



Vehicle Sales Authority
of British Columbia

Investigation File 18-12-237
Hearing File 20-04-002

Neutral Citation: 2020-BCRMD-005

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

Re:

Daniel Dubois

Complainant

And:

Preferred Auto Group Inc. dba We Do Salvage
(Dealer Registration# 40298)

Registered Dealer

And:

Abraham Walton
(Salesperson Licence #205183)

Dealer Principal/Salesperson

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Date and location of decision: June 30, 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 by Daniel Dubois involving him leaving a \$3,000 deposit with Preferred Auto Group Inc. d.b.a. We Do Salvage ("We Do Salvage") that was not returned to him upon demand. Abraham Walton is the principal of We Do Salvage and with whom Mr. Dubois dealt with.

[2] Generally, Mr. Dubois and We Do Salvage agreed that Mr. Dubois would purchase a 2015 Ford F-150 ("Ford") that was at that time declared as a salvage vehicle. The proposal was that We Do Salvage would rebuild the Ford, and once it was rebuilt, Mr. Dubois would purchase it. According to Mr. Dubois, the initial discussions were around the costs of repairs.

[3] On August 2, 2017, Mr. Dubois left a \$3,000 deposit with We Do Salvage and the two started exploring the costs to make the necessary repairs. By August 23, 2017, it became apparent to Mr. Dubois that the cost of repairs was too prohibitive, and he requested a refund. On August 30, 2017, We Do Salvage emailed Mr. Dubois agreeing to provide a refund. That refund never came. There are some emails that generally establish this agreement.

II. Complaint and Process to Date

[4] The Authority's Investigations Officer Godwin Tse ("Officer Tse") investigated the complaint and provided an Investigation Report dated March 2, 2020. A Notice of Hearing dated April 16, 2020 was sent to We Do Salvage, Mr. Walton and Mr. Dubois. With the Notice of Hearing is the Investigation Report of Officer Tse with its attached exhibits. This is the evidence before me for adjudication. I may not look outside this evidence as that would be procedurally unfair. It is this evidence that is the foundation of the Authority's allegations and case, for which they gave Notice to We Do Salvage and Mr. Walton.

[5] According to Officer Tse's Investigation Report, Mr. Dubois did not file his complaint with the Authority until January 26, 2019. Officer Tse's Investigation Report states that Mr. Dubois did not realize the refund had not be processed until he filed his taxes.

[6] During the investigation and while attempting to obtain the return of the deposit, We Do Salvage closed its operations and its registration as a motor dealer expired on June 23, 2019. While not expressly stated in the Hearing Notice, there is a notation to suggest Mr. Walton's salesperson licence was already cancelled as of the date of the Hearing Notice.

III. Jurisdiction

[7] The Registrar is empowered to hear consumer complaints and to provide consumers with remedies if a registered motor dealer or licensee breaches the *Motor Dealer Act* or its regulations which causes a proven harm to the consumer: section 26.02(4)(a) of the *Motor Dealer Act*. The Registrar may also provide consumers with remedies if a registered motor dealer or licensee breaches certain provisions of the *Business Practices and Consumer Protection Act* that the Registrar administers, and which causes harm to the consumers: section 155(4)(a) of the *Business Practices and Consumer Protection Act*. The Registrar has no inherent authority to adjudicate all consumer claims. The Registrar may only adjudicate those claims the legislation empowers the Registrar to consider and remedy.

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

[8] It is well understood that the *Motor Dealer Act* and the *Business Practices and Consumer Protection Act* are consumer protection legislation that protect consumers and not businesses.

- *Seidel v. TELUS Communications Inc.*, 2011 SCC 15 (CanLII), [2011] 1 SCR 531 (Supreme Court of Canada) at paragraph 37
- *Fireman's Fund Insurance Co. of Canada v. Shoreline Auto Sales Ltd.* [1986] B.C.J. No. 1745 (BC Supreme Court)

[9] The definition of *motor dealer* and of *sale* in section 1 of the *Motor Dealer Act* makes it clear that the type of transaction the Registrar regulates and has authority over involves a motor vehicle whose primary use will be for the personal, family or household use of an individual. A vehicle can still be used for a business purpose, but it cannot be most of the vehicle's use. Where evidence shows a business use, a legal presumption arises that the vehicle is used for a business purpose. In such a case, evidence must be advanced to show the vehicle's primary intended use was for the personal, family or household use of an individual.

