



Neutral Citation: 2018-BCRMD-035

**IN THE MATTER OF THE *MOTOR DEALER ACT* R.S.B.C. 1996, C. 316
AND THE *WHOLESALE LICENSING REGULATION*, B.C. REG. 203/2017**

Re:

**BEST IMPORT AUTO LTD.
(proposed Wholesaler # W40531)**

Applicant

And

BAHMAN (BOB) SHOKOHI

Applicant Associate/Representative

**DECISION OF THE REGISTRAR
ON APPLICATION FOR WHOLESALE LICENCE**

Date and place of decision: October 12, 2018 at Langley, British Columbia

I. Introduction

[1] Best Import Auto Ltd. (“Best Import”) applies for licensing as a wholesaler, pursuant to the *Wholesaler Licensing Regulation*, B.C. Reg. 203/2017 (“WL Reg.”).

[2] The business plan accompanying the wholesaler application identifies Bob Shokohi as the sole owner and President of Best Import. Therefore, Bob Shokohi is, by definition, an “associate” of Best Import Auto Ltd.: section 1 definition of “associate” of the WL Reg. That same business plan identifies Bob Shokohi as the only person who will be carrying out the day-to-day operations of Best Import. Thus, Bob Shokohi is also, by definition, to be the sole “representative” of Best Import: section 1 definition of “representative.”

[3] The staff of the Authority raise concerns about granting Best Import a wholesaler licence, based on my findings of fact in *Re: Best Import Auto Ltd. et al.* (Hearing file 17-08-002, Registrar, November 28, 2017), varied by *Best Import Auto Ltd. v Motor Dealer Council of British Columbia*, 2018 BCSC 834 (BC Supreme Court).

[4] The BC Supreme Court upheld all my findings of fact, but set aside the 10 years ban that I imposed on Bob Shokohi personally from applying for any future

registrations. The Court found that Mr. Shokohi had not been given proper notice of the possibility of a ban. The Court also made clear the Registrar's authority to make such a ban and left it open to the Authority to re-institute proceedings, seeking such a ban on proper notice to Mr. Shokohi. Excerpts from the Court decision, summarizing my factual findings and the Court's opinion on the reasonableness of those findings are as follows:

[18] The Registrar provided a written decision on November 28, 2017. The Registrar made the following findings after reviewing the evidence:

[114] Based on the forgoing, I make the following findings:

- (a) Best Import advertised five motor vehicles for sale without representing them as "not suitable for transportation" in its advertisement as required by the legislation. This is a failure to state a material fact contrary to section 5(1) of the BPCPA. I have found that conduct to be reckless amounting to deliberate conduct.
- (b) Best Import re-advertised motor vehicles for sale, which were not compliant with the *Motor Vehicle Act* and after being advised by the Ministry of Transportation's Commercial Vehicle Safety Enforcement Branch of that fact. This conduct was also a breach of section 5(1) of the BPCPA and was deliberate conduct.
- (c) Best Import misrepresented a motor vehicle as having "no accident" when it knew that to be untrue. This conduct was also a breach of section 5(1) of the BPCPA and was deliberate conduct.
- (d) Best Import allowed an unlicensed person to act as a salesperson contrary to section 13.1 of the *Motor Dealer Act*.
- (e) I find that Best Import was in breach of the conditions placed on its registration to have motor vehicles inspected by a red seal mechanic or a designated inspection facility.

(f) I find that Bob Shokohi, the directing mind of Best Import, intentionally tried to mislead the Registrar during the course of the hearing.

(g) I find that the cumulative conduct of Best Import disregarding lawful orders and Bob Shokohi attempting to mislead the hearing, make Best Import ungovernable.

The Court continued:

[55] The petitioners accept that if I conclude that Best Import's ten-year ban on reapplication was reasonable based only on the accepted findings at (a) through (e) in para. 114 of the reasons set out above, then the penalty could be upheld even if there was no basis for findings (f) and (g). I find that this is indeed the case. Those findings reflect serious concerns about the public interest. Imposing a ten-year ban on reapplication for Best Import on those grounds alone "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir* at para. 47.

[56] Furthermore, on a review of the entire reasons, rather than the "parsing" approach proposed by the petitioners, I cannot find that it was unreasonable for the Registrar to have made the challenged findings. It is important to review the decision "as a whole": *Cooper v. British Columbia (Liquor Control and Licensing Branch)*, 2017 BCCA 451 (CanLII) at para. 54. The specific findings were not outside the bounds of available reasonable inferences from the evidence provided by Mr. Shokohi, either in his own testimony or through his corporation's counsel. There was sufficient evidence to conclude that the corporation and its witnesses had wrongly represented to the Registrar that:

- a) a police officer told Mr. Shokohi's son that he need not be present at the hearing on the day he was scheduled to appear;
- b) the Registrar Delegate had improperly detained one of Best Import's employees in a vehicle; and
- c) Mr. Shokohi's son was not involved in the ownership of the property on which Best Import was located.

