

**LICENCE APPEAL
TRIBUNAL**

**Safety, Licensing Appeals and
Standards Tribunals Ontario**

**TRIBUNAL D'APPEL EN MATIÈRE
DE PERMIS**

**Tribunaux de la sécurité, des appels en
matière de permis et des normes Ontario**



Citation: James Michalopoulos v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2020 ONLAT MVDA 11944

Date: 08-01-2020
File Number: 11944 MVDA

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

Between:

James Michalopoulos

Appellant

and

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

DECISION AND ORDER

Adjudicator: Evelyn Spence

Appearances:

For the Appellant: Self-represented

For the Respondent: Michael Burokas, Counsel

Heard in Ottawa: November 12, 13, 14 and 15, 2019

REASONS FOR DECISION AND ORDER:

A. OVERVIEW

- [1] The appellant, Mr. James Michalopoulos, was a registered salesperson under the *Motor Vehicle Dealers Act, 2002, S.O. 2002, c. 30, Sch. B* (the “Act”) from July 3, 2013 to January 5, 2018, when the contract with his sponsoring dealership, Barrhaven Chrysler Dodge Jeep Ram (“Barrhaven”), concluded. Pursuant to section 17(2) of Ontario Regulation 333/08 made under the Act, when the dealer to whom a salesperson is registered ceases to employ them, the salesperson’s registration expires.
- [2] Mr. Michalopoulos, intending to remain registered as a salesperson, submitted a number of salesperson change applications to the Ontario Motor Vehicle Industry Council (“OMVIC”) between January 2018 and February 2019, each time indicating the different dealerships with whom he wished to be registered. He ultimately abandoned most of the applications, but his June 25, 2018 application, for registration as a salesperson with Car City Auto Sales (“Car City”), remained in place and is the subject of the present appeal.
- [3] On or about March 6, 2019, after having investigated a number of transactions it found to be concerning, the registrar under the *Motor Vehicle Dealers Act, 2002* (the “registrar”) issued a Notice of Proposal proposing to refuse Mr. Michalopoulos’ application for registration as a salesperson (the “Proposal”). The registrar alleged that Mr. Michalopoulos’ past conduct is inconsistent with the intention and objective of the Act and warrants disentitlement to registration. The appellant appealed the Proposal to the Tribunal.

B. ISSUES

- [4] The primary issue to be determined in this appeal is whether Mr. Michalopoulos’ past conduct affords reasonable grounds for the belief that he will not carry on business in accordance with the law and with integrity and honesty.
- [5] If I find that his past conduct does afford such belief, the subsequent questions I must consider become whether refusal to register him as a motor vehicle salesperson is appropriate, or whether his conduct can suitably be addressed through the imposition of conditions.

C. CONCLUSION

- [6] After considering all the evidence and submissions, I direct the registrar to carry out the Proposal and refuse the registration. In reaching this decision, I have weighed the evidence relating to Mr. Michalopoulos’ past conduct and considered his likely future conduct in light of that past conduct.

D. EVIDENCE:

- [7] At the outset, it is worth stating that the facts in his proceeding were not straightforward; there were significant gaps in evidence and more questions than answers were raised regarding the involvement of different actors who were mentioned but never introduced as witnesses.
- [8] The registrar called seven witnesses. Each provided evidence relating to one or more of the transactions that form the basis for the registrar's belief that Mr. Michalopoulos will not carry on business in accordance with the law and with integrity and honesty. These transactions were particularized in the Proposal and refer to Mr. Michalopoulos' involvement with the trade of a 2009 Mazda Tribute, in which he purported to act for a dealership where he was not registered, falsified information on the bill of sale and failed to disclose significant damage to the vehicle. The Proposal also refers to a 2017 Dodge Ram (and related trade of a 2011 Subaru Outback), in which Mr. Michalopoulos was alleged to have engaged in "curb-siding" and misrepresented the cost of the vehicle. The Proposal had outlined a third transaction of concern, involving a 2007 BMW CX3. However, when the consumer who purchased that vehicle failed to attend the hearing, counsel for the registrar advised that the registrar would not be relying on its allegations relating to that transaction.
- [9] The registrar's witnesses included:
- Laura Halbert, Deputy Registrar and Director of Compliance and Business Standards with OMVIC;
 - Pamela and David McNichols, the consumers who purchased the 2009 Mazda Tribute (the "Mazda");
 - Akram Elmuradi, the owner of Belfast Family Auto Services Inc. operating as AK Auto ("AK Auto");
 - Jim Voll, Operations Manager with Nationwide Warranty ("Nationwide"), a company that sells service warranties for vehicles purchased through dealerships;
 - Tracey Pawis, the consumer who purchased the 2017 Dodge Ram (the "Dodge") in exchange for her 2011 Subaru Outback (the "Subaru"); and
 - Ali Youssef, the Dealer Principal of the business that completed safety checks on vehicles for Mr. Michalopoulos.
- [10] Mr. Michalopoulos called Christina Moore, former Nationwide Warranty Representative and Regional Manager with the vehicle financing company, Carfinco, to provide evidence regarding those respective company's practices, particularly as they applied to the Mazda transaction. Mr. Michalopoulos also testified.
- [11] The particulars of each of the impugned transactions are outlined below.

