Licence Appeal Tribunal
Tribunal d'appel en matière de permis

Ontario

DATE: 2012-05-29
FILE: 6239/MVDA
CASE NAME: 6239 v. Registrar, *Motor Vehicle Dealers Act 2002*

An Appeal from a Notice of Proposal by the Registrar, *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B - to Refuse Registration

1775091 ONTARIO INC.
O/A CANADIAN BEST AUTO INC.
AND HADI MAHMOODI

Applicant

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: D. Gregory Flude, Chair

APPEARANCES:

For the Applicants: Douglas Allen and Joran Gold, Paralegals

For the Respondent: Angela Laviola, Counsel,

Heard in Toronto : April 18 – 21, October 3, 2011
February 13 -15, 2012
May 7 – 11, 15 and 17, 2012

REASONS FOR DECISION AND ORDER

The Applicants, 1775091 Ontario Inc. o/a Canadian Best Auto Inc. and Hadi Mahmoodi appeal to this Tribunal from a decision of the Registrar under the *Motor Vehicle Dealers Act, 2002*, S. O. 2002 c. 30 Sched. B (the "Act") dated August 23, 2010 to revoke the registration of the corporate Applicant as a motor vehicle dealer and of Mr. Mahmoodi as a salesperson.

The original Notice of Proposal to Revoke1 has been modified by the withdrawal of a number of allegations and it has been supplemented by three Notices of Further and Other Particulars: one dated March 31, 2011,2 one dated September 19, 20113 and the third dated December 16, 2011.4

There were 24 paragraphs of particulars set out in the Notice of Proposal. Of these, 11 were withdrawn at the commencement of the hearing. The withdrawn allegations are set out in paragraphs 6 through 10, 12, 14, 15, 16, 19 and 23. The March 31 Notice added another 16 paragraphs of particulars; the September 19 Notice added 13 more; and the December 16 Notice added another 13. During the hearing, the Registrar withdrew several of the particulars in the September 19 Notice, in particular, paragraph 5 concerning Consumer V and paragraphs 12 and 13 relating to Consumer AA. The allegations relating to the Applicants may be broken down as follows:

1. Allegations relating to consumer complaints, in particular, the failure to provide a basic warranty of fitness for purpose;
2. Allegations relating to failure to properly complete and deliver bills of sale to consumers in accordance with the Act and regulations; in particular:
   a. Failure to disclose financing terms,
   b. Failure to disclose all of the fees and charges relating to the sale of a vehicle
   c. Failure to disclose material facts, especially damage history,
   d. Accepting deposits from consumers and failing to provide a bill of sale, and
   e. Failure to provide a bill of sale to consumers despite the completion of the sale and delivery of the vehicle;
3. An allegation relating to fraudulently signing a consumer's name to a bill of sale and delivering the bill of sale to OMVIC to defend against the consumer's claim for the return of a deposit;
4. Allegations against Mr. Mahmoodi relating to acting a salesperson under the Act when he was not registered to do so;

---

1 Ex 1
2 Ex 4
3 Ex 18
4 Ex 19

5. An allegation that the Applicants carried on the business of selling cars during the period following October 3, 2011 when their registration to do so was suspended by this Tribunal;
6. Allegations that the Applicant deliberately delivered falsified documents to OMVIC with the intent to mislead OMVIC when dealing with consumer complaints.

At the recommencement of the hearing on May 7, 2012, Mr. Gold advised the Tribunal that he could no longer represent the Applicants but that he was prepared to remain at the Applicants' table to assist. The Applicant, Mr. Mahmoodi, was advised that the Tribunal would adjourn the matter for him to seek new legal representation but he chose to proceed without legal representation.

BACKGROUND FACTS

The background facts are not in dispute. Mr. Mahmoodi is the sole officer and director of the corporate Applicant. He was registered as a salesperson and the corporate Applicant was registered as a dealership on December 15, 2008. The corporate Applicant signed terms and conditions of registration on December 14, 2008. Within four months of registration, the Registrar began to receive complaints from consumers about the Applicants.

