



Neutral Citation: 2018-BCRMD-022

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

MOTOR VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA

Complainant

And

WILD GRIZZLY TRANSPORT LTD.
(Unlicensed)

Respondent

And

PASQUALE ZAMPIERI
(Unlicensed)

Respondent

And

JENNIFER AIKEN
(Unlicensed)

Respondent

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

By way of written submissions

Norm Felix, Manager of Compliance and Investigations,
for the Authority May 18, 2018

Wild Grizzly Transport Ltd. and Pasquale Zampieri May 25, 2018 (via email)

I. Introduction

[1] In written reasons issued on May 10, 2018, I found that Wild Grizzly Transport Ltd. was acting as motor dealer while not registered to do so (curbing), contrary to section 3(1)(a)(i) of the *Motor Dealer Act* R.S.B.C. 1996, c. 316 (“MDA”). I also found that Wild Grizzly Transport Ltd. had tampered with the

odometers on 37 motor vehicles contrary to section 34(2) of the *Motor Dealer Act*. Finally, I found "Pasquale Zampieri, as a director of Wild Grizzly Transport Ltd., did authorize, permit, or acquiesce in the conduct of Wild Grizzly Transport Ltd." As a result of my findings, I issued a cease and desist order against Wild Grizzly Transport Ltd. and Pasquale Zampieri. The allegations against Jennifer Aiken were dismissed.

[2] In my reasons of May 10, 2018, I invited the Authority and Wild Grizzly Transport Ltd. to make written submissions on costs. I have received those written submissions.

II. Position of the Parties

A. The Authority

[3] The Authority submits its costs to investigate this matter were \$11,383.91. Those costs are based on an hourly rate calculation for each specific employee that was involved with the investigation file multiplied by their hours of work on the file. The overall hours to investigate and bring this matter before the Registrar was 167.33 hours. This amounts to roughly \$68 per hour.

[4] The Authority also notes that there were no legal costs (lawyer's fees) or hearing costs within the \$11,383.91 figure.

[5] The Authority submits that it is not pursuing an administrative penalty in this case, following the reasoning in *Thow v. B.C. (Securities Commission)* 2009 BCCA 46 (BC Court of Appeal).

B. Wild Grizzly Transport Ltd.

[6] Pasquale Zampieri made submissions on behalf of Wild Grizzly Transport Ltd. Mr. Zampieri notes that the \$11,000 in investigation costs would hurt him "a lot financially." Pasquale Zampieri stated he spoke with Norm Felix, Manager of Compliance and Investigations, and wishes to comply with the compliance order.

[7] Pasquale Zampieri made submissions about his current work delivering vehicles and how he wishes to get his wholesaler's licence as he sees the amount of money wholesalers can make. Mr. Zampieri suggests that the Authority drop the demand for \$11,000 in costs so he can apply for a wholesaler's licence. Mr. Zampieri also requests that the Authority drop the compliance order made against him, because having the compliance order made public could negatively impact him

as a wholesaler. Mr. Zampieri states he does not intend to retail vehicles to consumers. Finally, Mr. Zampieri notes that he will forward his application for a wholesaler licence to the VSA "early next week." Mr. Zampieri was unclear if he personally will apply or if he will apply on behalf of Wild Grizzly Transport Ltd., for a wholesaler licence.

III. The Law

[8] Section 26.02(4)(d) of the MDA empowers the Registrar to issue a compliance order for costs. Costs are at the discretion of the Registrar. The provision states:

(4) The registrar may include one or more of the following orders in a compliance order:

(d) that a person reimburse to the registrar all or part of the **actual** costs, including **actual** legal costs, incurred by the registrar for

- (i) any inspection or investigation of the person, or
- (ii) the appointment of a receiver, receiver manager or trustee

in respect of the contravention referred to in the compliance order.

[Bold added.]

[9] "Actual" costs are different than a cost award after a trial in the B.C. Supreme Court, applying a tariff of costs. Actual costs mean just that, the full recovery of all the investigation and legal costs.

[10] An award of costs must be assessed with the entirety of the case in mind. The fact that the Authority has proven their case does not mean they will be entitled to recover all their costs. In some cases, a hearing is necessary because of the insistence of a complainant and evidence shows the regulated person was cooperative and offered what the complainant was legally entitled to receive in compensation from the outset. Any award of costs should reflect the regulated person's cooperation and reasonableness throughout the investigation and hearing process.

- *Lamontagne et al. v. Bill Howich Chrysler Ltd.* (File 08-70064, August 12, 2008, Registrar)
- *Boyd v. APG Car Sales & Leasing Ltd.* (File 08-70008, July 4, 2008, Registrar)

[11] In other cases, a complainant may withhold critical evidence and mislead a hearing. In such a case, the awarding of costs against a regulated person can be reduced or waived outright, even if compliance action has been taken.

- *Naples v. River City Auto Sales Ltd. et al.* (File 12-70098, February 18, 2013, Registrar)

[12] The request for costs must be reasonable. The legislative authority to recover actual costs is not a blank cheque to incur any costs. The requested costs should reflect the work necessary to prove the allegations in the case and bring it forward. Considerations would include, but are not limited to:

- (a) The complexity of the case and the need for outside expert assistance such as a forensic accountant.
- (b) The depth of the case. Was the investigation over a one-time breach or multiple breaches of the legislation? Did the investigation involve one or multiple consumers/complainants? Did the investigation require reviewing several months or years of transaction/documentary records?
- (c) The number of witnesses interviewed or who testified.
- (d) The amount of documentary evidence necessary to bring the case forward.
- (e) The need to create explanatory material to make sense of and to present the evidence; such as charts, diagrams, and accounting spreadsheets.
- (f) The need for the Registrar to issue interim orders to compel the disclosure of evidence.