The Mazda Transaction

- [12] In and around November 2015, Mr. and Mrs. McNichols, a couple living in a rural area outside of Ottawa, were looking to replace their older vehicle with a more reliable used car. Mr. McNichol had had a bad run of business and was hoping to rebuild his credit, so he and his wife decided they would purchase a used vehicle in his name alone. They filled in an online lead generator and within a day or two, they were contacted by Mr. Michalopoulos, who invited them to Pembroke Nissan, the dealership where he was registered as a salesperson at that time.
- [13] The McNichols attended Pembroke Nissan, where they met with Mr. Michalopoulos for the first time. After completing and submitting a credit application, Mr. Michalopoulos showed them around the lot and presented a few new vehicle options. When the credit application came back and revealed that the McNichols did not qualify for financing, their initial decision to purchase a used car was reinforced. There being nothing that would meet the McNichols' requirements at Pembroke Nissan, the McNichols left the dealership, with Mr. Michalopoulos stating that he worked with other dealers and assuring them that he could help them find a vehicle.
- [14] For a period of weeks after their initial meeting, Mrs. McNichol and Mr. Michalopoulos were in regular contact, principally through text and email, as Mr. Michalopoulos attempted to source a vehicle for the McNichols.
- [15] After being informed that Mr. Michalopoulos found a vehicle, the McNichols agreed to purchase the Mazda, "sight unseen." They understood that they were to pay \$14,968.75, which would be financed over a period of 48 months at an annual interest rate of 29.5%. Because they were purchasing an older vehicle, the McNichols also opted to purchase an extended warranty through Nationwide in the amount of \$1,050. The total cost of the vehicle, over the life of the loan, was \$25,661.74. The McNichols apparently were not overly concerned about the total cost because Mr. Michalopoulos had advised them that after a year, they could refinance and bring the price of the vehicle down.
- [16] The McNichols made a down payment of \$880 on the Mazda, which Mrs. McNichol testified was as much as they were able to put down at the time of purchase. That amount was paid in cash and given to Mr. Michalopoulos.
- [17] Mrs. McNichol also email transferred \$1,063 to Mr. Michalopoulos. Her understanding for this payment was that it was intended to cover the costs of licensing the vehicle, which she believed Mr. Michalopoulos was doing on the McNichols' behalf. That amount included the cost of paying two fines, which Mrs. McNichol was told had been acquired by her son while driving a truck registered to Mr. McNichol. Mrs. McNichol stated that she believes Mr. Michalopoulos had offered to provide the receipts for the fines, but that she and Mr. McNichol did not ask for them. She therefore could not confirm that the \$1,063 was used for the assumed purpose.

- [18] On or around February 3, 2016, Mr. Michalopoulos prepared a bill of sale and sent it to Mr. McNichol, which he signed. Mr. Michalopoulos also sent the Carfinco financing agreement and paperwork associated with the Nationwide warranty. The McNichols did not take possession of the vehicle until some point later in time, however, when their son met Mr. Michalopoulos, or as Mr. Michalopoulos asserted, one of his delegates, in a strip club parking lot in Quebec.
- [19] Approximately 45 days after acquiring the Mazda, the McNichols began to experience significant problems with it. At one point, the vehicle would not start. Since Mrs. McNichol believed she had purchased a warranty through Nationwide and had in fact received the associated warranty papers in the mail, she contacted them first. Through her inquiries, and to her great disappointment, she learned that the warranty payment had never been remitted by the dealer, meaning that the McNichols did not have any coverage in place. When she subsequently called Mr. Michalopoulos, he told her that he would look into the issue. It then became increasingly difficult to reach him.
- [20] When Mrs. McNichol did not hear back from Mr. Michalopoulos, she called AK Auto, the dealer with whom she believed Mr. Michalopoulos worked, as this was the business name that appeared on the various documents that Mr. Michalopoulos had supplied to her and her husband.
- [21] Eventually, Mrs. McNichol spoke with the owner of AK Auto, Mr. Elmuradi. Mr. Michalopoulos also stated that he spoke to Mr. Elmuradi at that time and tried to bring him up to speed on the chain of events. Both Mr. Michalopoulos and Mrs. McNichol testified that Mr. Elmuradi did not appear to be familiar with the transaction. Notwithstanding that he denied his business' part in the sale, after receiving the documents containing AK Auto's name on them and hearing Mrs. McNichols' pleas, Mr. Elmuradi agreed to help. In doing so, he travelled almost two hours, from Ottawa to Killaloe, to personally and at his own expense replace the alternator. This fixed the vehicle only temporarily, however, and Mr. Elmuradi stated that he attended at the McNichols' home at least once more to fix the alternator again. Despite these fixes, there continued to be constant issues with the Mazda.
- [22] Unwilling to take responsibility for the sale of the vehicle, when they spoke next, Mr. Michalopoulos suggested that the McNichols return the Mazda through a process of voluntary repossession. The McNichols took Mr. Michalopoulos' advice and on or about May 29, 2017, after making payments of \$534.62 per month for just over a year on a vehicle they testified was operational for only five months, they signed a Voluntary Release and Carfinco repossessed the vehicle. Carfinco thereafter filed a statement of claim against Mr. McNichol and obtained a default judgement in the amount of \$13,932.76.
- [23] Shortly afterwards, the McNichols learned that the Mazda had been stolen in or around June 2011 and had suffered accident damage later that same year, which had resulted in an insurance claim for repairs in the amount of \$8,842. This information had not been disclosed

to the McNichols by Mr. Michalopoulos or anyone else, but instead was information they learned independently after procuring an online vehicle history report. Both Mr. and Mrs. McNichol testified, in no uncertain terms, that they never would have purchased the vehicle had they been aware of the vehicle's history.

The Dodge and Subaru

- [24] Ms. Tracey Pawis, the consumer who purchased the 2017 Dodge Ram from Mr. Michalopoulos, is a 53 year-old traditional craftsperson who lives in Northern Ontario. She is a member of the Wasauksing First Nation Community.
- [25] On the advice of a friend, Ms. Pawis contacted Mr. Michalopoulos in the Fall of 2018 and told him that she was looking to replace her current vehicle, a 2011 Subaru Outback. That friend had previously purchased a vehicle from Mr. Michalopoulos and had had a very positive experience. Ms. Pawis explained to Mr. Michalopoulos that she wanted a truck that she could take into the bush and hoped to acquire the new vehicle before the first snow fall.
- [26] At the time of this occurrence, Mr. Michalopoulos had applied for registration with OMVIC in respect of both the Central City Auto Sales ("Central City") and Car City dealerships but had not had his registration confirmed. Mr. Michalopoulos admitted that when Ms. Pawis contacted him, he was not registered as a salesperson in Ontario, and was only working in Quebec. His practice, however, was to give away leads to dealers with whom he had a relationship.
- [27] In this case, at some point after their initial conversation, Mr. Michalopoulos directed Ms. Pawis to the Central City, Car City and one or two other motor vehicle dealer websites. In addition to the dealer websites, Mr. Michalopoulos sent Ms. Pawis a webpage that displayed images of nine different vehicles. Ms. Pawis stated her belief that the webpage was associated with a dealership and thought she remembered the words "Motor City" appearing on that page, but she wasn't entirely sure. Mr. Michalopoulos testified that the nine vehicles appearing on that webpage were vehicles that he personally owned. He said they had been purchased from a wholesaler or off other lots.
- [28] Only one of the vehicles displayed on Mr. Michalopoulos' webpage was a truck, and it was a 2017 black Dodge Ram pickup. Mr. Michalopoulos told Ms. Pawis it was "the only truck he had." The price of the Dodge, as stated on the webpage, was \$37,500.
- [29] After taking some time to think through her options, Ms. Pawis expressed her interest in the Dodge. She had been hoping that Mr. Michalopoulos would be able to accommodate her, as he done for her friend, by meeting her someplace closer to her home, but instead she was directed to meet him at Central City, a used car dealership in Ottawa. On or about October 18, 2018, she drove the nearly six hours, from Parry Sound, to meet him there.

