



**RE: 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:

Motor Vehicle Sales Authority of B.C.

("Authority")

AND:

Marilynne Johnny

Complainant

AND:

**Pioneer Garage Ltd. dba Pioneer Chrysler Jeep
(Dealer #5224)**

Motor Dealer

AND:

**Sarabjit Mander
(Salesperson #103534)**

Salesperson

AND:

**Jaspaul Mann
(Salesperson #106197)**

Salesperson

AND:

**Raymond K. Van Empel
(Salesperson #110650)**

Salesperson

**Decision of the Registrar of Motor Dealers
Undertaking Proposal by Pioneer Garage Ltd. dba Pioneer Chrysler Jeep**

Decision date: January 25, 2016

Place of Decision: Surrey, British Columbia

Introduction

[1] On October 14, 2015, a hearing was held before me where it was alleged that Pioneer Garage Ltd. dba Pioneer Chrysler Jeep ("Pioneer"), Sarabjit Mander, Jaspaul Mann and Raymond K. Van Empel did breach the *Motor Dealer Act* ("MDA") and the *Business Practices and Consumer Protection Act* S.B.C. 2004, c. 2 ("BPCPA") in relation to a consumer transaction involving Marilynne Johnny (the

"Consumer") when selling her a 2010 Hyundai Elantra (the "motor vehicle"). Specifically, it was alleged that they:

- Failed to provide a Purchase Agreement to the Consumer at any time before, during or after the sale.
- Failed to terminate the deal at the request of the Consumer and prior to the consumer signing the purchase agreement.
- Delivered the Motor Vehicle to the Consumer by a Salesperson who was unlicensed by the VSA to sell motor vehicles at Pioneer.
- Failed to stop the transaction at the time of delivery to the Consumer after she requested not to take delivery of the motor vehicle.
- Failed to disclose prior and existing body damage on the motor vehicle prior to or at the time of the sale.
- Failed to disclose the make, model and year of the motor vehicle prior to the delivery of the motor vehicle.
- Sold an unsafe motor vehicle contrary to Section 222 of the *Motor Vehicle Act*.
- Failed to disclose to the Consumer that there was a documentation fee of \$300.00.
- Failed to disclose fully the terms and conditions of the Finance Agreement to the Consumer.
- Failed to disclose to the Consumer that Sarabjit Mander was not licensed by the VSA to sell motor vehicles at Pioneer.

There were further allegations that they:

- Failed to provide records to Compliance Officer, Carrie VanDokkumburg, who is authorized by the Registrar to conduct investigations.
- Provided false or forged documents to Compliance Officer, Carrie VanDokkumburg, who is authorized by the Registrar to conduct investigations.

[2] At the hearing, Raymond K. Van Empel noted that Pioneer had settled the monetary concerns of the Consumer and proposed that the compliance issues could be dealt with by way of an Undertaking.

[3] Before agreeing to adjourn the hearing and consider an Undertaking, I questioned the Consumer and the one other witness from the repair facility who was to provide evidence about the motor vehicle's safety – the condition of the tires. Pioneer was also allowed to ask questions as was Mr. Daryl Dunn, Compliance Manager for the Authority. At the conclusion of the questioning, I noted that the witness from the repair facility was not able to ascertain if the motor vehicle was not in a safe condition at the time of sale. I concluded that these issues could be dealt with by way of an Undertaking and adjourned the hearing.

[4] Immediately after the adjournment, discussions took place in my presence regarding the terms of the Undertaking. The terms regarding what Pioneer would undertake in order to address the allegations were agreed to and it was left for Pioneer and Mr. Dunn to finalize the Undertaking. The allegation of selling a motor vehicle that was unsafe contrary to section 222 of the *Motor Vehicle Act* was removed from the proposed Undertaking, as the witness was unable to substantiate that fact.