The Tribunal heard from a number of consumer witnesses with respect to their dealings with the Applicants. In the Notices, to protect their privacy, these consumers are identified by letters of the alphabet. As far as possible the Tribunal will use the same lettering system as set out in the various Notices to identify consumers who testified before it or whose complaints were dealt with in the evidence.

EVIDENTIARY ISSUE

In the course of these reasons, the Tribunal has referred to the evidence of an expert in the CarProof system, Paul Maiorana. Mr. Maiorana's evidence was advanced by the Registrar as reply evidence following the Registrar's motion for leave to introduce reply evidence. The Registrar's justification for the need to proffer this evidence arose out of the examination of Ms Farrah Mohammed. Ms Mohammed was cross-examined aggressively on the contents of a CarProof report she had ordered prior to giving evidence at the Tribunal. That report showed a history of damage to a vehicle while the bill of sale for the vehicle prepared by the Applicants indicated no damage history. In handling the consumer complaint, Ms Mohammed had testified that she had asked the Applicants to forward a copy of a CarProof report that they alleged showed no damage to the vehicle. She testified that the Applicants had not sent it. At the request of the Applicants, the Registrar recalled Ms Mohammed to the stand after she had a chance to search the OMVIC database to see if the Applicants had sent further documents as they alleged.

On Ms Mohammed's recall she indicated that she had discovered other documents and that evidence is canvassed below. The Applicants' then produced, and put a CarProof report to her that purported to be issued on June 9, 2010 that was silent as to a damage history. Ms Mohammed had no explanation for why the OMVIC CarProof report issued in September 2011 showed damage prior to June 9, 2010 that did not appear on the Applicants' report. It was in response to this evidence that the Registrar sought to tender the evidence of Mr. Maiorana in reply.

The Federal Court has recently had to consider the admissibility of reply evidence in the case of *Merck-Frosst-Schering GP MVIA v. Canada (Minister of Health)* [2009] F.C.J. No. 1092, 2009 FC 914, 79 C.P.R. (4th) 100, 180 A.C.W.S. (3d) 489. In that case, Novopharm, a respondent in the underlying action, had sought leave to file affidavit evidence in reply and had been denied at first instance by the Prothonotary. On appeal to the Federal Court, the Court upheld Novopharm's appeal and in doing so, at paragraph 10 of the decision, set out a four part test for the admissibility of reply evidence which the Tribunal finds persuasive, as follows:

> [10] In considering the motion to file reply evidence, the Prothonotary correctly set out the relevant test as enunciated in *Pfizer Canada v. Canada (Minister of Health)*, 2007 FC 508 (CanLII), 2007 FC 508, *Eli Lilly Canada v. Apotex Inc.*, 2006 FC 953 (CanLII), 2006 FC 953, and other decisions of this Court. The test has four components as follows:
>
> (i) whether the further evidence serves the interests of justice;
>
> (ii) whether the further evidence assists the Court in making its determination on the merits;
>
> (iii) whether granting the motion will cause substantial or serious prejudice to the other side; and
>
> (iv) whether the reply evidence was available and/or could not be anticipated as being relevant at an earlier date.

In considering the interest of justice, it would be easy to collapse this test into the second branch. Making a final determination on the merits is the goal of all litigation before tribunals and courts and can, therefore be said to serve the interests of justice at a most fundamental level. In this case, the Tribunal can say with certainty that the evidence was of great assistance to the Tribunal in making a determination on the merits. The Tribunal is of the view that the first test is somewhat broader. It may be restated that it would be unfair to both the party advancing the evidence and the Tribunal if the evidence is not admitted. The Tribunal finds that to permit the Applicants to tender the impugned CarProof report of June 9, 2010 without giving the Registrar the ability to respond would work such unfairness.

