



Neutral Citation: 2018-BCRMD-024

**IN THE MATTER OF THE *MOTOR DEALER ACT* R.S.B.C. 1996, C. 316
AND THE *SALESPERSON LICENSING REGULATION*, B.C. Reg. 202/2017**

Re:

Safiollah (Safe) Youseffi
(Licence # 101011)

Salesperson

DECISION OF THE REGISTRAR

Date and place of hearing: July 19, 2018 at Surrey, British Columbia and October 2, 2018 at Langley, British Columbia

Date and place of decision: January 23, 2019 at Langley, British Columbia

Appearances for

Vehicle Sales Authority of British Columbia	Hong Wong, Manager of Licensing
Safiollah (Safe) Youseffi	In person

I. Introduction

[1] The Vehicle Sales Authority of British Columbia ("Authority") has requested a review of Safiollah (Safe) Youseffi's salesperson licence. The Authority proposes that the licence be revoked.

[2] In the Third Amended Hearing Notice dated September 10, 2018, there are five allegations, as follows:

- (a) Deliberate misrepresentation of material facts, in respect of the sales of motor vehicles;
- (b) Unauthorized use of a dealer registration, in respect of the sales of motor vehicles;
- (c) Unauthorized participation in consignment sales;
- (d) Theft, via failure to distribute the proceeds of consignment sales to the consignor; and

(e) "Curbing" – acting as a motor dealer while not registered as one.

[3] During the hearing, the Authority advised me that allegations (c) and (d) were brought forward by Aliakbar H. Shirazi, owner of A.D. Auto Sales Ltd. The Authority further advised that it very recently became aware that allegations (c) and (d) form the bases of an ongoing civil court case before the B.C. Supreme Court between Mr. Shirazi and Mr. Youseffi. The Authority advised that it would not be going forward with allegations (c) and (d) at this time and would await the BC Supreme Court case to conclude.

[4] Allegations (a) and (b) refer to a consumer complaint, received in 2013 and involving the purchase of a 2007 BMW 650i ("BMW"). The allegations in that case were that, in 2013, Mr. Youseffi obtained and sold the BMW without the motor dealer's (his employer's) knowledge and consent and with an active lien from the prior owner on the BMW. The bank eventually seized the BMW from the purchasing consumer. Ultimately, the resolution was for the dealer to pay out the lien and have the BMW returned to the consumer. I am advised - and it is not disputed - that the dealer and Mr. Youseffi arranged for Mr. Youseffi to repay the dealer. I have been advised - and again it is not disputed - that the debt is still outstanding. Mr. Youseffi and the dealer disagree on the amount outstanding.

[5] Allegation (e) came to light, when the Vancouver Police advised the Authority that vehicles registered to Mr. Youseffi were stopped by them and were being driven by individuals, who were allegedly drug dealers.

II. The Position of the Parties

A. The Authority

[6] In its summations, the Authority expressed concern for the public that Mr. Youseffi continue to be licensed. The Authority noted that his answers to the allegations indicates he does not even understand the basic rules, which are applicable to a salesperson. For instance, Mr. Youseffi believed that he could sell five vehicles a year, without having to be registered as a motor dealer. This view has been a long running myth in British Columbia. Salespersons in the industry know this to be a myth. The Authority also implicitly suggested in its submissions that Mr. Youseffi's conduct shows a lack of concern for his legal obligations and casts doubt on his governability.

B. Safiollah Youseffi

[7] Mr. Youseffi does not deny that he sold the BMW with an existing lien to a consumer. Nor does he deny that he knew it had a lien on it, when he sold it. He attempts to deflect responsibility, however, by saying that the consumer bought the BMW, while knowing that there was a lien on the vehicle. Mr. Youseffi also states that the prior owner of the BMW was given the proceeds of the sale and promised to discharge the lien by paying the debt. The prior owner did not do so.

