



**Citation: Jalili and Platinum Cars Inc. v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2024 ONLAT MVDA 14328**

**Licence Appeal Tribunal File Number: 14328/MVDA**

In the matter of an appeal from a Notice of Proposal to Revoke registrations under the *Motor Vehicle Dealers Act, 2002*.

Between:

**Shaun Jalili and Platinum Cars Inc.**

**Appellant**

and

**Registrar, *Motor Vehicle Dealers Act, 2002***

**Respondent**

**DECISION**

**VICE-CHAIR: Colin Osterberg**

**APPEARANCES:**

For the Appellant: Symon Zucker, Counsel  
Laney Paddock, Counsel

For the Respondent: Jillian Siskind, Counsel  
J. Little, Counsel

**HEARD: June 19, 20, July 13, 18, November 14, 15, 16, 17, 20, 21,  
December 18, 2023**

## OVERVIEW

- [1] Pursuant to a Notice of Proposal dated September 21, 2022 (“NOP”) and a Notice of Further and Other Particulars dated June 22, 2023 (“NFOP”), the Registrar, *Motor Vehicle Dealers Act, 2002* (the “Registrar”) proposes to revoke the registration of Platinum Cars Inc. (“Platinum”) as a motor vehicle dealer and the registration of Shaun Jalili (“Jalili”) as a motor vehicle salesperson under the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 20, Sched. B (the “Act”).
- [2] The Registrar alleges that Jalili’s past conduct affords reasonable grounds for belief that he and Platinum (collectively, the “appellants”) will not carry on business in accordance with law and with integrity and honesty and are not entitled to registration pursuant to s. 6(1)(a)(ii) and s. 6(1)(d)(iii) of the *Act*.
- [3] The Registrar also alleges that the appellants breached conditions of their registrations and are not entitled to registration pursuant to s. 6(1)(f) of the *Act*.
- [4] The appellants appeal the NOP to the Tribunal. They deny some of the allegations made against them and have mitigating explanations for others. They argue the conduct alleged in all of the circumstances does not warrant revocation of their registrations.

## PRELIMINARY ISSUES

### Appellants’ motion

- [5] On the second day of the hearing, June 20, 2023, counsel for the appellants objected to the late service of documents the Registrar proposed to introduce into evidence. The documents consisted of 140 pages including a report and supporting materials of an investigator retained by the Registrar.
- [6] The Registrar submitted that the late documents were produced as the result of a recent request from the appellants’ counsel and was evidence that the Registrar had previously not intended to rely on at the hearing. Now that the documents were produced at the request of the appellants, the Registrar intended to rely on those documents.
- [7] The appellants also objected to the inclusion of allegations, which they say were not particularized in the NOP, as bases in support of the revocation of the

appellants' registrations. Specifically, the Registrar wished to argue that the appellants breached conditions of registration by trading in motor vehicles before completing the Ontario Motor Vehicle Industry Council Certification Course and by failing to designate a person responsible for dealing with customer complaints.

- [8] I adjourned the hearing to the dates already scheduled in July 2023. I found that procedural fairness required that the Registrar produce documents relevant to the appeal and not just documents it intended to rely on at the hearing. Further, now that the Registrar did intend to rely on the recently produced documents, it would be unfair to proceed until the appellants had the opportunity to review and respond to those documents.
- [9] In addition, as noted above, the Registrar in its opening statement appeared to add particulars of its breach of conditions allegation which had not been disclosed previously. The appellants are entitled to notice of the allegations they would be required to meet and I was concerned that disclosing allegations in the Registrar's opening statement was insufficient notice in the circumstances.
- [10] On June 22, 2023, the Registrar served its NFOP which particularizes the breaches of conditions the Registrar raised in its opening statement.
- [11] The appellants brought a motion returnable July 13, 2023 seeking various relief arising out of the late disclosure of documents by the Registrar and service of the NFOP. The relief requested in the motion included the following:
1. "A stay of the allegations before the LAT"; or in the alternative
  2. An order staying specific allegations relating to documents which were served late and which are contained in a Notice of Further and other Particulars dated June 22, 2023;
  3. An order striking allegations and facts included in the Registrar's opening statement relating to matters not alleged in the Notice of Proposal;
  4. An order permitting the appellants to adduce expert evidence with respect to the conditions of vehicles which are the subject of the Notice of Proposal;
  5. An order excluding hearsay evidence with respect to the mechanical condition of vehicles;
  6. An order declaring that the sanction of revocation cannot be imposed in this case due to the Registrar's failure to comply with its obligation to provide full disclosure; and,
  7. Costs.

- [12] The appellants' motion was denied for the following reasons.
- [13] The bases of the appellants' request that the allegations should be stayed, and the alternative relief requested, is that there has been an abuse of process by the Registrar which consisted of: 1) failing to provide notice of the case the appellants were required to meet; 2) failing to provide disclosure in accordance with the principles set out in *R. v. Stinchcombe*, 1995 CanLii 130 (SCC) ("*Stinchcombe*"); and 3) continuing with the hearing in the face of those failures.
- [14] The appellants argued that their ability to defend the allegations against them had been prejudiced and that the public's confidence in the Registrar would be undermined if the hearing was allowed to proceed.
- [15] The Registrar argued that its NOP was sufficient notice to the appellants that it was taking the position that conditions of registration were breached and that any failure to particularize the breaches was cured by the issuance of the NFOP and the inclusion of the particulars in that document. The Registrar argued that the documents it served during the hearing were ones it did not intend to rely on before they were requested by the appellants shortly before the hearing and therefore it was not required to produce them.
- [16] I held that, although the documents the Registrar served late and the failure of the Registrar to sufficiently particularize the allegations against the appellants in the NOP may have resulted in procedural unfairness had the hearing continued as scheduled, that unfairness could be cured by an adjournment and the appellants were not entitled to the relief requested.
- [17] Under s. 23 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 ("*SPPA*"), a tribunal may make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes.
- [18] Abuse of process in the administrative context is a question of procedural fairness. In *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44 ("*Blencoe*") the Supreme Court of Canada held that the fairness of a hearing may be compromised where a party's ability to answer the complaint against them is impaired or if significant prejudice has come about, or in some other way brings the administration of justice into disrepute.
- [19] However, the Supreme Court stated that only in the clearest of circumstances should a stay be granted and, for there to be an abuse of process, the proceedings must be unfair to the point that they are contrary to the interest of justice. Cases of this nature will be extremely rare: See *Blencoe* at paragraph 120.