IV. Discussion on Costs

[13] Based on the submissions made by the Authority and Wild Grizzly Transport Ltd. on the main decision and the submissions on costs, it appears Wild Grizzly Transport Ltd. was mostly cooperative with the investigation by the Authority. For instance, in its submissions for the decision of May 10, 2018, Wild Grizzly Transport Ltd. admitted it had conducted the sales as alleged, and did not contest the odometer roll backs.

[14] However, Wild Grizzly Transport Ltd. was not reasonable in the position that it took. Wild Grizzly Transport Ltd. maintained that as a corporation, the Authority and the Registrar had no jurisdiction over it. That was incorrect in law and an untenable position to take. If it had accepted the evidence, as it did in its submissions, and accepted the Registrar's jurisdiction, this matter may have been dealt with by way of an Undertaking.

[15] Wild Grizzly Transport Ltd. continues to be unrealistic or unreasonable in its approach to costs. It states that the request for \$11,000 in costs should be dropped and it be issued a wholesaler licence, once it applies, all on its promise to be compliant. Further, it states that the compliance order made requiring it to cease and desist acting as an unregistered motor dealer and from committing odometer roll-backs should also be dropped, because it would have a negative impact on it as a wholesaler; if it were so licensed. Wild Grizzly Transport Ltd. focuses on what is important to it and does not consider the public interest. Its submissions on costs reflects its poor understanding of what it means to be in a regulated industry.

[16] The investigation did not require using an expert to analyze the evidence. The investigation was somewhat in-depth as it required reviewing a minimum of one year of records and obtaining records from other sources such as auctions and online advertisements. The Authority's reviewing one-year worth of transaction records was reasonable to establish the presumption in section 1(2) of the *Motor Dealer Act*.

[17] A spreadsheet was created to assist in proving the odometer roll-backs. Proving the odometer roll-backs required a comparative analysis of odometer declarations on the purchase documents from the auctions, with the declarations on the ICBC APV9T Transfer/Tax forms. The review encompassed at least 37 vehicles and transactions.

[18] The Authority is only requesting the recovery of staff time. There are no additional disbursements (hard costs) being requested.

[19] The highest number of hours charged was by a Compliance Support Officer followed by the Compliance Officer responsible for the investigation file. This was appropriate as the hourly rate for the Compliance Support Officer is less (about \$10/hr. less) than for a Compliance Officer. The combined hours of the Compliance Officer and the Compliance Support Officer is 161.75 hours.

[20] A further 3.5 hours was for support staff working on the file, who charge out at rates less than the Compliance Support Officer. Finally, the Manager of

Compliance, who would review the file before it was advanced to a hearing, charged out 2.08 hours.

[21] Given the depth of the investigation, the one-year worth of documents to review, the multiple sources of information canvassed, the need to monitor online advertising, and the comparative analysis of the documents to prove the odometer roll-backs and the selling of motor vehicles while not registered as a motor dealer, I find that the number of hours charged to be reasonable in the circumstances. I see no reason to reduce those hours based on Wild Grizzly Transport Ltd.'s cooperation, as it took an unreasonable position in this case.

[22] A compliance order pursuant to section 26.02(4)(d) of the *Motor Dealer Act* will issue requiring Wild Grizzly Transport Ltd. and Pasquale Zampieri to pay the actual investigation costs of the Registrar in the amount of \$11,383.91. Pursuant to section 26.02(6) of the *Motor Dealer Act*, Wild Grizzly Transport Ltd. and Pasquale Zampieri are jointly and severally responsible to pay that amount.

[23] As no evidence was advanced about any legal or hearing costs, no order will be made on those items.

V. Other issues raised

[24] Wild Grizzly Transport Ltd. asks that it be issued a wholesaler licence once it applies. Whether Wild Grizzly Transport Ltd. or Pasquale Zampieri will or will not be issued a wholesaler licence cannot be assessed now. The application process requires they provide various pieces of information for review. Any future decision on a wholesaler application from Wild Grizzly Transport Ltd. or Pasquale Zampieri must be assessed, when the application is submitted and complete. The decisions in this case will be taken into consideration on any such wholesaler applications.

[25] Wild Grizzly Transport Ltd. asks that the compliance order stated in my reasons for decision on May 10, 2018, be "dropped." A compliance order issued under the *Motor Dealer Act* is valid and continuous until set aside in accordance with the legislation. It is not just "dropped."

VI. Review of Decision

[26] The Compliance Order for costs may be reviewed by requesting reconsideration in accordance with section 26.11 of the *Motor Dealer Act* within 30 days of receiving these reasons or a copy of the Compliance Order whichever is received later. The request for reconsideration must identify the grounds for

reconsideration and be accompanied with the required new or newly discovered evidence as defined in section 26.12(2) of the MDA.

[27] This decision may also be reviewed by petitioning the B.C. Supreme Court for judicial review pursuant to the *Judicial Review Procedure Act*, within 60 days of this decision being issued: section 7.1(t) of the *Motor Dealer Act*.

Date: May 31, 2018

Original Signed
Ian Christman, J.D., Registrar