[8] Regarding the allegations of curbing, Mr. Youseffi provided a few explanations. First, he spoke of buying vehicles for his personal use and replacing them, when they broke down. Second, Mr. Youseffi states that he is entitled to sell up to five vehicles a year, without being registered as a motor dealer. Third, Mr. Youseffi stated that the three vehicles are registered to him, but that he bought them for the persons who are currently driving them, but he made a mistake in having the vehicles registered in his name. Mr. Youseffi says that this has been going on for approximately the past three years. He further states that he cannot get the vehicles registered in the name of the other three individuals, because they have not paid the taxes.

III. The Law

[9] If the intention is to revoke a salesperson licence, the applicant has a right to be heard and to receive written reasons regarding the revocation: s. 7(3) of the *Salesperson Licensing Regulation*, B.C. Reg. 202/2017 ("SL Reg."). The right to be heard can be in any combination of a written, electronic, or oral hearing: section 8 SL Reg.

[10] In considering revoking a licence, I am to be mindful of Mr. Youseffi's desire to earn a livelihood as a salesperson. However, if there are concerns for the public interest in allowing Mr. Youseffi to continue to be licensed, the public interest is paramount. In reviewing past conduct, I am not limited by time, type of, or location in which the conduct occurred. The issue is whether the conduct is of concern to the public interest, such that the licence should be revoked.

- Section 7(2) of the SL Reg.
- *Re: Best Import Auto Ltd. et al.* (Hearing file 17-08-002, Registrar, November 28, 2017) at paragraphs 32 to 34; varied but not on this point by *Best Import Auto Ltd. v Motor Dealer Council of British Columbia*, 2018 BCSC 834 (BC Supreme Court).
- *Re: Best Import Auto Ltd. et al.* (October 12, 2018, Hearing File 18-06-005 – refusal of wholesaler licence.
- *Re: Anwar Badshah* (February 16, 2010, File 09-111523, Registrar).
- *Re: Peter Fryer* (December 13, 2013, File 13-11-005, Registrar), affirmed *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279 (BC Supreme Court).

[11] As noted by Justice Dhillon in *Fryer v. Motor Vehicle Sales Authority of British Columbia*:

[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.

[Underlining added]

[12] The burden of proof falls on the Authority to show that Mr. Youseffi poses a risk to the public interest that warrants the revocation of his salesperson licence. That burden is on a balance of probabilities, which is often reframed as establishing that the allegation is "more likely than not" true, based on sufficiently clear, convincing, and cogent evidence: *F.H. v. McDougall*, [2008] 3 SCR 41, 2008 SCC 53 (Supreme Court of Canada).

[13] Some of the evidence turns on the credibility of the witnesses. In this case - particularly on Mr. Youseffi's explanations, which are not supported by any documentary evidence or corroborating witness. In assessing credibility, I keep in mind the guidance of the courts.

- *Bradshaw v. Stenner*, 2010 BCSC 1398 (BC Supreme Court), affirmed by 2012 BCCA 296 (BC Court of Appeal), leave to appeal to the SCC refused 2013 CanLII 11302 (Supreme Court of Canada).
- *Crest Realty Westside Ltd. v. W & W Parker Enterprises Ltd.* 2014 BCSC 1328 (BC Supreme Court), affirmed by 2015 BCCA 447 (BC Court of Appeal).

IV. Discussion

A. Allegations (a) and (b) - the BMW sale

[14] Mr. Youseffi admits that he knew that the BMW had a lien on it, when he sold it to the consumer: October 2, 2018, Transcript of Proceedings at pages 37 and 49 to 50.

[15] Mr. Youseffi admits that the BMW was repossessed by the lien holder from the consumer and that Mr. Youseffi told the consumer that Mr. Youseffi would "take care of it:" October 2, 2018, Transcript of Proceedings at page 37.

[16] Mr. Youseffi admits that the dealer is the one that took care of the consumer: October 2, 2018, Transcript of Proceedings at pages 37 to 38.

[17] Mr. Youseffi admits that he still owes the dealer \$25,000 in relation to the BMW transaction: October 2, 2018, Transcript of Proceedings, pages 35 to 36.

[18] In his defence Mr. Youseffi states that, when the consumer purchased the BMW, the consumer knew that it had a lien.