[60] Finally, I conclude that the Registrar did have the ability to impose the ban on further applications for a period of ten years, relying on the decision in *Pugliese v. Clark*, 2008 BCCA 130 (CanLII).

II. Procedural History

[5] This hearing was conducted by way of written submissions.

[6] On August 14, 2018 a Hearing Notice was issued to Best Import and to Bahman ("Bob") Shokohi Manesh advising that the Authority was recommending to the Registrar that a wholesale licence for Best Import be refused, why it be refused, and that Best Import and Bahman ("Bob") Shokohi Manesh be banned, for a period of time or indefinitely, from being licensed or registered under the legislative scheme. The August 14 Hearing Notice was followed by an Amended Hearing Notice on August 16, 2018. The Amended Notice corrected the name of Bahman (Bob) Shokohi to remove Manesh. It also extended the time for a written response by a week, to September 24, 2018. The Amended Hearing Notice also advised of a way to request an oral hearing if desired and advised of the evidence being relied on.

[7] The notice made it clear that the requested ban is on issuing any licence or registration as a motor dealer, under the legislative scheme anchored by the *Motor Dealer Act*, R.S.B.C. 1996, c. 316 ("MDA")

[8] Best Import and Bob Shokohi did not apply to have an oral hearing and did not provide any written submissions by the time required.

III. The Law

[9] The WL Reg. became law on April 1, 2018. There are no prior precedents.

[10] Section 6(1) of the WL Reg. grants authority to refuse a wholesaler licence if it would not be in the public interest to issue such a licence having regard to:

(a) the financial responsibility of the applicant and, if applicable, the applicant's associates, or

(b) the conduct of the applicant, and, if applicable, the applicant's associates and representatives.

[Underlining added.]

[11] The language in section 6(1) of the WL Reg. is like the language in section 5 of the MDA. There are prior precedents applying that provision. The language is also like the language in section 6 of the now repealed *Salesperson Licensing Regulation*, B.C. Reg. 241/2004 and as replaced by section 5 of the *Salesperson Licensing Regulation*, B.C. Reg. 202/2017 (in force April 1, 2018). There are prior precedents applying B.C. Reg. 241/2004, s. 6.

[12] If the intention is to refuse the wholesaler application, the applicant has a right to be heard and to receive written reasons regarding the refusal: s. 6(2) of the WL Reg. The right to be heard can be any of a written, electronic or oral

hearing, or combination thereof, as determined by the Authority: section 12, W.L. Reg.

[13] In considering granting or refusing a licence, I am to be mindful of the applicant's desire to earn a livelihood as a wholesaler. However, if there are concerns for the public interest in granting the licence, 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 a concern to the public interest, such that the licence should be refused: *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).

[14] In reviewing the conduct of a corporation, I am to have regard to the conduct of its directing minds to understand the realities of the corporation's operations. Corporations make decisions and act through people: *Re Best Import Auto Ltd. et al.* This principal is embodied in section 6(1) and 11(2) of the WL Reg.

IV. Discussion

A. Wholesaler's work and duties

[15] As defined, a wholesaler engages in the sale, exchange or other disposition of motor vehicles to other wholesalers or motor dealers, as part of their business: section 1(1) of the MDA.

[16] A wholesaler is required to make the same motor vehicle history declarations in an agreement of purchase and sale that a motor dealer must make to a consumer under section 23 of the *Motor Dealer Act Regulation*, B.C. Reg. 447/78: section 9(e) of the WL Reg. This includes making declarations about prior accident damage.

[17] A wholesaler must declare whether a motor vehicle offered for sale is "not suitable for transportation," meaning that it does not comply with the safety requirements of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318: section 9(e) of the WL Reg.

[18] As of April 1, 2018, a wholesaler now operates within a regulatory framework and is required to meet the requirements of the legislation, as well as the lawful directions of its Regulator.

B. Past Conduct of Best Import

[19] From my decision, regarding Best Import's operation as a motor dealer, I made findings that Best Import:

- (a) Deliberately sold motor vehicles that were not suitable for transportation and without declaring that fact; even after being advised by officials of the B.C. Ministry of Transport and Infrastructure of the non-compliance of the motor vehicles;
- (b) Deliberately disobeyed the orders of its regulator and of officials from the B.C. Ministry of Transportation and Infrastructure;
- (c) Made misrepresentations about the accident history of a motor vehicle; and
- (d) Breached the conditions of its licence.