[5] I am advised that the Undertaking attached to this decision as Schedule "A" was forwarded to Pioneer for signature. Instead of signing that Undertaking, Pioneer removed a portion of the Undertaking involving all the facts and allegations that led to the Undertaking, which was signed by Raymond K. Van Empel. The Undertaking was presented to me by Mr. Dunn for review, and a copy of that Undertaking is attached to this decision as Schedule "B".

[6] For the reasons that follow, the Undertaking submitted by Pioneer is not in an acceptable form and I am exercising my discretion to refuse to accept that Undertaking.

The Law

[7] The Undertaking discussed in this decision is an exercise of statutory authority and discretion by the Registrar found in section 154 of the *Business Practices and Consumer Protection Act* S.B.C. 2004, c. 2 (BPCPA). That authority has been delegated to the Registrar by section 29 of the *Motor Dealer Act Regulation* B.C. Reg. 447/78. As an exercise of statutory authority and discretion, if I refuse to accept an Undertaking, I should provide reasons that at a minimum, meet the requirements of transparency, intelligibility and justification: *Dunsmuir v. New Brunswick* [2008] 1 SCR 190, 2008 SCC 9 (Supreme Court of Canada) and see also *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, [2004] 2 SCR 650, 2004 SCC 48 (Supreme Court of Canada).

[8] As this is the first instance of the Registrar refusing to accept an Undertaking, I will go into more detail about the legal and policy reasons underlying that refusal.

[9] Section 154 of the BPCPA states:

Undertakings

154 (1) If the director [registrar] has reason to believe that a person is contravening, is about to contravene or has contravened this Act or the regulations, the director [registrar] may accept from the person a written undertaking that is in a form and that contains the terms and conditions the director [registrar] determines are appropriate in the circumstances.

(2) Without limiting subsection (1), an undertaking may include one or more of the following terms and conditions:

- (a) an undertaking to comply with this Act and the regulations;
- (b) an undertaking to refrain from engaging in an act or practice;

- (c) an undertaking to compensate consumers or a class of consumers, including reimbursing any money or returning any other property or thing received from consumers in connection with a consumer transaction;
- (d) an undertaking to provide a bond in accordance with the *Bonding Act* or other security and the circumstances under which the security may be realized;
- (e) an undertaking to reimburse to the director [registrar] the costs of any inspection, including actual legal costs;
- (f) an undertaking with respect to the form, content and maintenance of trust accounts, records, contracts, advertisements or other documents;
- (g) if two or more persons give the undertaking, all the persons named in the undertaking are jointly and severally responsible for complying with the undertaking and are jointly and severally liable for the payment of any amounts under the undertaking.

(3) The director [registrar] may terminate an inspection of or proceeding against a person on the acceptance of an undertaking from the person.

[10] In subsection 154(1) of the BPCPA, it is to be noted that the Registrar “may” accept an Undertaking, which is discretionary or permissive language: section 29 definition of “may” in the *Interpretation Act* R.S.B.C., c. 238.

[11] The common law may also impose a requirement on an Undertaking. As an exercise of statutory power, an Undertaking is reviewable under the *Judicial Review Procedure Act* of B.C. Therefore, the Undertaking should be able to speak for itself (have reasons) as to why it exists and at a minimum meet the *Dunsmuir* test of being transparent, intelligible and justifiable. Without the facts for which the Undertaking is being made, it is hard for anyone to know why it came to be. The reasons or underlying facts do not have to be elaborate, so long as it can meet the *Dunsmuir* test as noted by the Supreme Court of Canada in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, [2011] 3 SCR 708, 2011 SCC 62 at paragraph 16:

...In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

[12] Transparency in the exercise of a statutory power is important to the general public as noted in *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, [2004] 2 SCR 650, 2004 SCC 48 (Supreme Court of Canada) at paragraph 13:

Giving reasons for refusing to rezone in a case such as this serves the values of fair and transparent decision making, reduces the chance of arbitrary or capricious decisions, and cultivates the confidence of citizens in public officials...