The Applicants did not assert that admission of Mr. Maiorana's evidence would be prejudicial. Recognizing that at the time of the Registrar's motion the Applicants did not

have legal representation, the Tribunal must fill the gap to some extent. The impugned document was advanced by the Applicants. Mr. Maiorana's evidence went to the manner in which CarProof reports are prepared and delivered. This process was well known to the Applicants and there can be no surprise or prejudice arising out of such evidence. The substance of Mr. Maiorana's evidence concerned possible alteration of the June 9, 2010 CarProof report by the Applicants. Given the fact that the impugned June 9, 2010 CarProof report was produced by the Applicants, details of its provenance and potential alteration cannot come as a surprise to the Applicants. The Tribunal can find no basis for substantial or serious prejudice.

The final test creates the question of who knew what and when. Approaching the case, the Registrar was aware that a September 2011 CarProof report showed an accident history. It was not until the case was underway and the Applicants produced the impugned CarProof report that the Registrar's attention could have been drawn to the possibility of tampering. The Tribunal is of the view that the impugned CarProof report could not have been anticipated prior to hearing and is properly reply evidence.

Mr. Maiorana testified concerning accident damage in two other cases. In one of those cases, the Applicant testified that he did not order a CarProof report but had ordered a competing product, a CarFax report. In the second case, he denied knowledge of an accident history. Again, Mr. Maiorana's evidence addresses issue raised for the first time in the Applicants' evidence and it meets the test for reply evidence set out above.

EVIDENCE

The Registrar's first witness was Chad Puddicombe. Mr. Puddicombe is an inspector with the Ontario Motor Vehicle Industry Council (OMVIC), the office of the Registrar under the Act. He spends all of his time in the field ensuring compliance with the Act and with the *Consumer Protection Act* ("CPA"). On January 8, 2009, he made a routine unscheduled new dealer visit to the Applicants at their new premises at 1900 Wilson Avenue in Toronto. He met with Mr. Mahmoodi and discussed the obligations of new dealerships under the Act, the *Standards of Business Practice* and the CPA. Mr. Puddicombe felt that he developed a rapport with Mr. Mahmoodi, noting that Mr. Mahmoodi liked to use the name "Mike."

In Mr. Puddicombe's experience, new dealers have a great many questions and he spent an hour with Mr. Mahmoodi outlining the regulatory scheme, the terms and conditions of registration, the garage register and the keeping of books and records. He specifically dealt with the concept of fitness for purpose under the CPA, as well as liquidated damages and transaction fees. Mr. Mahmoodi appeared to be satisfied with all of his explanations and did not ask for further details.

About two weeks later, on January 29, 2009, he met with Mr. Mahmoodi again. On this occasion, Mr. Puddicombe was visiting another dealership that shared space with the Applicants. He took the opportunity to discuss the mandatory requirement for a refund within 90 days in the event there has been material non-disclosure. He delineated the

grounds for a refund as: vehicle does not match the description; the vehicle has been used as a fleet car; or the branding classification on the vehicle has not been disclosed. He advised Mr. Mahmoodi that he might sell anything he wished to sell as long as he gave full disclosure. Part of the discussion on January 29 dealt with all-in pricing. Mr. Puddicombe pointed out that, under the Act, the Applicants must provide a bill of sale that splits out individual fees and charges. He explained that a single price on the bill of sale is not permissible under the Act.

Mr. Mahmoodi testified concerning his dealings with Chad Puddicombe. According to Mr. Mahmoodi, on no occasion did Mr. Puddicombe conduct a visit to his premises specifically to see him. On each occasion, Mr. Puddicombe was visiting another dealer with whom the Applicants shared premises. Incidental to these visits, Mr. Puddicombe struck up a conversation with Mr. Mahmoodi focused on a common interest in physical fitness. Mr. Puddicombe, according to Mr. Mahmoodi, never covered any of the topics listed above. His overall evidence was that OMVIC provided no back-up or training for him as an inexperienced dealer starting out in the industry. OMVIC failed to offer seminars, counseling or written advice. Mr. Mahmoodi stated that he did not receive mailings sent out from OMVIC such as dealer bulletins or the OMVIC quarterly newsletter.