- [30] Ms. Pawis remembers that the Dodge was parked in the Central City lot and when Mr. Michalopoulos arrived, he pointed to it and said: “there’s your vehicle, right there.” She then followed him inside the Central City dealership.
- [31] Ms. Pawis and Mr. Michalopoulos spent the majority of their day together running errands. They left her Subaru at Central City and took the Dodge to another location where they left it to have it safe tied. They then drove together in Mr. Michalopoulos’ car to Service Ontario, where they proceeded to transfer the ownership of the Subaru into Mr. Michalopoulos’ name alone and added Ms. Pawis to the ownership for the Dodge.
- [32] Next, the two went to Ms. Pawis’ bank, where Ms. Pawis signed off on a periodic transfer of funds, from her account to Mr. Michalopoulos’ personal account. She testified to being confused about why she would be depositing money into Mr. Michalopoulos’ account, because this is not what had occurred when she purchased the Subaru from the dealership. When she raised her concern with Mr. Michalopoulos, he explained that he would be making the payments, since Ms. Pawis’ credit rating was poor, and she would just repay him.
- [33] At the end of the day, Ms. Pawis and Mr. Michalopoulos returned to Central City. There, they switched the licence plates from the Subaru and Ms. Pawis was brought into an office where she was shown and asked to sign a number of documents. One of those documents was a bill of sale for the Dodge which indicated \$66,821.50 as the cost of the vehicle. On the second page of the bill of sale, under the heading ‘Special Conditions of Sale,’ it stated that the vehicle was to be paid by “82-month finance lease” with payment terms to “take over monthly payment commitment of \$880.13 + \$2.87 = \$883.” Ms. Pawis signed the bill of sale. She testified that she did not remember Mr. Michalopoulos explaining what the “cost of borrowing” meant, nor did she remember seeing any documents or agreeing to anything but the \$37,500 that she and Mr. Michalopoulos had formerly discussed.
- [34] At the same time, Ms. Pawis was asked to sign a type-written letter, purporting to be a contract between Mr. Michalopoulos and Ms. Pawis, dated 18 October 2018 and entitled “Tracey L Pawis Lease / Finance Conditions.” That letter stipulates that payments of \$883 were to commence on November 10, 2018 and would continue until September 11, 2025. It also read, in part:
- Open loan. Loan may be paid out at anytime. Loan rate is at 4.19%. Loan balance as of October 18, 2018 is \$66821.50 with lien held at TD Auto Finance. Upon signing \$2640.39 will be applied to current loan.
- 2011 Subaru Outback [...] to be sold to James Michalopoulos at the value of \$1 because of engine problems.
- [35] Again, Ms. Pawis signed the document. She admits that, because it was the end of a very long day, and she was anxious to get home, and because she trusted and believed Mr. Michalopoulos was trying to help her, she was negligent and did not clearly read the

documents. She testified that she really needed the vehicle, and thought if she signed the papers, she could get the keys and get going. She reasoned that she would read the paperwork when she got home.

- [36] About a month later, Ms. Pawis did review the paperwork. That was the first time she saw that she had agreed to pay more than \$72,000 over the term of the lease. She was also puzzled about the reference to \$2,640.39 being applied to the current loan as well as the stated \$1 trade-in value for the Subaru. She did not have a lien on the Subaru, and in her discussions with Mr. Michalopoulos, she understood that on paper, he'd state the value of the trade around \$2,000, but he'd be giving her around \$4,000 for the vehicle. She was unclear about how that would work or the reason for the discrepancy, but she admitted she did not ask enough questions.
- [37] At that point, she called Mr. Michalopoulos to clarify her understanding of the transaction. During their discussion, he asked her to send the extra keys to the Subaru. She realized then that she only had one set of keys to the Dodge, and when she asked him about it, Mr. Michalopoulos explained that after she makes all her payments, then he would mail her the second set of keys and transfer the ownership into her name alone.
- [38] Until the day before the hearing commenced, Ms. Pawis had made every payment on her vehicle. She stated that she was generally pleased with the vehicle and that it served her needs well. She testified to feeling deceived, however, in respect of the way the transaction was carried out. She was going through a difficult period in her life and was dealing with a significant number of stressors, including the sale of her home and a court proceeding, and she felt vulnerable. She testified, with tears in her eyes, that it has been a struggle to keep up with the payments on top of all her other responsibilities.

E. LAW AND ANALYSIS:

- [39] The Act and its regulations are intended not only to regulate the Ontario motor vehicle industry and those who trade in motor vehicles, but also to protect the public.
- [40] Pursuant to section 6(1)(a)(ii) of the Act, an individual applicant who meets the prescribed requirements is entitled to be registered as a salesperson under the Act *unless* the past conduct of the applicant affords reasonable grounds for the belief that he or she will not carry on business in accordance with law and with integrity and honesty.
- [41] The registrar has the onus to establish the facts to support the allegations against the appellant on a balance of probabilities. Those facts are then applied to the registration eligibility test set out in section 6(1)(a)(ii) of the Act, where they must establish the registrar's "reasonable grounds for belief" that the applicant is not entitled to registration. On this, the Tribunal is guided by the Ontario Court of Appeal's decision in *Ontario (Alcohol and Gaming Commission, Registrar) v. 751809 Ontario Inc. (c.o.b. Famous Flesh Gordon's) 2013 ONCA*

157 (*CanLII*) (“Flesh Gordon’s”), which confirmed that the standard of proof is that of “reasonable grounds for belief;” a lower standard of proof than “balance of probabilities.”

