

Licence Tribunal
Appeal Tribunal
Tribunal d'appel en matière de permis



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 Of these, 11 were withdrawn at the commencement of the hearing. The withdrawn allegations are set out in paragraphs 6 through 10, 12, 14, 15, 16, 19 and 23.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 506 (CanLII), 2007 FC 506, *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 323i. 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 3
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 95 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 knew 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 that 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 7, Tab 10, Page 92

¹⁰ An example of an incomplete report may be seen at Ex 27. 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 320i whereas Consumer S had purchased a 1999 BMW 323i. 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.

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 Larroca 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 70

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 21

¹⁹ Ex 6 page 16

signed by Consumer R was for sale price of \$7,500.00 plus taxes and adjustments.

The vehicle was ultimately sold for a sale price of \$10,750.00.²⁰ Consumer R was not repaid his deposit as, in a letter to OMVIC,²¹ the Applicants claimed \$508.60 in liquidated damages to advertise the car for sale. The amount was calculated based on advertising costs of \$150.00 per month plus HST. The letter alludes to forgiveness of "reconditioning cost and other damages." It is difficult for the Tribunal to understand what reconditioning might be necessary after a 16 minute test drive. In the letter advising of the sale of the vehicle dated October 28, 2010²² the Applicants indicated they had made a refund offer to Consumer R but he turned it down.

Of note on to the two bills of sale²³ with respect to Consumer R's vehicle is the fact that neither of them indicates any damage history. In his evidence, Mr. Maiorana produced a CarProof report run by the Applicants on this vehicle on June 9, 2010 at 12:12 p.m. that indicates that the vehicle had sustained \$3,756.00 worth of damage on June 16, 2007.²⁴

Ms Larrea addressed two other consumer complaints, Consumers P and Q. In both cases, after the initial complaint was made to OMVIC the consumers did not sign the appropriate authorization and there was no further action on these two files. Ms Larrea was unaware if these matters were resolved to the satisfaction of the consumers. It was put to Ms Larrea in cross-examination that Consumer Q's vehicle was sold on an "as is" basis. Ms Larrea responded that a vehicle sold on an "as is" basis cannot come with a safety certificate. If a vehicle is sold with a safety certificate, it must carry the statutory warranties.

Consumer R testified about his experience with the Applicants. He has a Masters degree in Computer Science and is experienced in working in UNIX based systems. He was looking for an Acura SUV in the \$9,000.00 to \$10,000.00 range. While searching the Internet he found an advertisement for Canadian Best Auto and decided to attend their showroom on Dufferin Street. He met with Mr. Mahmoodi who indicated that there were two Acura MDX vehicles available and invited him to inspect them. He spent about 30 minutes inspecting the two vehicles including starting the engines. He then talked to Mr. Mahmoodi about the black one. He wanted to do a test drive. Mr. Mahmoodi stated that he and Consumer R were "brothers" and that Consumer R could do a test drive the next day. Mr. Mahmoodi asked for a deposit promising that he would return it if Consumer R was not satisfied with the vehicle after a test drive. Consumer R offered to give the Applicants a cheque but was prevailed upon to pay by credit card. No price was agreed for the vehicle and no bill of sale was prepared.

Consumer R returned the next day. The car was outside. He took it for a test drive for

²⁰ Ex 6 page 29

²¹ Ex 6 Tab 9 page 30

²² Ex 6 page 30

²³ Ex 6 pages 16 and 29 respectively

²⁴ Ex 35

10-15 minutes but was dissatisfied with it. He stated that the tires and steering were noisy. He returned to the dealership, informed Mr. Mahmoodi that he did not want the car but wanted his money back. Mr. Mahmoodi refused to return the money. A yelling match ensued and there were threats to call the police. Consumer R did call the police who referred him to OMVIC. Thereafter he dealt with OMVIC.

On the advice of Ms Larrea, Consumer R sent two registered letters, one to the Dufferin Street address of the Applicants where he had first seen the vehicle and a second to the Applicants new premises on Finch Avenue West. Neither letter was picked up by the Applicants. After receiving the bill of sale purportedly signed by him and recognizing that it was a forgery, Consumer R took the documents to the police station. The police advised him to seek his remedy through OMVIC. That advice was repeated when he had a follow up telephone call from a police officer a couple of days later.

With respect to his signature, Consumer R stated that he uses his initials on things like credit card transactions but uses his full signature on what he considers to be legal documents. He included the bill of sale in "legal documents." He pointed out that the bill of sale has initials only and is nothing like his full signature. He also stated that, contrary to the assertion in the October 28 letter that he had been offered a refund; the Applicants had never offered him a refund. He did say that the Applicants offered him a credit if he bought another vehicle from them.

Mr. Mahmoodi's evidence regarding Consumer R detailed only one visit. According to Mr. Mahmoodi, at that visit, Consumer R had test driven the vehicle and wanted to buy it. A price was negotiated; Consumer R signed the bill of sale and provided a \$475.00 deposit. At this point, the Applicants began to incur expenses because the car was sent for a safety check. Shortly thereafter, Consumer R got cold feet and saw another vehicle at another dealer. Being aware that there is no cooling off period in used car transactions in Ontario, the Applicants insisted in charging liquidated damages.

Consumer W gave evidence concerning her experience purchasing a 2005 BMW X3. When Consumer W dealt with the Applicants they were located at "Keele and Finch."²⁵ She visited the dealership on a couple of occasions eventually zeroing in on a BMW X3. She discussed the purchase with Mr. Mahmoodi and was assured by him that he would look after any problems with the vehicle after purchase. She test drove the vehicle, decided to buy it and picked it up on June 20, 2011. Within a couple of days, she began to experience problems. On June 22, she took it to a mechanic who identified problems with the left CV boot, the driveshaft, the tire pressure light and the two front shocks. She spoke to Mr. Mahmoodi on June 23. He asked her to bring it to Bell Auto. Bell Auto identified the problem with the driveshaft and Mr. Mahmoodi undertook to repair that problem because it was related to the safety inspection. He declined all other repairs.

On June 29 the sunroof developed problems. It would not close. Consumer W

²⁵ Presumably this is the 1290 Finch address

discussed the problem with Mr. Mahmoodi. He told her to bring the vehicle back to Bell Auto who then referred her to an electrical specialist. In the interim, a problem with the fuel gauge was identified. Both the sunroof problem and the fuel gauge problem were checked by the electrical specialist. The cost of repair for the sunroof was approximately \$3,000.00. Mr. Mahmoodi refused carry out the repairs on the basis of his belief that his warranty was limited to the 36 day/1000 km warranty set out in the safety certificate. He took the position that the sunroof problem was caused by Consumer W "continually playing" with the sunroof. He threatened Consumer W that if she sought the assistance of OMVIC he would consider suing her.²⁶ As of the date of the hearing, the front shocks have not been replaced, the fuel gauge is still defective and the sunroof does not close properly letting water into the vehicle on wet days.

At the conclusion of her testimony and throughout her cross-examination Consumer W repeated that Mr. Mahmoodi had promised to deal with any problems with the car that came to light after purchase. She is of the view that he was aware of the problems with the vehicle and was dishonest with her to induce her to buy.

In addressing Consumer W during his evidence, Mr. Mahmoodi stated that his dealings with Consumer W were always friendly. Her spouse was often aggressive and confrontational with him. When problems arose, he asked Consumer W to take the vehicle to his mechanic, Bell Auto. Bell Auto identified some safety concerns which they described as borderline. Mr. Mahmoodi instructed them to repair them at a cost to him of \$500-700.00. The mechanic advised him that there was no problem with the fuel gauge. The issue with the sun roof was beyond the Bell Auto mechanic's expertise so it was suggested that the consumer take the vehicle to a mechanic who was more familiar with electrical issues or to BMW. This electrical system mechanic stated that it would cost \$3000.00 to fix the sun roof. The roof could be closed for \$150.00 but Consumer W did not want that. In any event, in its current condition the roof did not leak. According to Mr. Mahmoodi, the electrical system mechanic stated that the problem arose because Consumer W had played with the sun roof and the BMW X3 sun roof is sensitive. Mr. Mahmoodi stated that he had seen Consumer W play with the sun roof a couple of time in the showroom. He did not feel that he was liable to repair something brought about by the consumer's misuse of the car.