[19] Mr. Youseffi's evidence of his state of knowledge about the lien changed back and forth, during the hearing. Initially, he stated that he knew from the outset that there had been a lien on the BMW. Later in his testimony, Mr. Youseffi back tracked, indicating that he only became aware of the lien, when the consumer called him to say that the bailiff had seized the vehicle:

No, the rest you know, whatever you know, when I find out there is a lien on it, and the customer called me and the bailiff they come and took the car from his house, when after that I just talk to Ali, the rest Ali helped to pay the lien.

October 2, 2018, Transcript of Proceedings, page 38. (Underlining added)

[20] In so testifying, Mr. Youseffi's seems to be attempting to down-play his own knowledge of the lien, to which he had freely admitted in his earlier testimony. Later in the hearing, Mr. Youseffi took up his earlier testimony that he knew of the lien before he sold the BMW: October 2 Transcript of Proceedings and pages 49 to 50.

[21] Evidence exists to suggest that Mr. Youseffi obtained the BMW from another person and that Mr. Youseffi sold it on their behalf. That owner was then given the proceeds of sale on a promise to discharge the lien.

- Evidence of Mr. Youseffi: October 2, 2018, Transcript of Proceedings, at page 37, lines 7 to 19 and page 49, line 10 to page 50, line 13.
- Evidence of Shackom Mied: October 2, 2018, Transcript of Proceedings, at page 33, lines 8 to 19.

[22] It does not make sense for a consumer to purchase a vehicle with an existing lien on it, unless he expects it will be cleared after the sale. Mr. Youseffi has admitted that the lien on the BMW was to be discharged by the prior owner with the sale proceeds. Based on the evidence before me, I am satisfied, on a balance of probabilities, that Mr. Youseffi knew that there was a lien on the BMW, before selling it to the consumer. However, the consumer either was not aware of the lien or - if they were aware - they expected it to be discharged from the proceeds of sale.

[23] Based on the evidence, the sale of the BMW was, by definition, a consignment sale: section 1 of the *Motor Dealer Consignment Sales Regulation*, B.C. Reg. 101/95 ("MDCS Reg."). When a motor dealer conducts a consignment sale, they are to enter into a consignment agreement with the consignor (section 2 of the MDCS Reg.) and use a purchase agreement containing specific terms unique to a consignment sale (section 4 MDCS Reg.). Important for this case is the MDCS Reg.'s required treatment of a lien owing on the consigned vehicle:

Form of consignment agreement

2 (1) If a consignment is negotiated between a motor dealer and a consignor, the motor dealer must prepare a consignment agreement and provide the consignor with a copy of the consignment agreement at the time of signing by the consignor.

(2) The consignment agreement must contain all of the following information:

(g) a declaration of title from the consignor, including any outstanding liens, which must be discharged at the time of sale;

Form of purchase agreement

4 (1) If the purchase of a consigned motor vehicle is negotiated between a motor dealer and a purchaser, the motor dealer must prepare a purchase agreement and provide the purchaser with a copy of the purchase agreement at the time of signing by the purchaser.

(2) The purchase agreement must contain, in addition to any content required by the Motor Dealer Act Regulation, the following statements:

(a) a statement that the motor vehicle is on consignment;

(b) a statement that any cheque, bank draft or money order received from the purchaser in payment for the consigned motor vehicle must

(i) be made payable to a trust account of the motor dealer at a savings institution located in British Columbia, and

(ii) identify the trust account in the manner that the trust account is identified in the records of the savings institution.

Manner of payment

6 (1) Any payment received from a purchaser is deemed to be held in trust for the consignor and lien holder.

(4) A motor dealer must not withdraw or authorize the withdrawal of any trust funds referred to in this section unless the funds are for the purpose of

- (a) disbursing sale proceeds to a consignor or lien holder under a consignment agreement,
- (b) correcting an error caused by money deposited in the trust account by mistake, or,
- (c) making payments to the motor dealer as authorized in the consignment agreement after the payment of the disbursements described in paragraph (a).

