



Neutral Citation: 2019-BCRMD-012

Investigation File No. 19-04-162
Hearing File No. 19-04-002

**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***

BETWEEN:

VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA

Complainant

AND:

Foorat Serop Sultan dba Canadian Maple Leaf Auto

(#26885)

Motor Dealer

AND:

Foorat Serop Sultan

(#102193)

Salesperson

INTERIM ORDER & DECISION OF THE REGISTRAR

Date and place of hearing: April 29, 2019 at Langley, British Columbia

Date of decision: May 1, 2019 at Langley, British Columbia

Appearances for:

The Authority

Hong Wong, Manager of Licensing

Foorat Serop Sultan dba
Canadian Maple Leaf Auto

In person for himself and the dealer

I. INTRODUCTION

[1] The Authority seeks an interim order suspending the dealer registration of Foorat Serop Sultan dba Canadian Maple Leaf Auto (#26885) ("Maple Leaf") and the salesperson licence of Foorat Serop Sultan (#102193). In the Notice for this Hearing,

the Authority alternatively seeks the cancelation of the respective motor dealer registration and salesperson license.

[2] During the hearing, the Authority did not make strong submissions in support of cancelling Maple Leaf's dealer registration or Mr. Sultan's salesperson licence. The investigating compliance officer noted that the investigation is ongoing. Neither did the Authority make detailed submissions or present evidence, regarding the suspension or cancellation of Mr. Sultan's salesperson licence. Based on the Authority's submissions and the evidence presented, cancellation would not be appropriate or procedurally fair to Maple Leaf or Mr. Sultan at this time. I confine my reasons to the consideration of an interim suspension of Maple Leaf's registration and Mr. Sultan's licence, pending the outcome of the investigation.

[3] The main concern raised by the Authority is that Maple Leaf is no longer financially viable as a motor dealer, placing consumers at risk of financial harm and exposing the Motor Dealer Customer Compensation Fund to liability. As to Mr. Sultan personally, the Authority is concerned that he is the guiding mind of Maple Leaf and that the financial concerns of Maple Leaf reflect both on him personally and his salesperson licence.

[4] At the outset it is important to note that, when considering the propriety of imposing an interim suspension, I am not adjudicating whether - in fact - Maple Leaf is financially viable. Rather, my role in this hearing is to determine if there is sufficient evidence that, if believed and not contradicted, establishes a *prima facie* case in support of that allegation. If the allegation is substantiated, the question then becomes whether the registration of Maple Leaf should be suspended until the investigation is complete and any hearing in this matter is completed to protect the public.

II. AUTHORITY'S POSITION

[5] Mr. Chris Coleman, Compliance Officer with the Authority, provided an overview of the current state of the Authority's investigation and the evidence it has gathered. The evidence relevant to my considerations are as follows:

- (a) Maple Leaf is in debt to Automotive Financial Corp. ("AFC") in the amount of approximately \$277,000: see paragraph 17 of Coleman's Investigation Report.¹ Maple Leaf granted security interests in several specific vehicles as security for that debt.

¹ Sarb Minhas of AFC provided evidence that Maple Leaf actually owes approximately \$281,000.00 after deducting a recent \$4,000 payment.

- (b) Maple Leaf failed to account for 38 vehicles it had sold, over which AFC held a security interest (a lien) and failed to pay AFC.
- (c) AFC was able to locate and seize 20 of those 38 vehicles. Eighteen vehicles remain unaccounted for.
- (d) The Authority has determined that 12 vehicles have been sold to consumers with AFC's lien still attached. Consumers may be in jeopardy of those vehicles' being seized and suffering a financial loss as a result.
- (e) Mr. Coleman interviewed Mr. Sultan, regarding his plan to address these issues and show that the dealership is viable. Mr. Sultan was asked to produce records and documents to show such a plan as well as Maple Leaf's viability but has not done so.

[6] In summarizing the Authority's submissions, Mr. Wong asserted that allowing Maple Leaf and Mr. Sultan to continue operating in the industry places consumers at an unacceptable risk. He noted that evidence already exists that at least 12 consumers may be negatively impacted. Further, Maple Leaf and Mr. Sultan have not presented any viable plan to address these debts and outstanding liens - not even at the hearing. Thus, the Authority asserts that allowing Maple Leaf and Mr. Sultan to remain in operation would place consumers at further risk, which would not be in the public interest so long as the investigation remains open.

[7] Mr. Wong further noted that Maple Leaf has been a dealer for 20 years, always paid its licensing fees on time, and had only nine complaints in 20 years - all prior to 2014. Maple Leaf has at all times been in good standing with the Authority.