Farah Mohammed is currently a Business Standards Representative at OMVIC but at all material times she was a Complaints Handler. She addressed issues arising out of the purchase of a vehicle by Consumer L on May 21, 2010. Consumer L advised her that he had put down a \$500.00 deposit on a 2003 BMW 325i car. The balance was to be financed by the Applicant. Consumer L wanted to set aside the transaction and have his deposited refunded because the financing terms continued to change. The end result was a refund of \$250.00 to Consumer L but what concerned Ms Mohammed were the deficiencies on the bill of sale.²⁷

The two areas of concern with the bill of sale relate to the failure of the Applicants to

²⁶ Ex 15, Tab 5 A page 77

²⁷ Ex 5 Tab L page 198

complete the financing terms part of the bill of sale and the failure of the bill of sale to indicate the accident history of the vehicle.

According to Ms Mohammed, a selling dealer is required to make full disclosure of the financing terms. On the standard form bill of sale there is an area marked "Terms of Financing" that has boxes entitled "Amount of payments," "No. of Payments," "Payments Start on" and "Credit Approval." Below those boxes is a section which states "Customer has received financing disclosure statement from the Lending Institution." Finally, there is a space for the purchaser's initials. Under the "Terms of Settlement" column on the right side of a standard bill of sale there are line entry spaces for "Balance Financed Subject to Approval," "Net Amount to be Financed" and "Cost of Borrowing %." On Consumer L's bill of sale all of these areas have been left blank. The only reference to financing on the bill of sale is a handwritten entry in the "Comments" section that states: "\$ monthly payments should be managed up to \$370 per month." Ms Mohammed referred to s. 40 (1) of O/Reg 333/08 which incorporates s. 79 of the CPA by reference. In her view, the Applicants were in breach of these provisions by failing to complete the financing disclosure areas on the bill of sale.

In preparation for appearing as a witness in this hearing, Ms Mohammed ran a CarProof report.²⁸ She noted that the CarProof indicated that the vehicle had been in two accidents: one in November 2004 costing \$1,132.00 to repair and one in April 2007 costing \$5,143.00 to repair. Ms Mohammed pointed out that the bill of sale was silent as to the accident history. She further stated that Consumer L had advised her that he had been promised a Car Fax report and that the advertisement placed in Auto Trader by the Applicants indicated that the vehicle came with a CarProof report. On May 26, 2010 Consumer L emailed the Internet link for the advertisement to Ms Mohammed with the comment: "You can see by the picture below that he has advertised carproof [sic] but did not provide it. Also car is not sport version which he advertise [sic]."²⁹ Unfortunately the picture referred to was not included in the materials available to the Tribunal. On June 4, 2010 Consumer L expanded on the issue of the CarProof report. He stated in an email dated that day³⁰ that Mr. Mahmoodi had demanded \$45.00 from him if he wanted to see the CarProof report and he would be required to pay \$100.00 if the report indicated no damage.

At the request of the Applicants, Ms Mohammed was recalled to the stand to address her testimony that, despite requests of the Applicants, the Applicants had never forwarded to her a copy of the CarProof report indicating that there was no damage history on Consumer L's vehicle. On her recall to the stand, Ms Mohammed testified that she had conducted a fuller search of the OMVIC computer system and found that a CarProof had been faxed by the Applicants to OMVIC on June 3, 2010 to the attention of "Sara." Until she turned it up on the system in her recent search, she had never seen the document. She noted that not only was the report directed to Sara's attention, and OMVIC had no-one called Sara working for them at that time, it related

²⁸ Ex 20

²⁹ Ex 5 Tab T page 190

³⁰ Ex 5 Tab L page 194

to a vehicle other than that which was the subject of Consumer L's complaint. Because the complaint settled and Ms Mohammed closed the file shortly after June 3, 2010, she did not follow up with the Applicants to find out why the documents she requested were not forthcoming.

Ms Mohammed went on to review a CarProof report that she had ordered on September 30, 2011 indicating accident damage to the Consumer L vehicle that was not disclosed on the bill of sale. There were two accidents, one in 2004 for \$1,132.00 and one in 2007 in the amount of \$5,143.00. She felt that these accidents should have been disclosed on the CarProof report recently provided to OMVIC by the Applicants³¹ during this proceeding and had no explanation why they were not. She did note that the date of the CarProof report provided by the Applicants at Tab 9 post-dated Consumer L's bill of sale by approximately one month.

The difference between the data on the OMVIC CarProof report dated September 30, 2011 and the Applicants' CarProof report dated June 9, 2010 was covered in the testimony of Paul Maiorana. All three CarProof reports run by Mr. Maiorana were dated on June 9, 2010 at 12:12. Mr. Maiorana pointed out that the CarProof system permits dealers to conduct multiple searches at one time. Dealers may enter a batch search of up to 20 VINs and each search report will then be stamped with the same time and date. Accordingly, the three searches conducted by the Applicants on June 9, 2010 were part of such a batch search. There are two essential differences between the OMVIC report and the Applicants'. In the chronology section, entitled "Combined Canadian & United States History Details" there is an entry for November 1, 2004. In the version provided by the Applicants to OMVIC during the hearing³², that section reads "insurance records" and "New Policy." There is a similar entry dated April 26, 2007. On the next page in Section 8 entitled "Canadian Accident and Collision Estimate Data" there are two boxes entitled "Accident Data" and "Coverage Data." The Accident Data box indicates no records. According to Mr. Maiorana that box relates to insurance estimate records. He described the CarProof template and pointed out that there should be a third box entitled "Accident Incidences" that records accident information found in the data. If no accidents are found in the data, that box will state "No Records" but the box should, nonetheless, be there.

The report produced by Mr. Maiorana from the CarProof archives³³ has different entries. With respect to the November 1, 2004 entry, the Carproof reports states "Insurance Records" and "Accident Claim" and the April 26, 2007 entry also notes an "Accident Claim." The Accident Incidences box on the next page shows two accidents: one in the amount of \$1,132.00 on November 1, 2004 and one in the amount of \$5,143.00 on April 26, 2007 as shown on the report obtained by OMVIC in September 2011. Mr. Maiorana testified that it is clear that the original report has been tampered

³¹ Ex 24 (tab 8 & 9 respectively)

³² Ex 24 Tab 9

³³ Exs 34 and 36. Both exhibits contain the same data which is frozen when the report is complete. CarProof has changed its presentation template and Ex 34 is an attempt to recreate the old presentation template. Ex 36 uses the new template.

with using a computer program like Photoshop or an Adobe editing program. In fact, Mr. Maiorana stated that each CarProof report constitutes its own website so the original on the CarProof site may be examined by a third party purchaser if tampering is suspected.

The next consumer witness, Consumer X, presented serious challenges for the Tribunal. He was not a highly educated man and provided for his family by delivering pizza in the winter and working picking vegetables in the summer. It would be fair to say that he was deeply offended by the manner in which he felt he had been treated by the Applicants and answered to questions from the Applicants' legal representative with an excess of passion unusual in the staid surroundings of a formal hearing. Notwithstanding that passion, the Tribunal found Consumer X to be a highly principled individual who was truthful in his evidence concerning his dealings with the Applicants.

Consumer X purchased a 2002 Honda Civic from the Applicants in or around July 2, 2011. He saw an advertisement in Auto Trader. He telephoned and spoke to Mr. Mahmoodi who told him to come up to their premises. In discussions with Mr. Mahmoodi, Mr. Mahmoodi said he was Brazilian and had been in the car business for years. Consumer X is a Portuguese speaker so presumably the representation about being Brazilian was an attempt to develop some level of rapport. Consumer X informed Mr. Mahmoodi that he needed a reliable car to last for about six months. He was shown a Honda Civic. Because of the trust he had reposed in the Applicants, he did not test drive the car. The Applicant filled out the bill of sale and Consumer X signed it. The purchase price for the car was \$4,240.00. Consumer X was not given a copy of the bill of sale. He was told by Mr. Mahmoodi that he would be given all the documents on the morrow when he picked up the car. Consumer X's son paid a deposit with a bank card leaving a balance to be paid on delivery of \$3,900.00.

Consumer X did not return to pick the car up for two days. He brought cash with him for the outstanding balance. He stated that Mr. Mahmoodi had asked him to bring cash. He was told the bill of sale and other documents were in the console. He checked later and determined that there was no bill of sale. Nor did he ever get one. On the drive home, about 100 metres from the Applicants' premises, warning lights came on. He turned around and took the car back to the premises and asked Mr. Mahmoodi to deal with it. Mr. Mahmoodi told him to take the car home and he would deal with it the next day. On the drive home, the car would not go faster than 40 km/hr. A friend told him he had been sold "a car without transmission." He contacted Mr. Mahmoodi the next day and was told that all of his documents were in the console. When he checked there were no documents in the console. He took the car back to the Applicants' premises. Mr. Mahmoodi tried to sell him a warranty. He told Consumer X that he could replace the engine but it would cost \$800.00. At this point, Consumer X's son, who had accompanied him, said that every time they talk with the Applicants, the Applicants want money so they should leave. Consumer X asked for his money back, but Mr. Mahmoodi would only pay back \$3,650.00. Mr. Mahmoodi said the balance was for taxes. In frustration, Consumer X took the \$3,650.00 and deposited the cheque. As a condition of being paid the cheque, Consumer X signed a release

saying he was satisfied with the refund. He told the Applicants that he would sue them for the balance. Mr. Mahmoodi told him to go ahead and do so and he would get even more money.

