



**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:

**MOTOR DEALER COUNCIL OF BRITISH COLUMBIA
dba MOTOR VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA
AND JAMES GRIEVE**

COMPLAINANTS

AND:

**AUTOLINES MOTOR GROUP LTD.
(Dealer #40090)**

MOTOR DEALER

AND:

**CORY DEWINETZ
(Salesperson #110800)**

SALESPERSON

**DECISION OF THE REGISTRAR OF MOTOR DEALERS
ON RECONSIDERATION**

Introduction

[1] On July 28, 2016, Bryan Reid, a compliance officer with the Vehicle Sales Authority, applied on behalf of the complainant, James Grieve, for a reconsideration of my decision dated July 15, 2016. I provided both Mr. Grieve and the Mr. Dewinetz (Salesperson #110800) with an opportunity to respond to the application for reconsideration. Both provided me with correspondence dated August 3, 2016, which I have reviewed.

[2] The issue raised by Mr. Reid relates to a finding I made that Mr. Dewinetz used funds received from Mr. Grieve to purchase new rims and tires for the 2007 Volkswagen Golf (the "2007 Golf"), which was the subject of the hearing. In particular, the finding which is challenged on this application is the following:

[33] The evidence of Mr. Moore and Mr. Dewinetz together with the invoice from Gordons European Used Parts, which was produced by Mr. Dewinetz, leads me to conclude that in fact the 2007 Golf was delivered to Mr. Grieve with rims and tires purchased by Autolines and installed by Autolines at the request of Mr. Grieve. While Mr. Grieve may have a different memory of what he saw on the car in early November, I am satisfied on the balance of the evidence that Autolines

did take the money provided by Mr. Grieve for the replacement mags and tires and used that money to purchase and install replacement mags and tires on the 2007 Golf to be ready for delivery to Mr. Grieve on November 19, 2014.

Reconsideration

[3] The basis for reconsideration are three photographs of the 2007 Golf taken by Mr. Grieve on November 28, 2014, and July 27 2016, which were only provided to Mr. Reid by Mr. Grieve in the week of July 27, 2016.

[4] The *Business Practices and Consumer Protection Act* ("BPCPA"), s. 182 provides that I may reconsider my decision if I am:

s. 182 ... satisfied that new evidence has become available or has been discovered that

- (a) is substantial and material to the determination, and
- (b) did not exist at the time of review or did exist at that time but was not discovered and could not, through the exercise of reasonable diligence, have been discovered.

[5] In *MVSA v. AutoCanada Northtown Auto GP Inc.*, January 12, 2016, Registrar Christman confirmed the purpose of the reconsideration provisions of the BPCPA:

[30] As I noted in *Bunyak*, the purpose of the reconsideration provisions of the BPCPA are to allow the Registrar to revisit a determination where there is a change of circumstances. This is in recognition that regulatory bodies, such as the Registrar, are in constant oversight of the industry they regulate and may need to adjust their orders in order to carry out their regulatory mandate. It is also in recognition of the statutory right of a person subject to a notice of administrative penalty to provide evidence that they acted with due diligence even though they breached the BPCPA, in order to have the notice of administrative penalty cancelled.

[31] A reconsideration under the BPCPA is not an appeal or a judicial review of the original determinations to assess their reasonableness: *Roeder v. B.C. Securities Commission* (BCCA) at paragraphs 57-58; and *Fraser Health Authority v. Workers' Compensation Appeal Tribunal* (BCCA) at paragraphs 141-142.

[6] I am not satisfied that the new evidence is substantial or material to my determination.

[7] The photograph taken in November 2014 was available to Mr. Grieve at the time of the hearing. Mr. Dewinetz was given the opportunity to produce the invoice from Gordons European Used Parts on the day following the hearing (March 17, 2016). The MVSA and Mr. Grieve were given the opportunity to respond to this material. The photograph was not produced by Mr. Grieve at that time.

[8] While the photographs taken in July 2016 were not available for the March 2016 hearing, Mr. Grieve could have submitted a photograph of the 2007 Golf taken in March 2016. He could have done so at the hearing or when invited to make additional submissions. He chose not to do so.

[9] Section 182 of the BPCPA is not intended to allow parties to create new evidence after the fact to challenge a decision they do not agree with.

[10] Only once my decision had been rendered did Mr. Grieve produce this additional evidence for the purpose of challenging the reasonableness of my finding. This purpose is not consistent with section 182 of the BPCPA.

Decision

[11] The new evidence will not be admitted and the application for reconsideration is denied.

[12] No reconsideration may be made of this decision: subsection 182(6) of the BPCPA. Subsection 7.1(t) of the *Motor Dealer Act* and section 57 of the *Administrative Tribunals Act* set a time limit of 60 days to apply for judicial review from the date this decision is issued.

DATED: August 12, 2016



Wendy A. Baker, QC
Acting Registrar