



Investigation File No.: 19-08-136 & 19-05-044
Hearing File 19-12-003

Neutral Citation: 2019-BCRM-032

**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:

Federation Auto Ltd.
(Proposed Dealer Registration #41215)

Dealer Applicant

And:

Alaa Daloussi
(Salesperson Licence #211544)

Individual Dealer Applicant &
Licensed Salesperson

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Date and place of decision: May 8, 2020 at Langley, British Columbia

By way of written submissions

I. Introduction

[1] The Vehicle Sales Authority of British Columbia ("Authority") has requested a review of the dealer application of Federation Auto Ltd. ("Federation"). The Authority proposes that the application for registration be refused. The Authority also requests that conditions be placed on the salesperson licence of Alaa Daloussi. Mister Daloussi is the owner and principal of Federation.

[2] This review went by way of written submissions. I have submissions from the Authority and Mr. Daloussi on behalf of Federation.

II. Position of the Parties

(a) The Authority

[3] In reviewing Federation's application, the Authority contacted Manitoba Public Insurance ("MPI") who licenses motor dealers in that province. Mr. Daloussi had operated a motor dealership in that province and MPI noted several concerns with Mr. Daloussi's dealership operations. Specifically, it noted Mr. Daloussi's dealership received 11 Notice to Repair letters due to complaints and vehicle inspections conducted by MPI's Vehicle Safety Department. These were in relation to vehicles sold by Mr. Daloussi having been advertised as "safetied".

[4] It was also brought to the Authority's attention that there were several small claims actions against Mr. Daloussi's dealership in Manitoba which were not declared on Federation's application to be registered in British Columbia as a motor dealer, as required on the dealer application form. The Authority notes that Mr. Daloussi states in his submissions that he won all those cases, which the Authority says is incorrect.

[5] The Authority notes that Mr. Daloussi's practice in Manitoba was to advertise vehicles for sale without having conducted the necessary inspections and repairs to ensure they were safe and roadworthy. In his investigation report, Compliance Officer Cote notes Mr. Daloussi allowed customers to take vehicles for test drives without them being safety certified as required. Mr. Daloussi would then get a deposit for the sale of the vehicle, make repairs, but not in all cases, and then deliver the vehicle to the customer. The Authority notes that this was a contravention of Manitoba law and is also a contravention of British Columbia law.

[6] MPI also determined that in February 2019, Mr. Daloussi had established another corporate account for a corporation, Daloussi Auto Ltd., and used this account to purchase and sell vehicles without having the required dealer's permit in Manitoba.

[7] Overall, the Authority is saying Mr. Daloussi's past business practice in Manitoba, his acting as a dealer in Manitoba without a licence, along with not being forthcoming with the Authority about the court cases; suggests that Mr. Daloussi will not act with honesty and integrity, will not act in accordance with the law, and is willing to withhold information from his regulator making governing him doubtful.

(b) Alaa Daloussi for himself and Federation

[8] On January 6, 2020, Mr. Daloussi sent an email with the core of his submissions. Mr. Daloussi stated that the Authority's representation of his business in Manitoba was not a fair one. He goes on to say his vehicles were inspected by outside mechanics as he did not have his own mechanic. Mr. Daloussi says if there was ever a problem after the sale, he would address the issue. He further states he won all his court cases because of the way he ran his business and the documents he had to support his position. Mr. Daloussi states he has addressed all complaints before coming to British Columbia and applying for registration.

III. Legal Principles

(a) Past Conduct

[9] If the intention is to refuse a motor dealer registration, the applicant has a right to be heard: section 6 of the *Motor Dealer Act*, R.S.B.C. 1996, c. 316 ("MDA"). The law imposes a duty to provide reasons for that refusal.

[10] In considering refusing a registration, I am to be mindful of Alaa Daloussi's desire to operate and earn income from running a motor dealer. However, if there are concerns for the public interest in registering Federation as a motor dealer, the public interest is paramount. In reviewing past conduct, I am not limited by time, type of, or location in which the conduct occurred. I am also not limited to looking at the corporation's conduct. I may look at the conduct of those who will guide the corporation. The issue is whether the conduct is a concern to the public interest, such that the registration should be refused.

- Section 5 of the *Motor Dealer Act*.
- *Re: Wild Grizzly Transport Ltd. & Zampieri & Aiken* (Hearing File 18-10-001, December 28, 2018, Registrar)
- *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)
- *A Vancouver Auto Ltd. & Moghaddam* (April 3, 2017, Hearing File 17-02-002)

[11] Generally, "conduct does not require evidence of deceit or even willful blindness. It encompasses any act or omission or course of behaviour that affords reasonable grounds to believe that the business will not be carried on in accordance with law, honesty and integrity": *Prestige Toys Ltd. v. Ontario (Registrar, Motor Vehicle Dealers Act)* 2009 CarswellOnt 4743 (Ont. SCJ(Div. Ct)) at paragraph 34 and cited approvingly in *Re: Key Track Auto Sales & Detailing Ltd.* (May 11, 2010, Hearing File 10-013, Registrar) at para. 20.