This exchange was not the end of Consumer X's problems. When he went to get a refund for the licence plate, he got only \$40.00 despite having paid the Applicants \$150.00. Two days later, Consumer X received a telephone call from a person purporting to be a police officer. Consumer X thought the caller was a friend of Mr. Mahmoodi masquerading as a police officer and dealt with him accordingly. The caller cautioned Consumer X against making death threats to Mr. Mahmoodi. Consumer X was not diplomatic on the phone because he thought the caller was a friend of the Applicants so, approximately one hour later, the police attended his home and arrested him for making death threats. He spent four hours at the police station and was interrogated and subsequently charged. He has been afraid of the Applicants since that time but he still feels he is owed a full refund of the outstanding \$550.00. He is of the opinion that there was no justification for the Applicants taking \$550.00 of his money.

Mr. Mahmoodi stated that when Consumer X brought the vehicle back to him, he offered immediately to have the transmission checked out by a mechanic. He stated that if the transmission proved defective he advised Consumer X that he would refund all of his money. Consumer X declined the offer, choosing instead the sit on the floor wailing that he was being cheated and pulling his hair out. Consumer X finally accepted an offer for a partial refund and, once the cheque was cashed, asked for the balance. He made the threat to put Mr. Mahmoodi in a body bag. Mr. Mahmoodi was concerned, not for his personal safety, but for the condition of his inventory. He was afraid Consumer X would come back and damage the cars. He called the police. The police used Mr. Mahmoodi's phone to call Consumer X and when he repeated the threats on the phone they went and charged him.

Sayod Mohammed Hussain Pishvai is a motor vehicle salesperson and owns a dealership called Autowholesale Cars R Us Inc. ("Cars R Us") in Richmond Hill. He testified concerning his dealings with the Applicant, Mr. Mahmoodi, during a period of several weeks when Mr. Mahmoodi acted as a salesperson at Cars R Us. He parted company with the Applicant after a few weeks and notified OMVIC on September 23, 2011 that he terminated the relationship because of: "*too many complain [sic] from customers/lack of trust*."³⁴ His evidence expanded on that comment.

Mr. Pishvai has operated Cars R Us since 2003. He met the Applicant through their common involvement in the industry. They would see each other at the car auctions. He decided that he and the Applicant could work together so an agreement was made whereby the Applicant would sell cars for Cars R Us and would also dispose of the remaining Canadian Best Auto inventory of cars on consignment. The paperwork to register the Applicant as a salesperson for Cars R Us was dated August 8, 2010 and

³⁴ Ex 16 Tab 9 P. page 77

received by OMVIC on August 10.35 Accompanying the Salesperson Change Notice was a letter written by the Applicant and signed by Mr. Pishvai to the effect that Mr. Pishvai was aware the Applicant would be selling for both Cars R Us and Canadian Best Auto.

According to Mr. Pishvai, Mr. Mahmoodi worked for Cars R Us for a period of approximately three weeks in August, 2011. The registration documentation suggests that Mr. Mahmoodi was registered for the period from August 10, 2011 to September 23, 2011 but it would appear that there were sales involving the Applicant on August 8, 2011 and no sales transactions after August 29, 2011. The Tribunal is satisfied that this period reflects Mr. Mahmoodi's active involvement with Cars R Us.

Mr. Pishvai's complaints against Mr. Mahmoodi fall into four categories. According to Mr. Pishvai, Mr. Mahmoodi forged Mr. Pishvai's signature on a number of bills of sale, signing the contract with the name "Amir" as dealer and inserting Mr. Pishvai's registration details. Amir was the name that Mr. Pishvai used, as a nickname, with friends and associates, but in his business dealings always signed his name "S. Pishvai." He spoke to Mr. Mahmoodi and advised him in no uncertain terms not to sign as dealer. Despite this warning, Mr. Mahmoodi forged his signature on at least one subsequent occasion.

The second broad category arose out of the agreement that the Applicants' cars would be sold on consignment. Mr. Pishvai stated that Cars R Us bore the expense of advertising the vehicles and had them available for showing on its lot. In return for this service, sales were to be conducted through Cars R Us and the profits from the sale of the vehicles were to be split equally. Mr. Pishvai stated that the Applicants sold vehicles without his knowledge and did not give him a share of the proceeds. The Applicants' practice in this regard came to light when he received a complaint from a customer that a vehicle was defective. He reviewed the sales documentation and noted that the bill of sale was a Canadian Best Auto invoice. He told the consumer that, as he had not sold the vehicle, he was not responsible for any defects. The customer was in tears.

Mr. Pishvai did accept responsibility for promises made by Mr. Mahmoodi even on bills of sale where his signature was forged. He considered himself bound by the actions of Mr. Mahmoodi. One example involved the sale of a Landrover on August 11. Mr. Mahmoodi had signed this bill of sale and provided for a 24 month or 24,000km Auto Gard power train warranty up to the amount of \$8,000.00. Mr. Pishvai testified that such a warranty does not exist. Mr. Mahmoodi had signed this bill of sale using "Amir." When Mr. Pishvai learned the details of the transaction he asked Mr. Mahmoodi to contact the customer and change the warranty terms. When Mr. Mahmoodi was unable to change the warranty provisions, Mr. Pishvai accepted that he was liable. When the customer came back with problems three days later, Mr. Pishvai signed the document over the "Amir" signature and took the car back. He had to put a new engine in the car before he could sell it again for a loss of about \$4,000.00.

Mr. Pishvai was concerned about Mr. Mahmoodi's failure to make full disclosure of problems with vehicles. In one transaction, Mr. Mahmoodi sold a Mercedes but failed to disclose that the vehicle had been imported from the US.

A former customer of the Applicants had purchased a Porsche Boxter from the Applicants in the winter or spring of 2011. The vehicle had a damage history that Mr. Mahmoodi was well aware of from the earlier sale. The customer attended Cars R Us and wanted to purchase a new car using the Boxter as a trade-in. Mr. Mahmoodi gave \$10,000.00 trade-in allowance for the Boxter despite the fact that it was worth approximately \$6,000.00 because of its damage history. He also failed to note the damage history of the vehicle on the trade-in bill of sale despite the fact he was aware of it and had noted it on the bill of sale when he had previously sold the car. The customer purchased an Audi. When problems arose with the Audi, Mr. Mahmoodi advised the customer to report Mr. Pishvai to OMVIC, write a letter demanding a new engine and to sue. The customer recorded the telephone conversation and played it in full to Mr. Pishvai. At this point, Mr. Pishvai decided he had had enough from Mr. Mahmoodi and the employment relationship was terminated.

Mr. Mahmoodi admitted that he sold for Cars R Us during the time set out above. He also admitted that, during that time, he had not received registration from OMVIC to act a salesperson for Cars R Us. He had applied for registration and had received a response from OMVIC stating that there were defects in his application. He was of the view that he could sell for Cars R Us pending registration. When the relationship broke down, he notified OMVIC not to finish processing the transfer application. In light of this admission, the Tribunal will not review the evidence of OMVIC's witness, Ms Lisa Ellis, who processed the application.

The balance of Mr. Mahmoodi's evidence concerning his dealings with Mr. Pishvai focused on establishing grounds to make Mr. Pishvai responsible for Mr. Mahmoodi's actions and on suggesting that Mr. Pishvai was not a reliable witness because of ongoing small claims court litigation between the parties. He related a tale of acrimony between the parties and alluded to threats made against him by Mr. Pishvai. He produced screenshots from three text messages sent by Mr. Pishvai to support the threat allegations.³⁶ On review, the Tribunal cannot conclude that any of the messages indicates a particular threat. At the highest, they seem to say that Mr. Pishvai will not seek to pursue Mr. Mahmoodi unless the latter starts a legal action, although the language used is somewhat colourful and unprofessional.

Mr. Mahmoodi stated that the \$8000 warranty was a mistake. The intention was to put in \$800.00. This stands in contrast to Mr. Pishvai's evidence that Mr. Mahmoodi told him that the warranty was necessary to complete the sale. Mr. Mahmoodi testified further that Mr. Pishvai hired him to run the dealership because he was away pursuing real estate business. Mr. Mahmoodi stated that he was authorized to sign Mr. Pishvai's signature to complete transactions.