- [42] While *Flesh Gordon’s* applied in respect of a liquor licence application, the Court’s direction on the relevant standard is equally applicable in the present case. It clarified that the registrar only has to prove that the appellant’s past conduct provides reasonable grounds for belief that the appellant will not carry on business in accordance with law and with integrity and honesty. It does not have to go so far as to show that the appellant’s past or present conduct make it *more likely than not* that he will not carry on business as required (*Flesh Gordon’s*, para. 18 and 19).
- [43] In so finding, the Court quoted the Supreme Court of Canada decision in *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005 SCC 40 \(CanLII\)](#), [2005] 2 S.C.R. 100, where it wrote, “The “reasonable grounds to believe” standard requires something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities. In essence, reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information” (para. 114).

Are there reasonable grounds to believe Mr. Michalopoulos will not carry on business in accordance with the law and with integrity and honesty?

- [44] I find that the registrar has established that Mr. Michalopoulos acted as a motor vehicle dealer or a motor vehicle salesperson in the course of both the Mazda and the Dodge transactions despite not being properly registered. Further, in his dealings on the trade of both the Mazda and the Dodge, I find that Mr. Michalopoulos furnished false information and misled the consumers with respect to material information and, in respect of the Mazda, he failed to disclose material information relating to the vehicles’ history.
- [45] The registrar did not satisfactorily prove, however, that Mr. Michalopoulos was responsible for remitting the warranty payment.

(a) Dishonestly misrepresenting his relationship to AK Auto

- [46] Before diving into an analysis of Mr. Michalopoulos’ conduct with respect to the Mazda, I must first set out my findings regarding his involvement with AK Auto, which is the operating name of the dealer appearing on all the paperwork relating to the trade of that vehicle.
- [47] The registrar’s position, though not entirely clear in the Proposal or its submissions, seems to be that Mr. Michalopoulos was deceptively attempting to operate his corporation, 2479649 Ontario Inc. o/a Invision Automotive (“247 Ontario Inc.”) through AK Auto. 247 Ontario Inc. had been incorporated shortly before Mr. Michalopoulos met the McNichols, on or around August 19, 2015, and on or about January 20, 2017, he submitted a business application to register 247 Ontario Inc. as a registered motor vehicle dealer. In so structuring 247 Ontario

Inc. via AK Auto, the registrar appears to be alleging that Mr. Michalopoulos alone profited from the sale of the Mazda.

- [48] For the reasons that follow, I find this to be an over-simplification of the facts, and do not accept that the evidence sufficiently justifies this proposition. Instead, I find that AK Auto employed an individual or two who, whether with the owner's knowledge or not, worked in some capacity with Mr. Michalopoulos on the trade of the Mazda and encouraged or perhaps even permitted him to falsely associate himself with the dealership. Unfortunately, those individuals did not appear before the Tribunal to provide evidence.
- [49] Mr. Michalopoulos testified that, prior to his first meeting with the McNichols, he had gotten to know an individual named Mario Khoury through the car sales business. He believed Mr. Khoury to be a wholesaler and said that he purchased vehicles for AK Auto using cheques from AK Auto. No evidence was provided to support this assertion. Mr. Khoury was unfamiliar with financing vehicles and Mr. Michalopoulos agreed to help him. The two apparently came to some agreement in respect of their partnership, and Mr. Michalopoulos took steps to action their plan to work together. This is evidenced by the fact that Mr. Michalopoulos completed a Nationwide dealer agreement on or about October 30, 2015, indicating AK Auto as the dealer and himself as the authorized dealer representative. He and Mr. Khoury were stated, on Nationwide's internal dealer profile, as contacts for AK Auto. Mr. Michalopoulos testified that their "first customer would have been the McNichols."
- [50] Around the same time, AK Auto had an account set up with Carfinco. Ms. Moore explained that in signing dealers on, Carfinco required that the dealer be registered with OMVIC and they needed to provide certain paperwork, including a signed contract and a VOID cheque. Ms. Moore stated that she remembered Mr. Khoury signing AK Auto up with Carfinco, and she believed that he had the ability to bind the dealership. She identified a VOID cheque connected to an account in the name of Belfast Family Auto Services Inc. o/a AK Auto as a cheque that Carfinco would have accepted in signing up the dealer, but she could not confirm for certain whether it was the cheque she obtained at the time AK Auto was signed up with Carfinco.
- [51] The owner of AK Auto, Mr. Elmuradi, unequivocally denied having employed any unregistered salespersons, including Mr. Khoury. I find it likely, however, that Mr. Khoury was working, albeit in an unregistered capacity, at AK Auto. This finding is based on the fact that Mrs. McNichol remembered speaking to someone named "Mario", who she believed to be an employee or "shop-hand" of AK Auto, when she called to inquire about her car troubles. Ms. Moore also testified her belief that Mr. Khoury worked at AK Auto, which belief was based on statements he made to her and the fact that she used to meet with him at the AK Auto dealership.
- [52] Likewise, Mr. Elmuradi denied that Mr. Michalopoulos was ever employed at AK Auto. Mr. Michalopoulos agreed with this, yet stated he was brought on to "assist with financing." In

contrast, Mr. Elmuradi testified that, due to his religion, AK Auto had a practice of not leasing or financing vehicles and asserted that his business “never took a loan.” He was firm on this point.