[13] As I noted in the recent decision of *Re: AutoCanada Northtown Auto GP Inc. et al* (Registrar, Hearing # 13-08-001, January 12, 2016) at paragraph 39:

...It is also important to note that a settlement for breaches of the BPCPA occurs by way of an Undertaking pursuant to section 154 of that Act. Undertakings, which are published public documents, include the allegations or agreed facts for which the Undertaking is made as required by subsection 154(1) and to ensure transparency, intelligibility and justification for the Undertaking.

[14] Finally, knowing the reason for the existence of the Undertaking, the facts for which it exists, is important to the industry and consumers. Identifying the facts underlying an Undertaking, educates the industry and consumers as to their respective rights and obligations under the legislative scheme.

[15] For the above legal and policy reasons, the form of an Undertaking acceptable to the Registrar must contain the allegations or agreed to facts. Without that factual context, it is hard for anyone, including a reviewing court, to

understand why it exists and it will not be transparent, intelligible or justifiable on its face.

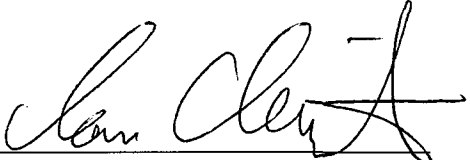
Decision

[16] After the terms of the Undertaking that identified what Pioneer would undertake in order to address the allegations were agreed to, it merely had to be placed into the proper form. The Manager of Compliance and Investigations, Daryl Dunn, sent that form to Pioneer which is Schedule "A" to these reasons. Pioneer removed the entire factual context from the Undertaking and then returned it signed by Mr. Van Empel, a copy of which is attached to these reasons as Schedule "B". Without that factual context, the Undertaking is not transparent, intelligible and justifiable. The proposed Undertaking is not in a form acceptable to the Registrar and I am refusing to accept it.

[17] I direct the VSA staff to bring this matter back on for a hearing before me at the soonest opportunity. At that hearing, Pioneer will be afforded an opportunity to address the allegations and any desire it may continue to have in entering into an Undertaking to address the allegations in this matter.

[18] As an Undertaking is not a "determination" as defined in section 180 of the BPCPA, there is no right of reconsideration of this decision. Section 7.1 of the *Motor Dealer Act* and section 57 of the *Administrative Tribunals Act* sets a 60 day limitation period from the receipt of these reasons, to seek a judicial review.

Dated: January 25, 2016.



Ian Christman, Registrar



IN THE MATTER OF THE *MOTOR DEALER ACT* R.S.B.C. 1996 c. 316

VSA Investigation File #: 14-12-061

VSA Hearing File #: 15-09-001

RE:

**VSA and MARILYNNE JOHNNY v. PIONEER GARAGE LIMITED *dba*
PIONEER CHRYSLER JEEP**

UNDERTAKING

WHEREAS Pioneer Garage Limited *dba* Pioneer Chrysler Jeep (Dealer #5224) (the "Dealer") is a "registered motor dealer" as defined under the *Motor Dealer Act* R.S.B.C. 1996 c. 316 (the "Act").

AND WHEREAS the "Registrar of Motor Dealers", as defined under the Act, (the "Registrar") is responsible for the administration and enforcement of the Act, its regulations and prescribed provisions of the *Business Practices and Consumer Protection Act* S.B.C. 2004 c. 2 (the "BPCPA").