(b) Truthful declarations on applications for licence/registration

[12] Failing to provide truthful responses on an application for a licence is grounds to consider a person as ungovernable, warranting refusal of the licence. Withholding such information deprives a regulator from carrying out its vetting process to protect the public interest. It is also relevant to the assessment of whether the applicant will act with honesty and integrity.

- *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279 (BC Supreme Court) at paragraphs 33-34 and 45; affirming *Re: Peter Fryer* (December 13, 2013, File 13-11-005, Registrar)

- *Registrar, Motor Vehicle Dealers Act v. Vernon*, 2016 ONSC 304 (Ont. S.C., Div. Crt) at paragraphs 13-14

(c) Motor Vehicle Act - compliance

[13] In British Columbia, a motor dealer may not advertise for sale, display for sale or sell a motor vehicle that is not compliant with the requirements of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 (“MVA”) and all its regulations. This includes the various minimum standards set for certain safety equipment such as brakes and suspension components as well as being equipped with certain emission components. The owner of a motor vehicle may not allow its use on the highways if it does not comply with those requirements. This includes a motor dealer allowing a test drive. A motor dealer must declare to a purchaser that the motor vehicle being sold is compliant with the MVA. If the vehicle is not compliant, the motor dealer must declare the vehicle as “not suitable for transportation” and that it is sold for parts only or for a purpose other than transportation; on the purchase agreement, in any advertisement or written representation for the motor vehicle, and on the motor vehicle itself.

- Sections 219(1) and 222 of the MVA
- Section 8.01 and 8.02 of the *Motor Vehicle Act Regulation*, B.C. Reg. 26/58
- Sections 21(2)(e) and (f), 22 and 27(b) of the *Motor Dealer Act Regulation*, B.C. Reg. 447/78

[14] Advertising a vehicle for sale that is not compliant with the MVA and selling a vehicle that is not compliant with the MVA has been grounds to cancel or suspend a motor dealer’s registration.

- *Re: Best Import Auto Ltd. et al.* (Hearing file 17-08-002, Registrar, November 28, 2017); varied but not on this point by *Best Import Auto Ltd. v Motor Dealer Council of British Columbia*, 2018 BCSC 834 (BC Supreme Court)
- *Knapp v. Crown Auto Body and Auto Sales Ltd. et. al* (September 21, 2009, File 08-70578, Registrar) affirmed by *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894 (BC Supreme Court)
- *Re: N.W. Auto Depot Ltd.* (September 4, 2018, File 18-06-003, Registrar)
- *Re: Parkwood Auto Sales Ltd. et al* (August 6, 2010, File 07-70285, Registrar – licensing decision)

(d) Burden of Proof

[15] Under the legislative scheme, there is no right to be registered as a motor dealer. Federation must meet the minimum requirements set by the legislation to the satisfaction of the Registrar, when applying for registration as a motor dealer. If Federation meets those requirements, it then falls to the Authority to show that Federation poses a risk to the public interest, warranting refusing it registration as a motor dealer. That burden is on a balance of probabilities; often reframed as

establishing that it is “more likely than not” that the alleged conduct is true, based on sufficiently clear, convincing, and cogent evidence: *F.H. v. McDougall*, [2008] 3 SCR 41, 2008 SCC 53 (Supreme Court of Canada).

IV. Discussion of the Evidence

(a) Selling motor vehicles

[16] First, I would note that Mr. Daloussi did not deny the Manitoba selling process described by the Authority and as found in the Investigation Report of Compliance Officer Cote. Mr. Daloussi also did not advance that his selling process was compliant with Manitoba law. What Mr. Daloussi is noted as saying is that if he got a complaint, he would have the subject vehicle inspected and repaired to have the MPI order on the vehicle removed. Offering vehicles for sale that are not compliant with safety regulations and allowing persons to test drive them would also be a breach of British Columbia legislation and the duties of a motor dealer in this province.

[17] I also note that Mr. Daloussi did not deny that he was buying and selling vehicles in Manitoba through Daloussi Auto Ltd. while not licensed. The Manitoba Queen’s Bench decision in *Roxas v. Daloussi Auto Ltd., Alaa Daloussi* Certificate of Decision at Hearing dated May 9, 2019 (File SC19-01-36607, Manitoba Queens Bench), very much shows Daloussi Auto Ltd. was buying and selling vehicles. The British Columbia industry term for this is “curbing” and it is an offence to do so. It would clearly be contrary to the public interest to register someone as a dealer who in the recent past acted as a dealer while not licensed. This shows a disregard for obeying laws in general, and those associated with a motor dealer licence in specific. In the past, a person who was found to have aided and abetted persons who were curbers, was found unsuitable to be registered as a motor dealer.