- [53] Despite this fact, Ms. Moore and Mr. Michalopoulos both mentioned an individual named Abukar Abukar, who they implied may have been involved in signing AK Auto up as a dealer with Carfinco. Mr. Elmuradi agreed Mr. Abukar was one of his employees at AK Auto, and described him as a “straight shooter” and was someone he trusted. In fact, Mr. Abukar was authorized to sign on behalf of AK Auto and the evidence shows that Mr. Abukar did sign a cheque, from AK Auto to Rendezvous Nissan, dated January 26, 2016, for the purchase of the Mazda.
- [54] Mr. Elmuradi testified that, at some point after purchasing the Mazda, the vehicle was wholesaled to Mr. Michalopoulos. However, there was no evidence to indicate that this transfer occurred, and in fact, the Ministry of Transportation vehicle registration shows that ownership of the vehicle transferred from Belfast directly to the customer, Mr. McNichol.
- [55] Mr. Elmuradi admitted that AK Auto was just one of his businesses and he was not involved in the day-to-day running of the dealership. This might explain why, if I am to believe his assertions, he did not know that Mr. Khoury or Mr. Michalopoulos were working at or purporting to be affiliated with AK Auto or that, if true, Mr. Abukar authorized or was somehow involved in having the dealership registered with a financing company.
- [56] Taken all together, I accept that Mr. Michalopoulos and Mr. Khoury may have had some sort of arrangement between themselves and that based on the representations made by Mr. Khoury, whatever those may have been, and his belief in their partnership, Mr. Michalopoulos falsely ascribed himself some sort of position within the dealership. This false affiliation appears to have been intended to benefit Mr. Michalopoulos because it allowed him to transact and profit from deals outside of his contract with Pembroke Nissan. It also benefited Mr. Khoury; in that he was able to acquire clients, requiring financing, that he otherwise would not have been able to serve. Whatever the exact nature of their relationship, Mr. Michalopoulos engaged in a fraudulent misrepresentation by falsely identifying himself as a representative of AK Auto.
- [57] Despite this finding, the registrar has not adequately supported its position that Mr. Michalopoulos’ inclusion of 247 Ontario Inc. as the legal name appearing together with Belfast’s operating name on the bill of sale was done to funnel proceeds away from AK Auto or anyone else, nor that 247 Ontario Inc. actually realized any profit in this transaction. It was sloppy, indeed, and a misstatement of the vendor’s legal name, but given the information appearing on the Carfinco agreements, it appears more likely than not that the real AK Auto was actually the entity that was financed on this transaction, and not Mr. Michalopoulos.

(b) Acting as a dealer or salesperson without registration

The Mazda

- [58] I must turn now to the question of whether Mr. Michalopoulos acted as a motor vehicle salesperson or dealer without the benefit of registration in this transaction. Mr. Michalopoulos maintains that his involvement with the trade was limited; he facilitated the McNichols' purchase by sourcing a vehicle and he assisted Mr. McNichol to obtain the financing he required through Carfinco. He suggested that he occasionally would work with dealerships to set consumers up with financing, a role that does not require registration with OMVIC. In this way, he states that the McNichols procured the vehicle directly from AK Auto and specifically, AK Auto's agent, Mr. Khoury.
- [59] The McNichols, on the other hand, believed that they had purchased the Mazda from Mr. Michalopoulos in his capacity as an agent of AK Auto. They both stated that they dealt exclusively with Mr. Michalopoulos in selecting the vehicle and in executing the purchase, and did not interact with anyone at AK Auto, including Mr. Khoury, until after they began experiencing difficulties with their vehicle.
- [60] Section 1(1) of the Act defines a motor vehicle dealer as "a person who trades in motor vehicles, whether for the person's own account or the account of any other person, or who holds himself, herself or itself out as trading in motor vehicles." That same section defines a salesperson as "an individual who is employed by a motor vehicle dealer to trade in motor vehicles on behalf of the motor vehicle dealer."
- [61] Subsection 4(5) states that a salesperson shall not trade a motor vehicle on behalf of a motor vehicle dealer unless the salesperson is registered to that dealer.
- [62] The act of "trading" is also a defined term under section 1(1) of the Act, and includes "buying, selling, leasing, advertising or exchanging an interest in a motor vehicle or negotiating or inducing or attempting to induce the buying, selling, leasing or exchanging of an interest in a motor vehicle."
- [63] Notwithstanding the assertion of his limited participation, Mr. Michalopoulos agreed that he sourced the vehicle, corresponded with the consumers, obtained financing, and prepared and signed the bill of sale. These efforts, especially when considered all together, exceed those of someone merely financing a deal and fall squarely within the definition of trading under the Act. Additionally, Mr. Michalopoulos' name appears all over the documents, both as "Business Manager" with 247 Ontario Inc. o/a AK Auto, a non-existent corporation, and as a salesperson with AK Auto. At the time of the trade, however, Mr. Michalopoulos was registered to, and therefore only permitted to trade in association with, Pembroke Nissan.
- [64] Mr. Michalopoulos was not simply operating as a "middle man" in this transaction. Rather, I find that he was acting as a motor vehicle salesperson, under the pretense of being employed by AK Auto and/or the illusory 247 Ontario Inc. o/a AK Auto, despite that he was not properly registered to do so.

The Dodge

- [65] Subsection 4(1) of the Act prohibits a person from acting as a motor vehicle dealer or salesperson unless they are registered under the Act. During his dealings with Ms. Pawis in the Fall of 2018, Mr. Michalopoulos does not deny that he was neither a registered motor vehicle dealer nor a salesperson.
- [66] For that transaction, however, Mr. Michalopoulos states he was carrying out a private trade of a vehicle that he personally owned, and in doing so, was exempt from registration. That exemption is contained within section 5 of the Act, and provides that an individual who trades in a motor vehicle on his or her own account or on the account of a member of the individual's family is exempt from the registration requirements under section 4 of the Act if the motor vehicle is primarily for the personal use of the individual or a member of his or her family.
- [67] Importantly, section 5 must be interpreted in light of the overarching consumer protection philosophy of the statute as a whole, and relates to the occasional sale of a family automobile. As stated by this Tribunal at paragraph 40 of *Sief Kassab o/a Fast Lane Auto Sales and Sief Kassab v. Registrar, Motor Vehicle Dealers Act, 2002*, 2017 CanLII 49185:
- It would defeat the intent of the Act to interpret the exemption as permitting a dealer to avoid registration and governance by structuring his business so as to claim each car sold was a personal vehicle. Rather, it is the pattern of behaviour that establishes whether the individual was dealing in vehicles or simply selling a personal vehicle.
- [68] In this case, Mr. Michalopoulos did not tender any evidence to suggest that the Dodge was used primarily for his personal use. Instead, both he and Ms. Pawis testified that on the day she picked up the vehicle, they were doing their errands while driving in another of Mr. Michalopoulos' vehicles: "a little black car."
- [69] Moreover, Mr. Michalopoulos agreed that the Dodge was one among eight other vehicles that were featured, for sale, on his own personal website. Notwithstanding everything else, I find that this activity, on its own, falls squarely within the definition of "trading" in that it is an act of advertising, inducing, or attempting to induce the buying, leasing or exchanging on an interest in multiple motor vehicles.
- [70] The Dodge transaction included a trade of Ms. Pawis' Subaru, which occurs quite regularly in transactions between dealers and consumers, but is not typical in trades of personal vehicles. Similarly, Ms. Pawis assumed Mr. Michalopoulos' loan payments while he maintained an ownership interest in the Dodge. Although an unorthodox way of financing a vehicle, the very fact that financing was a core part of this transaction implies that this was a business, and not a personal, transaction.
- [71] Finally, it's important to consider what representations were made to Ms. Pawis to support her understanding of whether this was a personal or business trade. I find that she very