[All above underlining is added]

[24] This legislation mandates a specific process for the proceeds of sale, where a lien is involved. First, the proceeds of sale are to be deposited to a trust account of the motor dealer. Second, the money is to be held in trust, for the benefit of the consignor and lien holder. Third, any lien must be satisfied and discharged "at the time of sale." Based on the evidence, including Mr. Youseffi's admissions, he did not follow the legislatively required process.

[25] Allegation (b) was not strongly pursued by the Authority. Mr. Meid, owner of the dealership, did give evidence that he was unaware of the sale until the issue of the lien came to light a few months after the sale. This was never countered by Mr. Youseffi in any meaningful way. The licensing hearing report of Ross Cote indicates that the consumer thought that he was buying the BMW from a dealership called "Sonic," with which Mr. Youseffi was also licensed as a salesperson. However, the paperwork showed that the purchase was from Mr. Meid's dealership, Advance Auto, where Mr. Youseffi was also employed. The consumer's complaint form even named Sonic as the selling dealer. Mr. Youseffi gave a confusing explanation as to why the consumer would believe that he was buying from Sonic: October 2, 2018 Transcript of Proceedings, page 49.

[26] What is missing is evidence of the routine operations of Advance in buying and selling vehicles, as well as the level of authorization Mr. Youseffi had in purchasing vehicles for the dealership. I find that the evidence advanced was imprecise to establish, on a balance of probabilities, that Mr. Youseffi was acting on behalf of the dealer, Advance Auto, in an unauthorized way.

B. Allegation (e) - curbing

[27] As noted below, I find that Mr. Youseffi's evidence stating that he was not curbing is not credible. For the reasons that follow, I find that Mr. Youseffi was acting as a motor dealer while not registered, which is the very definition of curbing.

[28] I will first set out chronologically the transactions, which specifically show vehicles bought and sold by Mr. Youseffi as shown in the documentary evidence or as admitted by him. I am not including those records showing sales by A Best Auto, where Mr. Youseffi has signed the paperwork. I will then address the allegation of curbing and Mr. Youseffi's three stated defenses that:

- (a) He is allowed to sell up to five vehicles per year without being registered as a motor dealer;
- (b) The actual owners of the three vehicles, which are currently in Mr. Youseffi's name, have not paid the taxes on those vehicles and, therefore have not been transferred into their names; and
- (c) He was buying and selling personal use vehicles as they broke down.

[29] Based on the documentary evidence, and Mr. Youseffi's admissions, the following six transactions are under consideration here:

	Date	Vehicle	Activity
1	November 25, 2015	2004 BMX X5	Sale to an individual
2	December 19, 2015	Audi A4	Sold to an individual by Mr. Youseffi but registered in Mr. Youseffi's name (VPD)
3	April 9, 2016	2006 Mercedes B200	Sale to an individual
4	July 26, 2016	2004 BMX X5	Sold to an individual by Mr. Youseffi but registered in Mr. Youseffi's name (VPD)
5	July 29, 2016	2001 Mercedes ML320	Sale to an individual
6	September 22, 2017	Jaguar S Type	Sold to an individual by Mr. Youseffi but registered in Mr. Youseffi's name (VPD)

[30] Transactions 2, 4, and 6 in the above table relate to the vehicles identified by the Vancouver Police. Transactions 1, 3, and 5 are transactions involving Mr. Youseffi's selling to individuals.

[31] Transactions 1 to 5 all occurred in less than a 12-month period – 8 actually. Based on the documentary evidence and Mr. Youseffi's testimony, Mr. Youseffi is deemed to be a motor dealer: section 1(2) of the *Motor Dealer Act*. The burden would then shift to Mr. Youseffi to prove that he was not acting as a motor deal. Mr. Youseffi attempts to do so by raising the three defenses noted above.