Consumer S testified concerning his experiences with the Applicants. In the fall of 2010 Consumer S was looking to purchase a 3 series BMW. He is not resident in Toronto so when he came to Toronto looking for this type of vehicle he went to a number of dealerships. The Applicant dealership was the last one he visited. He met with someone named Rahmic5 who showed him a 1999 BMW 323*i*. He test drove the vehicle with Rahmic and liked it. He did point out a number of issues and Rahmic undertook to deal with them. Rahmic stated that if he were to pay a $300.00 "safety fee" the vehicle would be perfect when picked it up. In particular, Rahmic stated that the vehicle would have had an oil change, a broken driver's side mirror would be fixed, a hole in the rear turn signal lens would be repaired and a clunking noise in the trunk would be remedied. Rahmic showed Consumer S a copy of a CarProof report indicating that the vehicle had no damage history but did not provide a copy.

Consumer S met with the Applicant, Mr. Mahmoodi to finalize terms. In addition to the $300.00 safety fee, Consumer S paid a $500.00 deposit and paid for the plates. After dealing with Rahmic, a bill of sale was made up for the sale price but there is no mention of the safety fee or any other fee.6 Only the $500.00 deposit is mentioned. There is also no mention of any damage history disclosure.

On pick-up about a week later, despite Rahmic's reassurance that everything was fixed, Consumer S noted that the mirror was still broken. Rahmic fixed it. A warning light illuminated on the dash as soon as Consumer S took the vehicle. Rahmic advised that it was a traction control light. Pushing the traction control button seemed to address the issue.

---

5 Rahmic's handwritten business card was entered as Ex 8

6 Ex 6, Tab 10 p.52

By the time Consumer S left for home it had started raining. He noted that at 116 kph on a 400 series highway the vehicle appeared to drift. If he slowed down to 96 kph the problem appeared to resolve. He pulled over but everything appeared to be in good order so he continued. His son then took the vehicle and had problems with it.

Consumer S called Mr. Mahmoodi, whom he know as Mike, to talk about the problems. Mr. Mahmoodi appeared to be very concerned and suggested he bring the vehicle back to the Applicant's premises for inspection and repairs. Because of the distance, Consumer S was reluctant to do so and it was agreed that he would take it, at his expense, to a local facility to be checked out. The local tire dealer he took it to stated that the vehicle should not have passed its safety inspection because of the tires. The next morning, a mechanic described the tires as "barely legal" and advised against driving the vehicle to Toronto. The consumer called Mr. Mahmoodi to ask for new tires and suggested they split the cost.

Within a week and with less than 400 km on the odometer since purchase, the vehicle broke down while being driven by the consumer's son and had to be towed to a repair facility. At this time, Consumer S was away on vacation. The repair facility identified a need for new fuel lines, fuel pump and fuel filter. The repair facility also identified worn bushings in the back end of the vehicle that were the cause of the clunking noise in the trunk that was supposed to have been fixed before delivery. The total cost of repairs including four new tires was approximately $1700.00 plus tax.

When Consumer S called Mr. Mahmoodi from out of the country, Mr. Mahmoodi yelled at him that he was not responsible and hung up the phone. Consumer S called back several times but no-one answered. Finally, he called from another number. Mr. Mahmoodi answered the new line and was much more reasonable. He told Consumer S to bring the vehicle back to Toronto. By this time, Consumer S had exhausted any confidence he had that the Applicants would provide compensation. He chose to advance his complaints through the OMVIC complaint handling service rather than deal directly. All further dealings with the Applicants were through OMVIC.

On December 11, 2010 the vehicle was vandalized and was out of service for a month in a body shop in the consumer's neighborhood. In light of this, it came as a surprise to Consumer S when OMVIC forwarded a repair bill dated December 17 that indicated the car had been repaired in Toronto at a cost of $565.00. When Consumer S failed to pay for this repair bill, the Applicants threatened and then registered a lien against the vehicle for $1,000.00 in the name of Consumer S and his son, the latter never having had any ownership of the vehicle.

Following notification of the lien, Consumer S decided to do some further checking. He obtained a CarProof report that indicated that the vehicle had been in an accident and had sustained $4,829.00 of damage. A BMW dealer advised him that the accident would result in a loss of value of approximately $1,500.00. Consumer S called Mr. Mahmoodi and asked him for the $1,500.00 loss of value. He was offered $400.00 and

threatened that if he pushed for $1,500.00 the Applicants would seek to enforce the lien.

