



Citation: Charles Cadman, Bobby Wilkinson, and 2631273 Ontario Inc. o/a 2nd Chance Auto Sales v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2024 ONLAT 15085

Licence Appeal Tribunal File Number: 15085/MVDA

In the matter of an Appeal from a Notice of Proposal to Revoke Registrations issued by the Registrar pursuant to the *Motor Vehicle Dealers Act, 2002*, c. 30, Sch. B

Between:

Charles Cadman, Bobby Wilkinson, and 2631273 Ontario Inc. o/a 2nd Chance Auto Sales

Appellants

and

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

DECISION

ADJUDICATOR:

Rebecca Hines

APPEARANCES:

For the Appellants:

Justin Jakubiak, Counsel
Jonathan Gross, Co-Counsel

For the Respondent:

Rishi Nageshar, Counsel

Held by videoconference:

April 8, 10, 11, 12 and 15, 2024

BACKGROUND

- [1] This is an appeal of the Notice of Proposal (“NOP”) issued by the Registrar, *Motor Vehicle Dealers Act, 2002* (the “respondent” and “Act,” respectively) on July 6, 2023, and Notice of Further and Other Particulars dated March 3, 2024, to revoke the registrations of Bobby Wilkinson (“Wilkinson”) and Charles Cadman (“Cadman”) (the “appellants”) as motor vehicle salespersons and 2631273 Ontario Inc. operating as 2nd Chance Auto Sales (the “corporate appellant”) as a motor vehicle dealership.
- [2] Both Wilkinson and Cadman are registered under the *Act* and are officers and general managers for the corporate appellant and, therefore, are responsible for overseeing the day-to-day operations of the dealership’s business.
- [3] The respondent submits that the past conduct of Wilkinson and Cadman affords reasonable grounds for belief that both they, along with the corporate appellant, will not carry on business in accordance with the law and with integrity and honesty and are therefore disentitled to registration as motor vehicle salespersons and dealer pursuant to s. 6(1)(a)(ii) and (d)(iii) of the *Act*. The onus is on the respondent to prove that the NOP should be carried out.
- [4] The appellants argue that they did not have any involvement in the transactions outlined in the NOP and Notice of Further Particulars. Instead, many of the transactions involved the conduct of one employee and when they became aware they took immediate action to address it.
- [5] The matter proceeded to a five-day videoconference hearing. On behalf of the respondent, I heard the testimony of Marc Duval, Manager of Investigations, Ontario Motor Vehicle Industry Council (“OMVIC”), Patrick Lowell, an Investigator with OMVIC, Jude Albakri, a former employee of the corporate appellant, and six consumers: Sheena Lafortune (“Consumer H”); Trevor Goble (“Consumer I”); Daniel Tenover (“Consumer J”); Sue Ann Atkins and Bernard Freve (“Consumer K”), and Fatoumapa Bah (“Consumer L”). Cadman testified on behalf of the appellant, as did Raymond Ramazani, Director of Autoguard Warranty Corporation.

ISSUES IN DISPUTE

- [6] I have been asked to decide the following issues:

- i. Does the past conduct of Cadman and Wilkinson afford reasonable grounds for belief that they will not carry on business in accordance with the law and with integrity and honesty, thereby disentitling either of them or both of them to registration pursuant to s. 6(1)(a)(ii) of the *Act*?
- ii. Does the past conduct of Cadman and Wilkinson afford reasonable grounds for belief that the corporate appellant's business will not be carried out in accordance with the law and with integrity and honesty thereby disentitling the corporate appellants to registration pursuant to s.6(1)(d)(iii) of the *Act*.
- iii. If I find that any of the appellants is disentitled to registration then I must determine whether to direct the respondent to carry out its NOP or whether to substitute my opinion for that of the registrar, as by attaching conditions to a registration.

RESULT

- [7] The respondent has established that the past conduct of the appellants affords reasonable grounds for belief that the appellants and the corporate appellant will not carry on business in accordance with the law and act with honesty and integrity. However, I find that the public interest can be adequately protected by ordering an alternative penalty to revocation and by attaching terms and conditions to the licence. I therefore direct the Registrar not to carry out its NOP to revoke the registrations of the appellants under the *Act*.

ANALYSIS

I find that the past conduct of the appellants affords reasonable grounds for belief that they will not carry on business in accordance with the law and with integrity and honesty.

- [8] Under s. 6(1)(a)(ii) and s.6(1)(d)(iii) of the *Act*, the onus is on the respondent to prove that the past conduct of the appellants affords reasonable grounds for belief that they will not carry on business in accordance with the law and with integrity and honesty. The standard of "reasonable grounds for belief" was set out by the Court of Appeal in *Ontario Alcohol and Gaming Commission of Ontario v. 751809 Ontario Inc. (Famous Flesh Gordon's)*, 2013 ONCA 157 (CanLII). The respondent does not have to show that the appellants' past conduct makes it more likely than not that the business will not be carried out as required, but only that its belief to that effect is based on more than mere suspicion and on compelling and credible information. Further, the respondent must also show that

there is a nexus between the past conduct and the appellants' ability to conduct business under the *Act* serving the interests of the public.

