



Vehicle Sales Authority
of British Columbia

Investigation File No. 19-10-067
Hearing File No. 20-02-001

Neutral Citation: 2020-BCRMD-001

**IN THE MATTER OF THE *MOTOR DEALER ACT*, R.S.B.C. 1996, C. 316 and
BUSINESS PRACTICE AND CONSUMER PROTECTION ACT S.B.C. 2004, c.2**

RE:

MOTOR VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA

Complainant

ANITA LYNN PRINCE

(Unlicensed)

Respondent

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Date and Location of Decision: June 4, 2020 at Langley, British Columbia

By way of written submissions

I. Introduction

[1] The Motor Vehicle Sales Authority of British Columbia ("Authority") brings before me a complaint that Anita Lynn Prince ("Anita Prince") is acting as a motor dealer without being registered as such. The Authority alleges that Anita Prince did:

- (a) between June 17, 2017 and December 31, 2017 sell three (3) motor vehicles,
- (b) between January 20, 2018 and December 19, 2018 sell eight (8) motor vehicles,
- (c) between January 14, 2019 and December 6, 2019 sell nineteen (19) motor vehicles, and
- (d) between April 30, 2019 and December 9, 2019, did advertise eight (8) motor vehicles for sale

while not registered as a motor dealer which is contrary to section 3(1) of the *Motor Dealer Act*, R.S.B.C. 1996, c., 316 (MDA).

[2] The Authority states that as Anita Prince acted as a motor dealer, she was to provide purchase agreements with the required statutory declarations to the purchasers and did not. This, the Authority says, is contrary to sections 21 and 23 of the *Motor Dealer Act Regulation*, B.C. Reg. 447/78 (MDA-Reg). Finally, the Authority alleges that the failure to make these required statutory declarations is also a failure to state material facts contrary to section 5(1) of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 ("BPCPA").

[3] A Notice of Hearing was sent by regular and registered mail to Anita Prince which enclosed the investigator's report and evidence relied on by the Authority. The Affidavit of Service from Ana Ramirez, Legal Assistant at the Authority, shows that these materials were received on January 3, 2020: Canada Post Tracking confirmation.

[4] The Notice of Hearing advises Anita Prince that she had 30 days to provide any submissions and evidence in response to the Authority's investigation findings and allegations. The Notice of Hearing also advises Anita Prince what steps to take if she wished to proceed by way of an oral hearing.

[5] As of the date of this decision, no submissions or evidence has been received from Anita Prince.

II. Background

[6] The Authority received several complaints that Anita Prince was acting as a motor dealer while unlicensed. In the industry, this is called curbing. As a result of these complaints, the Authority opened Investigation File No. 19-04-407 on April 30, 2019.

[7] The investigation was conducted by Compliance Officer Bryan Reid. Compliance Officer Reid obtained records from the Insurance Corporation of British Columbia ("ICBC") showing Anita Prince transferred ownership of 21 vehicles between June 17, 2017 and April 21, 2019. The records specifically show ten (10) vehicle transfers in the four months between January 14, 2019 to April 21, 2019. The transfer documents show a selling price or in one case, a straight trade of motor vehicles. Compliance Officer Reid was also able to identify three motor vehicles advertised for sale by Anita Prince. As a result of these findings, a warning letter to cease and desist was sent to Anita Prince in June of 2019. The evidence before me (Canada Post Tracking) shows that letter was received June 25, 2019. The investigation file was closed.

[8] On or about December 5, 2019, another complaint was received by the Authority that Anita Prince was advertising multiple vehicles for sale. Investigation file 19-12-062 was opened and Compliance Officer Reid was assigned to investigate. Compliance Officer Reid found that between April 21, 2019 and December 6, 2019 Anita Prince had transferred a further nine (9) vehicles. Compliance Officer Reid also reviewed online advertisements and found five (5) active advertisements offering motor vehicles for sale associated to Anita Prince.