AND WHEREAS an investigation has been initiated involving the Dealer's conduct, and the following alleged contraventions:

1. Between September 1, 2014, and October 30, 2014, at or near Burnaby, in the Province of British Columbia, Pioneer Garage Limited *dba* Pioneer Chrysler Jeep (Dealer #5224), Sarabjit Mander (Salesperson #103534), Jaspaul Mann (Salesperson #106197), and Raymond K. Van Empel (Salesperson #110650), collectively (the "Suppliers") mislead Marilynne Johnny (the "Consumer") during the purchase of a 2010 Hyundai Elantra VIN#KMHDU4BD0A4026939 (the "Motor Vehicle"). Specifically:
 - Failed to provide a Purchase Agreement to the Consumer at any time before, during or after the sale.
 - Failed to terminate the deal at the request of the consumer and prior to the consumer signing the purchase agreement.
 - Delivered the Motor Vehicle to the consumer by Sales Person who was unlicensed by the VSA to sell motor vehicles at Pioneer Garage Ltd. *dba* Pioneer Motor Group.
 - Failed to stop the transaction at the time of delivery to the consumer after she requested not to take delivery of the motor vehicle.
 - Failed to disclose prior and existing body damage on the motor vehicle prior to or at the time of the sale
 - Failed to disclose the make, model and year of the motor vehicle prior to the delivery of the motor vehicle.
 - Failed to disclose to the Consumer that there was a documentation fee of \$300.00.

- Failed to disclose fully the terms and conditions of the Finance Agreement to the Consumer.
 - Failed to disclose to the Consumer that Sarabjit Mander was not licensed by the VSA to sell motor vehicles at Pioneer Garage Limited *dba* Pioneer Motor Group.
2. Between January 16, 2015, and September 8, 2015 at or near Surrey, in the Province of British Columbia, Pioneer Garage Limited *dba* Pioneer Chrysler Jeep (Dealer #5224), Sarabjit Mander (Salesperson #103534), Jaspaul Mann (Salesperson#106197), and Raymond K. Van Empel (Salesperson #110650), collectively (the "Suppliers") did in relation to a consumer transaction contravene section 150(1)(e) of the *Business Practices and Consumer Protection Act* ("BPCPA") and section 35(3)(b) of the Motor Dealer Act, by failing to provide records to the Vehicle Sales Authority and/or Compliance Officer, Carrie VanDokkumburg, who is authorized by the Registrar to conduct investigations, that are related to the purchase of a 2010 Hyundai Elantra VIN#KMHDU4BD0A4026939 (the "Motor Vehicle").
 3. Between January 16, 2015 and September 8, 2015, at or near Surrey, in the Province of British Columbia, Pioneer Garage Limited *dba* Pioneer Chrysler Jeep (Dealer #5224), Sarabjit Mander (Salesperson #103534), Jaspaul Mann (Salesperson#106197), and Raymond K. Van Empel (Salesperson #110650), collectively (the "Suppliers") did in relation to a consumer transaction contravene section 35(3)(a) of the *Motor Dealer Act (MDA)* by providing false or forged documents to the Vehicle Sales Authority and/or Compliance Officer, Carrie VanDokkumburg, who is authorized by the Registrar to conduct investigations, that are related to the purchase of a 2010 Hyundai Elantra VIN#KMHDU4BD0A4026939 (the "Motor Vehicle").

AND WHEREAS the Dealer wishes to resolve these issues, without a hearing, voluntarily by entering into this Undertaking.

AND WHEREAS the Dealer has resolved the consumer monetary complaint to the satisfaction of the consumer and the Registrar by making the consumer whole again by reimbursing the consumer the amount of the purchase price of the Motor Vehicle.

AND WHEREAS the Dealer has resolved the consumer monetary complaint to the satisfaction of the consumer and the Registrar by reimbursing the consumer the cost of four replacement tires in the amount of \$527.24.

AND WHEREAS the Dealer will complete a system review of its operations and make procedural changes satisfactory to the Registrar within 45 days of signing this Undertaking.