- [20] In *8484 v. Registrar of Alcohol and Gaming*, 2014 CanLii 70018 (ON LAT) the Tribunal held that the interest at issue required the Registrar to make further disclosure in accordance with the principles set out in *Stinchcombe* but that any breach of the appellant's right to procedural fairness caused by the failure to produce these documents earlier would be adequately cured by the granting of an adjournment.
- [21] In *Hodge v. Registrar, Real Estate and Business Brokers Act*, 2022 ONSC 7206 ("*Hodge*") the Divisional Court found that the Tribunal's reliance on conduct which had not been alleged in the Notice of Proposal in its determination that the appellant's past conduct affords reasonable belief that he will not carry on business in accordance with the law, integrity and honesty, was a breach of procedural fairness. The Divisional Court did not order a stay of the NOP or that the specific allegations which had not been earlier alleged should be stricken. Instead, it ordered a new hearing by the Tribunal.
- [22] In the present case, the appellants' motion was heard July 13, 2023, and the decision delivered orally on July 18, 2023. The hearing was thereafter adjourned and did not recommence until November 14, 2023. I find that this provided the appellants sufficient time to deal with the late-served documents and the allegations in the NFOP.
- [23] I agree with the appellants' position that the failure of the Registrar to produce relevant documents prior to the hearing, and the approach the Registrar took with respect to documentary production was procedurally unfair to the appellants. The issues in the appeal are very serious to the appellants. They involve the ability of the appellants to continue to work in a regulated industry. In those circumstances, the disclosure obligations of the Registrar are significant. I do not agree with the Registrar that their only obligation is to produce documents that they intend to rely on at the hearing.
- [24] Although the *Common Rules of Practice and Procedure* ("Rules"), which were in force at the time this motion was heard, only provide for the disclosure of documents a party intends to rely on at the hearing, they do not encompass all the parties' obligations as they relate to procedural fairness. There may be additional obligations on administrative decision makers than those set out in the Rules which may be contained in case law and which will depend on the entire context of the decision being made including the importance of the decision to the appellant.
- [25] If the Registrar's only obligation was to produce documents it intends to rely on at the hearing, this implies that it could withhold documents relevant to the issues in the appeal and which might be exculpatory of the appellant(s) because it does not

intend to rely on them. In circumstances involving the potential loss of an appellant's livelihood, that cannot be, and I find that it is not, the law. While the Registrar may not be fully subject to the *Stinchcombe* disclosure requirements, I find that its obligations include making reasonable efforts to disclose all documents in its possession which are relevant to the issues in the appeal, and which are not privileged or which may not be producible for some other lawful reason.

[26] The documents which were served late should have been disclosed earlier. In addition, the appellants should have been given particulars of the conditions of registrations the Registrar alleges have been breached before opening arguments at the hearing. Requiring the appellants to proceed with the hearing in the face of the late service and the failure to give notice would be a breach of procedural fairness.

[27] Further, even had I found that the Registrar was only obligated to disclose documents it intended to rely on at the hearing, in this case the Registrar advised at the hearing that it did, in fact, intend to rely on the documents it served late. It took the position that, since the documents were produced as the result of a late request for documents made by the appellants, the normal disclosure rules do not apply to those documents. That is an untenable position and is neither fair nor reasonable.

[28] However, I am not satisfied that this is one of the "clearest of cases" to warrant the remedy requested by the appellant, including a "stay of the proceeding" nor am I satisfied that an order striking some of the allegations contained in the NOP is reasonable or necessary in the present circumstances. The purpose of the legislation is one of consumer protection and public interest, which the case law makes clear is to be weighed when considering the appropriate remedy for breaches of procedural fairness. I considered the following factors in determining that the remedies sought by the appellants should not be granted:

- i. the Registrar's failure to produce the subject documents was the result of a mistake and not done maliciously;
- ii. the documents which were withheld are not alleged to be exculpatory of the appellants, but are ones which support the Registrar's position;
- iii. the documents have now all been produced and I accept the Registrar's sworn evidence that there are no more documents relevant to the appeal which remain in its possession and which have not been disclosed;

- iv. I am not satisfied that the appellants have been prejudiced in their positions as the result of the late disclosure;
- v. I am not satisfied that any procedural prejudice that might have resulted from the late disclosure and failure to give notice cannot be adequately mitigated by the granting of an adjournment.

[29] I found, given all the circumstances, including the need to ensure that the appeal is procedurally fair, and considering the purpose of the legislation of consumer protection and the public interest, the appropriate remedy was to adjourn the hearing.

[30] I therefore adjourned the hearing and it continued November 14, 2023.