III. Legal Principles

(a) Acting as motor dealer and registration

[9] I start by considering the definition of "motor dealer" in section 1(1) of the *Motor Dealer Act*. In considering the appropriate interpretation of that term, I have employed the various common law principles of statutory interpretation, section 8 of the *Interpretation Act* and the principle that consumer protection legislation, such as the *Motor Dealer Act*, is to be interpreted generously in favour of protecting consumers.

- *Re: One West Auto Ltd.* (November 8, 2019, Hearing File 19-09-001, Registrar) at paragraphs 6 to 14.

[10] The *Motor Dealer Act* defines a motor dealer 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";

[11] The definition of "motor dealer" is complex as within it are words which are themselves defined by legislation, as underlined.

[12] The word "sale" is defined in the MDA as follows:

"sale" means a lease, exchange or other disposition or supply of a motor vehicle to an individual primarily for the individual's personal or family use;

[13] The word "disposition" in the MDA has the following corresponding meaning:

"dispose" means to transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release and agree to do any of those things;

- Sections 2, 28(4) and section 29 definition of "dispose" of the *Interpretation Act*, R.S.B.C. 1996, c. 238 ("IA")

[14] The word "person" includes a natural person (an individual) and also "includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law".

- Sections 2 and section 29 definition of "person" of the *Interpretation Act*, R.S.B.C. 1996, c. 238 ("IA")

[15] To assist in the prosecution of unregistered activity, the *Motor Dealer Act* provides a deeming provision in section 1(2):

1(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.

[16] Section 1(2) of the *Motor Dealer Act* is not an exemption from being registered as a motor dealer if one sells or advertises the disposition of a motor vehicle five times or less in a year. Exemptions are found in the *Motor Dealer Act Regulation*.

[17] A motor dealer is a person [an individual (such as a sole proprietor), corporation, partnership or party or their legal representative] who either for themselves or on behalf of another person [captures selling on consignment], does any of the conduct noted in paragraphs (a) to (c) of the definition of motor dealer. As defined, the term motor dealer captures a sale to a person (including a business) so long as the intended use¹ of the motor vehicle is primarily (more than 50% of the time) for an individual's personal, family or household use. This means a business, being a person, could purchase a vehicle and it is still a regulated transaction if the intended use of the vehicle is primarily for an individual's personal, family or household use. This interpretation is supported by section 7(c) of the *Motor Dealer Customer Compensation Fund Regulation*, B.C. Reg. 102/95 that prohibits compensation to an applicant for only that portion of a vehicle's use in business, so long as the motor vehicle is primarily used for personal, family or household use.

[18] The term "personal, family or household use" is also found in several other enactments such as the *Sale of Goods Act*, the *Business Practices and Consumer Protection Act*, and the *Personal Property Security Act* ("PPSA"). In general, it means a consumer transaction or is used to determine something being a "consumer good". Its use in the *Personal Property Security Act* is because consumers are afforded different rights when granting a security interest in their property. Much of the case law interpreting and applying the term "personal, family or household use" come from claims under the PPSA. It is to be noted that where the Legislature has used the same term in different legislation, it is accepted that the term is to have a consistent meaning across those pieces of legislation, unless the legislative context suggests otherwise.

¹ The intended use is determined as at the time of the sale: *Money in a Minute Auto Loans Ltd. v. Price* 2001 BCSC 864 (BC Supreme Court), affirmed by 2002 BCCA 507 (BC Court of Appeal); and see *Hnidan v. Great West Chrysler Ltd.* 2006 ABPC 288 (Alta. Prov. Ct).

[19] Under the MDA, the purpose for obtaining a motor vehicle from a motor dealer must be primarily for personal, family or household use. It does not need to be exclusively used for personal, family or household use. So long as over 50% of the intended use of the motor vehicle is for the personal, family or household of an individual, it can be a regulated sale under the MDA.