- [9] Section 23 of the *Act* supports that a motor vehicle dealer shall ensure that every salesperson employed by them is carrying out his or her duties in compliance with the *Act*. The respondent submits that both Cadman and Wilkinson failed to prevent the dealership and/or its employees from engaging in non-compliant conduct. For clarity, throughout this decision when I refer to the appellants, I am referring to both Cadman and Wilkinson as I agree with the respondent that they are ultimately responsible for the dealership and the actions of their employees.
- [10] The respondent argues that it has shown reasonable grounds for belief based on the allegations outlined in its NOP and Notice of Further and Other Particulars. The allegations stem from numerous transactions regarding the sale of used motor vehicles by employees of the corporate appellants. The respondent submits that the appellants have displayed a pattern of deceptive business practices and non-compliance with the law. This is supported by the appellants' admission that false insurance documents were created on four transactions by one of their employees. Further, they have failed to pay off a loan and discharge a lien on a trade-in vehicle, falsified the transaction of a refinance agreement on a bill of sale, provided the incorrect odometer reading on a bill of sale, and have misrepresented to consumers that warranties are a mandatory purchase for approval of loans. In addition, they have provided no recourse to the consumer complaints. Instead, they behaved in a threatening and intimidating manner by, in one case, serving false court documents on a consumer. The respondent maintains that the appellants have a responsibility to ensure their employees and the dealership are carrying out their duties with honesty, integrity and in compliance with the law.
- [11] The appellants argue that both Cadman and Wilkinson have been registered as salespeople with OMVIC for over 20 years and had a clean record. They concede that a salesperson employed with their dealership furnished and falsified insurance documents pertaining to four transactions. However, when they became aware of the issue, they immediately took the appropriate steps to deal with the matter. The appellants also submit that they were not directly involved in any of the transactions that are the subject of this appeal. Instead, almost all of the transactions involved the actions of one salesperson who has since been terminated. The appellants also maintain that the business of the dealership got away from them because of the increase in sales due to COVID

19. They recently closed the dealership because of this. Finally, they submit that revocation of their licence is the most severe penalty and that if the Tribunal finds they were responsible for any misconduct terms and conditions should be applied to their registrations.

- [12] Due to the number of transactions and the fact that each contains different allegations of non-compliance with the *Act* and *Regulation 333/08* ("*Regulation*"), I will discuss each and my findings regarding same in turn.

Consumer A – 2017 Nissan Versa Transaction

- [13] Regarding the transaction with Consumer A, the NOP alleges that the appellants falsified and furnished false information and/or documents contrary to ss. 26 and 27 of the *Act*.
- [14] Sections 26 and 27 of the *Act* support that no registrant shall falsify or induce another person to falsify or furnish any deceptive information or document relating to a trade of a vehicle.
- [15] The NOP alleges that that the appellants falsified information on the credit application regarding this transaction. In particular, Consumer A was advised by an employee of the dealership to have her husband co-sign for the vehicle because she had bad credit. Moreover, the credit application falsely indicated that Consumer A's husband was a full-time employee at Amazon for 4 years, made \$3200 per month and it falsely identified supporting information such as a letter of employment and paystubs. Consumer A filed an OMVIC complaint where she reported that her husband has never been employed, is on disability and is a recipient of ODSP. The respondent relied on the testimony of Mr. Lowell who confirmed that these allegations were made by the consumer when he conducted his investigation.
- [16] I find the respondent has not met its onus in proving this allegation because despite being summoned, neither Consumer A nor her husband testified at the hearing. No explanation was provided by the respondent for why they did not appear to testify. The appellants relied on a Client Acknowledgement Form signed by the consumers where they agreed that the information provided regarding the transaction was accurate. In addition, the consumers signed the loan application and bill of sale. As a result, I find it unclear whether the information was provided to the appellants by the consumer or falsified by the appellants as alleged in the NOP. Finally, I find the testimony of Mr. Lowell

unhelpful because his investigation notes were based on the consumers self-reports and could not otherwise be validated. While this Tribunal may admit hearsay evidence under s. 15(1) of the *Statutory Powers Procedure Act*, I decline to assign any weight to Mr. Lowell's evidence about this transaction because the prejudicial impact of the hearsay evidence outweighs any probative value that it may have. For these reasons, I find that the respondent has not met its onus in proving that the appellants breached ss. 26 and 27 of the *Act* regarding this transaction.

