Vehicle Sales Authority
of British Columbia

Investigation File No: 15-07-257
Hearing File No: 16-04-003

Neutral Citation: 2016-BCRMD-006

IN THE MATTER OF THE *MOTOR DEALER ACT* R.S.B.C. 1996 C. 316 AND THE *SALESPERSON LICENSING REGULATION* B.C. REG. 241/2004

RE:

Jeffrey Terrence Armstrong
(Salesperson Licence #108500)

Salesperson

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Date and Place of Hearing: April 21, 2016 at Surrey, British Columbia

Appearances

For Jeffery Terrence Armstrong	Himself
For the Authority	Hong Wong, Manager of Licensing Kim Murphy, Licensing Officer Ross Cote, Compliance Officer

INTRODUCTION

[1] In July of 2015, the Vehicle Sales Authority of B.C. ("VSA") was contacted by the Alberta motor dealer regulator, Alberta Motor Vehicle Industry Council (AMVIC). AMVIC was inquiring about Mr. Armstrong who had applied in Alberta to be a licensed salesperson. Their concern was Mr. Armstrong had an order not to attend Harris Mazda in B.C. The VSA staff made its own inquiries and determined Mr. Armstrong was charged with theft under $5,000 with the offence date noted as December 26, 2014. The theft was related to a $500 gift card Mr. Armstrong obtained from the Harris Mazda dealership and used for his own purposes at an EB Games store. Mr. Armstrong was convicted on February 18, 2016.

[2] When Mr. Armstrong renewed his licence on or around May 2015, he declared on his electronic renewal that he was not currently charged with any offences in Canada or any other jurisdiction. Mr. Armstrong said he read the question wrong, and thought it asked if he was convicted of any charges.

[3] Compliance Officer Mike Dorran interviewed the Harris Mazda dealership's Tony Harris. Mr. Harris noted Mr. Armstrong was working in the business office of the dealership when he took the gift card. Mr. Armstrong was interviewed by Mr. Cote on September 2, 2015 in relation to the charges.

[4] On September 3, 2015, Mr. Armstrong was offered employment at a Vancouver dealership. In order to protect the public interest, and in consideration that Mr. Armstrong had not yet been convicted of a crime, Mr. Armstrong was allowed to continue as a salesperson and working in the business office, but conditions were added to his licence as follows:

1. May not handle any monies at the dealership.
2. Must inform the VSA within 5 days of the conclusion to court proceedings.
3. Must inform the VSA of any new criminal investigations.
4. May not change employers without prior approval of the VSA.
5. May not work in a General Manager position at the dealership.
6. The conditions may be reviewed by the Manager of Licensing in 6 months were some, none or all of the conditions may be removed.
7. Approved employer must confirm with the VSA they have read the above conditions.

[5] On February 18, 2016, Mr. Armstrong was convicted of theft under $5,000. He was granted a conditional discharge with 8 conditions contained in the one year Probation Order. Mr. Armstrong was to pay a $100 Victim Surcharge and Restitution of $500 (due date of restitution was February 18, 2016).

[6] Once Mr. Armstrong advised the VSA of his conviction and conditions, the VSA continued his salesperson licence on the above conditions, except condition 5 was expanded to prohibit Mr. Armstrong from working as a business manager.

[7] Mr. Armstrong complains that these conditions are not warranted, especially the business manager prohibition. Mr. Armstrong states he understands that the VSA needs to take steps to protect the public, but it is being inconsistent in doing so. Mr. Armstrong says these conditions were not placed on the licenses of Neil Sudra (June 26, 2015, File # 14-12-001, Registrar of Motor Dealers) who stole $3,000 of consumer money 5 years ago or on Jaspal Thiara (VSA File 15-11-112) convicted of attempted murder 8 years ago.

[8] The issue here is; are the conditions placed on Mr. Armstrong's licence appropriate in the circumstances and consistent with pass precedents of the Registrar? In my opinion, the conditions are appropriate and consistent with past precedents.