[20] Where a business purchases a motor vehicle, a strong inference arises that the intended use of the motor vehicle is for a business purpose. It is then up to the person claiming the motor vehicle is used primarily for personal, family or household purposes to provide evidence establishing that fact. The Court in *GMAC LeaseCo Ltd. V. Moncton Motor Home & Sales Inc. (Trustee of)* 2003 NBCA 26 (New Brunswick Court of Appeal) noted at paragraph 36:

[36] In the present case, there was no finding that the debtor's truck qualified as a consumer good. The fact that it was owned by a corporation solidifies the inference that the truck was otherwise. Corporations simply cannot make use of items for personal, household or family purposes. This leaves only two options. The truck qualifies as either "equipment" or "inventory". Given the nature of the corporate debtor's business (the sale of recreational vehicles) one can speculate that the truck does not come within the category of inventory. By elimination, it would qualify as "equipment". But in either case, GMAC's inclusion of the truck's serial number was optional.

[21] A vehicle leased by a company but used by its employees, regardless of how it was used, was still considered to be business use: *Gimili Auto Ltd. v. Canada Campers Inc. (Trustee of)* (1998), 62 Alta. L.R. (3d) 40 (Alta. Court of Appeal). The declaration of use on an agreement is given weight: *Whitewater Motors Ltd. v. Amatto* 1993 CarswellBC 762, 1993 CanLII 2415 (B.C. Supreme Court).

[22] In *Gmac Leaseco Ltd v. Stalker*, 1999 CanLII 5443 (BC Supreme Court), Mr. Stalker had leased a sport utility vehicle in his and his company's name. He deposed that the intended use of the vehicle was for his wife's personal use. Mr. Stalker had also leased four other trucks which were for business use. The B.C. Supreme Court noted that the sport utility vehicle was insured for business use. Based on the totality of the evidence, the Court ruled the sport utility vehicle was not a consumer good² and the special protections afforded to consumer goods under the *Personal Property Security Act* did not apply.

[23] In summary, the definition of "motor dealer" and other aspects of the MDA expressly acknowledges that a business purchasing a motor vehicle may still be a

² Not intended primarily for personal, family or household use

regulated sale if at the time of sale its primary use will be for an individual's personal, family or household use. Where a business purchases or leases a motor vehicle and the motor vehicle's use is declared as for business use, a strong inference arises that the intended use of the motor vehicle is for business purposes. This includes if there is an individual as a co-lessee. In such a case the onus would then be on the person claiming it was primarily for personal, family or household purposes to provide evidence of that fact. This will become an important point later in my decision.

[24] If a person acts as a "motor dealer" they must be registered: section 3(1) of the MDA. Acting as a motor dealer without being registered is an offence and may also be addressed by the Registrar administratively or through a civil process before the courts: sections 26.02, 31 and 35(1) of the MDA.

[25] In reviewing the various transaction records, there is no concern that the motor vehicles in question meet the definition of "motor vehicle" under the *Motor Dealer Act*.

(b) Duty to provide purchase agreement

[26] Where a person acts as a "motor dealer", whether they are registered or not, they must provide a purchaser a purchase agreement compliant with the *Motor Dealer Act Regulation*. This includes making various declarations about the motor vehicle being purchased including its history such as whether it had ever sustained prior damage. See for example sections 21 and 23 of the *Motor Dealer Act Regulation* and see *Re: Imad Abdullah Rashid et al.* (June 20, 2019, File 19-04-003, Registrar).

(c) Business Practices and Consumer Protection Act – misrepresentations

[27] The mandatory disclosures required by the *Motor Dealer Act Regulation*, and especially those in section 23 of that Regulation, are deemed material facts. Misrepresenting those facts by failing to make those disclosures is considered a deceptive act or practice contrary to section 5(1) of the *Business Practices and Consumer Protection Act*: see for example *Re: Imad Abdullah Rashid et al.*, supra.

(d) Administrative Penalties and Cease and Desist Orders

[28] In the last few years, the *Motor Dealer Act* received various amendments. Two are important to this decision that came into force on January 1, 2018. First, the Registrar may impose administrative penalties for breaches of the *Motor Dealer*

Act and its regulations. This includes issuing penalties for unlicensed/unregistered activity. However, these may not be applied retroactively. So, an administrative penalty for conduct before January 1, 2018 is unavailable.