36 Ex 21

Consumer Z testified about her experiences in purchasing a 2004 Mazda 3 from the Applicants. She lived close to the Applicants' Finch Avenue address and dropped in to look at cars. She discussed with Mr. Mahmoodi that she was looking for a nice vehicle within her budget. She was initially interested in a Honda but the car sold before she was prepared to make a deposit. She then saw the Mazda in the showroom. On her third visit on July 21, 2011, she paid a deposit of \$1,000.00. She was not given a bill of sale. She paid a further deposit of \$500.00 on July 22, 2011. Again she was not given a bill of sale. She arranged for financing of the balance with the Applicants at a rate \$280.00 and interest of 15% per annum or below. She picked the vehicle up on July 25, 2011. Again she was not given a bill of sale. Indeed, she did not receive a bill of sale until August 8 after she made further demands.³⁷ That copy was not signed by the Applicants. The bill of sale also contained no details about the financing agreement.

Shortly after purchasing the vehicle, Consumer Z began to have problems. A hub cap came off in traffic on the second day she had it. Another was missing. She noted scratches on the windshield and rust spots. She acknowledged in her testimony that she had the chance to inspect the vehicle at the dealership and that she did not avail herself of a test drive. She was aware she could have asked for a test drive. She was upset because of the trust she reposed in Mr. Mahmoodi and felt that it was his responsibility to point out the defects to her.

She experienced mechanical problems with the vehicle too. As the weather cooled, she discovered the heater did not work. Two mechanics informed her that she had suspension problems. One put his findings in writing, noting also problems with the thermostat, coolant or sensor and a loose brake pad at the rear.³⁸ She took these various problems back to the Applicants. She dealt with a person called Ryan at the Applicants' promises who told her that all of the problems could be fixed and advised her to talk to Mr. Mahmoodi. She was unable to get in touch with him so she had further dealings with Ryan. She was informed that repairs would be at her expense. She was dissatisfied with this answer, feeling these were pre-existing problems that should be the responsibility of the Applicants. Finally, in November she decided she did not want the car any more. She entered into an agreement with Ryan that he would return the post-dated cheques given for the loan payment and \$650.00 and she would transfer the car to his company. She was ultimately out of pocket \$1,690.00. The vehicle would have cost \$1,000.00 to repair.

Mr. Mahmoodi described how Consumer Z came to his dealership to buy the vehicle. On her three visits to his dealership prior to purchase, she came once with a male friend and once with her mother. He felt he developed a very good relationship with Consumer Z and her mother. She had ample time to inspect the car and did so with her mother. Both of them liked it. He was surprised to find out later that Consumer Z was complaining about cosmetic issues that were apparent when she looked at the

³⁷ Ex 15 Tab 8A page 133
³⁸ Ex 16 Tab 6 Page 16

vehicle.

Consumer Z advised him that she had very bad credit. He was able to get her financing but at very high interest. She begged him to finance in-house and he agreed to do so because she seemed to come from a very good family. She paid him a \$1,500.00 down payment and gave monthly cheques for the balance. Shortly after closing this transaction, he transferred his lease and business to a salesperson called Ryan. Ryan dealt with Consumer Z thereafter. He told Ryan to satisfy any safety issues she might have. He left the country on September 30, 2011 and asked Ryan to deposit the monthly payment cheques for him. According to Ryan, Consumer Z bounced cheques and came in from time to time to pay cash. This arrangement continued until Ryan was visited by three individuals from OMVIC who told him in no uncertain terms that he had better take Consumer Z's car back. As a new dealer, Ryan was concerned about his registration and decided to take the vehicle back.

Two witnesses testified about advertisements placed on the Kijiji website. Kijiji is an online sales website where sellers can advertise wares for sale and purchasers can contact them. Justin Brown testified about a complaint he received about an advertisement on Kijiji.³⁹ The advertisement is for a 2003 Ford Focus "For Sale By: Owner." Mr. Mahmoodi's cell phone number is given and the location is shown as Keele St. and Finch Ave. W. Consumer T advised Mr. Brown that he called the number to discuss the vehicle and was told the price plus an administration fee. Since an indication the vehicle is for sale by the owner means it is a private sale, the consumer questioned the charge. Consumer T informed Mr. Brown that the Applicant exploded and started abusing him using foul language. When Consumer T asked to speak to the manager, he was told by Mr. Mahmoodi "I am the f***ing manager." The Consumer did not advance the complaint any further than the initial report to Mr. Brown. Mr. Mahmoodi has no recollection of the transaction.

Andrea Korth testified concerning two Kijiji advertisements relating to a 2005 Ford Crown Victoria. One ad was listed on March 3, 2012⁴⁰ and the second on April 30, 2012⁴¹ during a time when the Applicants' rights to exercise the privileges of registration under the Act were suspended by order of this Tribunal dated October 3, 2011. Ms Korth is the Business Standards Coordinator at OMVIC and in that capacity is involved in discipline issues. It is clear from a close examination of the two advertisements that they are for the same vehicle. Both ads refer to a sale by the owner and give a recent address of Mr. Mahmoodi and his cell phone number. Using the email post process available on Kijiji, Ms Korth emailed the seller and sought information concerning availability and VIN. On March 14, 2012 she used an alias and sent an email which asked:

Is this car avail? is it running ok? how is the body? has it been in an accident? my has bbeen [sic] looking for one of these fr a while and I'd like to surprise him.

³⁹ Ex 15 Tab 2B

⁴⁰ Ex 24 Tab 12

⁴¹ Ex 24 Tab 14

On March 14 she received a reply sent from a cell phone that stated that the vehicle was in good shape and still available. She replied on March 16, 2012:

"thx ...Is it ur car? how many owners has it had? is that price including the safety test."

She received no further reply to this email. On Monday April 23, 2012, she sent an email through the Kijiji post process asking if the car was still available. She received a reply that evening that it was still available. On April 26 she asked:

Great! Is it an old cop car? when can I come see it? is it your car? where is it located?
can I have the VIN I want to run a carfax report on it..

beat
do you have a vin number for this car? I want to run a carfax on it.

Thx a bunch

Not having received an answer to her April 26 email, on May 2, 2012 she sent a last email:

hi there,

I don't mean to be a pain in the you know what...but can the vehicle be seen and is it still for sale? can I have the VIN for it so I can run a Carfax vehicle accident report? My hubby's b-day is coming up in two and half weeks so time is ticking :)

Thx a bunch

Ms Korth received no further responses to her emails.⁴² She is of the view that a seller who refuses to provide a VIN is doing something underhanded.

In and around May 1, 2012, Ms Korth reviewed another advertisement for the sale of a vehicle, this time on a website called Carsified.com. A search using the Applicants' cell phone number had turned up this website. Ms Korth called the number and was advised that the vehicle was sold. Mr. Mahmoodi acknowledges receiving this call. It was his evidence that Carsified.com is a new service that trolls the Internet and uploads from dealers websites without their permission. The plan is to create the appearance of an active website and attract more customers. He did not place the Carsified advertisement. The vehicle in question had sold a year before from his Finch premises and the advertisement was an old one.

Mr. Mahmoodi denies placing the Kijiji advertisements. He produced two boarding passes⁴³ and a travel itinerary⁴⁴ indicating that he was absent from Canada for the period from March 13 to April 24, 2012. In his view it would be easy for a competitor to place the Kijiji ads to attempt to cause harm to his reputation. He could not specifically

⁴² Ex 24 Tab 13 sets out the email exchange.

⁴³ Ex 27

⁴⁴ Ex 28

identify who the competitor might be but hinted strongly that it might be Mr. Pishvai. He produced an extract from the Cars R Us website showing a similar make and model vehicle⁴⁵ and advised the Tribunal that these ex-police cruisers are rare. He stated that in his years as a salesperson he had never handled one. The Tribunal notes that the Cars R Us vehicle is offered at \$3,500.00 whereas the Kijiji vehicle is offered initially at \$1,700.00 and then \$1,500.00. It was Mr. Mahmoodi's evidence that he did not recognize the background to the Kijiji advertisements and that it was not background to the Cars R Us lot.

The final witness for the Registrar was Tim Hines. In his role as the Manager of Complaint Handling, Mr. Hines is a member of the senior management at OMVIC. Prior to joining OMVIC as a Complaint Handler, he had been a registered salesperson under the Act. He has also been an OMVIC inspector and has worked with the OMVIC Compensation Fund.

Mr. Hines outlined the manner in which claims are handled at OMVIC. Complaint handlers field complaints in any manner in which they are tendered. There may be letters, faxes, emails or telephone calls. Complaints may also be made in person. Complaints are assigned as they come in. Phone calls are handled on a random basis; emails rotate through the staff and letters and faxes are assigned as they arrive. There are no particular areas of expertise and handlers are not responsible for any particular dealer or salesperson.