Consumers B, C, D and E – Furnishing and Falsifying Insurance Documents

- [17] Regarding the transactions involving Consumers B, C, D and E, the NOP alleges that the appellants falsified and furnished false information and/or documents contrary to ss. 26 and 27 of the *Act*.
- [18] I find the appellants falsified and furnished false information and/or documents pursuant to ss. 26 and 27 of the *Act*. As highlighted above, the appellants conceded that false confirmation of insurance letters were submitted to the lenders in connection with these transactions. Cadman testified that all of these transactions involved Andrew Norman ("Norman"), a former salesperson employed with the dealership. Further, when they became aware of the accusations, they immediately reviewed the deal files which did not contain the false insurance documents. Overall, I find Cadman to be a credible witness because he testified in a straight-forward manner and acknowledged the various mistakes made by either employees or the dealership pertaining to the subject transactions.
- [19] Cadman also testified that he and Wilkinson questioned Norman about these transactions, and Norman indicated that he had arranged insurance for the consumers in the event that they were unable to find a better deal. Because the fake insurance documents were not in their file and the employee had the most repeat customers and referrals, they issued him a warning. Norman was eventually terminated in November 2023. Cadman indicated that they did not receive the false insurance documents until OMVIC provided them with disclosure in late 2023. They also had an urgent staff meeting with all employees to provide training so that everyone was aware that this was unacceptable and hired two employees to review all deal files prior to consumers picking up vehicles. A former employee confirmed during his testimony that the appellants held a meeting to specifically communicate with employees that this conduct was not allowed and was being taken seriously.

[20] I find that the appellants breached ss. 26 and 27 of the *Act* in that one of their employees falsified insurance documents on four transactions. Having said that, I find that once the appellants became aware of the employee's misconduct, they took the appropriate steps to ensure future compliance. They held a staff meeting to remind employees that this conduct was not acceptable and the importance of complying with the law and by disciplining the employee responsible. I also find that the appellants were not aware of the full extent of what had transpired until they received disclosure from OMVIC in the Fall of 2023. In my view, the steps the appellants took when they initially became aware of these transactions shows a willingness and intention to carry on business in accordance with the law and act with integrity and honest. Although I agree that the appellants breached ss. 26 and 27 of the *Act*, I find they took appropriate steps to correct the misconduct.

Consumer F – 2018 Nissan Pathfinder Transaction

- [21] Regarding the transactions involving Consumer F, the NOP alleges that the appellants failed to pay off a loan and discharge a lien on a trade-in vehicle.
- [22] Despite being summoned, Consumer F did not testify at the hearing, nor was an explanation provided for their absence. In addition, I was not directed to the evidence in support of the allegations outlined in the NOP. As a result, I conclude that the respondent has not met its onus in proving this allegation.

Consumer G – 2017 Dodge Journey Transaction

- [23] Regarding the transaction with Consumer G, the NOP alleges that the appellants falsified and furnished false information and/or documents contrary to ss. 26 and 27 of the *Act*.

Falsifying and Furnishing False Information and/or Documents

- [24] The NOP alleges that the appellants misrepresented Consumer G's financial position to the lender. In particular, the credit application indicated that the consumer's rent was \$700 per month instead of \$1000. The respondent submits that this information was false. The NOP also claims that the consumer thought he was buying a 4-cylinder vehicle but instead received a 6-cylinder vehicle. Finally, when he followed up with the dealership his complaints were ignored.
- [25] I find the respondent has failed to prove this allegation. Consumer G testified that he was interested in purchasing a vehicle, so he went to the dealership with his daughter who was there to translate because he is not fluent in English. The

consumer maintains that he signed the credit application, without fully reviewing it. Further, he acknowledged that he was not prevented from reading the documents before signing but felt rushed by the salesperson. The appellants relied on a Client Acknowledgement Form signed by the consumer which confirmed that the information provided in support of the transaction was accurate.

[26] The appellants submit that no documentation was submitted by the consumer to confirm that the information on the credit application was false. For example, a copy of his rental agreement indicating that his rent is \$1000 instead of \$700. I agree that this evidence is not before me. Further, Consumer G also admitted during his testimony that when he asked the salesperson whether the vehicle was a 4-cylinder model, the salesperson responded that they “did not know”.

[27] Overall, I find Consumer G’s testimony vague and unclear. Although it is possible that there was an error made on the credit application regarding his rent, he signed the acknowledgement form confirming the information was accurate and had his daughter there to translate. I also find the consumer’s claim that he agreed to buy a 4-cylinder vehicle not a 6-cylinder one unsubstantiated. The evidence supports that the consumer still agreed to buy the car when the salesperson told him that he did not know if it was a 4-cylinder vehicle. For these reasons, I find that the respondent has not proven the allegations regarding this transaction.

Consumer H – 2018 Dodge Journey Transaction

[28] In its NOP the respondent alleges that the appellants tricked Consumer H into purchasing a warranty, failed to remit payment of the warranty to the provider within 7 days pursuant to s. 47(7) of the Regulation, falsified and furnished false information and/or documents contrary to ss. 26 and 27 of the Act, and failed to pay out the loan and discharge the lien on the consumer’s trade-in vehicle.