[29] Second, the Registrar may issue a compliance order for a person to obey the legislation which includes issuing a cease and desist order for unlicensed/unregistered conduct. As these orders are protective orders and forward looking, they can be issued based on conduct that occurred before January 1, 2018.

- *Thow v. B.C. (Securities Commission)* 2009 BCCA 46 (BC Court of Appeal)
- *Re: Wild Grizzly Transport Ltd. et. al.* (May 31, 2018, File 18-04-003, Registrar) decision on penalty and costs
- *Re: Imad Abdullah Rashid* (June 20, 2019, File 19-04-003, Registrar) at paragraphs 23-24

(e) Burden of Proof

[30] Unless legislation establishes otherwise, the burden of proof falls on the person alleging certain facts. The burden is on a balance of probabilities, which is often reframed as establishing that it is more likely than not that the alleged facts occurred. That burden is assessed on the existence of clear, cogent and convincing evidence establishing the facts: *F.H. v. McDougall*, 2008 SCC 53 (Supreme Court of Canada).

IV. Discussion of the Evidence

(a) Acting as a motor dealer - vehicle transfers

[31] For the purpose of my decision, I find I only need to consider the 2018 and 2019 transactions and 2019 advertisements.

[32] Attached to the Affidavit of Compliance Officer Reid are ICBC Transfer/Tax Forms showing Anita Prince as seller, having transferred 8 vehicles between January 20, 2018 and December 19, 2018. All 8 were transferred to individuals.

[33] Also attached to Compliance Officer Reid's Investigation Report and Affidavit, are ICBC Transfer/Tax Forms showing Anita Prince as seller having transferred 19 vehicles between January 14, 2019 and August 3, 2019. Of those 19, two were transferred to companies. The legal presumption is that those two transfers were for business use unless evidence establishes otherwise. The Authority did not provide evidence to show those two transfers were "primarily for personal, family or

household use". Therefore, I will only consider the remaining 17 transfers to individuals.

[34] Also attached to the Affidavit of Compliance Officer Reid are the ICBC Transfer/Tax Forms showing the various sources from where Anita Prince obtained these vehicles. They include various registered motor dealers around British Columbia.

[35] Anita Prince provided no explanations for these vehicle transfers. The above evidence is not challenged.

(b) Acting as a motor dealer - advertisements

[36] On April 30, 2019, Compliance Officer Reid located five motor vehicles being advertised for sale by Anita Prince on Facebook. On December 1, 2019, another advertisement was located for the sale of one motor vehicle by Anita Prince. On December 9, 2019, advertisements for the sale of two additional motor vehicles by Anita Prince were located. Between April 30, 2019 and December 9, 2019, 8 vehicles were advertised for sale by Anita Prince.

[37] Anita Prince provided no explanations for these vehicle advertisements. This evidence is not challenged.

(c) Failure to provide purchase agreements

[38] The Authority alleges that while acting as a motor dealer, Anita Prince failed to provide the individuals with purchase agreements as required by section 21 of the *Motor Dealer Act Regulation*. However, there is no evidence to show that is the case. The absence of purchase agreements from the records obtained from ICBC does not mean that they do not exist and were not given to the consumers. This allegation is speculative on the part of the Authority. This allegation is dismissed: *Re: Imad Abdullah Rashid, supra*.

(d) Failure to make statutory declarations and failing to state a material fact

[39] The Authority alleges that while acting as a motor dealer, Anita Prince failed to make the statutory declarations required by section 23 of the *Motor Dealer Act Regulation*. A failure to make those statutory declarations is also a deceptive act or practice as deemed by section 4(3)(b)(vi) of the BPCPA. The issue with this allegation is that the statutory declarations are to be made on the purchase agreement: section 23 of the *Motor Dealer Act Regulation*. This allegation is also

speculative as those declarations may or may not have been made on purchase agreements given to the noted individuals. Also, the individuals may or may not have been given this information orally during their transactions. The allegations of failing to state material facts are also speculative.

[40] The evidence does not establish either allegation one way or another. Both these allegations are also dismissed: *Re: Imad Abdullah Rashid*, supra.