clearly believed she was working with a registered salesperson, who was affiliated with one or more registered dealerships. This finding is supported, in part, by the multiple references she made in her testimony to “Motor City”, and her belief that Mr. Michalopoulos was affiliated with that dealership. In fact, the parties filed an email entitled “Re: Preauthorized payment form – Oct 17, 2018,” with a signature line which read:

...
James Michalopoulos
Motor City
[phone number]

- [72] Additionally, included as an attachment to the October 17 email was a Scotiabank pre-authorized payment instruction form, which Ms. Pawis completed and signed, erroneously authorizing “Central City Auto Sales” to debit her account. In his testimony, Mr. Michalopoulos explained that he sent several documents to Ms. Pawis in advance of their October 18 meeting - the pre-authorized payment instruction being one of them - and after providing Central City as their meeting spot (or the “landmark,” as he referred to it), Ms. Pawis must have inadvertently inserted the wrong information on the form.
- [73] Mr. Michalopoulos maintains that the Dodge was at Central City, where Ms. Pawis was told to meet him to pick up the Dodge, for a car wash. He asserted it was not done to induce or encourage any belief that he was associated with or working for Central City or any other dealership. Whether true or not, Ms. Pawis, as an inexperienced motor vehicle consumer, confirmed that it did assist in cementing her belief that she was dealing with a registered salesperson on this trade.
- [74] It should be noted that Mr. Michalopoulos made two salesperson applications between January 2018 and October 2018, when this transaction occurred. He expressed great frustration with the length it took OMVIC to process his multiple applications. Despite the inconvenience, each time he completed a change application he confirmed in writing his understanding that he “may not trade on behalf of a motor vehicle dealer unless [he is] registered under the Act as a salesperson to that dealer,” and further that he “acknowledge that “trade” refers to any form of discussion, representation or negotiation concerning the purchase, sale or lease of a vehicle and is not limited to the signing of contracts.” He would, or should, have been aware that his actions through the present transaction ran contrary to the very restrictions he agreed to abide.
- [75] In light of the above, I reject that the trade of the Dodge was personal so as to have it fall within the section 5 exemption. Mr. Michalopoulos’ pattern of behaviour; that of maintaining a website with multiple vehicle listings, having Ms. Pawis meet him and take possession of the vehicle on a dealer lot, and the fact that he carried out an exchange of her used vehicle and financed the deal, all leads to my finding that Mr. Michalopoulos was trading as a motor vehicle dealer on this trade, and not simply selling a personal vehicle.

[76] Ms. Halbert explained the impact of not purchasing from a registered motor vehicle dealer. The Act creates a compensation fund for consumers who have been victimized by registered dealers who do not comply with the requirements of the Act. Consumers dealing with an unregistered motor vehicle dealer or salesperson or, as is known in the industry, “curbsiders”, are deprived of the benefit of making a claim against OMVIC’s compensation fund. Ms. Halbert stated that had Ms. Pawis wished to make a claim, for having been misled about the total cost of the Dodge, for example, she would not have a clear path to compensation.

(c) Falsifying and furnishing false information on documents

[77] I find that Mr. Michalopoulos intentionally falsified paperwork with respect to both the Mazda and the Dodge. Falsifying and furnishing false information or documents relating to a trade of a motor vehicle is contrary to sections 26 and 27 of the Act, and I find it is a clear demonstration of Mr. Michalopoulos’ lack of honesty and integrity in his dealings on these transactions.

The Mazda

[78] The bill of sale for the Mazda contains significant false and inaccurate information. It bears repeating that Mr. Michalopoulos did not deny or tender any evidence to counter the proposition that he prepared and signed the bill of sale, and is in fact listed as the salesperson on the document.

[79] Firstly, and as previously mentioned, the corporate information identifying the seller on the bill of sale was inaccurately stated by Mr. Michalopoulos as “2479649 Ontario Inc. o/a AK Auto.” This was a combination of the legal name of Mr. Michalopoulos’ own corporation together with Belfast Family Auto Services Inc. (“Belfast”)’s operating name, and did not exist. It was a clear misrepresentation of the entity making the sale.

[80] Once more, in trying to understand the reasons for his providing the false corporate information, I accept that Mr. Khoury worked at AK Auto and that he and Mr. Michalopoulos had agreed to work together in some capacity. Regardless, any work that Mr. Michalopoulos purported to do on behalf of or in the name of AK Auto was unauthorized, and without an employment contract in place with AK Auto, he certainly would have known this. Yet in carrying out this transaction, he misrepresented himself as an agent and entered AK Auto into binding agreements with businesses and consumers.

[81] Beyond that, the bill of sale indicates that there was a deposit of \$2,000 made towards the price of the vehicle instead of the \$880 that was actually paid. The McNichols confirmed that Mr. Michalopoulos told them they should put down as much money as they could, but that \$880.00 was as much as they could pay that time. Mrs. McNichol stated that when she asked Mr. Michalopoulos about the discrepancy in the deposit amount, she was told that \$2,000 was what needed to be listed in order for “the numbers to work.”

[82] I accept Mr. Michalopoulos' explanation that he misstated the numbers on the bill of sale in an attempt to help the McNichols, who testified that they were having a very hard time obtaining the financing they needed. However, as Ms. Halbert stated, this information on a bill of sale is expected to be accurate, as it is used to inform the financing company whether they want to take on a risk in a transaction. Providing an inflated down payment amount harms the financing company who may be led to believe that a consumer can make payments they cannot afford on an ongoing basis, and it also has the potential to harm the consumer by binding them to an unmanageable financial obligation.