THE LAW

[9] In determining whether to issue, cancel, or suspend a salesperson's licence, consideration is made of section 6 of the *Salesperson Licensing Regulation*. When adding conditions to a licence, the concern is for the protection of the public interest, and a salesperson is entitled to notice if the VSA adds to or alters any conditions on their license: section 4(3) of the *Salesperson Licensing Regulation*. Where there is concern regarding a criminal record, section 14 of the BC *Human Rights Code* requires the VSA not discriminate against the licensee merely because of the existence of a criminal record. The VSA is to review the licensee's unique circumstances and determine if their past criminal record possess a concern to the public interest, if they remain or were to be licensed. In some cases, adding conditions to a salesperson's licence is a means to balance protecting the public interest with the interest of a person to earn a livelihood in this industry. Conditions are an attempt to mitigate or "manage" any concerns of future harm to the public. Ultimately, protecting the public interest outweighs an individual's interest to be licensed.

> *Re: Peter Fryer* (December 13, 2013, File 13-11-005, Registrar of Motor Dealers) affirmed by *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279 (BC Supreme Court)

[10] As Madame Justice Sharma of the BC Supreme Court noted in the *Fryer* decision:

> [22] The Registrar points out that refusing to issue a license because of a criminal conviction that is unrelated to the intended license is prohibited under s. 14 of the *Human Rights Code*, RSBC 1996, c. 210. Case law has determined that whether or not convictions are related must be looked at in context, considering all the circumstances of the case: *B.C. Council of Licensed Practical Nurses v. Mans & Humphreys v. B.C. Council of Human Rights*, 1993 CanLII 1501 (B.C. Court of Appeal) and *Woodward Stores (British Columbia) Ltd. v. McCartney*, 1983 CanLII 444 (B.C. Supreme Court).
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> [23] The Registrar states that the requirement to examine a person's past conduct demonstrates an overarching concern with public safety. Past conduct is the statutory tool by which the Registrar can determine if applicants will be governable, act in accordance with the law and conduct themselves with honesty and integrity. Salespersons are in a position of trust with the buying public who rely on them to give clear and honest information about buying motor vehicles. The public also expects safety to be a priority if taking a test drive with a salesperson. Lastly, integrity is important because salespersons may be privy to customer's confidential personal information including home address and financial information.

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[27] Mr. Fryer also says his convictions are unrelated to his license application because they did not arise from his interaction with customers. He contrasts his situation to other people who were granted licenses even though, apparently, they had criminal convictions for fraud and, apparently, mishandling customer funds. Mr. Fryer handed up extracts from Registrar's licensing decisions referring to Anwar Badshah, Edward Chieduch and Phillip Curtain.

[28] I was not given the complete case report but even the extracts I was given, illustrate an important distinction between them and Mr. Fryer's situation. In each of those cases, the Registrar was satisfied that with conditions, the risk posed to the public by the applicant's past criminal conduct could be managed. Also, in one case, the Registrar notes that the applicant showed remorse and signs that he was rehabilitating himself. Another applicant had taken counselling and training. All applicants were supported by employers with whom they had to stay employed and who had to report to the Registrar.

DISCUSSION

[11] At the outset it should be noted that Mr. Armstrong's recent criminal conviction did not give the VSA sufficient concern that his licence should be revoked or suspended. Upon a review of the circumstances surrounding Mr. Armstrong's case, the VSA felt any concerns for the public's safety could be managed by adding the above noted conditions to his licence.