Consumer S contacted the repair facility about the $565.00 bill. He spoke to the service manager, Cameron. Cameron advised Consumer S that Mr. Mahmoodi had requested copies of the bill but that the car the dealership had worked on was black, whereas Consumer S's vehicle was silver.7

The day after the discussion with Cameron, Mr. Mahmoodi called Consumer S and advised him that he was removing the lien. Because of the toll taken on Consumer S and his wife by the course of the dealings with Mr. Mahmoodi, Consumer S decided to offer to settle for $900.00. This offer was accepted, but Mr. Mahmoodi subsequently stated that his lawyer wanted some substantial documentation of the settlement. To the date of this witness's testimony, no letter had been sent to Consumer S.

Mr. Mahmoodi addressed his dealings with Consumer S when he testified. He confirmed that he had made an offer to settle. In his examination-in-chief, he stated that the amount that Consumer S accepted was $400.00 but during cross-examination he confirmed the amount of $900.00. He also confirmed that it had never been paid despite the lapse of over a year since the offer was accepted.

With respect to the safety and other defects with the vehicle, Mr. Mahmoodi denied that he refused to repair them. He also denied any agreement to have the vehicle taken to a local mechanic for repairs. He stated the he told Consumer S to bring the vehicle back to Toronto where the Applicants' mechanic could look at it. He stated that he was willing to repair any problems relating to the safety certificate, but only if his mechanic told him it was necessary. He also stated that it was his policy to fix any pre-existing problems with vehicles he sold following inspection by his mechanic. He needed to confirm that the defects were actually pre-existing and not as a result of incorrect boosting or hosing down of the engine by the consumer. Given that Consumer S had had a new fuel pump, fuel filter and fuel lines installed, it is difficult to fathom how boosting the car battery or hosing down the engine could cause such damage.

With respect to Consumer S's allegations of rudeness and lack of professionalism, Mr. Mahmoodi stated that he was never rude. Sometimes his accent on the phone may come across as being abrupt but that is not his intention.

It was Mr. Mahmoodi's evidence that he put the lien on in good faith. He was out of the country during the time when the work was done. He had asked his mechanic to look over the car if Consumer S brought it back and carry out the necessary repairs. On his return, he saw the repair bill and assumed it was work done by the mechanic to fix earlier identified issues. When Consumer S reported the failure to disclose the

---

7 The Tribunal notes that the repair invoices alleged to relate to this repair total about $300.00 for parts and labour and are detailed. The Applicants' invoice has no explanation of the charges and is for $500.00 plus taxes. See Ex 6 tab 10 pages 82 to 84 and 89

accident history to OMVIC, Mr. Mahmoodi decided to register a lien. As soon as the mistake was clarified, he removed the lien.

Mr. Mahmoodi testified that he was unaware that the vehicle had an accident history. He produced, for the Tribunal to see, an Auction Bill of Sale relating to his purchase of the car. It notes no accident damage.8 He also produced a Car Fax report that shows no damage.9 He stated that when he found out about the damage history, he contacted Consumer S and advised that he was sorry, he had no intention to mislead and that he wished to offer some compensation. It was this discussion that ultimately led to the offer of $900.00.

In the face of Mr. Mahmoodi's denial that he was aware of the accident damage, in reply evidence, Paul Maiorana, a representative of CarProof testified on behalf of the Registrar. Mr. Maiorana is the Sales and Business Development Manager for CarProof. He has been there for 8 years and is currently CarProof's longest serving employee. Mr. Maiorana is also the salesperson with responsibility for the Toronto area. He stated that Toronto is a mature market for CarProof so he spends most of his time doing training and product promotion rather than selling. He described the manner in which CarProof develops vehicle reports, their sources of data and the manner in which reports are delivered to customers and then archived.