The first step in the process is the gathering of information regarding the complaint. The consumer is encouraged to contact the car dealer in writing setting out the substance of the complaint and seeking redress. If the letter fails to bring about a satisfactory result, the consumer is asked if they want OMVIC to escalate the claim and attempt a resolution with the dealer on the consumer's behalf. At this stage, the consumer signs an authorization form permitting OMVIC to attempt to mediate on the consumer's behalf.

Complaints handling staff is also trained to identify administrative shortcomings on the part of dealers. Where the dealer has failed to properly follow the Act and regulations, the staff may bring this failure to Mr. Hines' attention for further administrative action. Mr. Hines will draw the issue to the attention of senior management and a decision will be made concerning future action. Mr. Hines acts as a resource for complaints handlers and discusses ongoing issues that are brought to his attention frequently throughout each day.

The Applicants first came to Mr. Hines attention in 2009 because of a rather large volume of complaint activity. Mr. Hines stated that it was unusual for an individual dealership to have five or more complaints a year. In most cases, the dealerships that reached five complaints a year were selling thousands of vehicles. With respect to the Applicants, Mr. Hines determined that over the course of their history they had sold approximately 300 vehicles and OMVIC had received 36 complaints. Over the history

⁴⁵ Ex 30

of the operation of the Applicant dealership, the complaint rate remained steady and high. He discussed the situation with the senior management team at OMVIC and the decision was made to issue the Notice of Proposal to Revoke the Applicants registrations.

Mr. Hines addressed a complaint brought by the Applicants against Mr. Pishvai and Cars R Us. According to the complaint, the Applicants had sold a 2001 Acura MDX to Cars R Us for \$5000.00 plus HST of \$650.00. Mr. Pishvai had paid only \$5,200.00 and the Applicants were seeking assistance to help recoup the balance. The history of the sale of this car uncovered some further concerns for the Registrar. The vehicle had originally been purchased as a trade-in in May 2011 by Bell Auto, the company the Applicants used to do some of their safety checks.⁴⁶ Sometime later, Bell Auto completed a wholesale bill of sale transferring the vehicle to the Applicants.⁴⁷ The date of this transfer was cut off on the copy provided to the Tribunal and counsel for the Registrar advised that it was unreadable on the version in OMVIC's files. Contrary to the law, the Applicants did not register the change of ownership of this vehicle from Bell Auto to them. The sale to Cars R Us took place, but again the date is obscured⁴⁸ and the transfer was registered from Bell Auto directly to Cars R Us.⁴⁹ Mr. Hines stated that it is a requirement under the *Highway Traffic Act* that the transfer be registered in the name of the dealer Applicant within six days.

Mr. Hines then reviewed several transactions Mr. Mahmoodi had been involved in as a Cars R Us salesperson. Since Mr. Mahmoodi has admitted to selling for Cars R Us while not registered and Mr. Pishvai has testified about a number of transactions where Mr. Mahmoodi had improperly signed "Amir" on the bills of sale in the place in which Mr. Pishvai should have signed as dealer, the Tribunal will not go into this evidence in great detail. Mr. Hines also reviewed a number of complaints handled by Complaints Handlers who are no longer with OMVIC. Invariably, despite that fact that these complaints raised serious issues about full and frank disclosure on the part of the Applicants, the consumers chose not to escalate the complaints. In several of the instances, it would appear that there was a failure to disclose a vehicle damage record. Given that in these cases, the consumers chose not to escalate the claims with OMVIC or come to the Tribunal to testify, the Tribunal assigns little weight to this evidence and will not review it in detail. In doing so, the Tribunal is not accepting the theory advanced by the Applicants through the tenor of their cross-examination questions that a competitor put these individuals up to making bogus claims. In many cases, Mr. Mahmoodi himself testified concerning these transactions. Also in many cases, important details were missing from bills of sale.

One particular issue does require review. Consumer H lives in Winnipeg, Manitoba. He saw a 2003 Mercedes Benz C230 advertised by the Applicants and called to discuss the vehicle with Mr. Mahmoodi. Mr. Mahmoodi prevailed upon Consumer H to

46 Ex 16 Tab 8B page 47
47 Ex 16 Tab 8C page 48
48 Ex 16, Tab 8D page 48
49 Ex 16, Tab 8F page 51

give him a \$500.00 deposit to hold the vehicle until he could come to Toronto to see it. Mr. Mahmoodi promised to return the deposit minus \$20.00 in the event the consumer did not like the car. Consumer H came to Toronto several days later and did not like the car. He asked Mr. Mahmoodi to process a refund. When he received his credit card statement for that month he contacted OMVIC because rather than refund his statement \$480.00, the Applicants had put through another charge for \$480.00. Over the next several weeks, Mr. Mahmoodi dealt with OMVIC and stated that the consumer had been credited according to the Applicants' bank records. Finally, it became apparent that \$980.00 had been charged and Mr. Mahmoodi undertook to refund that amount. Initially he ended up charging another \$980.00 before finally refunding \$1,960.00. The Tribunal is satisfied with Mr. Mahmoodi's explanation that this sequence of transactions was due to his unfamiliarity with the bank charging machines in his office and that the matter was solved once a service technician attended and showed him how to process a refund.

In his evidence concerning the failure to fully disclose financing terms on bills of sale, Mr. Mahmoodi had stated that, at the time the bills of sale were prepared, the financing terms were unknown. According to Mr. Mahmoodi's evidence, the only concern the consumers had with respect to financing was the monthly payment. As long as they could manage the monthly payment they did not care about the other terms. Mr. Mahmoodi testified that, once he was satisfied that a consumer was seriously looking to buy as opposed to just shopping around, he would take a credit application and see what terms he could get for the consumer. He would also complete a bill of sale and usually set out the maximum monthly payment in the comments box. In some cases, no payment terms are set out in the bill of sale and the financing agreement was verbal. In his view, he then had a binding contract with the consumer as long as he could get the monthly payment rate. If the consumer failed to close the transaction, he could seek liquidated damages. Ms Mohammed, in cross-examination, answered that, in her view, at least one of these contracts were valid and legally binding. Ms Mohammed, of course, has no legal training so her opinions are not binding on this Tribunal. Mr. Hines addressed this issue using the benefit of his greater experience and training including his time as a salesperson.

According to Mr. Hines, dealers generally have available to them sources of financing.

Operating in general ignorance of the credit rating of each specific consumer, dealers can write into a transaction to be financed the terms and conditions that an average consumer might expect from the financing source, including all of the disclosure required by the CPA. The bill of sale is then marked "Subject to Approval of financing terms." If the consumer qualifies at the rate specified in the bill of sale, the transaction is then binding and the sale can be completed. If the consumer fails to qualify for financing then there are two options. The dealer can seek to get the best terms available and if they are acceptable to the consumer a new bill of sale can be prepared incorporating the new terms and the transaction can proceed to close. In the alternative, the consumer can decide not to proceed with the purchase in which case it is the dealer's obligation to return the deposit and the bill of sale is void. By insisting on retaining deposit funds because the consumer wished to reject previously

undefined financing terms, the Applicants were in breach of their obligations under the Act and regulations.

Mr. Hines reviewed the terms and conditions of registration entered into by Canadian Best Auto as a condition of registration.⁵⁰ In his view, Applicants had breached at least 9 of these terms and conditions. He enumerated them as conditions 1, 6, 7, 9, 11, 20, 22, 25 and 30. The impugned behaviour, according to Mr. Hines was the use of an unregistered salesperson, Rahmic; breaches of the Code of Ethics with respect to non-disclosure of material information or financing conditions; acting as a salesperson while suspended; failing to register a vehicle within 6 days and before selling it contrary to the *Highway Traffic Act*; failure to disclose all material facts relating to a vehicle to be sold; failure to compensate consumers after defects came to his attention; failure to take responsibility for work done on vehicles at his request by third parties, in particular, issues arising out of safety inspections; and failure to comply with responsibilities as a registrant under the CPA.

Overall in his testimony, Mr. Mahmoodi denied that he was ever unprofessional with consumers. It was his position that those who said he was were not telling the truth. In particular, it was his position that consumers lied to get their money back and said whatever was necessary to OMVIC. He testified that if he felt that OMVIC would use the large number of complaints as grounds to revoke his registration, he would have handled matters differently. At the heart of his reasoning was his understanding that once he had a deposit from a consumer, there was no cooling off period and he could recover liquidated damages if a consumer sought to set aside the deal. He advanced this position even when there was a failure to make full disclosure of damage history or to include the full terms and conditions of financing. He acknowledged that he had answered correctly in his qualification exam questions relating to a dealer's obligations under the Act and regulations and under the CPA. He hinted, without saying definitively that, despite his 79% mark in the exam, his answers to those questions were lucky guesses.