- Section 35(2) of the *Motor Dealer Act*
- Section 33(2)(i) of the *Motor Dealer Act Regulation – Code of Conduct*
- *Re: Mafcan Motors Ltd & Cheema* (July 2, 2010, Files 10-017 and 10-018, Registrar)

(b) Providing false information

[18] In his email submission dated January 6, 2020, Mr. Daloussi did say he won all the court cases in Manitoba. A review of the court decisions in evidence before me shows that is incorrect. See for example *Roxas v. Daloussi Auto Ltd., Alaa Daloussi, supra*. A person who is willing to provide false information to a regulator brings into question their honesty and integrity and whether they can be properly governed: *Fryer, supra* and *Vernon, supra*.

(c) Court decision in *Roxas v. Daloussi Auto Ltd., Alaa Daloussi*

[19] I have reviewed the reasons for decision in the case of *Roxas v. Daloussi Auto Ltd., Alaa Daloussi*. In summary, the Manitoba Queen’s Bench found Mr. Daloussi

misrepresented a leasing agreement as a finance agreement. The Court also found that the cost of the loan which Mr. Daloussi was attempting to collect was excessive due to extra charges and the excessive late payment fees. The Court set aside the "Car Lease Agreement" pursuant to section 2(d) of Manitoba's *The Unconscionable Transactions Relief Act*.

[20] British Columbia's *Business Practices and Consumer Protection Act* ("BPCPA") also prohibits unconscionable acts, including for excessive charges: sections 8 and 9(1) of the BPCPA. The consumer remedy for an unconscionable act under British Columbia law being the same as in Manitoba: section 10 BPCPA.

[21] Pursuant to section 8.1 of the *Motor Dealer Act* and section 29 of the *Motor Dealer Act Regulation*, the Registrar is empowered to apply these provisions within the motor dealer industry in this province. Importantly, the British Columbia Legislature has expressly stated that it is grounds to suspend or cancel a motor dealer's registration where they are found to have committed an unconscionable act: section 8.1(4)(b) of the *Motor Dealer Act*. That being the case, it is equally true that it would be contrary to the public interest to grant someone a motor dealer registration who has recently (2019) been found by a court to have committed an unconscionable act, and especially within the motor dealer industry albeit in another province.

(d) Application materials

[22] In the application materials to register Federation, is a copy of Mr. Daloussi's temporary work permit. The permit expires on January 7, 2020 and one of its conditions says Mr. Daloussi is to leave Canada by January 7, 2020. Based on this evidence, even if I believed Federation was suitable to be registered as a motor dealer, which I do not, its principal and sole declared salesperson would not be authorized to work in Canada. Based on this evidence, there would be no utility in granting Federation a motor dealer registration. Further, granting Federation a registration under these circumstances would be tacit authorization to breach the conditions of the temporary work permit. I would note the date Mr. Daloussi was to leave Canada is the day after he made his email submission to the Authority.

V. Decision

[23] I find that the prior conduct of Alaa Daloussi while operating a motor dealership in Manitoba is grounds to refuse registering Federation Auto Ltd. a motor dealer registration: section 5 of the *Motor Dealer Act*. That conduct shows a disregard for obeying the law and indicates the dealership will not operate in accordance with the law, with honesty and with integrity. The fact that Mr. Daloussi provided false information during his application process indicates that type of conduct continues and brings into question the governability of Mr. Daloussi which flows into questioning the governability of Federation. For these reasons, I am refusing to register Federation Auto Ltd. as a motor dealer.

[24] The Notice of Hearing noted that I could suspend or cancel the salesperson licence of Alaa Daloussi. However, the Authority only requested that I add conditions to the salesperson licence of Alaa Daloussi.

[25] Given the evidence before me of what appears to be an expired temporary work permit to work in Canada, I cannot allow Mr. Daloussi's salesperson licence to remain valid unless or until his status to work in Canada is reconfirmed. While suspension of his salesperson licence was not sought by the Authority, under these circumstances, I believe it is necessary to suspend Alaa Daloussi's salesperson licence on condition that he provides the appropriate documentation to show he is legally entitled to work in Canada. While not expressly stated in the legislation, the granting of a salesperson licence is conditional on the person being legally entitled to work in Canada.

[26] Given this suspension, I would adjourn the issue of adding conditions to the salesperson licence of Alaa Daloussi *sine die*. If Mr. Daloussi should provide the required information as to his ability to work in Canada, the Authority has leave to bring back before me the issue of adding conditions on the salesperson licence of Alaa Daloussi. This does not preclude the Authority from raising any new issues regarding the licensing of Alaa Daloussi as a salesperson, should new evidence or information arise.

Review

[27] Federation and Alaa Daloussi may request a reconsideration of this decision under sections 26.11 and 26.12 of the *Motor Dealer Act*. The request must be in writing and made within 30 days of receiving this decision. The request must identify the reasons for requesting the reconsideration and meet any other requirements of those sections of the Act. For the Registrar to cancel or vary a determination, there must be new evidence, as defined in those sections of the Act, provided with the request for reconsideration. The request and supporting documents may be sent to the attention of my assistant Preet Jassal at the Authority's address in Langley or electronically to preet@mvsabc.com.

[28] This decision 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 receiving these reasons: s. 7.1(t) of the *Motor Dealer Act*.

“original is signed”

Ian Christman, J.D.
Registrar of Motor Dealers