings and Deputy Registrar Christman's determination.

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Advanced salesperson course: a focus on critical legislation

A focal point of the new Level II Salesperson Certification Course is the changed legal environment since 2004. The Business Practices and Consumer Protection Act (BPCPA) puts unprecedented responsibility on vendors to be knowledgeable about what they are selling and to share that information with the buyer. The course uses recent VSA compliance activity to explore this issue and to help highlight industry best practices. In addition, new advertising guidelines will be issued in April and reviewed in the course.

As noted in this Bulletin and in other recent cases, dealers and salespeople can get themselves in trouble by failing to understand the law and not using the law to protect the dealership. These errors are proving to be costly, particularly where deliberate deception is proven.

Introducing the BPCPA is now the centerpiece of the curriculum in the Level I Salesperson Certification Course, along with the Motor Dealer Act and other related legislation. The application of the BPCPA dominates the workshop-style Level II course for experienced

salespeople. Nearly 200 industry veterans assisted in the development of the case-based content and format of the Level II course. Feedback has been overwhelmingly positive, particularly about the conference-like style of the two-day program and the participation in every class by the Registrar or Deputy Registrar.

Level II is now mandatory for those who took the introductory certification course prior to June 2004. The first letters have been sent by the VSA, offering additional discounted courses and providing a Level II course deadline for each individual. The earliest Level II course deadline is June 1, 2010, and those salespeople who are required to take Level II will receive advance notice of this requirement before their course completion date. In time, all salespeople will be required to take the Level II advanced course as a part of their on-going professional development program.

For more information, please visit the VSA website or contact Doug Longhurst, Manager of Consumer Services and Professional Development at 604-575-6171.

Applewood (continued)

Smith's written summary advises that he could "vary or cancel a determination" under the BPCPA only if new evidence is presented that is "substantial and material" and could not have been known at the time of the original hearing. He said that Applewood presented nothing new in its "reconsideration" application.

Applewood continued to insist that it did not know the severity of the Dodge's engine problems at the time of the sale. Evidence was presented that the previous owner of the Dodge truck had advised Applewood that there were serious problems, presenting service records from Langley Chrysler.

However, both Christman and Smith emphasized that this was not necessary to prove a violation under the BPCPA.

Smith's ruling said:

“. . .the first and perhaps the only question is, whether or not the details outlined in the (Applewood) affidavit could have been discovered 'through the exercise of reasonable diligence' before the time of the hearing. The difficulty with Applewood's argument here is that the law of British Columbia . . . is clear that Applewood needed to discover and disclose the information regarding the engine issues with this truck (to the customer) before 'the time of the sale' - not just before the time of the hearing”.

The Registrar expanded upon this - within the ruling - in a message to the entire industry:

“What dealers need to understand is that proper documentation at both the time of taking a vehicle into inventory, as well as proper documentation when selling the vehicle out of inventory, are absolutely essential and are the only defence in situations such as this. Presenting an almost empty file and claiming “no prior knowledge” is not enough in the face of the reverse onus provisions in Section 5 of the BPCPA . . . Also, the B.C. Supreme Court made it clear that a motor dealer has a positive duty to make inquiries in order to meet its declaratory requirements under the Motor Dealer Act Regulation where it is on notice that a vehicle it intends to sell may have damage.”

The VSA has repeatedly stated in recent Bulletins, news releases and articles in trade publications that "buyer beware, caveat emptor or as is" proclamations are not supportable by law. In 1980, the Supreme Court of Canada commented that "buyer beware" had little impact on the sale of goods. The B.C. Sale of Goods Act, the BPCPA and other statutes and regulations clearly demonstrate that in response to a consumer allegation of deception or misrepresentation, the onus of proof resides with the seller.