Misrepresentation re: Mandatory Purchase of Warranty

[29] I find the appellants misrepresented to the consumer that the purchase of a warranty and gap insurance was mandatory. Consumer H testified that she was interested in buying a 2018 Dodge Journey and she dealt with Jon Niskanen (“Niskanen”), a salesperson employed with the corporate appellant. I find text messages between the consumer and Niskanen clearly support the consumer’s claim that the warranty and gap insurance were mandatory purchases. As a

result, she signed the bill of sale which included these products. The consumer followed up with the bank to inquire about this policy and was told that warranties and gap insurance were not required by the lender. She followed up with Niskanen to cancel the warranty and her request was ignored.

- [30] Cadman acknowledged during his testimony that there is no requirement by lenders for consumers to purchase these warranties. I find that the respondent has proven that the appellants misrepresented the mandatory need for warranties by lenders to the consumer. I find that in this case, the salesperson did not act with honesty and integrity in this transaction.

Failure to Remit Payment for Warrant

- [31] Section 47(7)(c) of the Regulation provides that if a registrant sells a warranty to a consumer, they shall provide the warranty provider with any payment received within 7 days of selling the warranty, along with any documentation and information about the vehicle.
- [32] Neither party spent any time at the hearing addressing this allegation, nor was I directed to the evidence relied upon in support of same. I conclude that the respondent has not met its onus in proving this allegation.

Falsifying and Furnishing False Information and/or Documents

- [33] I find the appellants falsified and furnished information pertaining to this transaction as the bill of sale misrepresented the nature of the transaction and inflated the price. The total price of the vehicle on the bill of sale indicated that the purchase price was \$34,860 whereas the purchase price was \$19,998. The salesperson included the negative equity from the trade-in of the consumer's Dodge Ram into the purchase price which was false information. I find this was supported by the text messages between the consumer and the salesperson which demonstrates that the purchase price of the vehicle was inflated by \$14,862.00 to offset the negative equity from the consumer's trade-in vehicle.
- [34] During his testimony, Cadman acknowledged that this was an error and that the negative equity should not have been included in the purchase price. He submits that the compliance team caught this and agreed to cancel the transaction with Consumer H. I find the respondent has proven that the appellants falsified the nature of the transaction by concealing the existence of the negative equity on the trade in vehicle contrary to ss. 26 and 27 of the Act.

Failure to Pay Out Loan and Discharge Lien

- [35] The respondent has not met its onus in proving this allegation. Consumer H testified that as part of the transaction the dealership agreed to the trade-in of her 2016 Dodge Ram. She took ownership of her new vehicle on March 19, 2023. The consumer testified that the appellants did not pay out the loan and discharge the lien on her trade-in vehicle leaving her responsible for making loan payments on two vehicles. The respondent relies on a letter from Auto Capital (the lender for the Dodge Ram) dated June 6, 2023, which confirmed that the loan had not been paid out and the date of the next payment. The respondent also relied on a series of text messages between the consumer and the salesperson where they state that the loan on the trade-in would be paid on May 19, 2023.
- [36] The appellants relied on a cheque payable to Auto Capitol dated March 24, 2023, for the outstanding loan on the vehicle in the amount of \$24,478. The appellants also rely on a letter from Auto Capitol dated March 25, 2023, which confirmed that the loan had been paid out and they no longer had an interest in the vehicle. Cadman testified that it is within industry standards to pay out loans for trade-in vehicles within 7 days of a transaction. The appellants submit that despite providing these documents to OMVIC they were ignored.
- [37] While I find it unfortunate that the consumer was misled by the salesperson about the exact date the loan on the trade-in vehicle would be paid out, the evidence before me supports that the loan was paid out within a week after the consumer took ownership of the vehicle. I find the appellants paid out the loan for the trade-in vehicle and discharged the lien in a timely manner. In my view, there was a disconnect on behalf of Auto Capital which remains unexplained about when the loan was paid out when the documents relied on by the appellants confirmed otherwise. As a result, I find the respondent has not met its onus in proving that the appellants failed to pay out the loan and discharge the lien because of the inconsistencies in the evidence.
- [38] As noted above, I find the appellants falsified the bill of sale by including the negative equity of the trade-in which inflated the price. Further, I find they misrepresented to the consumer that purchasing a warranty and gap insurance was mandatory to be approved for a bank loan. I find this misconduct speaks to the appellants' willingness to break the law when it is to their financial benefit.

Consumer I – 2011 Malibu Transaction

[39] Regarding the transaction with Consumer I, the NOP alleges that the appellants failed to disclose that the kilometres driven were unknown or indicate that the total kilometres driven was believed to be higher, contrary to s. 42 of the Regulation and failed to respond to the OMVIC complaint pursuant to s. 14(3) of the Act.

Failure to Disclose the Correct Kilometres on the Bill of Sale

[40] I find that the respondent has proven that the appellants did not comply with s. 42 of the Regulation. The bill of sale indicated that the odometer reading was 154,298 kilometres. The respondent relies on a picture of the odometer reading taken by the consumer on the date he took possession of the vehicle which indicated that the vehicle had been driven 115,961 kilometres. An MTO profile report indicated that the previous owner of the vehicle had reported that the vehicle had been driven 185,801 kilometres. Consumer I testified that this had a negative impact on him because his warranty claims were denied because of the inaccurate odometer reading. During his testimony, Cadman agreed that the odometer reading listed on the bill of sale was not accurate.