[83] Further, the provision of a non-existent entity on the bill of sale and other documents led to significant confusion for the McNichols and for the owner of AK Auto, as they tried to reconcile who was responsible for the sale of a defective vehicle.

The Dodge

[84] On the October 18, 2019 contract that Mr. Michalopoulos drafted and asked Ms. Pawis to sign, he states that the Subaru would be sold to him at the value of \$1 "because of engine problems." In the line above, it states that "Upon signing \$2,640.39 will be applied to current loan." Ms. Pawis was confused about the amount she was provided for the trade-in, but believed it was either around \$2,000 or \$4,000. She had not agreed to sell the Subaru for \$1, especially since she testified that she had recently invested more than \$5,000 in repairs on the vehicle and had been told that she could likely sell it for \$8,000.

[85] A contract should accurately reflect the nature of the agreement, whether on a bill of sale or otherwise. If the \$2,640.39 was to be applied to the Subaru, as Mr. Michalopoulos testified, he should not have stated \$1 as the trade-in value. Ms. Halbert explained that inserting such a nominal trade-in value on the contract would only serve to benefit Mr. Michalopoulos, who would have to pay significantly less in taxes when registering the vehicle. In this case, his interests appear to have been clearly served by including the false information.

(d) Failure to pay warranty company for extended warranty

[86] The registrar alleges that another aspect of concern with respect to Mr. Michalopoulos' conduct relates to his failure to pay Nationwide for the extended warranty the McNichols believed they had purchased. Section 47(7) of Regulation 333/08 (the "Regulation") under the Act provides that within 7 days after the consumer and dealer enter into a contract for the warranty, the dealer shall pay the warranty company the funds received from the consumer purchaser for the extended warranty.

[87] Mr. Voll, the Nationwide representative, testified about how extended warranties are offered to consumers. He stated that a dealer would sign an agreement with the warranty provider which then provided the dealer access to a web-based portal listing available warranties to consumers. When the dealer then sold a warranty to a consumer, the consumer would pay for it, or finance it, as at the vehicle purchase date and then the dealer would have to pay the

warranty company. The dealer would mark up the cost of the warranty, normally resulting in a significant profit to the dealer. The type of extended warranty and the cost to the consumer is noted on the bill of sale for the purpose of the vehicle.

- [88] In the present case, the dealer agreement with Nationwide was signed by Mr. Michalopoulos, in his capacity as “Authorized Dealer Representative” for AK Auto. Moreover, the sales screen indicating the specific warranty that was selected lists “James” as the salesperson, with the identical salesperson registration number as is listed next to Mr. Michalopoulos’ name on the bill of sale. Mr. Michalopoulos does not deny that he sold the warranty to the McNichols, but he maintains instead that it was Mr. Khoury and/or AK Auto, as the dealer, who was responsible to remit the payment. The warranty was, after all, financed through Carfinco with AK Auto as the stated Vendor/Dealer.
- [89] By contrast, the registrar asserts that Mr. Michalopoulos received two payments from the McNichols – one in respect of the down payment, and the other purportedly as payment for the fines and licensing of the vehicle. These amounts exceeded the amount that was due to be paid to Nationwide, and the registrar holds the position that they should have been used to pay for the warranty instead of having been “pocketed” by Mr. Michalopoulos.
- [90] The parties did not tender any evidence to indicate what amounts AK Auto received in relation to the sale of the Mazda. Mr. Elmuradi, having agreed that AK Auto purchased the vehicle from another dealer, testified that AK Auto would have received payment, otherwise he would have “chased” it down. At the same time, he stated there was no proof of funds in relation to the sale because when Belfast filed in bankruptcy, the insolvency agency took all associated paperwork. This does not mean, however, that AK Auto did not receive the funds. It also might explain, if true, why there is no record of Mr. Michalopoulos having transferred the funds he was paid by the McNichols to Mr. Khoury, as he alleged.
- [91] Notwithstanding my findings that Mr. Michalopoulos was acting on behalf of a dealership without its permission, I have difficulty finding that he was the one responsible to remit the payment for the warranty given my finding that it was AK Auto (whether with the owner and/or his authorized employee, Mr. Abukar’s knowledge and authorization or not), who was financed on this deal and would have profited from the sale of the warranty.
- [92] Finally, and in the absence of better evidence, I must consider that the Regulation applies to dealers, and not salespersons. Having found that Mr. Michalopoulos was not the dealer in this transaction, I cannot find that he contravened the Regulation.

(e) Failure to disclose material information

- [93] Ms. Halbert testified that the overriding theme throughout the Act is that of disclosure and transparency. There are extensive provisions in the Act and its regulations that require motor vehicle dealers and salespersons to provide truthful, accurate and transparent information to consumers.

- [94] Ms. Halbert explained that all individuals are required to take a certification course through OMVIC before seeking registration, where this disclosure obligation is heavily emphasized. She confirmed that Mr. Michalopoulos did take and successfully complete the OMVIC course, and therefore would have known about the requirement in statute to disclose, in writing on the bill of sale, the nature of any sort of material incident; theft or collision included.
- [95] The importance of this disclosure requirement is obvious. Motor vehicle consumers need to have all the information available to make an informed decision about such significant and costly purchases. As an example of this, Mr. and Mrs. McNichol were unequivocal that they never would have purchased the Mazda had they known its previous history.
- [96] The registrar did not introduce evidence to suggest that Mr. Michalopoulos actually knew of the damage and theft of the vehicle, nor did it lead evidence to suggest in what ways he made false, misleading or deceptive statements with respect to the fitness of the vehicle, as is required to make out its claim that he engaged in unfair practices under the *Consumer Protection Act, 2002, S.O. 2002, c. 30, Sched. A.*
- [97] However, given the established fact that the Act is itself consumer protection legislation, I accept that the obligation to disclose material facts includes actions and omissions. Moreover, the fact that Mrs. McNichol was able to obtain the vehicle's history online, at a small cost, indicates that the information was readily and easily available. Mr. Michalopoulos certainly would have known how to go about acquiring this information.
- [98] Having been the only individual the McNichols dealt with in purchasing the Mazda, and knowing, as he did, his duty to disclose material information to consumers, Mr. Michalopoulos should have taken the necessary steps to acquire and then to disclose information about the vehicle's history, including its past collision history and theft. Ultimately, Mr. Michalopoulos' failure to obtain and disclose information about the Mazda's past history resulted in the McNichols purchasing a vehicle that I find very likely they would not otherwise have bought.