ANALYSIS

Given the position of the Applicants in this case that consumer complainants were being untruthful because they were motivated by a quest for compensation, it is necessary to make an initial finding of credibility. The Tribunal finds that Mr. Mahmoodi is totally lacking in credibility and where his evidence differs from another witness, the Tribunal prefers the evidence of the other witness. There are several grounds for arriving at this conclusion. First and foremost of those grounds is the blatant attempt by the Applicants to mislead the Tribunal by providing a doctored CarProof report relating to Consumer L. There was also the clear attempt to mislead the Tribunal concerning knowledge of the damage history of the vehicles relating to Consumers S and R.

The transaction involving Consumer R highlights another deliberate attempt to

⁵⁰ Ex 5 tab 2 pages 7 – 10.

mislead: initially OMVIC and then this Tribunal. It will be recalled that Consumer R complained that he had not signed a bill of sale. Mr. Mahmoodi insisted in his testimony that he had and produced a bill of sale in the amount of \$7,500.00. The documentation shows that this vehicle was purchased at auction for \$8,500.00 and finally sold for \$10,750.00. Mr. Mahmoodi stated on two occasions in his evidence that the vehicle was "a \$10,000.00 car." The bill of sale allegedly signed by Consumer R was clearly produced in haste by Mr. Mahmoodi in an attempt to mislead OMVIC into believing Consumer R was lying without thought as to how it may come back to haunt him. Having started down that track, Mr. Mahmoodi continued to insist in his evidence that he had not forged Consumer R's signature on the bill of sale when, in fact, he had.

Finally, the bulk of the consumer evidence given at this Tribunal supports the conclusion that Mr. Mahmoodi had a practice, when selling cars, that leads the Tribunal to believe the consumer evidence. Mr. Mahmoodi's sales technique involved establishing a rapport with a buyer and making whatever promises he felt necessary to clinch the deal. He did not feel comfortable until he had convinced the consumer to provide a deposit. Once he had money in his hands, it was unlikely that he would ever give it back. In some instances, he was pressured to make compensation offers but, by his own admission, he failed to make at least one agreed payment, the payment to Consumer S. One clear example of a wild promise was his statement to Mr. Pishvai that it was necessary to give an \$8,000.00 warranty to complete the sale. In this transaction, Mr. Mahmoodi was not risking his own funds and was seeking to generate a sales commission for himself.

In coming to this conclusion, the Tribunal does not absolve consumers of some responsibility, especially those who did not take vehicles for test drives and uncritically reposed their trust in Mr. Mahmoodi. For example, Consumer Z's complaint about cosmetic issues with her vehicle that would have been apparent from a cursory inspection. A reasonable consumer would have conducted that cursory inspection. The Tribunal reads the obligations of a dealer under the Act and regulations as creating a duty to disclose those things known to the dealer that are not obvious to the consumer such as expertly repaired previous damage or the true cost and impact of financing terms. The Tribunal does not impose on a dealer a need to point out the obvious fact that a hub cap is missing. With respect to Consumer Z's complaint, what is telling is the failure to fully disclose financing terms and the failure to respond when mechanical issues presented themselves shortly after purchase, not that there was a hub cap missing or rust spots on the body.

The general nature of the allegations against the Applicants has already been set out. It may be of assistance to restate those allegations and indicate the Tribunal's findings with respect to each. In each case, the standard of proof applied by the Tribunal has been proof on a balance of probabilities.

1. Allegations relating to consumer complaints, in particular, the failure to provide a basic warranty of fitness for purpose.

The business of selling cars requires attention to a wide range of interrelated statutes and regulations. The starting point for addressing these allegations is s. 15 of the *Sale of Goods Act*, R. S. O. 1990 Chap S. 1 which states:

- 15.** Subject to this Act and any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:
1. Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description that it is in the course of the seller's business to supply (whether the seller is the manufacturer or not), there is an implied condition that the goods will be reasonably fit for such purpose, ...

Pursuant to s. 9 of the CPA, when a supplier of goods sells to a consumer, the supplier cannot contract out of the *Sale of Goods Act* warranties:

9. (1) The supplier is deemed to warrant that the services supplied under a consumer agreement are of a reasonably acceptable quality.

Quality of goods

(2) The implied conditions and warranties applying to the sale of goods by virtue of the *Sale of Goods Act* are deemed to apply with necessary modifications to goods that are leased or traded or otherwise supplied under a consumer agreement.

Same

(3) Any term or acknowledgement, whether part of the consumer agreement or not, that purports to negate or vary any implied condition or warranty under the *Sale of Goods Act* or any deemed condition or warranty under this Act is void.

Same

(4) If a term or acknowledgement referenced in subsection (3) is a term of the agreement, it is severable from the agreement and shall not be evidence of circumstances showing an intent that the deemed or implied warranty or condition does not apply.

These statutory terms have been incorporated into Standards of Business Practice applicable to dealers under the Act:51

9. PROFESSIONALISM

(1) In carrying on business, a registrant shall not engage in any act or omission that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming of a registrant.

(2) In carrying on a business, a registrant shall act with honesty, integrity and fairness.

(3) A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicle.

(4) A registrant shall provide conscientious service to the registrant's customers in the course of a trade in a motor vehicle and shall demonstrate reasonable knowledge, skill, judgment and competence in providing the services.

(5) If,

(a) a registered motor vehicle dealer enters into a contract to sell or lease a motor vehicle to a purchaser or lessee who is not another registered motor vehicle dealer;

(b) the purchaser or lessee trades in another motor vehicle to the dealer under the contract or to another registered motor vehicle dealer under a separate contract; and

(c) the dealer who receives the vehicle being traded in agrees to pay any outstanding loan on the vehicle or to pay any outstanding bill for the repair or storage of the vehicle,

the dealer who receives the vehicle being traded in shall fulfil the dealer's obligations under the agreement described in clause (c).

EXAMPLES

9.1 Registrants promptly, honestly and courteously respond to complaints made about them by other Registrants, consumers or others.

9.2 Registrants keep informed with respect to all matters essential to the conduct of business in the motor vehicle industry.

9.3 Registrants cooperate with OMVIC representatives carrying out OMVIC's administrative activities including inquiries, inspections, investigations and discipline.

9.4 The obligations in Example 9.3 apply whether the issue concerns that Registrant, another Registrant or any other person.

9.5 Registrants sell or lease motor vehicles reasonably fit for the intended use that a consumer expressly or by implication makes known to the Registrant. A motor vehicle may be considered not reasonably fit because it is not designed for the intended use, or because it has structural or mechanical defects.

9.8 All contracts respecting motor vehicle transactions are in writing and disclose all terms and conditions, including the total amount of all payments made or received in relation to the sale or lease of a motor vehicle. After all terms and

conditions have been filled out on the contract, every contract is signed by all parties to the contract and a signed, duplicate original copy of the contract is provided to all parties to the contract.

9.9 All terms and conditions in contracts respecting motor vehicle transactions are set out clearly and in plain language. Disclosure statements are expressed clearly and concisely in a logical order and in a manner that is likely to bring the information to the attention of the purchaser.

9.10 Dealers encourage consumers to read and understand the terms and conditions of all contracts before signing the contract.

9.11 Dealer employees are clear and truthful in describing vehicle features, benefits and prices, and in explaining products, services, programs and charges. They assist customers to find the vehicle that best meets their needs and financial ability.

9.12 Registrants comply with the all laws that govern the motor vehicle industry, including applicable parts of the following legislation:

- *Motor Vehicle Dealers Act, 2002;*
- *Consumer Protection Act, 2002;*
- *Highway Traffic Act;*
- *Human Rights Code;*
- *Sale of Goods Act;*
- *Environmental Protection Act;*
- *Personal Property Security Act;*
- *Repair and Storage Liens Act.*
- *Competition Act* (as it pertains to the advertising of motor vehicles)

9.13 Registrants have knowledge of and comply with the Code of Ethics. Registrants cannot create or enter into an agreement which negates any obligation under the Code of Ethics.

9.16 Registrants do not knowingly allow anyone other than a registered Salesperson to be involved in negotiating or approving motor vehicle transactions or to give information about specific motor vehicles that are for sale or lease. Without

limiting the generality of the foregoing, such positions include those typically known as business managers, finance and insurance staff, leasing staff, sales staff and all sales and leasing managers.

9.17 Registrants do not encourage or counsel anyone to break a contract already made with another Registrant.

9.18 When leasing a used motor vehicle, Registrants ensure that the motor vehicle has been inspected and that a Safety Standards Certificate has been issued for that vehicle.