[41] I conclude that the appellants did not comply with s. 42 of the Regulation regarding this transaction by failing to disclose the accurate kilometres of the vehicle on the bill of sale.

Failure to Resolve the Consumer's Complaint

[42] The respondent alleges that the appellants failed to resolve the consumer's complaint appropriately. Both parties relied on various emails exchanged between the consumer and Wilkinson which support that at one point the appellants agreed to take back the vehicle. However, this did not happen and based on the emails exchanged between the consumer and Wilkinson it is unclear why. Cadman testified that the consumer was being unreasonable because he wanted to keep the vehicle and take another one free of charge. Consumer I testified that he commenced a small claims action because of the appellants' refusal to take the vehicle back and compensate him.

[43] I find Consumer I to be an unreliable witness because despite his experience regarding this transaction he testified that he would still do business with the appellants. I find it illogical that a consumer would still want to do business with the appellants after having this experience. The consumer's logic also conflicted

with the tone of the emails exchanged between him and Wilkinson which were hostile and immature. For these reasons, I believe Cadman that the consumer was not being reasonable regarding the resolution of this dispute. Although the consumer's complaint remains unresolved, for the reasons noted above I find the appellants are not entirely responsible due to my findings regarding Consumer I's credibility. I therefore do not conclude that this allegation is supported.

Failure to Respond to OMVIC Request

- [44] Section 14(3) of the *Act* provides that a registrant who receives a written request from the Registrar for information about a complaint shall provide the information as soon as practical.
- [45] I find the respondent has failed to prove this allegation. On May 26, 2020, OMVIC requested that the appellants provide documents regarding Consumer I's complaint. The next day, Wilkinson responded indicating that he could not forward the documents because they were working remotely because of COVID 19. I find Wilkinson's explanation for not being able to provide the documents right away reasonable because the request was made during the height of the pandemic when the whole province was under strict orders for residents not to leave their homes. Further, I find the evidence unclear as to whether the request was never complied with or whether the documents were eventually provided to OMVIC. For these reasons, I find the respondent failed to prove that the appellants failed to cooperate with the OMVIC investigation.
- [46] As noted above, I find the appellants breached s. 42 of the Regulation by providing the incorrect odometer reading on the bill of sale, which I find had a negative impact on the consumer because his warranty was not honoured.

Consumer J – Google Review

- [47] In its NOP, the respondent alleges that the appellants furnished false documents.
- [48] I find the appellants furnished false documents. Consumer J testified that in March 2020, he attended the dealership because he was interested in purchasing a vehicle. The consumer was not happy with the customer service he received so he left a negative review on Google. The respondent relied on a series of text messages between Hamza, an employee with the dealership and the consumer dated March 31, 2020, where the employee attempts to get the consumer to remove the Google review in exchange for a \$50 gas card. The consumer refused to remove the review. Consumer J testified that an employee

from the dealership attended his address and served a fake statement of claim which advised him that if he did not remove the Google review within 24 hours he would be sued.

[49] The respondent relied on a statement of claim dated April 2, 2020, which was confirmed to be false. The document listed the appellant numbered company as the plaintiff and the consumer as the defendant and indicated that it was issued by the Ottawa Superior Court and included a file number. The document included the excerpt from the consumer's Google review and indicated that if the consumer did not take down the review within 24 hours they would be aggressively pursued for damages under the *Libel and Slander Act*. A text message from Consumer J to Hamza dated April 7, 2020, indicated that he had received the fake court document and would not be removing his review. Cadman testified that neither himself or Wilkinson were aware of this incident and would not have condoned it.

[50] I find Consumer J to be a credible witness and find the evidence relied upon supports his narrative. Although Cadman testified that neither himself nor Wilkinson were aware of this incident, I believe that one of their employees created this fraudulent document in an attempt to bully the consumer into removing the negative review. While this incident did not involve a trade of a vehicle, the salesperson demonstrated dishonesty and intimidating behaviour towards a consumer. As noted above, the appellants are responsible for their employees conduct.

Consumer K – 2017 Dodge Journey Transaction

[51] In its NOP, the respondent alleges that the appellants failed to disclose in writing on the bill of sale that the vehicle was previously a daily rental, had incurred structural damage, and was previously registered out of province contrary to ss 42(7), (10) and (22) of the Regulation. Further, the appellants failed to properly handle the consumer's complaint and respond to the OMVIC investigation pursuant to s. 14(3) of the *Act*.

Failure to Disclose Accident History and Damages in Writing

[52] Sections 42(7), (10) and (22) of the Regulation provide that where a vehicle was previously used as a daily rental, had incurred structural damage or was an out of province vehicle the registrant must include a statement to that effect on the bill of sale.