1. Mr. Youseffi's defence of selling five vehicles per year

[32] Mr. Youseffi says he can sell up to five vehicles per year, without being registered as a motor dealer. As noted previously in this decision, the stated exemption to the requirement of being registered is a myth. Under section 1(1) of the *Motor Dealer Act* R.S.B.C. 1996, c. 316 ("MDA"), a motor dealer is defined as follows:

"motor dealer" means a person who, in the course of business,

- (a) engages in the sale, exchange or other disposition of a motor vehicle, whether for that person's own account or for the account of another

- person, to another person for purposes that are primarily personal, family or household,
- (b) holds himself, herself or itself out as engaging in the disposition of motor vehicles under paragraph (a), or
- (c) solicits, offers, advertises or promotes with respect to the disposition of motor vehicles under paragraph (a),
- but does not include a person exempted by regulation or an individual referred to in paragraph (a) of the definition of "salesperson";

[Underlining added]

[33] Sales volume has no bearing on the definition of being a motor dealer.

[34] Section 38(2)(g) of the MDA provides for regulations exempting a person or motor vehicle from the Act. This includes an exemption from the definition of "motor dealer". Sub-section 14(4) of the *Motor Dealer Act Regulation* identifies those persons who are exempted from the definition of "motor dealer". There is no general exemption if a person sells less than 5 vehicles a year.

[35] Section 1(2) of the MDA notes:

(2) Without limiting the definition of "motor dealer", a person who carries on the activities described in paragraphs (a) to (c) of that definition in respect of 5 or more motor vehicles within a 12-month period is, subject to an exemption by regulation, deemed to be a motor dealer.

[underlining added]

[36] Sub-section 1(2) of the MDA is a shift in the evidentiary burden of proof, in aid of prosecution, either under the administrative enforcement provisions of that Act [compliance orders (s. 26.02) or administrative penalties (s. 26.04)] or under the offence provisions (ss. 35 and 35.1). That is, if it can be shown that a person did any activity within the definition of "motor dealer" in relation to five vehicles within a 12-month period, they are legally deemed to be a "motor dealer"; then the onus shifts to the person to show that they are not a motor dealer.

[37] A regulated person in this industry is expected to know the core of their obligations:

[59] In my view, it is incumbent upon a party that operates within a regulated industry to develop at least a basic understanding of the regulatory regime, including its obligations under the regime, as well as the obligations, and the authority, of the regulator.

Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers, 2014 BCSC 903 (BC Supreme Court)

[38] The Ontario Superior Court of Justice also noted the importance of a licensee understanding the law by which they are governed in Ontario's motor dealer industry:

The MVDA is consumer protection legislation and, therefore, it is important for an applicant for registration to know his obligations under the governing legislation. However, the respondent testified that he did not understand the legal side of the business. The Tribunal's reasons fail to address the public policy implications of granting registration to a person who does not understand the statutory requirements and who will have serious difficulty in doing so.

Ontario (Registrar, Motor Vehicle Dealers Act) v. Unity-A-Automotive Inc. 2009 CarswellOnt 7553

[39] The MDA is consumer protection legislation. For a licensee not to understand a fundamental element of that legislation - whether one is or is not exempt from registering as a motor dealer - is a concern to the public interest. Failing to understand that basic precept suggests that a licensee may not understand their other duties, such as making honest and timely disclosures to consumers and the legal requirements under the MDCS Reg. regarding lien payouts.

[40] The fact that Mr. Youseffi previously owned and operated a motor dealership means that he should know this. His professed ignorance makes his continued participation in the industry all the more concerning to the public interest.

2. The three vehicles identified by the Vancouver Police Department

[41] Transactions 2, 4, and 6, noted above, are three vehicles of which Compliance Officer Cote was advised about by the Vancouver Police.

[42] In explaining why different individuals were driving these vehicles, Mr. Youseffi's answer was confusing and evasive at times. Getting a straight answer from Mr. Youseffi on this point was difficult. Eventually, though, he gave evidence that - in each of these three cases - Mr. Youseffi had purchased the vehicles on behalf of the individuals driving them and that he received payment from each for that purpose. Mr. Youseffi said that he "accidentally" registered each of the vehicles in his name. Mr. Youseffi went on to say that, while the buyers had paid for the vehicles, they have not paid the taxes owing on the sale. Further, because they have yet to pay the taxes on the vehicles, Mr. Youseffi has been unable to transfer ownership to the actual owners. Mr. Youseffi stated that he has asked the individuals to pay the taxes, but that the owners keep deferring payment.