THE DEALER HEREBY UNDERTAKES TO:

- a) To comply with the *Business Practices and Consumer Protection Act* and the regulations made there under;
- b) To ensure all material facts are disclosed to consumers prior to the purchase of any motor vehicle including but not limited to, accurate odometer readings;

- c) To ensure that consumers are provided the terms of the purchase agreement and the financing of the motor vehicle prior to a consumer entering into an agreement and provides copies of the purchase agreement and any finance documents to the consumer after the agreement is entered into ;
- d) To provide complete records when requested by the VSA and/or a Compliance Officer acting on behalf of the Registrar;
- e) To maintain complete records of all Motor Vehicle transactions including but not limited to repairs, deposits, purchase agreements, inspections, buy ins and all other related documents;
- f) To have all previously owned Motor Vehicles that are offered for sale inspected prior to sale;
- g) To ensure that all salespersons are licensed by the VSA at each dealership;
- h) Reimburse the Registrar a total of \$1,300.00 for inspection/investigation and legal costs relating to the subject matter of this Undertaking, comprising 50% of the actual investigation and hearing costs; and

THE UNDERSIGNED hereby acknowledges, represents and declares that he or she has read this Undertaking and has had a reasonable opportunity to obtain independent legal advice as to its terms.

THE UNDERSIGNED further hereby acknowledges that the availability of an undertaking to resolve any future similar allegations or contraventions may be unavailable; and that any similar allegations may be reviewed by the Registrar of Motor Dealers at a formal hearing to consider the allegations.

IN WITNESS WHEREOF the undersigned has set his hand:

| | |
|--|-------------------|
| Dealer Name: _____ | |
| (Print the name and title of Dealer's authorized representative) | |
| Signature: _____ | Date: _____ 2015. |

ACCEPTED by the Registrar of Motor Dealers of British Columbia this _____ day of _____ 2015

Ian Christman - Registrar of Motor Dealers



IN THE MATTER OF THE *MOTOR DEALER ACT* R.S.B.C. 1996 c. 316

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AND WHEREAS the "Registrar of Motor Dealers", as defined under the Act, (the "Registrar") is responsible for the administration and enforcement of the Act, its regulations and prescribed provisions of the *Business Practices and Consumer Protection Act* S.B.C. 2004 c. 2 (the "BPCPA").

1. ").

AND WHEREAS the Dealer wishes to resolve these issues, without a hearing, voluntarily by entering into this Undertaking.

AND WHEREAS the Dealer has resolved the consumer monetary complaint to the satisfaction of the consumer and the Registrar by making the consumer whole again by reimbursing the consumer the amount of the purchase price of the Motor Vehicle.

AND WHEREAS the Dealer has resolved the consumer monetary complaint to the satisfaction of the consumer and the Registrar by reimbursing the consumer the cost of four replacement tires in the amount of \$527.24.

AND WHEREAS the Dealer will complete a system review of its operations and make procedural changes satisfactory to the Registrar within 45 days of signing this Undertaking.

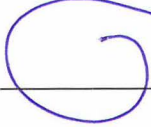
THE DEALER HEREBY UNDERTAKES TO:

- a) To comply with the *Business Practices and Consumer Protection Act* and the regulations made there under;
- b) Reimburse the Registrar a total of \$1,300.00 for inspection/investigation and legal costs relating to the subject matter of this Undertaking, comprising 50% of the actual investigation and hearing costs; and

THE UNDERSIGNED hereby acknowledges, represents and declares that he or she has read this Undertaking and has had a reasonable opportunity to obtain independent legal advice as to its terms.

THE UNDERSIGNED further hereby acknowledges that the availability of an undertaking to resolve any future similar allegations or contraventions may be unavailable; and that any similar allegations may be reviewed by the Registrar of Motor Dealers at a formal hearing to consider the allegations.

IN WITNESS WHEREOF the undersigned has set his hand:

| |
|--|
| Dealer Name: <u>Pioneer Garage Limited</u> |
| <u>Raymond Van Empel</u> (Print the name and title of Dealer's authorized representative) |
| Signature: <u></u> Date: <u>Dec. 18</u> 2015. |

ACCEPTED by the Registrar of Motor Dealers of British Columbia this ____ day of _____ 2015

Ian Christman - Registrar of Motor Dealers