[31] With respect to the appellant's request for an order permitting the appellants to adduce expert evidence with respect to the conditions of vehicles which are the subject of the Notice of Proposal, there is nothing preventing the appellants from adducing relevant expert evidence if they comply with the Rules and an order of the Tribunal is unnecessary.

[32] With respect to the appellant's request for an order excluding hearsay evidence with respect to the mechanical condition of vehicles, I found that is a request which should be made in the context of the presentation of specific evidence at the hearing and not something that is appropriate for a preliminary motion.

## ISSUES

[33] The issues in dispute are:

- i. whether the past conduct of Jalili affords reasonable grounds for belief that he and Platinum will not carry on business in accordance with law and with integrity and honesty according to s. 6(1)(a)(ii) and s. 6(1)(d)(iii) of the *Act*;
- ii. whether Jalili and Platinum breached conditions of their registrations and are therefore not entitled to registration pursuant to s. 6(1)(f) of the *Act*; and
- iii. if either or both of the above are answered in the affirmative, whether the public interest can be adequately protected through granting registration with conditions.

## RESULT

- [34] For the reasons which follow, I find that the Registrar has satisfied its burden of proving that Jalili and Platinum breached conditions of their registrations and that the past conduct of Jalili affords reasonable grounds for belief that he and Platinum will not carry on business in accordance with law and with integrity and honesty.
- [35] I find that Jalili and Platinum are not entitled to registration and that the public interest cannot be adequately protected by granting registration with conditions.
- [36] I therefore direct the Registrar to carry out its proposal to revoke the registrations of Jalili as a motor vehicle salesperson and Platinum as a motor vehicle dealer.

## ANALYSIS

### ***Reasonable grounds for belief***

- [37] Pursuant to s. 6(1)(a)(ii) of the *Act*, if the past conduct of Jalili affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty, Jalili is not entitled to registration.
- [38] Pursuant to s. 6(1)(d)(iii) of the *Act*, given that Jalili is an officer and director of Platinum, and was so at all material times, if the past conduct of Jalili affords reasonable grounds for belief that Platinum's business will not be carried on in accordance with the law and with integrity and honesty, Platinum is not entitled to registration.
- [39] The Ontario Court of Appeal in *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc. (Famous Flesh Gordon's)*, 2013 ONCA 157 at paras. 18-19, held that the standard of proof with respect to reasonable grounds for belief does not require the Registrar to go so far as to show that the conduct makes it more likely than not that he will not carry on business as required.
- [40] According to the Supreme Court of Canada in *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para.114, the reasonable grounds for belief must be more than mere suspicion and will be found to exist where there is an objective basis for the belief which is based on compelling and credible information.
- [41] Further, there must be a nexus between the person's past conduct and the registrant's ability to conduct business as required, considering the interests of the



public: See *CS v. Registrar, Real Estate and Business Brokers Act, 2002*, 2019 ONSC 1652 (Div. Ct.) at para. 32.

[42] The Registrar presented evidence of the following alleged acts of misconduct which it submits afford reasonable grounds for belief that Jalili and Platinum will not carry on business as required.

**1. 2016 Mercedes Benz C63**

[43] The Registrar alleges that Platinum sold a vehicle to Kastriot Tigani in April 2021, without disclosing to Mr. Tigani defects of which it was aware.

[44] Platinum and Jalili deny the Registrar's allegation.

[45] I find the Registrar has failed to establish its allegations involving the Tigani sale.

[46] On April 27, 2021, Platinum sold a 2016 Mercedes Benz C63 ("Mercedes") to Mr. Tigani. Mr. Tigani, to the knowledge of Platinum, intended to drive the Mercedes home to Saskatchewan after delivery. The Mercedes was sold to Mr. Tigani "as is" and the evidence is that Mr. Tigani understood that there was no safety certificate issued in respect of the Mercedes. The evidence is that the reason no safety certificate could be issued was that a catalytic converter had been removed from the vehicle. Mr. Tigani was aware of this when he purchased the vehicle and when the vehicle was delivered.

[47] Within hours of delivery, Mr. Tigani noticed the engine light was on. He contacted Platinum and was told that either the light came on due to the missing catalytic converter or because he was driving the Mercedes too hard. According to information received by the respondent from Mr. Tigani, the engine light turned off within a short time and he drove the Mercedes the rest of the way to Saskatchewan.

[48] The engine light continued to come on and, in June 2021, Mr. Tigani took the Mercedes to a dealership in British Columbia who diagnosed a defective sparkplug and replaced it.

[49] On July 14, 2021, Mr. Tigani took the Mercedes to a dealership in Saskatchewan and they diagnosed that an exhaust valve in one of the cylinders had a hole burnt through it which was causing extreme heat in the head and a leak in the exhaust manifold. Repairs were completed at a cost of about \$9,000. Some of the repair costs were covered by a warranty Mr. Tigani purchased when he bought the vehicle, but he had to cover about \$4,700 of the repairs himself.