V. Findings on Liability

[41] Within a 12-month period in 2018, Anita Prince transferred 8 motor vehicles to individuals. Within a 12-month period in 2019, Anita Prince transferred 17 motor vehicles to individuals. Within a 12-month period in 2019, Anita Prince advertised the sale of eight (8) motor vehicles. This conduct meets the conduct described in paragraphs (a) and (b) of the definition of "motor dealer". Also, given the two consecutive years of selling 25 motor vehicles to individuals, advertising eight (8) motor vehicles for sale and actively purchasing and reselling those vehicles within a short span of time, sometimes only one (1) day passing between Anita Prince purchasing then reselling the motor vehicle, I am satisfied on a balance of probabilities that Anita Prince is acting as a motor dealer. At the material times, Anita Prince was not registered as a motor dealer³ and is therefore in violation of section 3(1) of the *Motor Dealer Act*.

VI. Compliance Selection

[42] I now turn to what administrative action is appropriate in these circumstances to deter non-compliance with the *Motor Dealer Act* and to protect the public interest. That a person should obey the law is always in the public interest.

(a) Cease and Desist Order

[43] First, pursuant to section 26.02 of the *Motor Dealer Act*, I am issuing a Compliance Order that Anita Prince cease and desist acting as a motor dealer, as defined in the *Motor Dealer Act*, unless and until she is registered as a motor dealer. This is a forward-looking protective order requiring Anita Prince obey the law.

- *Re: Wild Grizzly Transport Ltd. et. al.* (May 10, 2018, File 18-04-003, Registrar) compliance order
- *Re: Imad Abdullah Rashid* (June 20, 2019, File 19-04-003, Registrar)

³ As of the date of this decision, Anita Prince was not registered as a motor dealer.

[44] If Anita Prince should apply for registration as a motor dealer, any determination on the application will be based on all the facts in existence at the time the application is made.

[45] I would caution Anita Prince that since April 1, 2018, other conduct now also requires a licence. The conduct of wholesaling and of being a buyer's agent now also require licensing along with acting as a salesperson.

(b) Administrative Penalty

[46] Administrative penalties are used to deter future non-compliance by the specific person and against persons in general. If Anita Prince was registered as a motor dealer, I would have additional legislative tools to deter non-compliance such as adding conditions on registration and a suspension of registration. As Anita Prince is not registered, I only have administrative penalties or issuing a compliance order.

[47] I have already made a cease and desist order against Anita Prince. This is an order to obey the law, which Anita Prince should already be doing. In June of 2019, the Authority wrote to Anita Prince advising her to cease and desist acting as a motor dealer or to register as a motor dealer. Anita Prince did not heed that Warning Letter. I am satisfied that my Compliance Order alone will not deter Anita Prince any more than the Authority's Warning Letter did. I find it necessary for both specific and general deterrence purposes to issue an administrative penalty against Anita Prince.

[48] Anita Prince has been found to be acting as a motor dealer as defined in the *Motor Dealer Act*. That is, acting in the course of business as a motor dealer. Section 26.05 of the *Motor Dealer Act* imposes the same maximum penalty amount on an individual acting as a business as it does on a corporation for a contravention of the *Motor Dealer Act* - \$100,000.

[49] The Authority has recommended a \$5,000 administrative penalty. It did not provide a rationale for that amount.

[50] In fashioning an appropriate administrative penalty, I am to consider the factors in section 26.04(2) of the *Motor Dealer Act*. The amount of the penalty must be proportionate to the non-compliance to be deterred and not stray into the realm of being punitive. Proportionality includes ensuring the penalty amount is not seen as merely the cost of doing business. I am to consider the individual circumstances

and the individual non-compliant person while also remembering the need for general deterrence in order to protect the public interest.