[12] During the hearing I asked Mr. Armstrong questions to obtain evidence about the circumstances of his conviction, the steps he has taken to rehabilitate, his remorse and any other facts that can assist me in determining whether Mr. Armstrong is a concern to the public interest and what conditions, if any, are appropriate to try and manage any risk. The following factors are considered:

(a) Mr. Armstrong pled guilty after a plea deal was made,
(b) Mr. Armstrong advises that he has paid the $100 Victim Surcharge,
(c) Mr. Armstrong advises he has not paid the $500 restitution as he has not received any pay cheques as yet,
(d) Mr. Armstrong advises that at the time of the hearing, he had not completed the community service hours ordered, but had discussed this with his probation officer to start fulfilling that requirement,
(e) Mr. Armstrong says he is remorseful although his condition may not allow him to show remorse

(f) Mr. Armstrong sought counseling while living in Nanaimo, 7 sessions, but has not had any sessions while living in Metro Vancouver since August 2015,
(g) Mr. Armstrong has seen a medical professional only once since being in Metro Vancouver for his condition,
(h) Mr. Armstrong advises that his condition was a factor in this issue,
(i) Mr. Armstrong advises that he has relied on his mother for financial assistance during the legal proceedings and since moving to Metro Vancouver,
(j) Licensing Officer Kim Murphy reported that there have been no licensing issues with Mr. Armstrong apart from being a few days late in renewing his licence on one occasion,
(k) Compliance Officer Ross Cote spoke with Mr. Armstrong's probation officer. The probation officer could not provide any information as they had met Mr. Armstrong only once as of the date of the hearing,
(l) Mr. Armstrong has employment at a dealership in Vancouver, although he is working only as a salesperson and not in the business office,
(m) Mr. Armstrong has otherwise been a licensed salesperson without incident since first being licensed in August 2006,
(n) Mr. Armstrong did not provide any reports from medical professionals, and
(o) Mr. Armstrong did not provide any letters of support from family, friends or co-workers.

[13] During the hearing Mr. Armstrong spoke of Neil Sudra and Jaspal Thiara. Mr. Armstrong focused on the severity of their conduct as compared to his own. While the severity of the conduct is an important factor, it is not the only factor to consider when assessing any risk to the public interest. What is also of importance is the time that has passed since the transgression, what the person has done since committing the crime, since the conviction and the time when they are being reviewed by the registrar. Have they shown remorse, is there evidence of rehabilitation, and other similar factors? What is important for a regulator, such as the registrar, is whether the person's conduct since the transgression shows they are no longer a concern to the public if allowed to operate in the industry. Or, if there is still some concern, can that concern or risk be managed with conditions on their licence. What has happened since the transgression is of equal importance to the conduct itself and after a period of time, it can become even more important than the transgression as directed by section 14 of the *Human Rights Code*.

[14] Mr. Armstrong tried to distinguish his theft from an employer as being somehow less concerning than Mr. Sudra's theft from a consumer. When theft is the conduct in question, it does not have to be focused on a wrong against a

consumer to be considered serious. Where theft occurs, the concern is the impact the theft has on the ability to trust the person in general.

[15] Mr. Armstrong's situation is not the same as that of Neil Sudra. In the case of Mr. Sudra:

(a) The incident in question happened about 5 years prior to his licence review,
(b) Mr. Sudra had made restitution,
(c) Mr. Sudra showed remorse and was cooperative with the review,
(d) The VSA inquired with all of Mr. Sudra's employers over the 5 years, and none found any concerns, none had any irregularities regarding financing (and were asked to check). There were also no reported issues with consumers,
(e) Mr. Sudra had no other incidents as a salesperson,
(f) Mr. Sudra provided a report from a medical professional to show what went wrong 5 years ago, that Mr. Sudra has awareness of the trigger and has mechanisms to deal with that trigger,
(g) Mr. Sudra provided a professional report to show he was very low risk to re-offend,
(h) Mr. Sudra had the support of his wife and a letter of support was provided at the hearing,
(i) Mr. Sudra had other letters of support from friends and colleagues, and
(j) Mr. Sudra was generally able to show that this was a one-time transgression due to extenuating circumstance that occurred 5 years prior, with no further incidents, all the while working in management – Mr. Sudra had showed rehabilitation and he was a very low risk to the public.