- [50] The Registrar makes a number of allegations with respect to the sale of the Mercedes. It says that Platinum sold the Mercedes to Mr. Tigani when it knew that there was a serious defect in the engine and without informing Mr. Tigani about the defect. It also alleges that Platinum should have paid Mr. Tigani for the cost of the repairs in excess of the available warranty coverage.
- [51] In addition, the Registrar alleges that, by failing to reimburse Mr. Tigani, Platinum also breached a condition of its registration which required it to resolve customer complaints in a manner which would bring it into compliance with the *Act* and the *Consumer Protection Act, 2002*. The Registrar also alleges that Platinum breached a condition of its registration by failing to notify the Registrar about Mr. Tigani's unresolved complaint within 30 days.
- [52] I am not satisfied that the serious defect discovered on July 14, 2021 was present when the Mercedes was sold to Mr. Tigani on April 27, 2021. Mr. Tigani did not testify at the hearing and there was insufficient evidence available from other sources to come to that conclusion on a balance of probabilities.
- [53] There was no expert evidence presented by the Registrar with respect to how the valve became damaged or when. There was very limited evidence presented with respect to what problems Mr. Tigani experienced after his initial complaint, how the Mercedes was driven by Mr. Tigani, or what symptoms the Mercedes was exhibiting before the damaged valve was discovered.
- [54] Aidan Kerslake is the service manager at the Mercedes Benz dealership in Saskatchewan which ultimately diagnosed and repaired the Mercedes. Mr. Kerslake is not a mechanic. He was not presented as an expert witness. He gave some evidence about what the mechanic who did the diagnosis and repairs told him but that evidence, even if it were accepted as probative, did not speak to how or when the engine damage occurred.
- [55] The vehicle was inspected by a Mercedes Benz dealer in June 2021 and their diagnosis was a faulty spark plug. No explanation was provided by the respondent for why the Mercedes Benz dealer was unable to diagnose the serious engine defect in June 2021, but at the same time Platinum knew or ought to have known about that defect two months earlier when the vehicle was sold. In fact, the inspection in June 2021 appears to be evidence that the engine defect may not have occurred until after the vehicle was delivered to Mr. Tigani.
- [56] I also find that the payment by the warranty company with respect to the damaged engine is evidence that that damage may not have pre-existed the sale of the vehicle. Pre-existing damage is excluded from warranty coverage. There was

evidence presented at the hearing that the warranty company investigated the warranty claim and I infer that they did not find sufficient evidence of pre-existing damage in order to deny Mr. Tigani's warranty claim.

[57] I am unable to conclude that the Mercedes was sold to Mr. Tigani with a defective engine as alleged or that the significant repairs that took place in July 2021 were, to the knowledge of Platinum, required when the Mercedes was sold to Mr. Tigani such that he should have been given notice of those defects and the required repairs.

[58] As a result of the above findings, I am unable to conclude that Platinum ought to have reimbursed Mr. Tagani for the cost of repairs which were not covered by the warranty. The vehicle was sold "as is" and as such there would have been no implied warranty that the engine was sound. Further, because Mr. Tigani did not give evidence at the hearing, we have no way of knowing what may have occurred in the three months between the time the Mercedes was purchased and when the damaged valve was discovered.

[59] I find that the Registrar failed to prove that the sale of the Mercedes and the refusal to compensate Mr. Tigani provides reasonable grounds for belief that Platinum will not carry on business in accordance with law and with integrity and honesty.

[60] The alleged breaches of the conditions of the appellants' registrations with respect to Mr. Tigani will be discussed below.

## **2. 2016 BMW X6**

[61] On August 29, 2021, Platinum sold a 2016 BMW X6 (the "BMW") to Alana Edgington for \$85,000. Ms. Edgington testified at the hearing.

[62] The Registrar alleges that when the vehicle was sold, it had serious defects in its engine cooling system which were not disclosed to Ms. Edgington. The Registrar alleges that, by failing to advise Ms. Edgington about the cooling system defects and by failing to make or fund repairs when those defects became known, there are reasonable grounds for belief that the appellants will not carry on business in accordance with law and with integrity and honesty.

[63] The appellants deny that they knew about defects in the BMW's cooling system and deny that they were obligated to make repairs to the BMW as alleged by Ms. Edgington. They take the position that Ms. Edgington should have taken the BMW

to a BMW dealership to have the issues she was experiencing assessed and that the repairs should have been covered by warranty.

- [64] I find that Platinum was aware that the BMW had an engine problem which resulted in the abnormal loss of coolant when the vehicle was sold and failed to advise Ms. Edgington about that problem. I also find that Platinum and Jalili unreasonably denied responsibility to assist Ms. Edgington by ensuring that the repairs were made or funding the cost of the repairs which were ultimately completed.
- [65] That there was a problem was apparent to Ms. Edgington almost immediately after delivery of the vehicle to Ms. Edgington. Within the first week after purchase, the BMW's coolant warning light came on and then the coolant had to be topped-up every few days after that because it was being depleted somehow. Given that the engine was losing coolant within a week of delivery to Ms. Edgington, it is likely that there was a problem when the vehicle was sold.
- [66] On September 8, 2021, Ms. Edgington sent a text to Platinum's service department advising of the problem and an appointment to inspect the vehicle was made for September 16, 2021. The vehicle was inspected at Platinum and no problem was identified. The BMW was delivered back to Ms. Edgington who continued to tell Platinum that there was a problem.
- [67] In my view, Platinum's responses to Ms. Edgington's concerns were inadequate. The fact that, within a week or two of the sale of the vehicle, the purchaser was having to regularly top up the engine coolant should have caused Platinum to recognize that there was clearly an issue that needed to be addressed. Instead, Platinum's response was to tell the customer that there were no problems and that the customer might have improperly topped up the coolant.
- [68] The evidence is that, when it became clear that Ms. Edgington was not satisfied with Platinum's assessment, Platinum's response was to suggest she take it to a BMW dealership and have them inspect the vehicle. No offer was made to her to have Platinum take the vehicle to the BMW dealership or pay for the inspection. In my view, in the circumstances Platinum should have taken responsibility to find the cause of the problem which it did not do.
- [69] On October 4, 2021, Ms. Edgington sent an email to Jalili and set out the history of the problem. She told Jalili that coolant levels were still going down quickly and that she had the vehicle inspected by Eurocharge Canada ("Eurocharge"), a service center which specializes in performance vehicles. By then Eurocharge told Ms. Edgington that there was a problem with the engine. Jalili's emailed response

was that he spoke with Eurocharge and was advised that there is “nothing wrong with the car” and he offered to give her a free oil change.