- [53] Consumer K testified she was interested in buying a 2017 Dodge Journey and she too dealt with Norman. The consumer testified that Norman did not disclose that the vehicle had been involved in an accident, had previously been a daily rental, that it had incurred structural damage and was an out of province vehicle prior to her agreeing to buy it. Further, Norman rushed her and her partner to sign the various documents, so they did not fully review them. Prior to taking ownership of the vehicle the appellants had agreed to make various repairs to the vehicle because the consumer identified issues with the electrical system. Consumer K testified that after taking ownership of the vehicle she had problems with it and the electrical system had not been properly fixed. She obtained a Car Fax report which noted that the auction listed the vehicle as having structural damage.
- [54] The appellants relied on the bill of sale which stated that the vehicle had been a daily rental. The appellants also relied on a Vehicle Disclosure Form which indicated that the vehicle had been a daily rental, had been involved in an accident under \$3000 and was an out of province vehicle. This form was signed by the consumer. As a result, I find the respondent has not proven that the appellants breached ss. 42 (7) and (22) of the Regulation. However, neither the bill of sale nor the Vehicle Disclosure Form noted that the vehicle had incurred structural damage. Therefore, I find the appellants breached s. 42(10) of the Regulation in that they failed to provide a statement to the consumer advising that the vehicle had incurred structural damage. I find the appellants' failure to disclose this information dishonest.

Failure to Resolve Consumer Complaint

- [55] Consumer K testified that she attended the dealership and made a complaint about the status of the vehicle and the failure to disclose the structural damage. The appellants refused to rescind the contract with the consumer because the complaint about the vehicle was made outside of the 90-day period. Cadman testified that they did not rescind the contract because of the lengthy delay of the consumer in making the complaint. However, I find Cadman did not provide a reasonable explanation about the fact that the dealership did not disclose the vehicle's structural damage yet maintained a stubborn approach in resolving the consumer's legitimate complaint. I find the appellants did not properly resolve the consumer's complaint once they became aware of the fact that they failed to disclose the structural damage to the vehicle.

Failure to Respond to OMVIC Request

- [56] On September 12, 15, and October 12, 2022, OMVIC requested information from Wilkinson regarding Consumer K's complaint. Wilkinson requested further information because he had a record of several transactions involving a consumer by the same name. On January 10, 2023, Wilkinson advised the respondent that there were no records involving the consumer. OMVIC made additional requests for the information on January 10, 11, 20 and February 2023. Despite the repeated requests, the appellants failed to provide the information.
- [57] Overall, I find the email correspondence between OMVIC and Wilkinson supports that there was confusion about which consumer the complaint related to. In this transaction, the final bill of sale was signed by Consumer K's partner who had a different last name and was not referenced by OMVIC in the subject line of its requests in 2022. Cadman testified that their system is based on the name of the purchaser which in this case was the consumer's partner. However, once OMVIC provided Wilkinson with the VIN # and the name of the partner in January 2023, he provided the deal file on February 6, 2023.
- [58] In light of the confusion noted above, I find that Wilkinson did not intentionally fail to comply with OMVIC's request for information because the bill of sale was not signed by Consumer K. Further, I find that once OMVIC provided clarification Wilkinson complied with the request. For these reasons, I find the appellants did not fail to comply with s. 14 of the *Act* regarding this transaction.

Consumer L – Refinancing Loan for 2016 Fiat 500X

- [59] In its NOP, the respondent alleges that the appellants falsified and furnished false information contrary to ss. 26 and 27 of the *Act*. They also falsely misrepresented to the consumer that purchasing warranties was a mandatory requirement, contrary the *Consumer Protection Act*.

Falsifying and Furnishing False Information and/or Documents

- [60] I find the appellants falsified and furnished false information contrary to ss. 26 and 27 of the *Act* regarding this transaction. Consumer L testified that she contacted the dealership to refinance a loan she had on her existing vehicle for the purpose of getting cash back. She dealt with Ben Lovell ("Lovell"), a finance manager employed with the dealership. The consumer acknowledged that she signed various documents but felt rushed by the salesperson, so she did not read them thoroughly until afterwards. Consumer L also testified that Lovell advised

her not to tell the lender that she was receiving cash back as part of the transaction. Upon reviewing the bill of sale, the consumer realized she had been charged for a warranty and gap insurance that she never agreed to. She followed up with Lovell who told her that due to her credit history the warranty and gap insurance were mandatory by the lender. She also inquired about various charges on the bill of sale which did not make sense because the numbers were inflated and implied that she was purchasing a new vehicle as opposed to refinancing her existing vehicle. The respondent relies on several text messages between the consumer and the manager to which the consumer attempts to get an explanation for the inflated numbers which I find were left unexplained by the appellants.