[20] The above conduct led to a finding that Best Import was ungovernable and posed a risk to the public interest such that it should have its motor dealer registration canceled. The conduct also warranted a ten-year prohibition on it being registered as a motor dealer.

[21] The same concerns would arise, if Best Import were to be licensed as a wholesaler. As a wholesaler, Best Imports would have the same statutory duties as those it breached as a motor dealer. Further, Best Import's disregard for its regulator and of the officials of the Ministry of Transportation and Infrastructure continues to provide concern of its governability even today. As I noted in the November 28, 2017 *Best Import* decision:

[121] Best Import had every opportunity to abide by the law for some time now, but refused to do so. It deliberately disregarded lawful orders of its regulator and orders from the Ministry of Transportation's Commercial Vehicle Safety Enforcement branch. Simply because it has now appeared before me, I am to believe that it has had a change of heart. A promise to obey the law and the passage of time alone (especially only a few short months) is not sufficient evidence to overcome the worrisome past conduct noted in this case. What is necessary is evidence of rehabilitation and of good conduct over a period of time: see *Re: A Vancouver Auto Ltd. and Shahram Moghaddam* (April 3, 2017, File 17-02-002, Registrar).

[Underlining added.]

[22] Best Import provided no submissions or new facts for me to consider on this wholesaler application. There is nothing to suggest that anything has changed since my decision of November 28, 2017. Given my November 28, 2017 findings, that there is a ten-year ban in place that was upheld by the BC Supreme Court, that there is no new evidence to suggest the application of Best Import as a wholesaler should be viewed in a different light, and no evidence of rehabilitation, I am denying Best Import a wholesaler licence.

[23] When my November 28, 2017 decision was made to ban Best Import for ten years, there was no Wholesaler Licensing Regulation in force. Therefore, I could not issue a ban on Best Import from applying for a wholesaler licence. Applying the same principles as in my November 28, 2017, decision on Best Import's motor dealer registration, and considering no new facts have been provided to change that view vis-à-vis the wholesaler application of Best Import, I would impose the ten-year ban on Best Import applying for a wholesaler licence or any licence under the Motor Dealer Act. In calculating the ten-year ban, fairness suggests that it should be considered to have started on November 28, 2017.

C. Past conduct of Bob Shokohi

[24] As noted earlier, I found that Bob Shokohi had attempted to mislead me, during the hearing, resulting in my November 28, 2017 decision on Best Import's registration as a motor dealer.

[25] Also in my November 28, 2017 decision, I noted that the operational control Bob Shokohi exerted as the sole declared owner.

[26] In my decision of November 28, 2017, I found that the facts were sufficient to issue a ban on Bob Shokohi, applying for a dealer registration or having anything to do with a motor dealer, for a period of ten year's. The B.C Supreme Court upheld my findings of fact, but set aside the decision, because Bob Shokohi was not provided appropriate notice of the possible order I eventually made.

[27] I would note that Bob Shokohi did not provide any additional submissions or information within the time noted in the Amended Hearing Notice - or at all. Therefore, there is no change in the facts or argument that those facts should be looked at differently in the context of Bob Shokohi being an associate or representative of Best Import, as a wholesaler.

[28] I also find the Amended Hearing Notice was clear that the Authority's recommendation for the Registrar's consideration was to ban Bob Shokohi from any licence under the legislative regime and from being registered as a motor dealer or having any involvement with a motor dealer.

[29] Based on the past conduct of Bob Shokohi, as found in my decision of November 28, 2017, that no new evidence has been submitted or argument made that those findings should be looked at differently on this application for a wholesaler license, and applying the legal principles noted in my November 28, 2017 decision as upheld by the B.C. Supreme Court, I do order Bob Shokohi be banned from being an associate or a representative, being licensed, or being registered under the MDA and its regulations in any capacity for a period of ten years. As with Best Import, fairness suggests the time for the ten-year ban should be considered to have started on November 28, 2017.

V. Summary of Decision

[30] Based on the forgoing:

- (a) Best Import's application to be licensed as a wholesaler is denied.
- (b) Best Import is banned from applying for registration or licensing under the MDA and its regulations in any capacity for a period of ten-years.
- (c) Bob Shokohi is banned from applying for registration or licensing under the MDA and its regulations in any capacity for a period of ten-years.
- (d) In calculating the ten-year bans under (b) and (c), the time should be calculated as starting on November 28, 2017.

VI. Review of this decision

[31] 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.

[32] 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: October 12, 2018

Original Signed

Ian Christman, J.D.
Registrar of Motor Dealers