[43] I reject Mr. Youseffi's explanation because of the way the evidence was given and for the following reasons:

- (a) Some of these vehicles have been in Mr. Youseffi's name for three years. Insurance is renewed annually and in the owner's name – Mr. Youseffi. Mr. Youseffi could easily refuse to insure the vehicles until the actual owners "pay the taxes" and then have the vehicles transferred into their names.
- (b) Looking at the Insurance Corporation of British Columbia ("ICBC") Transfer/Tax Form APV9T on the Jaguar, the seller from whom Mr. Youseffi obtained the vehicle applied their PST number and no sales tax was collected. This means that the Jaguar was purchased for resale and not for personal use by Mr. Youseffi. If Mr. Youseffi were selling this vehicle as a private sale, rather than as a dealer, he would not collect the tax. ICBC would collect the tax, at the time of registration to the new owner. Only if Mr. Youseffi were selling the Jaguar as a motor dealer would he be obligated to collect and remit the taxes on the sale.
- (c) Looking at the ICBC Transfer/Tax Form APV9T on the BMW X5, Mr. Youseffi paid the taxes on the transfer. If Mr. Youseffi were selling this vehicle as a private sale, rather than as a dealer, he would not collect the tax. ICBC would collect the tax, at the time of registration to the new owner. If Mr. Youseffi were selling the BMW X5 as a motor dealer, he would be obligated to collect and remit the taxes.
- (d) Looking at the ICBC Transfer/Tax Form APV9T on the Audi A4, the dealer that sold the vehicle to Mr. Youseffi applied their dealer registration number. Typically, this is done when the dealer has collected and will remit the taxes at the time of sale to Mr. Youseffi. This indicates that Mr. Youseffi paid the taxes, when he purchased the Audi A4. If Mr. Youseffi were selling this vehicle as a private sale, rather than as a dealer, he would not collect the tax. ICBC would collect the tax at the time of registration to the new owner. If Mr. Youseffi were selling the Audi A4 as a motor dealer, then he would be obligated to collect and remit the taxes.
- (e) I consider it to be highly unlikely that Mr. Youseffi could *mistakenly* register the vehicles in his own name and be unable to transfer ownership due to unpaid taxes on three different vehicles. I would note that the three vehicles were transferred into Mr. Youseffi's name on the following dates:
 - (i) Audi A4, December 19, 2015;
 - (ii) BMW X5, July 26, 2016; and
 - (iii) Jaguar S Type, September 22, 2017.

There were 20 months between the acquisition of the Audi A4 and the Jaguar S Type. By the time the Jaguar was acquired for the actual owner (according to Mr. Youseffi), Mr. Youseffi should have experienced the

difficulties of getting the other two vehicles registered into the actual owners' names. If it had actually been a problem, Mr. Youseffi should not have repeated the process.

[44] I reject Mr. Youseffi's explanation that he could not transfer the three vehicles to the actual owners due to unpaid taxes as nonsensical. Mr. Youseffi has admitted to selling these three vehicles within a relatively short period of time.

3. Personal use vehicles replaced as they broke down

[45] Mr. Youseffi advances that some of these sold vehicles were his personal vehicles that broke down and that he then replaced them.

[46] If these vehicles broke down, Mr. Youseffi appears to have repaired those vehicles, so that they could be sold. The evidence shows Mr. Youseffi sold at least five vehicles over a period of 8 to 12 months. It seems unlikely that so many vehicles – intended for personal use - could break down, be repaired, and be replaced within such a short period of time.

[47] I would specifically note that the 2004 BMW X5 (transaction 1) was purchased by Mr. Youseffi on October 24, 2015 and resold on November 25, 2015 – about 30 days apart. The time between this purchase and sale is more consistent with a motor dealer buying, reconditioning, advertising, and then reselling a motor vehicle than with someone acquiring and selling a personal use vehicle. I do note that other vehicles were in Mr. Youseffi's name for several months, before being sold. However, those must be viewed in light of Mr. Youseffi's evidence of keeping vehicles in his own name for long periods even though they are actually owned by someone else.