- *GMAC LeaseCo Ltd. V. Moncton Motor Home & Sales Inc. (Trustee of)* 2003 NBCA 26 (New Brunswick Court of Appeal)
- *GMAC Leaseco Ltd v. Stalker*, 1999 CanLII 5443 (BC Supreme Court)
- *Re: Anita L. Prince* (June 4, 2020, File 20-02-001, Registrar)

[10] The Investigation Report of Officer Tse states that Mr. Dubois did not realize he had not received the refund of the deposit until he filed his taxes. If a vehicle is being used for a business purpose, its costs may be applied as deductions for tax purposes. If it is used solely for an individual's personal, family or household use, there are generally no tax deductions available. Mr. Dubois also did not notice the refund had not been processed for quite some time. An individual purchasing a vehicle should notice they did not receive a \$3,000 refund fairly quick. A business may not notice this due to the volume of deposits and credits in its account. These two pieces of evidence are enough to infer an intended business use for the Ford. The evidence suggests a business use for the Ford and therefore the legal presumption of business use arises unless evidence shows the contrary.

[11] The investigation report and its exhibits provide no evidence that the Ford's intended primary use was for an individual's personal, family or household use. Therefore, the legal presumption of business use has not been rebutted. I have no jurisdiction over a transaction where a motor vehicle's intended use is business. Based on the evidence before me, I am without legal authority to consider Mr. Dubois' complaint and order a remedy.

- *Re: Anita L. Prince* (June 4, 2020, File 20-02-001, Registrar)

IV. Comments on the Requested Compliance Action

[12] If I had found a breach of the legislation by We Do Salvage and/or Mr. Walton, the Authority recommended that I:

- (a) Suspend or cancel Mr. Walton's salesperson licence with a prohibition on his eligibility to re-apply;
- (b) Suspend or cancel We Do Salvage's motor dealer registration with a prohibition on its eligibility to re-apply; and
- (c) Award the Authority its investigation and hearing costs.

[13] A few comments on each recommendation.

[14] The evidence tells me that Mr. Walton's salesperson licence is no longer valid. This means there is no salesperson licence for me to suspend or cancel.

[15] The evidence tells me that We Do Salvage's registration as a motor dealer expired on June 23, 2019. There is no motor dealer registration for me to suspend or cancel.

[16] The Authority asks me to prohibit Mr. Walton from re-applying as a salesperson and We Do Salvage from re-applying for registration as a motor dealer for a period of time. The evidence presented in the Investigation Report of Officer Tse does not allow me to conduct a fair assessment to make such an order for either. At a minimum, I would need to know Mr. Walton's and We do Salvage's compliance history with the Authority.

[17] Officer Tse's Inspection Report does not tell me the degree of cooperation of Mr. Walton and We Do Salvage during his investigation. That too is an important consideration. The Investigation Report simply says the dealer went out of business during the investigation and while trying to obtain a resolution to Mr. Dubois' complaint. It may be that Mr. Walton and We Do Salvage should be prohibited from re-applying, but the evidence placed before me must establish that as an appropriate order to make. When considering such a prohibition, the main considerations tend to be:

- (a) Is there a history of the person being uncooperative and ungovernable?
- (b) Does the person's conduct pose an unacceptable risk to the public?
- (c) The evidence establishes that some history of good conduct and rehabilitation is needed, to rebuild trust in the person being allowed in the industry.

See for example: *Re: Best Import Auto Ltd et al*, (November 28, 2017, File 17-08-002, Registrar) varied but not on this point in *Best Import Auto Ltd. v Motor Dealer Council of British Columbia*, 2018 BCSC 834 (BC Supreme Court).

[18] As I have found there is no jurisdiction for me to consider the complaint, there is no order as to costs.

V. Review of this Decision

[19] As I have not made a “determination” as that term is defined in the Motor Dealer Act and the Business Practices and Consumer Protection Act, there is no statutory right to request a reconsideration under those Acts.

[20] My decision may be reviewed by petitioning the B.C. Supreme Court for judicial review pursuant to the Judicial Review Procedure Act. Such a petition is to be filed with that Court within 60 days of this decision’s date: section 7.1(t) of the Motor Dealer Act.

“original is signed”

Ian Christman, J.D.
Registrar of Motor Dealers