Is Mr. Michalopoulos disentitled to registration or are there appropriate conditions that could facilitate registration?

- [99] Applying the principles identified in *Flesh Gordon's*, I must consider all of Mr. Michalopoulos' past conduct – the good and the bad – in determining whether there are reasonable grounds to believe he would not carry on in accordance with the law and with integrity and honesty in the future. His past conduct in its totality must be considered, and that conduct must be established on the evidence before the Tribunal.
- [100] In the present case, I consider the fact that, with the exception of the present transactions, there is no evidence that Mr. Michalopoulos has acted anything but lawfully as a motor vehicle registrant and in his personal life. Mr. Michalopoulos has had a spotless record in the motor vehicle industry for almost fifteen years; both as a salesperson in Ontario and before that, as a salesperson and motor vehicle dealer in Alberta.

- [101] Prior to working in the motor vehicle industry, he was in the avionics industry and before that, he served in the military. Both of these are highly regimented and regulated industries. Furthermore, the registrar did not take issue with any of the information provided in Mr. Michalopoulos' multiple application forms, which revealed, among other things, that he had never had any commercial, professional or business licences or registrations suspended, revoked or cancelled, nor had he ever been involved in bankruptcy proceedings or found guilty or convicted of an offence under any law. There is no prior record, therefore, to suggest that Mr. Michalopoulos has been anything but law abiding and financially responsible.
- [102] I also reviewed various correspondences between Mr. Michalopoulos and OMVIC relating to his multiple applications, and those demonstrate that Mr. Michalopoulos has been responsive to the regulator's requests for documents and information. Finally, I considered Mr. Michalopoulos' demeanor throughout the hearing, where I found him to be very cooperative and respectful. He was also conscientious, and he quickly picked up on the Tribunal's procedural requirements.
- [103] On the other hand, I must consider Mr. Michalopoulos' bad conduct in respect of the Mazda and (the more recent) Dodge transactions, where I have found that Mr. Michalopoulos failed to comply with various provisions of the Act and regulations. That non-compliance, and particularly his conduct in acting as an unregistered dealer or salesperson and in falsifying and furnishing false information, impacted the consumers on the Mazda and Dodge transactions in important ways. This was conduct that was dishonest, and it brings into question the very integrity of the regulatory scheme.
- [104] The public ought to have confidence that the industry is reliable, respected, and trusted. The law is enacted to protect consumers from having to engage with unconscionable, unfair, unreasonable or improper trade practices, and/or other conduct that may be deemed deceptive, misleading, unfair or fraudulent. What's more, Mr. Michalopoulos' customers need to have confidence that what is being expressed to them is accurate and reliable; and that they obtain exactly what they bargained for. This is particularly true when one considers his customer base. Mr. Michalopoulos testified that his business development efforts include targeting certain regions, including indigenous communities, and that he attempts to help people with poor credit histories who may not be able to purchase vehicles in the traditional course. Both the McNichols and Ms. Pawis fall squarely within this target demographic.
- [105] These are individuals who may not understand their rights and are likely to be unsophisticated in business and financial matters. They are also likely to require more attention in order to be educated about the motor vehicle purchase process, including the impacts of their financing decisions. They are the exact type of individuals who are most vulnerable and could be subjected to the most harm, whether it be emotional or financial. This is evidenced in particular by considering the harm that Ms. Pawis suffered. She honestly believed she was purchasing the Dodge for one amount and later found out that she had

agreed to pay almost double that amount. I do not accept that the financing terms, including the cost of borrowing, were adequately explained to her, if at all.

[106] Lastly, I must take into consideration and reconcile Mr. Michalopoulos' sincerely held belief that his actions were benefiting the impacted consumers. While I accept as true that Mr. Michalopoulos assisted the McNichols to acquire a vehicle and financing, both of which the McNichols testified had been difficult to acquire without Mr. Michalopoulos' help, I have difficulty with the fact that he refused to acknowledge that in doing so he failed to comply with the law in significant ways or that he acted dishonestly.

[107] Similarly, I believe that he intended and did so assist Ms. Pawis – an individual who Ms. Halbert testified would be referred to in the industry as a “subprime” consumer - to obtain a significantly lower financing rate that she would have obtained in the normal course of business, yet Mr. Michalopoulos again would not acknowledge his failings in explaining the true cost of the vehicle, or in misrepresenting the cost of the Subaru trade, or that he acted as an unregistered dealer. Mr. Michalopoulos' failure to accept that his conduct in respect of these dealings contravened the Act imbues a great degree of concern that his conduct may well be repeated in the future.

[108] Yet even where the registrar has proven the grounds for refusal, there may be cases when the imposition of conditions can adequately protect the public interest. This is not one of those cases. Instead, I find that Mr. Michalopoulos' past conduct gives reason to believe he would not comply with conditions, rendering them meaningless. This finding is informed by various factors, including that Mr. Michalopoulos' actions on the two impugned transactions were deliberate and premeditated. He constructed elaborate schemes to circumvent the registration requirements and in doing so, he seriously harmed his clients and knowingly ignored or failed to comply with acknowledgements he signed off on through his various salesperson change applications. Furthermore, Mr. Michalopoulos' non-conformance with the provisions of the Act under the pretense of trying to help subprime consumers - a belief he seems to maintain is acceptable or excusable - suggests that conditions might not be appropriate, as he may not be trusted to follow them.

F. ORDER:

[109] Section 9(5) of the Act states that after holding a hearing, the Tribunal may, by order, direct the registrar to carry out its proposal to refuse to grant a registration or substitute the Tribunal's opinion for that of the registrar. The Tribunal may also attach conditions to its order or to a registration.

[110] For the reasons set out above, I direct the registrar to carry out its Proposal to refuse the appellant's registration.

Released: January 08, 2020



Evelyn J. Spence, Member