[16] Despite the above factors, conditions were added to Mr. Sudra's licence as a means to manage any risk which included that he does not handle consumer money. Mr. Sudra also received a three month suspension of his licence because the issue was serious and in order "to keep this incident top of mind, so that he [Mr. Sudra] does not repeat that conduct".

[17] In the case of Jaspal Thiara, some eight years had passed since the transgression and evidence was provided that he was remorseful and rehabilitating. While the conditions of his licence are not reported on the VSA website, the following conditions are on his salesperson licence:

1. May not change employers without prior approval from the VSA.
2. May not work in the business office or hold a position of management.
3. Review of conditions in 6 months' time.

[18] Mr. Armstrong's case is more similar to that of Thomas Van Vu (April 21, 2016, File 16-04-002, Registrar). Mr. Van Vu's hearing occurred the same morning and before the hearing of Mr. Armstrong. In the case of Mr. Van Vu, I made an oral decision that morning. Mr. Van Vu had recently been convicted of theft under $5,000 and assault in September 2015 and is on probation until September 2016. Mr. Van Vu was in the midst of completing his probation conditions, but had not paid restitution or the victim surcharge. Mr. Cote was able to interview Mr. Van Vu's probation officer who indicated they had no concerns, and Mr. Van Vu had as of the day of his hearing, been compliant with his probation. Mr. Van Vu showed remorse and a willingness to rehabilitate and to not get caught up in similar situations. The following conditions were added to Mr. Van Vu's licence:

1. To advise any prospective employer of these conditions;
2. To not handle consumer money;
3. To not be in a management position without prior approval of the VSA;
4. To abide by the probation order;
5. To advise the VSA of any breaches of probation order or any other court proceedings criminal or civil;
6. To advise the VSA when all conditions of probation order have been fulfilled with supporting documents;
7. To fulfill all requirements for licensing; and
8. To abide by all laws and rules applicable to a salesperson within the motor dealer industry.

[19] The issue with Mr. Armstrong, as with Mr. Van Vu, is that Mr. Armstrong's conviction of February 18, 2016, is recent as was the date of the transgression of December 26, 2014. Mr. Armstrong has not yet built a history of compliant activity since his conviction to gauge if he has rehabilitated himself. Mr. Armstrong is still under the probation order, and has not yet completed those conditions. There is not enough time and evidence of good conduct since December 26, 2014 and the conviction date of February 18, 2016, to say that Mr. Armstrong can again be trusted, especially in the significant position of trust of a business manager at a dealership. The conditions on Mr. Armstrong's licence are in place to manage any risks to the public, while balancing Mr. Armstrong's desire to work in the industry.

[20] I also note that the conditions include the ability to have them reviewed in only 6 months' time by the Manager of Licensing. During that time, Mr. Armstrong can take steps to rehabilitate himself and to show this transgression was in fact a one-time occurrence.

[21] For clarity, I repeat the conditions on Mr. Armstrong's licence are as follows:

1. May not handle any monies at the dealership.
2. Must inform the VSA of any new criminal investigations.
3. May not change employers without prior approval of the VSA.
4. May not work in a general manager, business manager or any sales related management position at the dealership.
5. The conditions may be reviewed by the Manager of Licensing in 6 months were some, none or all of the conditions may be removed.
6. Approved employer must confirm with the VSA they have read the above conditions.

[22] The above conditions are appropriate given the significance of the criminal conviction, the conviction is recent, that Mr. Armstrong is still on probation, and the current state of Mr. Armstrong's efforts to rehabilitate and show he can once again be trusted as a business manager.

[23] If there is disagreement with this decision, it may be reviewed by petitioning the BC Supreme Court to conduct a judicial review pursuant to the *Judicial Review Procedure Act*. Such a petition must be filed with that court within 60 days of this decision being issued: sub-section 7.1(t) of the *Motor Dealer Act* incorporating section 57 of the *Administrative Tribunals Act*.

Date: May 9, 2015

Ian Christman, J.D.
Registrar of Motor Dealers