Mr. Maiorana stated that CarProof was formed in 2000 to conduct lien searches on used cars on a Canada-wide basis. It was soon recognized that adding an accident and registration history search would provide added value. CarProof now provides Canada-wide lien, registration, vehicle branding, insurance and accident information. It is unlike other vehicle search services in that it does not download data onto its own website and then respond to an information request. Search requests are conducted in real time with data being downloaded into the vehicle report direct from the data source, whether that be from provincial government databases, insurance company databases or repair facility databases. Accordingly, a CarProof report always contains the most up to date information, not information that may have become stale because of a lag in updating a central database.

Mr. Maiorana then described how dealers access CarProof. Each dealer is assigned a user name and a password. In the case of the Applicants, their user name was Hadi58. Once a report is requested on a particular Vehicle Identification Number (VIN), CarProof seeks information from multiple databases and populates the report template with the information. This process may take some time depending if the databases are online or offline due to some problem. As the search is ongoing, there is a notation on the report that it is incomplete and information regarding the databases that have not yet reported.10 Once all databases respond, CarProof locks that particular report and

---

8 Ex 26

9 Ex ?? Vol 2, Tab 10, Page 92

10 An example of an incomplete report may be seen at Ex 22. On the face of the report is a notation "Incomplete Reporting" and in the Data Reporting line an entry indicates that the Yukon database has not yet reported.

assigns a unique report number to it with the date and time when it was requested by the dealer. The dealer may access the report for six months. Thereafter, it is archived in the CarProof system and may only be accessed by CarProof employees. Of note is the fact that the report cannot be altered on the CarProof system once all databases respond.

Mr. Maiorana then produced a printout of all the CarProof enquiries relating to 3 VINs in issue in this proceeding.11 One of those VINs was the vehicle purchased by Consumer S in the fall of 2010. The report indicated that the Applicants had requested a CarProof report regarding this vehicle on June 9, 2010 at 12:12 p.m. Mr. Maiorana then produced the report from the CarProof archives.12 The report indicates that the vehicle purchased by Consumer S had been in a collision and sustained $$4,829.00 of damage on September 28, 1999. The other reports referenced in Exhibit 33 will be addressed later in the review of the evidence.

Amy Thrasher testified in her capacity as an OMVIC Complaint's Handler. In dealing with the complaint of Consumer S, she set out a number of areas that caused her concern. She was concerned that the vehicle had been misrepresented to Consumer S by the failure of the Applicants to disclose the damage history. She was concerned that the Applicants used the services of an unregistered salesperson, Rahmic, in dealing with Consumer S. Mr. Mahmoodi denied the fact that Rahmic worked for him or showed the vehicle to Consumer S. She was concerned that the Applicants had produced and tried to use in negotiations a repair invoice when the vehicle was several hundred kilometres from Toronto when the repairs were allegedly carried out. Finally, she was concerned that the Applicants had registered a lien against the vehicle in the name of Consumer S and his son, despite the fact that no repairs could have been done to the vehicle.

The notes and other documents relating to Ms Thrasher's dealings with Consumer S and the Applicants are set out in Exhibit 6 at Tab 10. For the most part, her notes and recollection track the evidence of Consumer S as far as her dealings with Consumer S go. She reviewed the repair bill that became the basis for the lien at page 83 and noted that the parts on the bill relate to a 2004 BMW 320*i* whereas Consumer S had purchased a 1999 BMW 323*i*. When she raised these issues with Mr. Mahmoodi, she found him very difficult to deal with. His discussions were fraught with contradictions and, in her view, dishonesty.

In cross-examination, Ms Thrasher addressed the vehicle damage history issue. She was shown a Car Fax report dated May 2010. This report does not show any damage history. She conceded that the Applicants might have relied on this report and sold the vehicle in the belief that it had no damage history. In her view, reliance on one vehicle report was insufficient due diligence for a dealer. She noted that the vehicle had been damaged while it was owned by BMW Canada. She stated that the sales invoice from BMW Canada would have recorded the damage history of the vehicle and that the

11 Ex 33
12 Ex 37

Applicants should have checked the earlier invoice trail. She was also of the view that a dealer should probably run a Car Fax report and a CarProof report. The former is a US company and the latter is Canadian. Sometimes information will be included in one report that is not included in another.