[61] From a review of the bill of sale, I find Lovell falsely indicated that this was a sale of a new vehicle as opposed to a refinance agreement. The bill of sale noted that the sale price of the vehicle was \$40,249.00 when the outstanding on the consumer's existing loan was \$8,495.84 and she was only to receive \$3,500.00 cashback. Text messages from Lovell to the consumer confirm the consumer's narrative that she was told not to mention cashback or refinance to the lender during the welcome call. Further, the bill of sale lists charges for HST and licencing when the consumer had already paid these fees when the vehicle was initially purchased. The bill of sale also included charges for PST for insurance which the consumer had already paid for. I find the respondent has proven that the appellants falsified the nature of this transaction on the bill of sale by passing it off as a new purchase as opposed to a refinance agreement contrary to ss. 26 and 27 of the *Act*.

[62] The respondent also submits that the application for financing falsely overstated the consumer's employment and housing history and misrepresented the value of the vehicle by misstating its condition and features. I find that the respondent failed to prove the allegation regarding falsifying information on the finance application because of inconsistencies in the consumer's testimony about her employment history. During cross-examination, the consumer confirmed that her LinkedIn profile said she was employed at the University of Ottawa which was consistent with the information listed on the credit application. Further, she acknowledged that she did sign the finance application and client acknowledgement form indicating that the information provided was accurate. As a result, I find the respondent provided insufficient evidence to prove this allegation.

Misrepresentation re: Mandatory Purchase of Warranty

[63] I find that the appellants misrepresented to the consumer that purchasing the warranty and gap insurance was mandatory for the approval of the loan by the lender. As noted above, this was supported by the text messages between the consumer and the manager. Further, when the consumer advised the manager that she did not want to purchase these products the manager responded to her with a rude tone. Overall, I find that the manager did not act with honesty and integrity in this transaction.

[64] As noted above, I find the appellants falsified information on the bill of sale and misrepresented to the consumer that warranty and gap insurance are mandatory. I find that the appellants did not act with honesty and integrity in that they took advantage of the consumer who was in a vulnerable situation for their own financial benefit.

Wilkinson - Unprofessional and Threatening Conduct

[65] In its NOP, the respondent alleges that Wilkinson engaged in unprofessional and threatening conduct in July and August 2021, by sending inappropriate text messages to a former employee.

[66] I find the respondent has failed to prove this allegation. The former employee testified that he was employed with the dealership for two months in 2021 and he was terminated. The appellants refused to pay him, so he pursued a remedy with the Labour Relations Board and also cooperated with the OMVIC investigation. He testified that he received a series of text messages from an unknown caller in July and August 2021, who he believes to be Wilkinson. From a review of the text messages, I conclude that they are written in an aggressive and intimidating tone and appear to be related to the former employee's employment with the dealership.

[67] I find there to be insufficient evidence to support that the text messages came from Wilkinson as the number listed on the text messages is unknown. I find the respondent is asking that I make assumptions about who the text messages came from. Further, I find the witness may have an ulterior motive because his employment was terminated for misconduct. As a result, I find his evidence unreliable. In addition, I find that Wilkinson was not given a fair opportunity to respond these allegations as he was never questioned by the OMVIC investigator about these text messages. For these reasons, I find OMVIC's

investigation unbalanced and give the former employee's evidence about it little weight.

Summary: The past conduct of the appellants affords reasonable grounds for belief that they will not carry on business in accordance with the law and with integrity and honesty

- [68] For the above noted reasons, I find the respondent has proven reasonable grounds for belief that the appellants' conduct in relation to some of the above transactions affords reasonable grounds for belief that their business will not be carried out in accordance with the law and with integrity and honesty. I have determined that the appellants have falsified and furnished false information and/or documents by: a) issuing fake insurance letters on four transactions; b) by including negative equity in the purchase price on a bill of sale; c) by failing to disclose the accurate kilometres on a bill of sale; d) by not advising the consumer of structural damage on a bill of sale; and e) by misrepresenting on a bill of sale that the transaction was a sale as opposed to a refinance. In addition, I have determined that the appellants have misrepresented to consumers that extended warranties and gap insurance are a mandatory requirement for lenders to approve loans. Finally, the appellants did not act with honesty and integrity in serving a consumer with a fake statement of claim in an attempt to bully a customer to remove a negative google review. I agree with the respondent that the appellants' employees have displayed a pattern of deceptive business practices in the sale of vehicles.
- [69] The appellants argue that they were not directly involved in any of the above transactions and should not be held accountable. I find this unsupported by the *Act*. As already highlighted above, s. 23 of the *Act* supports that a motor vehicle dealer shall ensure that every salesperson employed by them is carrying out his or her duties in compliance with the *Act*. The corporate appellant was bound by this duty, and, in its past conduct in respect of these transactions, failed in this duty. The individual appellants are the owners and business managers of the corporate appellant. As a result, I find their employees' conduct is attributable to the appellants for the purpose of this analysis. Further, the transactions involved four different employees, not just one bad apple which was the major theme of the appellants' case throughout this hearing.
- [70] For these reasons, I find that the individual appellants and the corporate appellant, are disentitled to registration in accordance with s. 6(1)(d)(iii) of the *Act*.

Should registration(s) be granted with conditions attached?