[48] Considering the above, along with my concerns with Mr. Youseffi's evidence generally (i.e. the change in evidence on the knowledge of the BMW lien, and his nonsensical explanation about the three VPD vehicles – transactions 2, 4 and 6), I do not find his explanation of replacing vehicles as they broke down as being credible.

V. Findings

[49] Based on the foregoing, I find on a balance of probabilities, that:

- (a) Mr. Youseffi was aware the 2004 BMW had a lien on it, and failed to satisfy or seek the discharge of that lien from the sale proceeds as required of him by the legislation; and
- (b) Mr. Youseffi has acted as a motor dealer without being registered – i.e being a curber. I find that this has been established without the need to rely on subsection 1(2) of the *Motor Dealer Act*.

VI. Compliance

[50] In considering allegations (a) and (b), I note the age of the BMW complaint and that the complaint appears to have been resolved, including any action by the Authority, in 2013. This prior complaint is before me not to review or reconsider the action taken by the Authority in 2013, but to consider Mr. Youseffi's compliance history. The fact that Mr. Youseffi sold a vehicle to a consumer without ensuring a previous lien had been discharged - as required by the legislation governing his licence - is a concern to the public interest. Dealers' not paying liens is also a common claim made by consumers against the Motor Dealer Customer Compensation Fund. Protecting the viability of that Fund is also of public interest. See for example, Compensation Fund Board decisions in:

- *Bolger v. Everyday Motor Centre* (June 25, 2018; File17-06-043): \$20,000 in compensation.
- *Gill v. GN Motors Sales "N" Rentals Limited* (December 17, 2017; File 16-12-018): \$12,407.71 in compensation.
- *Tut v. GN Motors Sales "N" Rentals Limited* (June 26, 2017; File 16-12-160): \$20,000 in compensation.

[51] Also, before me as part of Mr. Youseffi's compliance history is a decision involving Mr. Youseffi's prior ownership and operation of a dealership, called Saman Auto Sales Ltd: See *Re: Safe Auto Sales Ltd.* (File 08-70508, November 19, 2009, Registrar). *Re: Safe Auto Sales Ltd.* was a review of Mr. Youseffi's application to have that business registered as a motor dealer. That application was refused, because of Mr. Youseffi's prior conduct when he owned and operated the registered motor dealer Saman Auto Sales Ltd. Saman was the subject of two claims made by consumers against the Motor Dealer Customer Compensation Fund. The Fund paid one consumer \$10,000 and a second consumer \$19,500 in compensation, because Saman had sold their vehicles on consignment and failed to pay the consumers the proceeds of sale.

[52] The MDA specifies that, if payment is made from the Fund, the motor dealer is responsible to repay the Fund and may not be registered until it does so. Mr. Youseffi was the sole shareholder and guiding mind of Saman. Within a licensing regime, I am not blinded by the corporate veil, when I am assessing public risk and the public interest. Corporations act through people. So, an assessment of the guiding minds of a corporation, Mr. Youseffi in that case, is of crucial importance. I would note that the Compensation Fund has yet to be repaid.

[53] I have found that in 2013 Mr. Youseffi failed to pay out the lien on the consigned BMW as required by the MDCS Reg. Mr. Youseffi failed to pay two consumers the proceeds from the sale of their consigned vehicles as required by that same legislation, when he owned and operated Saman Auto Sales Ltd. In two recent cases, I have revoked licenses and banned licensees that failed to remit the proceeds of sale and payment of liens on consignment sales. See:

- *Scott v. Lake Country Motor Sports Ltd. & John Dumaine* (August 10, 2018, Hearing File 18-01-004, Registrar) judicial review dismissed by consent (S.C.B.C Action No. KEL-S-S-121002, BC Supreme Court, Kelowna Registry).
- *Partin v. Carmel Custom Contracting Ltd., dba Mill Bay Motors & Jason William Coburn* (Hearing File 18-03-001, July 6, 2018, Registrar).