A number of consumers appeared before the Tribunal to complain about what may be euphemistically referred to as poor after sales service. Consumer X took his vehicle back to the Applicants as soon as he left the lot as did Consumer S. Consumer Z identified numerous defects in her vehicle including an inoperative heater as winter approached. Consumer W had problems with her sun roof within a couple of days of leaving the dealership. Mr. Mahmoodi testified that he felt an obligation to fix safety related items and there is evidence that he did so in a couple of instances, most notably in Consumer W's case. Equally, there is evidence that he refused to carry out even safety related repairs as was the case with Consumer S. Mr. Hines and other OMVIC witnesses stated that the fitness for purpose warranty meant that the vehicle had to operate normally for some period of time or else the dealer was under an obligation to fix it. It is clear that Mr. Mahmoodi understood this fact. When addressing the \$8000.00 warranty sale while he worked for Mr. Pishvai, he stated that the \$8,000.00 warranty did not cost Mr. Pishvai any money because the vehicle in question suffered an engine failure within 3 days of the sale and Mr. Pishvai was under an obligation to fix it in any event. This is not a standard he applied to himself. The Tribunal finds that the allegation against the Applicants that they failed to appropriately deal with consumer complaints and extend the statutory warranties is proven.

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.**

With respect to allegation a., the obligation to disclose financing terms is found, again, in an interplay of statutes and regulations. S. 40 of O/Reg 333/08 sets out the

contents of an automotive bill of sale as follows:

40. (1) Before entering into a contract to sell a used motor vehicle to a purchaser who is not a registered motor vehicle dealer, a registered motor vehicle dealer shall ensure that the person providing financing for the purchase has provided to the purchaser the information that must be disclosed in any initial disclosure statement required under section 79 of the *Consumer Protection Act, 2002* with respect to the financing if,

- (a) the purchaser is a consumer within the meaning of that Act; and
- (b) the dealer is providing the financing or the application for the financing to the purchaser.

(2) A registered motor vehicle dealer shall ensure that any contract that the dealer enters into to sell a used motor vehicle to a purchaser who is not another registered motor vehicle dealer includes, in a clear, comprehensible and prominent manner, the following:

1. The matters required under paragraphs 1 to 3, 5 to 10, 14 to 19 and 21 to 27 of subsection 39 (2).
 - 1.1 If the contract is made through a motor vehicle dealer registered as a general dealer, the registered name and registration number of that dealer, together with the legal name of that dealer if it is different from the registered name.
2. A statement that the dealer has complied with subsection (1), if that subsection applies to the dealer with respect to the contract.
3. An itemized list of all repairs, if any, that, under the contract, the dealer has made to the vehicle or will make to the vehicle and the cost of any such repairs that are to be paid by the purchaser.
4. If a current safety standards certificate under the *Highway Traffic Act* has been issued for the vehicle, that certificate and a statement in accordance with subsection (5) in 12 point bold font, except for the heading which shall be in 14 point bold font.
5. If the dealer is selling the vehicle on an as-is basis, a statement in accordance with subsection (6) in 12 point bold font, except for the heading which shall be in 14 point bold font, where the purchaser initials the statement.

(3) No registered motor vehicle dealer shall sell a used motor vehicle on an as-is basis to a purchaser who is not a registered motor vehicle dealer if a current safety standards certificate under the *Highway Traffic Act* has been issued for the vehicle.

S. 79 of the CPA referenced in subsection 40 (1) states:

79. (1) Every lender shall deliver an initial disclosure statement for a credit agreement to the borrower at or before the time that the borrower enters into the agreement, unless the lender has adopted the loan broker's initial disclosure statement as his, her or its own.

Contents of statement, fixed credit

(2) The initial disclosure statement for a credit agreement for fixed credit shall disclose the prescribed information.

Contents of statement, open credit

(3) The initial disclosure statement for a credit agreement for open credit shall disclose the prescribed information.

Brokerage fee

(4) If a loan broker assists in arranging a credit agreement, the initial disclosure statement shall disclose the prescribed information.

The prescribed information is set out in O/Reg 17/05 as follows:

63. (1) The initial disclosure statement for a credit agreement for fixed credit shall be in writing and, for the purpose of subsection 79 (2) of the Act, shall disclose the following information, in addition to the information required under subsection 78 (1) of the Act:

0.1 The outstanding principal balance as at the beginning of the term of the credit agreement.

1. The total of the advances to be made to the borrower.
2. If more than one advance is to be made to the borrower, the nature, timing and amount of each advance.
3. The length of the term of the credit agreement.
4. The cost of borrowing.
5. The length of the term of the amortization period, if different from the length of the term of the credit agreement.
6. The interest rate payable by the borrower under the credit agreement, if the rate will not change during the term of the credit agreement.
7. If the interest rate payable by the borrower under the credit agreement may change during the term of the credit agreement,
 - i. the initial interest rate payable by the borrower under the credit agreement,
 - ii. the manner of determining the annual interest rate at any time during the term of the credit agreement, and
 - iii. unless the amount of the scheduled payments is adjusted to account for changes in the interest rate, the lowest interest rate at which the scheduled payments would not cover the interest that would accrue between consecutive scheduled payments based on the outstanding principal balance as at the beginning of the term of the credit agreement.
8. The date on which interest begins to accrue under the credit agreement.
9. The circumstances under which interest is compounded under the credit agreement.
10. For each element of the cost of borrowing, other than interest, the nature of the element and amount payable by the borrower.
11. The details with respect to grace periods under the credit agreement.
12. The annual percentage rate for the credit agreement.
13. Subject to subsection (2), the optional services accepted by the borrower, the charge for each optional service, the borrower's right to terminate any optional service of a continuing nature and the manner of exercising that right.
14. The total of all payments the borrower is required to make in connection with the credit agreement and the timing and amount of each payment, including, without

limitation, any down payment, trade-in allowance, balloon payment and final payment.

15. If the credit agreement does not require the borrower to make scheduled payments,

i. the circumstances under which the outstanding balance or a portion of it is required to be paid by the borrower, or

ii. the provisions of the credit agreement that set out those circumstances.

16. The method used to apply each payment by the borrower against the accumulated cost of borrowing and against the outstanding principal balance.

17. The prepayment rights, charges and penalties that apply to the credit agreement.

18. The method of calculating the amount that the lender is required to refund or credit to the borrower under subsection 76 (2) of the Act and section 60 of this Regulation, if the borrower prepays the full outstanding balance under the credit agreement.

19. The default charges under the credit agreement.

20. If the borrower is giving a security interest in personal property to secure the borrower's indebtedness under the credit agreement, a description of the property that will be subject to the security interest.

21. If the credit agreement requires the borrower to purchase insurance,

i. that the borrower may purchase the insurance from any insurer who may lawfully provide that type of insurance and may purchase the insurance directly from the insurer or through an agent of the borrower's choice, and

ii. if the credit agreement gives the lender the following right, that despite subparagraph i, the lender has the right to disapprove, on reasonable grounds, an insurer selected by the borrower.

In his evidence, Mr. Mahmoodi attempted to justify his admitted failure to insert such terms "*Before entering into a contract to sell a used motor vehicle to a purchaser*" by suggesting that consumers are not really interested in such information. All they are interested in is the affordability of the monthly payment. For the purposes of this hearing it is not necessary to explore whether the public policy reflected in these extensive regulatory requirements satisfy a genuine public concern. It is sufficient to state that, at this time, it is a legal requirement that these details are included in a bill of sale or through other written disclosure before the bill of sale is signed. The Applicants did not do so and are in breach of the Act, the CPA and applicable regulations.

In at least one case, the sale to Consumer S, the evidence is clear that the Applicants failed to disclose all attendant fees. Consumer S paid a \$300.00 fee to the Applicants to ensure the car was perfect and a noise in the trunk was fixed. That fee is not reflected in the bill of sale. In another, Mr. Mahmoodi advised Mr. Brown that the AutoGard warranty had been provided free of charge. Mr. Brown advised him that the cost of that warranty needed to be broken out in the bill of sale notwithstanding it did not represent an extra charge to the consumer. The Tribunal

finds that this allegation has been proven.

In the review above concerning credibility, the Tribunal canvassed a number of sales where the Applicant was aware of material facts related to vehicles that he chose not to disclose. Only research and evidence from CarProof's representative, Mr. Maiorana pinpointed that date of Mr. Mahmoodi's knowledge in the face of his denials. These were not the only instances. Mr. Pishvai testified concerning the Porsche Boxter trade-in when Mr. Mahmoodi failed to enter a damage history that was known to him into the trade-in bill of sale. The evidence is overwhelming that the Applicants sold vehicles without full disclosure of material facts known to them at the time of sale.