- [71] The Tribunal has the statutory discretion under s. 9(5) of the Act to consider each appellant's circumstances and determine whether the public interest requires outright revocation of registration or whether the purpose of the Act can be adequately protected through granting registration with conditions.
- [72] The Act has two broad purposes: first, to provide protection to consumers; and second, to promote professionalism amongst dealers and salespeople within the automobile industry.
- [73] The respondent argues that terms and conditions are not appropriate in this case because the appellants have displayed a pattern of deceptive business practices. Further, the misconduct was committed by more than one employee which supports that these were acceptable business practices at the dealership.
- [74] In support of its position that revocation of the appellants registrations is the appropriate remedy, the respondent relies on the decision of this Tribunal in *Toronto Quality Motors Inc., 2291683 o/a The Auto Dealer and Khaled Mousa-Khaled v. Registrar, Motor Vehicle Dealers Act, 2002*, 2021 CanLII 11891 (ON LAT) revoking an appellant's registration, which was upheld by the Divisional Court at 2022 ONSC 645. The respondent submits that the appellants' conduct in *Toronto Quality Motors* was similar to the conduct of the appellants in this case and revocation was deemed to be the appropriate penalty by the court.
- [75] The appellants argue that revocation of a registration should only be considered in the most severe circumstances. They submit that they both have a 20-year unblemished history as salespeople in the industry. The appellants rely on this Tribunal's decision in *11248 v. Registrar of Alcohol, Gaming and Racing*, 2018 CanLII 117012 (ON LAT), which was upheld by the Divisional Court at 2019 ONSC 5039. In this decision, the adjudicator placed significant weight on the fact that the appellant had a clean record in deciding not to revoke their licence.
- [76] The appellants also submit that I should consider imposing terms and conditions, or a suspension as opposed to directing the Registrar to carry out the NOP revoking their registrations. Such terms and conditions could include OMVIC retraining or hiring an OMVIC compliance auditor. The appellants relied on this Tribunal's decision in *Premium Cars Wholesale Limited, Hussein Shahnematollah Yazde, Daniel Amirjani v. Registrar, Motor Vehicle Dealers Act*,

2002, 2020 CanLII 27360 (ON LAT) where the adjudicator ordered a suspension as opposed to revocation. The appellants submit that this decision involved allegations of similar conduct to the present case. The appellants also assert that they mitigated consumer harm once they became aware of complaints because in the two transactions involving Consumers H and L, they rescinded the contracts. Further, they immediately took the appropriate steps when they became aware of the allegations of the false insurance letters.

[77] The appellants also maintain that OMVIC did not conduct a fair and balanced investigation in this matter because the investigator never interviewed them, the employees responsible for the misconduct or current employees of the dealership. Instead, they interviewed ex-employees who had been terminated for misconduct. Finally, they are willing to abide by any terms or conditions the Tribunal deems necessary such as additional training and monitoring or a suspension.

[78] I find that revocation of the appellants' registrations is not the appropriate penalty in this case for the following reasons:

- i) First, I find that once the appellants became aware of the false insurance letters, they took the appropriate steps based on the information they had at the time. I find their response to that matter demonstrates a willingness to act in compliance with the law and act with integrity and honesty. Moreover, they mitigated consumer harm in two of the transactions which demonstrates that they have accepted responsibility for their employees' misconduct. Finally, they accepted responsibility by closing the dealership.
- ii) Second, I agree with the appellants that OMVIC did not conduct a balanced investigation into this matter because the appellants, salespeople and manager involved in the transactions were never interviewed. I agree that this was unfair. Further, I find that the appellants were not given timely notice or disclosure of some of the complaints and that some of the evidence provided by the appellants to OMVIC was ignored. In my view, had the appellants been made aware of the complaints in a timely manner they could have prevented and mitigated any future non-compliance.
- iii) Finally, I have given some weight to the fact that both appellants have a 20-year unblemished history as motor vehicle salespeople. Although I agree with the respondent that the appellants are responsible for the conduct of their employees and failed to maintain control over them, they were not directly involved in any of the transactions. For this reason, I find that this case is distinguishable from *Toronto Quality Motors* relied on by

the respondent because the owner of the registrant in that case was directly responsible for the non-compliance with the law and misconduct on numerous transactions.

[79] For these reasons, I find that the public interest can be adequately protected with terms and conditions.

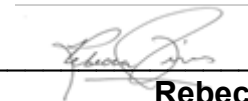
ORDER

[80] For the reasons set out above, pursuant to s. 9(5) of the *Act*, I direct the Registrar not to carry out the NOP to revoke the registrations of the appellants. I substitute my opinion for that of the Registrar as follows.

[81] The registrations of both Cadman and Wilkinson are subject to the following terms and conditions:

- i) Both appellants will complete OMVIC's certification course at their own cost within 6 months of the release of this decision and will provide proof of satisfactory completion to OMVIC.
- ii) The appellants will hire a compliance manager with OMVIC certification to ensure compliance and sign off on all future transactions.

Released: May 28, 2024



Rebecca Hines
Adjudicator