[54] I have found that Mr. Youseffi is acting as a motor dealer without being registered (curbing). Being the owner of and operating a former dealership, Mr. Youseffi knows the need to be registered to act as a motor dealer. In past decisions I have refused to grant a person a licence and/or dealer registration, where they have been found to be operating in the industry, while not licensed. See for example:

- *Re: Wild Grizzly Transport Ltd. & Zampieri & Atken* (December 28, 2018, Hearing File 18-10-001)
- *Re: R. Snippa* (December 10, 2010, File 10-70794)
- *Re: Mafcan Motors Ltd. & Cheema* (File 10-017 and 10-018, July 2, 2010).

[55] Mr. Youseffi has breached the MDCS Reg. on at least three occasions over the years. This conduct shows a disregard for the laws governing this industry and indicates that Mr. Youseffi is ungovernable. Mr. Youseffi offers excuses, with no indication of remorse or a willingness to rehabilitate and comply with the legislation. Mr. Youseffi does not seem to understand the laws governing his licence. This is of concern to the public, as there is no reasonable assurance that Mr. Youseffi will act with honesty, integrity, and in accordance with the law: *Peter Fryer* (BC Supreme Court). As noted by Adjudicator Flude applying similar Ontario legislation in the case of *7825 v. Registrar, Motor Vehicle Dealers Act, 2002*, 2014 CanLII 23589 (ON LAT):

[15] The Applicant agrees that he has engaged in dishonest and deceptive behaviour but that he will be able to function in accordance with the Act if this Tribunal removes from him all opportunity to be deceptive and dishonest. Despite the very able submissions of the Applicant's counsel, the Tribunal is of the view that the Applicant's submissions miss the obvious intent of the legislation. It is trite to say that the purpose of the legislation is public protection. With respect to registrants, the Act sets out a filtering mechanism to be applied initially by the Registrar as doorkeeper and, finally, by this Tribunal if the Registrar's decision is appealed. This scrutiny is designed to identify and weed out those whose past conduct is such that the public can repose no confidence in them to deal honestly when buying and selling automobiles. It does not distinguish between the potential roles registrants may play in the industry. It does not set a higher standard of behaviour for dealers as opposed to salespersons. In short, the legislative scheme seeks to admit only individuals who will be self-policing because they lack a history of dishonest dealing.

[Underlining added]

[56] Mr. Youseffi's history of non-compliance and disregarding the laws governing the industry, no indication of remorse, and no evidence of rehabilitation make him ungovernable and there can be no assurance that he will act with honesty, integrity and in accordance with the law; and I find that it would not be in the public interest to allow Mr. Youseffi to continue to be licensed as a salesperson. I hereby revoke Safiollah (Safe) Youseffi's salesperson licence effective from the date of this decision.

[57] The Hearing Notice warned that I could ban Mr. Youseffi from applying to be licensed or registered for a period of time. However, the Authority did not make any submissions on this at the hearing; and Mr. Youseffi did not make any submissions in response. Therefore, I will not make any order banning Mr. Youseffi from applying for registration or licence in the future. Whether or not such an application would be accepted from Mr. Youseffi if he should apply will be judged on the facts available at that future time.

VII. Review of this decision

[58] This decision may be reconsidered under the provisions of sections 26.11 and 26.12 of the MDA. A request for reconsideration must be made, in writing, within 30 days of receiving these written reasons. The request for reconsideration must identify the grounds for reconsideration and be accompanied with the required new evidence (as defined in those sections) and meet any other requirements of those two provisions.

[59] This decision may also be reconsidered by petitioning the B.C. Supreme Court for judicial review, pursuant to the *Judicial Review Procedure Act* R.S.B.C. 1996, c. 241. Such a petition must be filed within 60 days of this decision being issued: section 7.1(t) of the MDA.

Dated: January 23, 2019

Original Signed
Ian Christman, J.D.
Registrar of Motor Dealers