III. MAPLE LEAF'S POSITION

[8] Maple Leaf's position can be summarized as follows:

- (a) Mr. Sultan, both individually and on Maple Leaf's behalf, does not deny the facts presented by Mr. Coleman in his investigation report.
- (b) Mr. Sultan explained that he over-extended his businesses, diverting funds from Maple Leaf, which was making money, to his other business ventures, which were not.
- (c) Mr. Sultan also had some recent personal issues, which drew financial resources away from Maple Leaf.
- (d) Mr. Sultan has ended the business ventures, which were losing money and stated that he intends on focusing on Maple Leaf.

- (e) Mr. Sultan has family, friends, and business acquaintances, who are willing to assist him with his debt issues. Mr. Sultan noted that one dealer was willing to allow him to purchase vehicles with a 30-days-to-pay plan. In that time, Mr. Sultan stated that he would recondition and then resell the vehicles (even if only at auction) to make a profit. Mr. Sultan stated that he would pay the selling dealer, divert some of the funds to Maple Leaf's operations, and that the remainder would go to pay the debts with AFC.
- (f) Mr. Sultan has already paid one lien on a vehicle owned by a consumer.

[9] In summary, Mr. Sultan admitted some mismanagement on his part by over-extending his businesses. He denied any intention to cause harm.

IV. THE LAW

[10] The Registrar is empowered to suspend a motor dealer pending the outcome of an investigation: sections 4(6) and 5 of the *Motor Dealer Act* R.S.B.C. 1996 c. 316 ("MDA"). The same is true of a salesperson: section 7(2) of the *Salesperson Licensing Regulation* B.C. Reg. 202/2017 ("SLR").

[11] The BC Court of Appeal's decision regarding the *Health Professions Act* in *Scott v. College of Massage Therapists of British Columbia*, 2016 BCCA 180 provides guidance with respect to interim suspensions. A review of that decision notes the following principles:

- (a) At this stage in the matter, I am not "trying" the facts. I am determining whether the evidence - if believed true - indicates that the public would be placed at risk of harm if Maple Leaf continued to operate;
- (b) The test for establishing such risk is whether a *prima facie* case has been made out in support of the allegations;
- (c) The three main considerations are:
 - (i) The seriousness of the allegations;
 - (ii) What measures are currently in place to protect the public; and
 - (iii) The probability of harm;
- (d) In reviewing the evidence, I am to be mindful of and consider its reliability, plausibility, internal and external consistency, and any motives; and

- (e) I am to weigh the interests of Maple Leaf's continued operation against the public interest and the need to protect the public from harm. In that consideration, the public interest is paramount.

[12] The evidence demonstrates the financial harm and risk to consumers as evidenced by the 12 vehicles, which were sold to consumers with AFC liens still attached. Those consumers may be at risk of having their vehicles seized. The risk to those consumers goes to Maple Leaf's financial viability, a consideration in reviewing a motor dealer's registration: section 5 of the MDA.

V. DISCUSSION

A. Seriousness of the allegations

[13] The selling of vehicles to consumers with liens still attached is serious. As earlier noted, a consumer may have the vehicle seized and suffer financially. At a minimum, they would be without a vehicle until any legal processes unfolded, with associated financial costs.

B. What measures are currently in place

[14] At present, neither Maple Leaf nor Mr. Sultan have any measures in place to address this potential harm. The Authority has not imposed any measures, such as conditions on licence.

C. The probability of harm

[15] There is sufficient evidence, if believed, of the probability of harm:

- (a) The investigation to date has identified 12 negatively impacted consumers.
- (b) Maple Leaf and Mr. Sultan have not provided any documents or records or a detailed plan on how they will address these issues.
- (c) Mr. Sultan gave evidence of promises of help from friends or family. However, the credibility of those promises cannot be measured; and no details have been provided as to the nature or scope of that assistance. Moreover, the Authority cannot verify these commitments, because Mr. Sultan failed to provide the names of the people, whom he asserts, have made them.

- (d) Mr. Sultan's 30-days-to-pay plan with other dealers relies on the generosity of those businesses, which may decline to proceed with that plan. Further, I have no documents or written assurances from any other dealer indicating they are willing to extend such credit to Maple Leaf.
- (e) Maple Leaf's indebtedness to AFC is approximately \$281,000 - not an insignificant sum. In Maple Leaf's favour, I note that Maple Leaf has paid one lien of \$4,326.09, as verified by Sarb Minhas of AFC. This lien, I am told, is associated with a vehicle owned by a consumer.
- (f) In mid-2018, Mr. Sultan leveraged his home to pay AFC to reduce Maple Leaf's then debt of \$600,000.