- [70] At the hearing, Jalili testified that when he called Eurocharge on October 4, 2021, he was told they did not know what the problem was, and that was the last Jalili heard of it. That is different than what he told Ms. Edgington in the above email and is more consistent with the evidence of Ms. Edgington and the mechanic at Eurocharge about their dealings as set out below. I find that, when Jalili told Ms. Edgington that Eurocharge advised him there was nothing wrong with the car, that was not the truth.
- [71] Ms. Edgington says that on October 7, 2021, Eurocharge told her that there were signs of combustion in the engine coolant, which is a sign of a bad head-gasket or a compromised cylinder head and that further inspection was required. On October 14, 2021, Ms. Edgington says that Eurocharge told her that there was damage in 3 cylinders and that was the cause of the coolant loss. This evidence was supported by the evidence of Joel Soloman, Eurocharge’s service technician who inspected and repaired the BMW, and who gave evidence at the hearing. It was also supported by an invoice for repairs to the cooling system dated October 15, 2021 from Eurocharge.
- [72] Eurocharge’s estimate for repairs to the BMW was in the amount of \$11,255.88 and details the required repairs which Mr. Soloman identified as all relating to the engine cooling system. Mr. Soloman says that, before working on the vehicle, he was advised that there was a cooling system issue and that the owner had to add coolant on a regular basis. He says that he ultimately diagnosed that the engine required a replacement of the head gasket. He confirmed that this repair was reflected in the repair estimate of \$11,255.88.
- [73] Mr. Soloman confirmed that while the vehicle was in the possession of Eurocharge, coolant had to be refilled every couple of days and that on compression testing and coolant was seen bubbling through the head gasket which should not have been occurring. When he took the engine apart, he identified the head gasket problem.
- [74] The appellant called Tihomir Dyankov, Platinum’s operations manager, as a witness at the hearing. He testified that Ms. Edgington started complaining about coolant leaks very soon after she purchased the BMW. He says the vehicle was inspected and no issues were found and that Platinum’s mechanics could not reproduce the issues Ms. Edgington reported. Mr. Dyankov says that the low levels of coolant and the coolant warning lights could be explained by differences in the outside temperature causing the coolant to contract at different times. He

also suggested that coolant may require frequent topping up even if there is nothing wrong with the engine.

- [75] Both Jalili and Mr. Dyankov stated that Ms. Edgington should have taken the vehicle to a BMW dealership to have it inspected when Platinum could find nothing wrong. They were critical of her for taking the vehicle to Eurocharge although neither of them suggested that Eurocharge was not a reputable service center.
- [76] To date, Platinum has paid nothing toward the repair of the BMW. They have not acknowledged that the engine issue was present when the vehicle was sold. In addition, they say Ms. Edgington should have had the vehicle repaired under a warranty it says may have covered the repairs. I note that it is unlikely that the warranty Ms. Edgington purchased with the BMW would have covered this damage since it pre-existed the sale and there was no evidence presented that there was any other warranty available to Ms. Edgington.
- [77] The evidence establishes that the BMW had a significant defect in its engine when it was sold to Ms. Edgington. I accept that the engine required a head gasket replacement and that the cost of repairs total \$11,255.88.
- [78] Moreover, I find it likely that Platinum knew the BMW had a problem with coolant levels before it was sold to Ms. Edgington and failed to advise her of that problem. After the issue with the coolant arose, Ms. Edgington says she looked through the file given to her by the Platinum salesman on delivery and found an estimate for repairs to the BMW's cooling system dated February 3, 2020 when the vehicle was owned by a previous owner. The complaint listed on the estimate is that the coolant was leaking and that the owner had topped it up four times in the span of one week. There is no evidence that this issue was repaired before the BMW was sold to Ms. Edgington.
- [79] Jalili and Mr. Dyankov deny being aware of that invoice as did the salesman who sold the vehicle to Ms. Edgington and who also testified at the hearing. They say it is possible the estimate was somewhere in the vehicle undetected by them while it was in their possession.
- [80] I find it more likely that the 2020 estimate for repairs was in the file given to Ms. Edgington at the time of sale. Mr. Dyankov admits that the interior of the vehicle would have been thoroughly cleaned before the sale. I think it likely that, if this document were in the vehicle when that happened, it would have been discovered. I also accept Ms. Edgington's evidence that she was not advised of this previous repair and note that the salesperson testified that he did not tell her about that repair as he was unaware of it himself.