When testifying about the fact that the vehicle broke down within a week and 400 km of being purchased, Ms Thrasher felt that the vehicle was not fit for its purpose under the CPA. In her view, the Applicants should have done more when confronted with the breakdown to satisfy their obligations under the legislation to make the consumer happy. She was similarly unimpressed when addressing the repair invoice. While she conceded that the Applicants may have genuinely believed that the repair invoice related to the vehicle, she felt the Applicants should have exercised more due diligence to confirm that was the case, especially before putting a lien on the vehicle for an amount well in excess of the face value of the invoice.

Consumer O testified concerning a 2005 Nissan she purchased on July 10, 2010. She met with Mr. Mahmoodi after having seen an on-line advertisement for the vehicle. When she went to look at the vehicle she was asked for a $500.00 deposit. She was not allowed to test drive it. She provided a $500.00 cheque for the deposit. She then made two payments by money order in the amounts of $4,000.00 and $2,000.00 and paid a balance of $1,500.00 in cash when she picked up the vehicle.

On the drive home from the Applicants' place of business, a warning light illuminated and the car stalled repeatedly. Consumer O called Mr. Mahmoodi and he asked her to bring the car back. The next day, the car shut down totally. Consumer O could not afford an estimated $400.00 to tow the vehicle to Canadian Best Auto so it was towed to a local mechanic. The mechanic stated that the car was not safe. There was no air filter, the tires were bald and the muffler was rusted. With respect to the engine light, the mechanic advised that there was a crankshaft sensor problem. The total amount for towage, inspection and repairs was $476.00. The inspection showed two bald front tires, two rear snow tires, a badly rusted muffler, the right side floor badly rusted and wiper blades in need replacement.13

As a consequence of the need to pay for these repairs, Consumer O had insufficient funds to pay for the $500 deposit cheque when it was presented to her bank for payment. In her discussions with Mr. Mahmoodi, she advised him of this fact and asked him not to deposit it. Mr. Mahmoodi ignored that request and the cheque was subsequently dishonoured by the bank.

Consumer O's other dealings with Mr. Mahmoodi were generally unsatisfactory. Following her initial contact concerning the engine light, Consumer O contacted Mr. Mahmoodi on the day the vehicle was towed to the local garage. He was at an auction so he stated he could not deal with her. Subsequently, Consumer O made calls that went unanswered. At one point, Mr. Mahmoodi threatened to call the police if Consumer O called again. Consumer O contacted OMVIC and dealt with Justin Brown.

13 Ex 12

Consumer O was informed by Mr. Brown that the Applicants would not cooperate and had threatened to put a lien on the vehicle for the installation of tinted glass and an alarm at a cost of $500.00. Subsequently, the Applicants filed a lien for $750.00. The Tribunal is unaware of the status of the lien.

Consumer O stated that she thought that she had a power train warranty. Exhibit 10, Consumer O's bill of sale, states clearly that she has a 24 month, 24,000km Autogard warranty with the words "Power Train" entered below the time and mileage details. No separate amount to be charged for the warranty is set out in the "Third Party Warranty" section of the bill of sale. Consumer O stated that when she contacted Autogard she was told that no warranty existed for this vehicle.

Justin Brown testified in his capacity as the OMVIC Complaints Handler who handled Consumer O's complaint.14 Consumer O contacted Mr. Brown in tears as a result of her experience with the Applicants. He contacted Mr. Mahmoodi to discuss the situation. Mr. Brown stated that Mr. Mahmoodi was very unprofessional in his description of Consumer O, using racial and sexist epithets and referring to her as a "crook" and "a garbage customer." Mr. Mahmoodi advised that the bill of sale relating to this vehicle was stamped: "Please Note that the dealer is not responsible for engine lights or any electrical problems after delivery."15 While Mr. Brown did not discuss this stamp with the Applicant, he advised the Applicant that he could not contract out of his obligations under the Act and regulations or under the CPA.