- *Re: Barnes Wheaton (North Surrey) Chevrolet Buick GMC Ltd. et al* (April 16, 2020, File 19-07-004, Registrar) paragraphs 11 to 14.
- *Re: Imad Abdullah Rashid* (June 20, 2019, File 19-04-003, Registrar)

[51] I start by considering the factors in section 26.04(2) of the *Motor Dealer Act* followed by considering comparator cases and the need for specific and general deterrence.

i. Previous enforcement actions for contraventions of a similar nature by the person;

[52] The only previous action for a similar infraction that I am aware of is the Warning Letter from the Authority in June of 2019.

ii. The gravity and magnitude of the contravention

[53] The gravity of the contravention is serious. By operating without registration, Anita Prince is avoiding the usual background checks conducted on persons operating a registered motor dealer. Anita Prince is also bypassing legislation designed to protect consumers and hold motor dealer's accountable for misconduct, should it occur. The magnitude is also significant as Anita Prince conducted 25 sales in the span of 20 months. Also, a review of the purchaser's addresses declared on the ICBC Transfer/Tax Forms shows Anita Prince selling to individuals in various locations in British Columbia. Anita Prince's conduct is thus not geographically confined.

iii. The extent of the harm to others resulting from the contravention;

[54] In this case Anita Prince has disobeyed the laws of British Columbia which negatively impacts all British Columbians. Whether the 25 individuals have suffered any harm is unknown.

iv. Whether the contravention was repeated or continuous;

[55] The evidence establishes that Anita Prince repeatedly acted as a motor dealer while not registered as such.

v. Whether the contravention was deliberate

[56] I am satisfied on the evidence that Anita Prince's contraventions were deliberate. Anita Prince obtained motor vehicles for resale from several other motor dealers. There was one Metro Vancouver dealer who repeatedly sold vehicles to Anita Prince. She would know that dealers were to be registered. On the ICBC Transfer/Tax forms where the dealer is the seller, the dealer enters their dealer registration number. Importantly, Anita Prince continued to advertise and sell motor vehicles after the Authority's Warning Letter advised her to cease and desist until she was registered as a motor dealer.

vi. Any economic benefit derived by the person from the contravention;

[57] I have reviewed the Transfer/Tax Forms associated with the 2018 and 2019 sales by Anita Prince. The eight sales in 2018 add up to \$23,400 or an average of \$2,925 per motor vehicle. The 17 sales in 2019 add up to \$89,400 or an average of \$5,258 per motor vehicle. Anita Prince's two-year total is \$112,800. Even if we take a modest 10% profit margin over the two-year period, that is a \$11,280 economic benefit gained while contravening section 3(1) of the *Motor Dealer Act*. Given the very short turnaround times from when these vehicles were registered to Anita Prince as owner, to when they were sold to others, I expect Anita Prince did not expend much time, effort or money to prepare the motor vehicles for delivery. In 16 cases, the transfer to the individual occurred within six (6) days of Anita Prince being registered as the owner. Of those, there were four (4) transfers that occurred on the same day Anita Prince was also registered as owner. In *Re: Imad Abdullah Rashid*, the percentage of the sale proceeds attributed to preparing a vehicle for sale was 50%. Applying that number here would mean a potential economic benefit of \$56,400 over the two-year period.

vii. The person's efforts to correct the contravention.

[58] There is no evidence that Anita Prince has tried to correct her non-compliance. In fact, she continued to sell and advertise motor vehicles after receiving the Authority's Warning Letter.

viii. Comparator cases

[59] In considering other comparator cases to that of Anita Prince, I note the following:

(a) The first administrative penalties for acting as an unregistered motor dealer were around \$2,000. This amount also reflected that the individuals voluntarily undertook to cease and desist acting as an unregistered motor dealer through an Undertaking. The fact that they agreed to an Undertaking and to cease and desist the non-compliant activity would reflect on the penalty amount, generally reducing it. See for example *Re: Mykyta (Nick) Shtyrin* (April 17, 2019, Undertaking, Inv. File 19-03-164) and *Re: Jin De Xing* (October 29, 2018, Undertaking, Inv. File 18-02-048)

(b) In the more recent case of *Re: Imad Abdullah Rashid*, the penalty amount selected approximated the potential economic gain obtained through the non-compliance. This was after a hearing process and not through an Undertaking. It was necessary to deter similar conduct by ensuring the penalty amount approximated the potential gains from the non-compliant activity. Otherwise, an administrative penalty may be viewed as the cost of doing business. In that case, the penalty amount was \$35,000.

ix. Specific and general deterrence

[60] There is also the need for specific deterrence on Anita Prince. In this case, Anita Prince did not heed a warning to cease and desist acting as a motor dealer while unregistered. I am satisfied that the conduct will continue unless there is a proportionate but significant monetary deterrent on Anita Prince continuing the non-compliance.