- [81] In summary, I find that Platinum sold the BMW to Ms. Edgington when it knew there were defects in the engine's coolant system. I find that Platinum did not advise Ms. Edgington of the defects. I find that Jalili was not truthful with Ms. Edgington when he told her that Eurocharge advised him that they found nothing wrong with the vehicle and that Platinum and Jalili failed to accept responsibility for making repairs to the vehicle when it was clear that they ought to have done so.
- [82] I find Jalili and Platinum unreasonably refused to properly investigate the cause of the coolant loss after Ms. Edgington brought it to their attention, failed to acknowledge that they had some responsibility to rectify the problem or even to acknowledge that a problem existed at the time of sale when it was clear that was probably the case. I find Jalili and Platinum unreasonably failed or refused to make repairs to the vehicle when it was clearly their responsibility to do so once the problem was diagnosed by Eurocharge.
- [83] The fact that there might have been a warranty on the vehicle is irrelevant. It was not up to Ms. Edgington to investigate whether a warranty might or might not still be available to her arising out of repairs to the cooling system which may or may not have occurred prior to her purchase of the vehicle. It was also not her obligation to pursue compensation on the warranty she purchased at the time of sale, particularly since the fact that the condition was present when she purchased the vehicle probably makes the warranty inapplicable.
- [84] I find that the sale of the vehicle with the knowledge of a pre-existing engine defect is evidence that the Platinum will not carry on business in accordance with law and with integrity and honesty. I find Platinum's and Jalili's refusal to accept responsibility for repairs and to properly investigate and repair the defect in the vehicle to be evidence that Platinum and Jalili will not carry on business in accordance with law and with integrity and honesty.

### ***Breaches of Conditions***

- [85] I find that Platinum and Jalili breached conditions of their registration and are disentitled to registration pursuant to s. 6(1)(f) of the *Act*.
- [86] The parties agree that, as part of a settlement agreement between Platinum, Jalili and the Registrar related to a previous appeal of a Notice of Proposal, the registration of the appellants was subject to a number of conditions. The registrations of the appellants were ordered to be subject to those conditions by the Tribunal on May 12, 2021 in Tribunal file number 12555/MVDA. The conditions specifically state that Jalili shall be jointly and severally responsible for ensuring Platinum's compliance with its conditions of registration while he is an officer and

director of Platinum. The parties agree that the conditions of registration are signed by Jalili on his own behalf and on behalf of Platinum.

[87] The Registrar takes the position that Platinum and Jalili breached a total of nine of the conditions of registration. Three of the conditions which the Registrar says were breached were ones which apply specifically to the registration of Jalili. Six of the conditions were ones which apply specifically to the registration of Platinum in respect of which Jalili was to be jointly and severally responsible for ensuring compliance.

[88] Platinum and Jalili submit that there were no substantive breaches of the conditions of registration and that, if there were technical breaches, they were insignificant and not serious enough to warrant disentitlement to registration.

**1. Condition requiring that Jalili not trade in motor vehicles before completing OMVIC Certification Course**

[89] Condition number 2 in the conditions of registration provides that Jalili shall not trade in motor vehicles until he provides proof to the Registrar that he has successfully completed the OMVIC Certification Course with a mark of at least 80%.

[90] The parties agree, and the evidence shows, that Jalili received a letter from Georgian College confirming he completed the OMVIC Certification Course with a mark of 85% on October 15, 2021. Mr. Jalili agreed that he continued to purchase vehicles for the purpose of selling them through Platinum between May 12, 2021 and October 15, 2021.

[91] The Registrar says that by purchasing vehicles for Platinum, Jalili was engaging in trade in motor vehicles in breach of condition number 2.

[92] Jalili says he thought that condition 2 only prohibited him from selling motor vehicles to consumers and that purchasing vehicles for the purpose of resale did not qualify as trading in motor vehicles.

[93] The *Act* defines “trade” in s. 1(1) as including buying or attempting to buy motor vehicles. Mr. Jalili concedes that he now understands that buying motor vehicles was considered a trade for the purposes of condition 2.

[94] I do not accept that Jalili did not understand that he was trading in motor vehicles when he continued to buy vehicles for Platinum. He was a motor vehicle dealer for at least 10 years before 2021 and testified Platinum is probably the biggest used car dealer in Canada. Jalili is required to take continuing education courses



regularly. What constitutes trading in motor vehicles is so basic to the regulation of the motor vehicle sales industry that it is not credible for Jalili to suggest he was unaware that it includes buying motor vehicles for the purpose of selling them.

[95] I find that Jalili was in breach of this condition of registration.

**2. Condition that Jalili successfully complete within six (6) months both an anger-management course and a dispute-resolution skills course approved by the Registrar**

[96] Condition 6 provides that Jalili shall successfully complete within six (6) months both an anger-management course and a dispute-resolution skills course approved by the Registrar and that the Registrar will not unreasonably withhold his approval.

[97] The Registrar says that Jalili, to this day, has not completed either an anger-management course or a dispute resolution skills course nor has he sought the Registrar's approval for such a course.

[98] Jalili argues that a letter from his treating psychiatrist qualifies as an anger-management course and a dispute resolution skills course and that the Registrar impliedly approved the treatment provided by the psychiatrist as satisfying condition 6.

[99] Since the courses in question had to be completed within 6 months of May 12, 2021, they would have had to have been done by November 12, 2021 in order for the condition to have been satisfied. The parties agree that the Registrar was never asked by Jalili to approve a course he intended to take and never explicitly provided such approval.

[100] In or around April of 2022, Jalili submitted a letter from his treating psychiatrist, Dr. Nikola Grujich dated April 7, 2022, which states that he has followed Jalili in his outpatient practice since January 27, 2020, and sees him about every 6-8 weeks. Dr. Grujich states that, over the past years, he focussed his attention on addressing Jalili's anxiety and depressive mood symptoms and that Jalili struggles with impulsivity and affective dysregulation. Dr. Grujich writes that:

In our most recent sessions, we have paid closer attention to his emotional reactions and specifically anger. I have introduced various techniques to help manage his anger (Dialectical Behavioural Therapy informed). Thus far, they have provided moderate benefit...Last year, he

completed a course of Cognitive Behavioural Therapy with a psychologist at The Clinic on Dupont.