The last two allegations under this section relate to the failure to provide bills of sale. The two categories relate to persons from whom deposits have been received and persons who have actually purchase vehicles. There is clear evidence that these allegations have been proven. Consumer X and Consumer Z both testified that they were not given bills of sale when they purchased their vehicles. In the former case, Consumer X stated that he never ever received a bill of sale. In the latter, Consumer Z went back to the dealership a number of times before finally receiving an unsigned copy of the bill of sale. Consumer R not only denied receipt of a bill of sale, but, based on the evidence, established to the satisfaction of the Tribunal that the bill of sale advanced by the Applicants contained a forged signature. Consumer H from Winnipeg placed a deposit over the phone and even the Applicants have not alleged that he was provided with a bill of sale. The Tribunal finds these two allegations proven.

- 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.**

The Tribunal has canvassed the evidence relating to this allegation above and finds that it is proven.

- 4. Allegations against Mr. Mahmoodi relating to acting a salesperson under the Act when he was not registered to do so.**

Mr. Mahmoodi has admitted this activity.

- 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.**

The evidence relating to this allegation consists of two Kijiji advertisements and a Carsified.com advertisement and was given by Mr. Korth of OMVIC. The evidence creates some difficulties because there was only an exchange of emails concerning the Kijiji advertisements and no direct identification of Mr. Mahmoodi. The Tribunal

finds that the Applicants' attempts to attribute the Kijiji advertisements to a vengeful competitor too fantastical to bear any substance. Further, Mr. Mahmoodi asserts that he was out of the country during the email exchange. That leaves the Tribunal to determine, on a balance of probabilities, if it was more likely than not that the Applicants were responsible for these advertisements.

The Tribunal accepts Mr. Mahmoodi's explanation with respect to the Carsified.com advertisement that it constitutes an unauthorized download from his website. The explanation is consistent with the telephone call he answered from Ms Korth when he advised her the car was sold. The Tribunal does not accept the fact that Mr. Mahmoodi's absence from Canada during the email exchange with Ms Korth would in any manner inhibit him from responding to her Kijiji enquiries. In this day and age, email communication worldwide is possible through computers, Internet cafes and smart phones. At least one of the responses came from a phone. Mr. Mahmoodi could easily have communicated with Ms Korth while he was abroad. Additionally, Mr. Mahmoodi has acknowledged that the cell phone number given in the advertisements is his and that he answers that cell phone. Applying the test, is it more likely than not the Applicants placed these advertisements, the Tribunal is forced to conclude that it is. No other explanation bears close examination. Accordingly, the Tribunal finds this allegation proven.

6. Allegations that the Applicant deliberately delivered falsified documents to OMVIC with the intent to mislead OMVIC when dealing with consumer complaints.

This allegation has been canvassed above. There are two documents in issue; the falsified bill of sale relating to Consumer R and the falsified CarProof report relating to Consumer L. The latter document was provided during the course of this hearing in an attempt to mislead not only OMVIC but the Tribunal. The Tribunal is satisfied that this allegation has been proven.

One ground advanced by the Registrar in addition to the grounds set out above is that the Applicant used an unregistered salesperson, Rahmic, in the sale to Consumer S. Ms Thrasher testified that no salesperson named Rahmic was registered with the Applicants and that Mr. Mahmoodi denied using anyone called Rahmic. In his evidence Mr. Mahmoodi testified that he had a registered salesperson at that time who was developing a nickname rather than use his rather long and difficult to pronounce proper name. In the absence of evidence from the Registrar showing the names of persons, if any, registered as salespeople with the Applicant at that time, the Tribunal cannot conclude that Rahmic was not a registered salesperson able to sell cars for the Applicants.

The Registrar also advanced the position that the corporate Applicant had breach terms and conditions of registration. For the most part, the terms and conditions of

registration relied on by the Registrar track obligations of the Applicants set out in various statutory instruments. Breach of the statutory and regulatory scheme constitutes a breach of the terms and conditions and the Tribunal finds for the reasons set out above that the corporate Applicant breached its terms of registration.

The right to registration is set out in the Act at s. 6. The applicable terms are as follows:

6. (1) An applicant that meets the prescribed requirements is entitled to registration or renewal of registration by the registrar unless,

(a) the applicant is not a corporation and,

(i) having regard to the applicant's financial position or the financial position of an interested person in respect of the applicant, the applicant cannot reasonably be expected to be financially responsible in the conduct of business,

(ii) the past conduct of the applicant or of an interested person in respect of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty, or

(iii) the applicant or an employee or agent of the applicant makes a false statement or provides a false statement in an application for registration or for renewal of registration;

(e) the applicant or an interested person in respect of the applicant is carrying on activities that are, or will be if the applicant is registered, in contravention of this Act or the regulations, other than the code of ethics established under section 43;

(f) the applicant is in breach of a condition of the registration.

Pursuant to s. 8, the Registrar may issue a Notice of Proposal to Revoke Registration on any ground for which registration may be refused under s. 6, and s.9 provides for rights of appeal to the Tribunal from the Registrar's Notice. On appeal, the powers of the Tribunal are set out in s. 9 (5):

Hearing

(5) If a hearing is requested, the Tribunal shall hold the hearing and may by order direct the registrar to carry out the registrar's proposal or substitute its opinion for that of the registrar and the Tribunal may attach conditions to its order or to a registration.

The Registrar urges on the Tribunal the position that the past conduct of the Applicants provides reasonable grounds for belief that they will not carry on business in accordance with the law or with integrity and honesty. Further, the Registrar argues that the Applicant has breached terms and conditions of registration, in itself a ground for revocation. Mr. Mahmoodi admits that he has made mistakes but argues they were mistakes arising out of a lack of experience in the industry. He asserts that he is inherently honest and, if given a second chance, he will learn from his mistakes and perform better in the future. He states that to assist in the learning process he is happy to accept any terms the Tribunal may impose. He is prepared to pay to consumers any money the Tribunal feels may be owed and to take any course to learn about the obligations of a registrant under the Act.

The Tribunal is satisfied that the evidence discloses that past conduct of the Applicants provides reasonable grounds for belief that the Applicants will not carry on business in accordance with law or with integrity and honesty. It is also clear that the Applicants have breached conditions of registration. It remains only for the Tribunal to determine if terms are warranted.

Mr. Mahmoodi advanced two terms for the consideration of the Tribunal. He stated that the Applicants would be happy to repay to consumers any money the Tribunal felt is owed. In considering this term, the Tribunal notes that, notwithstanding that there is a settlement to pay Consumer S \$900.00, this has remained unsatisfied now for over a year, Mr. Mahmoodi's attitude was that he would await the outcome of this hearing before deciding whether to pay or not. It would appear that it is not his promise to pay that is the motivator but whether the Tribunal will force him to pay. Put another way, Mr. Mahmoodi is waiting to see if he can get away without paying.

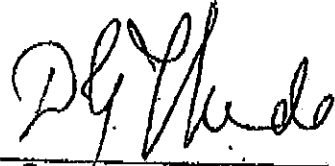
The second term advanced by Mr. Mahmoodi was that the Tribunal require that he attend school to learn about his obligations under the Act. The difficulty with this term is that Mr. Mahmoodi has already attended such a course and achieved a mark in the region of 80% in the exam. He answered correctly many if not all the questions relating to ethical dealing and the application on the CPA. He chose to hear his instructors but not to listen to them. The suggested term is nothing more than a request to repeat the basic qualification course. Until he chooses to listen, such a course of action is futile.

Having reviewed all of the evidence, the Tribunal must conclude that this is not a case where terms are warranted. It must be remembered that the Applicants have been subject to terms and conditions throughout their registration period. It is clear that the terms meant nothing to the Applicants in the conduct of their business. Further, during the period when the Applicants were prohibited by Order of this Tribunal from exercising the privileges of a car dealer or salesperson under the Act, the Tribunal has found that they ignored the Tribunal's Order and placed advertisements to sell cars. In the face of such behaviour, the Tribunal can have no confidence in the Applicants' ability to embrace both the letter and the spirit of any terms it might impose and truly achieve the necessary change in attitude necessary if the Applicants are to recognize their statutory obligations in a regulated industry.

ORDER

Pursuant to the provisions of s. 9 (5) of the Act, the Tribunal orders the Registrar to carry out his proposal dated August 23, 2010 as amended to revoke the registrations of 1775091 Ontario Inc. o/a Canadian Best Auto Inc. as a motor vehicle dealer and Hadi Mahmoodi as a motor vehicle dealer and salesperson under the Act.

LICENCE APPEAL TRIBUNAL



D. Gregory Flude, Chair

RELEASED: May 29, 2012

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