Mr. Brown advised the Tribunal that, in the end, he was unable to resolve this complaint since the Applicants were not prepared to take any steps to compensate the consumer. The Applicants placed a lien in the amount of $600.00 on the vehicle and put the matter into the hands of a collection agency. With respect to the warranty set out in the bill of sale, it was Mr. Brown's evidence that he was advised by Mr. Mahmoodi that the warranty was thrown into the deal without charge and the Applicants would not submit the warranty to the warranty company.

In testifying concerning Consumer O's complaint, Mr. Mahmoodi confirmed that he had placed a lien on the vehicle for unpaid invoices. According to him, the first time he dealt with Consumer O following the sale of the vehicle was when her cheque was returned from the bank dishonoured. He called her to ask her about it and she advised him that she had had to do $200.00 worth of repairs. After some discussions, Mr. Mahmoodi stated that he agreed to permit Consumer O to deduct $200.00 from the outstanding $500.00 owing. She was to bring the money the next day. The next day Consumer O advised him that she had incurred another $300.00 repair and towing cost and refused to make any further payment. He told her that she was obliged to honour the $500.00 cheque and that he would seek to enforce his rights. To the best of his recollection, there is still a lien on the vehicle and he has not been paid.

Jessica Larrea testified in her capacity as a complaints handler at OMVIC. She was a

14 His notes and back-up documentation are found at Ex 5 Tab 7O
15 Ex 10

complaints handler for four years until leaving OMVIC and moving to her present position in the insurance industry. She dealt with the complaint of Consumer R.16

Ms Larrea was contacted by Consumer R on July 28, 2010. He advised her that he had attended at the Applicants' premises, then located at 4544 Dufferin Street, and had seen a 2002 Acura MDX that caught his interest. He provided a credit card deposit of $475.00 but he signed no contract and was not given a bill of sale relating to the vehicle. He discovered that the vehicle had more miles than he had been led to believe and wanted his deposit back. Ms Larrea advised Consumer R about the provisions of s. 39 of O/Reg 333/0817 and told him to write a letter to the Applicants asking for the return of his deposit. Subsequently, the consumer provided her with a copy of a letter dated August 12, 2010 and sent to the Dufferin Street address by registered mail. It was not picked up by the Applicants. The consumer then determined that the Applicants had moved to 1290 Finch Avenue West and resent the letter to the new address on August 23. Again it was not picked up by the Applicants.

On September 3, 2010, Ms Larrea called Mr. Mahmoodi about Consumer R's complaint. Initially, Mr. Mahmoodi said that he could not recall the transaction. He later stated that there was no contract with Consumer R but that he had a signed credit card slip. Finally, he stated that there was a signed contract. Ms Larrea asked Mr. Mahmoodi to forward a copy of the signed contract. Mr. Mahmoodi asked that she put her request in writing. Ms Larrea sent a long email that day and on September 7 received an email with an attached credit card slip and a bill of sale purportedly signed by Consumer R.

When Ms Larrea informed Consumer R that she was in possession of a bill of sale purportedly signed by him, he adamantly denied signing anything other than the credit card slip. She advised him that he might want to pursue the matter with the police and that he might have civil remedies. She also asked him to forward copies of his signature for comparison. He did so the next day.18 Ms Larrea advised Mr. Mahmoodi that Consumer R denied signing the bill of sale. Mr. Mahmoodi repeatedly accused Consumer R of lying and used derogatory terms. Ms Larrea advised him that the use of such terms was unprofessional. He refused to resolve the matter because he had been accused of forgery.

One of the documents that Ms Larrea requested from Mr. Mahmoodi was the wholesale bill of sale relating to the purchase of the Acura. The Tribunal notes the following points relating to this document. While the numbers are hard to read, it appears to indicate that the vehicle was purchased by the Applicants at auction for $8,500.00 plus taxes, adjustments and auction fees. The bill of sale19 purportedly

16 Ex 6 Tab 9

17 There was some confusion in Ms Larrea's evidence about whether she was referring to sections of the Act or the regulations. She had a tendency to state that cited provisions were in the Act but on further review it appeared that she referred to the regulations.

18 Ex 6 page 23

19 Ex 6 page 16