[61] I am also considering the need to deter the public in general from taking up similar conduct. In the recent case of *Re: Barnes et al*, supra, I noted the need to incrementally increase administrative penalties as it was apparent past penalty amounts had not generally deterred the non-compliant conduct in that case. As I stated in that case, past ineffectual administrative penalties cannot be the basis for imposing future penalties. In the case of Anita Prince, it appears penalty amounts of \$2,000 or even \$35,000, which approximated potential profits, have not had the desired deterrent effect on her. This suggests past penalty amounts need to be revisited to ensure they are sufficient to deter future non-compliance by others.

x. Conclusion on administrative penalty

[62] Taking these various factors into consideration, the potential economic gain ranging from \$11,000 to \$56,000; the need to incrementally increase penalty amounts so they have their desired economic deterrent effect, keeping in mind the deliberate nature of the non-compliance and its general impact on British

Columbians and the other legislative factors, I believe the appropriate and proportionate administrative penalty in this case is \$20,000.

[63] In the *Re: Imad Abdullah Rashid* case, the \$35,000 administrative penalty was set to reflect the lower estimated economic gain of about \$36,000. That approach did not have the desired deterrent effect. The amount of \$20,000 reflects about a third of the higher end potential economic benefit of \$56,000 that I have estimated in this case. It is also only 18% of the \$112,800 total documented revenue Anita Prince generated between 2018 and 2019. It is proportionate and incrementally increases penalty amounts from past precedents, so that penalty amounts have the desired deterrent effect.

(c) Costs

[64] In its written submissions, the Authority notes its costs for the investigation of this matter amounts to \$938.03. The Authority provides its invoice which shows time spent on the file. Anita Prince is unlicensed and not paying any license fees. It is inappropriate for the industry to cover the costs to investigate Anita Prince's non-compliance through their licensing fees. On a principled and public policy basis, the non-compliant person should be responsible for the costs associated with investigating their non-compliance and steps taken to deter them from future non-compliance. Anita Prince did not provide any submissions challenging the amount of the costs or her liability for costs.

[65] Pursuant to section 26.02 of the *Motor Dealer Act*, I order Anita Prince pay investigation costs in the amount of \$983.03, payable to the Motor Vehicle Sales Authority of British Columbia.

VII. Summary

[66] I have found Anita Lynn Prince acted as a "motor dealer" as defined in the *Motor Dealer Act* in 2018 and in 2019 while not registered as such, contrary to section 3(1) of that Act.

[67] Pursuant to section 26.02 of the *Motor Dealer Act*, I am issuing a Compliance Order that Anita Prince cease and desist acting as a motor dealer, as defined in that Act, unless and until she is registered as a motor dealer. Pursuant to that same section of that Act, Anita Prince is liable to pay costs in the amount of \$983.03 to the Motor Vehicle Sales Authority of British Columbia.

[68] Pursuant to section 26.06 of the *Motor Dealer Act*, a Notice of Administrative Penalty in the amount of \$20,000 will issue against Anita Prince.

VIII. Further Reviews

[69] The compliance orders and notices of administrative penalties may be reviewed by requesting a reconsideration in accordance with sections 26.11 and 26.12 of the *Motor Dealer Act*. Such a request for reconsideration is to be in writing (electronic suffices) and must include any additional new evidence (as defined in the legislation). The time to request such a reconsideration is 30 days. Reference should be made to those sections of the Act for all necessary requirements.

[70] Alternatively, this decision may be reviewed by petitioning the B.C. Supreme Court for judicial review under the *Judicial Review Procedure Act*. Such a petition is to be filed within 60 days of receiving this decision.

“Original is signed”

Ian Christman J.D.
Registrar of Motor Dealers