D. General discussion

[16] Currently, the evidence suggests that this is a case of mismanagement. Even so, I do not have enough evidence to show that a viable plan for Maple Leaf to address its indebtedness and to clear the current liens in a timely manner exists. Maple Leaf's current stated plan is to rely on the generosity of others - including friends and family - to carry its debt (30-days-to-pay plan). The fact is, however, that AFC carried Maple Leaf's debt; and Maple Leaf failed to pay on time, affecting consumers. There was nothing in the evidence to show that Maple Leaf would behave any differently with respect to its future debts than it has with those it owes to AFC.

[17] I note that the Hearing Notice and Investigation Report of Compliance Officer Coleman are dated April 25, 2019. I understand that Maple Leaf and Mr. Sultan were personally served with these documents by Mr. Coleman. At best, Maple Leaf and Mr. Sultan had three days to prepare material in response to those documents in time for the Hearing. Mr. Coleman advised that he requested documents from Mr. Sultan earlier in the investigation. This is noted.

[18] In fashioning a response to this situation, I must ensure fairness to Maple Leaf and Mr. Sultan when responding to these concerns. I also note the need of the currently affected consumers to have the liens on their vehicles cleared. Those consumers may have other avenues to receive compensation, including possibly from the Motor Dealer Customer Compensation Fund.² Protecting the public from future harm, addressing the needs of the 12 currently affected consumers, and providing time for Maple Leaf and Mr. Sultan to put together a plan to address these issues

² That Fund is administered by a separate administrative tribunal with exclusive jurisdiction to determine eligibility. I do not make any determination on eligibility in this decision.

must all be balanced. As early noted, protecting the public from any future harm is the overarching concern.

VI. Decision

[19] There is sufficient evidence if believed that Maple Leaf poses a risk of harm to consumers were it to continue to sell vehicles to consumers. I have considered adding conditions to its registration, such as prohibiting Maple Leaf from incurring any further debt and allowing it to grant any more security interests in its assets. However, those conditions would have to be closely monitored by the Authority, something which would be administratively burdensome and impractical. Granting security interests can occur away from the motor dealer's business premises and cannot be adequately monitored.

[20] I will give Maple Leaf and Mr. Sultan an opportunity to come forward with a workable plan to address these issues, which can be verified by the Authority. I therefore do not agree with the Authority that suspending the dealer's registration, pending the outcome of the investigation as appropriate. Maple Leaf's prior compliance history and the payment it has made on the one lien, suggests that it wishes to be compliant.

[21] Therefore, I order that the motor dealer registration of Foorat Serop Sultan dba Canadian Maple Leaf Auto Dealer (#102193) be suspended until it provides a written plan, which is acceptable to the Registrar and showing how it will (a) address its financial circumstances, (b) pay off and clear the liens of AFC, and (c) show how it will be financially responsible and viable in the future. The written plan must be accompanied with verifiable documentary evidence to support that plan, such as financial statements, letters of commitment from friends and family, letters of intent from dealers (the 30-days-to-pay plan), new lines of credit, and any other documents to support the plan. The plan is also to include a new business plan with a minimum three-year outlook. Once the plan has been accepted by the Registrar, the suspension of Maple Leaf can be reassessed in consideration of any new facts that exist. To be clear, the submission of the plan does not automatically lift the suspension.

[22] The Authority did not strongly pursue the suspension of Foorat Serop Sultan's salesperson licence. I will not suspend Mr. Sultan's licence to allow him to sell vehicles on behalf of another motor dealer, while the investigation continues. The evidence currently indicates mismanagement of a company and not deception during sales on the part of Mr. Sultan. This will help balance Mr. Sultan's need to earn a livelihood with the protection of the public.

VII. Wholesaling

[23] At the hearing, Maple Leaf indicated that it may buy vehicles from dealers and then resell them at the dealer's auction. This is wholesaling. A review of the current registration of Canadian Maple Leaf Auto does not show a licence to wholesale as required by the *Wholesaler Licensing Regulation*, B.C. Reg. 203/2017.

[24] If Maple Leaf wishes to wholesale vehicles, while suspended as a motor dealer, it will need to apply for a wholesaler's licence, and to show how its wholesale operation will not be a risk to the public. Such an application would be fully and duly considered, without any assurances of a wholesale licence being issued.

VIII. Review

[25] My decision to suspend Maple Leaf may be reviewed by requesting a reconsideration in accordance with sections 26.11 and 26.12 of the MDA. Any request for a reconsideration must be in writing, state the reason for reconsideration and must be accompanied with any new evidence as defined in those sections. The request must be made within 30 days of receiving this decision: section 26.11(2)(a).

[26] My decision to suspend Maple Leaf may also be reviewed by petitioning the B.C. Supreme Court for judicial review pursuant to the *Judicial Review Procedure Act*. Such a petition must be filed with the court within 60 days of this decision being issued: section 7.1(t) of the MDA.

Dated: May 1, 2019

Original Signed
Ian Christman, J.D., Registrar