- [101] The Registrar did not advise Jalili that this letter satisfied condition 6, but Jalili says that, since his registration was later renewed, he took that to be implied confirmation that condition 6 had been satisfied.
- [102] I do not accept Mr. Jalili's position and find that he is in breach of condition 6.
- [103] The condition is clear in that two specific types of courses were to be taken, that the Registrar is to approve the courses, and that they are to be taken before November 12, 2021.
- [104] It also clear that Jalili never sought or received the Registrar's approval for treatment by Dr. Grujich before November 12, 2021 either explicit or implicit. After submitting Dr. Grujich's report, Jalili never asked the Registrar whether condition 6 was satisfied. In fact, an inspection was completed by OMVIC in May 2022, and the inspectors' written findings, which were provided to Jalili, included a statement that "Dealer must comply with s. 6 of the signed Conditions of Registration. Dealer to complete both an anger-management course and a dispute-resolution skills course approved by the Registrar".
- [105] I find that Jalili knew that he was not in compliance with condition 6 when he received the inspection report and findings.
- [106] I also note that, even if for some reason Jalili did not understand that the Registrar had not approved any courses as alleged by Jalili, or that the Registrar's position was that he was not in compliance with condition 6, the NOP dated September 14, 2022, specifically states that "Jalili was required by his conditions of registration to successfully complete (within 6 months) both an anger management course and a dispute resolution course approved by the Registrar...To date, Jalili has failed to commence and complete either course, thus breaching his conditions of registration." Jalili had taken no steps before this hearing to rectifying his non-compliance.
- [107] I also find that the suggestion that the letter from Dr. Grujich satisfies the condition is without merit. The letter gives no details with respect to when the anger treatment began, what the treatment entails, how many sessions were taken, what the goals of the treatment are, or how long the treatments are intended to continue. Moreover, there is no indication in the letter that any treatment was directed at dispute resolution skills, the second course required by condition 6.

[108] I find that Jalili has breached this condition of registration.

### **3. Platinum's obligation to disclose material facts**

[109] Condition 15 of the conditions of registration requires Platinum to acknowledge "that it is under a positive obligation to disclose in writing on the bill of sale all material facts about the vehicles it sells or leases to its customers, whether or not it agrees with the disclosure and whether or not the vehicle has been branded through the Ministry of Transportation. Material facts include, but are not limited to, ...any other material fact which would reasonably affect the customers decision to purchase or lease a vehicle...Platinum agrees to make its best efforts to research the history of all of its vehicles prior to sale to ensure all material facts are disclosed".

[110] The Registrar argues that Platinum failed to advise Ms. Edgington about previous coolant issues with the BMW as described above. I have found that Platinum knew about the coolant system defect and that Platinum did not disclose that information when the vehicle was sold to Ms. Edgington. I accept Ms. Edgington's evidence that she would not have purchased the BMW had she known about the engine problem and that such a defect would reasonably affect a customer's decision to purchase that vehicle. I find that Platinum did not make its best efforts to ensure all material facts were disclosed before the BMW was sold to Ms. Edgington.

[111] I find that Platinum is in breach of this condition of registration.

### **4. Condition that Platinum shall inform the registrar of any complaints which have not been resolved to the customer satisfaction within 30 days**

[112] Condition 19 states that Platinum shall inform the registrar in writing of any complaints it receives from its customers related to a trade and which have not been resolved to the customer satisfaction within 30 days of that complaint being made to Platinum.

[113] The Registrar argues that Platinum failed to advise the registrar about Mr. Tigani's complaint or Ms. Edgington's complaint as required.

[114] Platinum's position is that, by the time it realized that the complaints could not be resolved, both Mr. Tigani and Ms. Edgington had already reported the complaints to OMVIC and so reporting the complaint again would have been redundant.

[115] Although the appellants may be right that reporting the complaints were redundant, I find that Platinum failed to comply with the strict wording of this condition. It was

required to report the complaint in writing and it did not. This may be the least egregious of the breaches of condition, however it speaks to the general attitude of Platinum and Jalili of taking it upon themselves to determine whether or not a condition must be fully complied with or not.

**5. Platinum shall, at its expense...provide to Wolf Leuthner various parts**

- [116] Condition 25 provides that Platinum shall, at its expense...provide to Wolf Leuthner the following parts for a 2015 Mercedes-Benz...within thirty (30) days...Wolf Leuthner will have the parts which are removed from the vehicle and replaced with the above given to Platinum.
- [117] Jalili says that he left compliance with this condition in the hands of his father who was dealing with a small claims lawsuit involving Mr. Leuthner's family at the time. He alleges that he assumed the matter had been taken care of and later found out that Mr. Leuthner had died in August 2021 and that the vehicle had been sold. He alleges that it was not possible to comply with this condition.
- [118] I find that Platinum is in breach of this condition. No evidence was presented as to the steps taken to provide the parts to Mr. Leuthner during the 30 days in which the parts were to be delivered or at any time before Mr. Leuthner died. Jalili says he could not later comply with the condition because the vehicle had to be brought into Platinum so that the parts could be installed and that was no longer possible. However that is not what the condition calls for. The condition requires the parts be provided to Mr. Leuthner and then, after they were installed, Mr. Leuthner was to bring the old parts to Platinum.
- [119] Jalili could have called OMVIC and asked what he should be doing if there was any doubt, but Jalili did not do that. He again, decided that the condition no longer had to be fulfilled.
- [120] I find that Platinum is in breach of this condition.

**Other conditions**

- [121] In addition to the above, the Registrar took the position that Platinum breached a condition that it designate a person who shall be responsible for dealing with customer complaints arising from trades of vehicles, that Jalili not be involved in dealing with complaints without the customer's consent in writing, and that the person designated as being responsible for dealing with customer complaints shall ensure that each complaint is resolved in such a way as to bring Platinum into compliance with the Act, the *Consumer Protection Act*, and the *Sale of Goods Act*.

[122] In my view, the Registrar has not satisfied me that these conditions were breached by Platinum. Given my findings above, I will not detail the evidence presented with respect to the compliance with these conditions.

**Platinum and Jalili are not entitled to registration**

[123] I have found that Jalili has breached the conditions of his registration as a motor vehicle salesperson in that he:

- i. traded in motor vehicles before successfully completing the OMVIC Certification Course with a mark of at least 80%; and
- ii. failed to successfully complete within six (6) months both an anger-management course and a dispute-resolution skills course approved by the Registrar.

[124] I have found that Platinum has breached the conditions of its registration as a motor vehicle dealer in that it:

- i. failed to disclose in writing on the bill of sale all material facts about the vehicles it sells or leases to its customers;
- ii. failed to inform the registrar in writing of complaints it received from its customers related to a trade and which had not been resolved to the customer satisfaction within 30 days of that complaint being made to Platinum; and
- iii. failed to provide to Wolf Leuthner the required parts for a 2015 Mercedes-Benz within thirty (30) days.

[125] Under s. 6(1)(f), if a registrant is in breach of a condition of the registration, then they are not entitled to registration under the *Act*. Both Jalili and Platinum are in breach of conditions of their registrations and are not entitled to registration under the *Act*.

[126] I have also determined that the actions of Platinum and Jalili with respect to their dealings with Ms. Edgington are evidence that Platinum and Jalili will not carry on business in accordance with law and with integrity and honesty, and therefore Platinum and Jalili are not entitled to registration according to s. 6(1)(a)(ii) and s. 6(1)(d)(iii).

### **Registration with conditions is not appropriate in this case**

- [127] The Registrar and the Tribunal have the statutory discretion to consider the appellant's circumstances and determine whether the public interest requires outright refusal of registration or whether the public interest can be adequately protected through granting registration with conditions. The Tribunal owes no deference to the Registrar's position of seeking refusal of registration.
- [128] In my view, the breaches of conditions and the conduct of Platinum and Jalili affords grounds for belief that they will not act in accordance with the law, integrity and honesty are serious. They are even more serious in the context of the registration history of Platinum and Jalili.
- [129] The conditions breached by the appellants were imposed in the course of a Tribunal proceeding in respect of a Registrar's Notice of Proposal to revoke the appellants' registrations. Previously, the appellants were fined a combined total of \$24,500 by the Discipline Committee for breaches of advertising requirements under the *Act*. In 2018 there was Notice of Proposal to suspend registrations of Platinum and Jalili.
- [130] Jalili has consistently failed to recognize the authority of the Registrar as a regulator. He failed to bring himself into compliance with the educational requirements of his conditions of registration even when he knew he was in default of those conditions. He continued to trade in motor vehicles despite the clear condition that he does not do so until he brought himself into compliance with the conditions.
- [131] Platinum failed to disclose on a bill of sale an engine defect which resulted in a repair estimate of almost \$12,000 within two months of the sale in breach of a condition of registration. It also failed to notify the Registrar in writing of unresolved complaints and did not comply with a condition for the provision of certain parts to a consumer without making any determination as to whether the Registrar found its excuse to be satisfactory.
- [132] In my view, registration along with the imposition of conditions would not be sufficient in the circumstances. The appellants have demonstrated that they cannot be relied on to comply with conditions and that they are likely to simply decide themselves which conditions to comply with and which ones need not be complied with.
- [133] Further, the conduct upon which my finding that there are reasonable grounds for belief that Platinum and Jalili will not carry on business in accordance with law,

integrity and honesty arises largely out of their failure to comply with their obligations under the *Act*. The requirement that defects be disclosed to consumers is an important requirement under the *Act* and plays a central part in the protection of consumers. The failure of Platinum and Jalili to comply with this basic obligation under the *Act* makes it even more unlikely that conditions imposed by this Tribunal would be honored.

[134] I find that the appellants have presented no basis in evidence for the Tribunal to conclude that registration with conditions would be appropriate or would adequately protect the public.

### **Conclusion**

[135] I conclude that the Registrar has satisfied its burden of proving that the past conduct of the Jalili affords reasonable grounds for belief that he will not carry on business as a motor vehicle salesperson in accordance with law and with integrity and honesty.

[136] I find that the Registrar has satisfied its burden of proving that the past conduct of Jalili affords reasonable grounds for belief that Platinum will not carry on business as a motor vehicle dealer in accordance with law and with integrity and honesty.

[137] I find that Jalili and Platinum breached conditions of their registration.

[138] I find that Jalili and Platinum are not entitled to registration under the *Act* as a motor vehicle salesperson or a motor vehicle dealer respectively.

[139] I conclude that the appropriate remedy is revocation of registration and not registration with conditions.

**ORDER**

[140] Pursuant to s. 9(5) of the Act, the Tribunal directs the Registrar to carry out its proposal to revoke the registration of Jalili as a motor vehicle salesperson and of Platinum as a motor vehicle dealer.

LICENCE APPEAL TRIBUNAL



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**Colin Osterberg**  
Vice-Chair

***Released: February 16, 2024***