



**Citation:** Toronto Quality Motors Inc., 2291683 Ontario Inc. o/a The Auto Dealer and Khaled Mousa-Khaled v. Registrar, *Motor Vehicle Dealers Act, 2002*, **2019 ONLAT MVDA 12255**

**Date: 2021-02-06**  
**File Number: 12255 MVDA**

Appeal under s. 9(5) of the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c.30, Sch. B from a Notice of Proposal of the Registrar to Revoke Registrations

**Between:**

**Toronto Quality Motors Inc., 2291683 Ontario Inc. o/a Auto Dealer and Khaled Mousa-Khaled**

**Appellants**

-and-

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

**Respondent**

**DECISION and ORDER**

**ADJUDICATOR:** Stephen Scharbach, Member

**APPEARANCES:**

**For the Appellants:** Justin Jakubiak, Counsel

**For the Respondent:** Diana Mojica, Counsel

**Heard at Toronto, Ontario:** November 30, December 1, 2, 3, 4, 7, 2020

## **A. OVERVIEW**

- [1] This is an appeal by Mr. Khaled Mousa-Khaled (“MK”), Toronto Quality Motors Inc. (“TQM”), and 2291683 Ontario Inc., which operates under the name “Auto Dealer” (“Auto Dealer”), of a notice of proposal (“NOP”) issued by the Registrar under s.9(1)(b) of the *Motor Vehicle Dealers Act, 2002* (“Act”) to revoke their registrations under that Act.
- [2] MK is registered as a motor vehicle salesperson. He owns, operates, and is the sole officer and director of TQM.
- [3] TQM is registered under the Act as a motor vehicle dealership (general dealer class). It sells used vehicles directly to the public from its premises and sales lot on Lawrence Avenue East in Scarborough, Ontario.
- [4] MK also owns, operates, and is the sole officer and director of Auto Dealer. Auto Dealer is registered under the Act as a motor vehicle dealer (wholesale class). Auto Dealer operated out of the same premises as TQM but is presently inactive.
- [5] The Registrar proposes to revoke the appellants’ registrations based on allegations that:
  - MK’s past conduct, especially in connection with nine vehicle sales to consumers, but also in connection with activities that led to a *Criminal Code* charge and *Provincial Offences Act* (“POA”) convictions, affords reasonable grounds for the belief that MK and his registered companies will not carry on business in accordance with the law and with integrity and honesty; and
  - MK provided false information to the Registrar in registration renewal applications submitted for himself and TQM.
- [6] The appellants deny the allegations and assert that the Registrar has not proven a basis for revocation.

## **B. ISSUES**

- [7] In summary, the issues are:
  - Does the past conduct of MK afford reasonable grounds for belief that he and the two registered corporations under his control, will not carry on business in accordance with the law and with integrity and honesty?
  - Did MK knowingly provide false statements in registration renewal applications?

- If the answer to any of the above is “yes”, what is the appropriate disposition?

### **C. DECISION**

- [8] I find that the past conduct of MK does afford reasonable grounds for belief that he, and his registered companies, will not carry on business in accordance with the law and with integrity and honesty and that, on one occasion, MK knowingly provided a false statement in a registration renewal application.
- [9] I have decided to direct the Registrar to carry out his proposal to revoke the registrations of MK, TQM, and Auto Dealer.

### **D. BACKGROUND**

#### **(a) The Appellants**

- [10] MK is 40 years old and has been registered as a salesperson since 2006. TQM has been in business since 2007. TQM’s primary business is to buy collision-damaged vehicles at auctions, repair them, and then sell them on a retail basis directly to consumers. TQM sells approximately 25-30 cars per month and employs two full-time and two part-time salespersons.
- [11] Auto Dealer is registered as a wholesale dealer but has not been active since 2014.
- [12] MK testified that TQM only buys “clean” vehicles and does not trade in “salvage” vehicles. Salvage vehicles are more extensively damaged and must be inspected for structural safety. If they pass inspection they are branded as “rebuilt” vehicles. MK stated that TQM only buys vehicles that have been accident-damaged and then repairs them for sale. They are branded as “normal.” In other words, they are “clean” and not salvaged.

#### **(b) The Motor Vehicle Dealers Act, 2002**

- [13] The Act is a consumer protection statute which, along with its regulations, attempts to regulate the business of dealing in new and used motor vehicles in Ontario. Its main objective is to ensure that the public receives honest, ethical and competent services from motor vehicle dealers and salespersons.
- [14] To achieve that, the Act prohibits anyone from acting as a dealer or salesperson unless they hold a registration granted under the Act by the Registrar. Registration is only granted to applicants who are qualified and have demonstrated their suitability to do business with the public.

- [15] Once registration is granted, the Registrar may revoke, suspend or attach conditions to a registration in circumstances specified in the Act.<sup>1</sup> Before doing so however, the Act requires the Registrar to first give written notice to the registrant.<sup>2</sup> The registrant may then request a hearing before this Tribunal.<sup>3</sup> If no hearing is requested, the Registrar may carry out the proposal and revoke, suspend or place conditions on the registration.<sup>4</sup>
- [16] If, as in this case, the registrant does request a hearing, the Act requires the Tribunal to hold a hearing.<sup>5</sup>
- [17] Following a hearing, the Tribunal may substitute its opinion for that of the Registrar and may direct the Registrar to carry out the proposal, not to carry out the proposal, or impose conditions on the registration.<sup>6</sup>

**(c) Regulatory Disclosure Requirements When Selling Vehicles to the Public**

- [18] The Act and its regulations, particularly *Ontario Regulation 333/08* (“Regulation”), a general regulation made under the Act, are intended to provide protections to consumers who purchase new or used motor vehicles in Ontario.
- [19] Foremost among those protections are requirements that dealers and salespersons disclose to purchasers in writing, in the sales contract (“bill of sale”), information about all transaction charges, the vehicle’s previous use, its collision damage history, or any other information relevant to the purchaser’s decision to purchase and what price to pay.
- [20] Those regulatory requirements are particularly relevant to the nine consumer transactions in issue in this case.
- [21] Section 38 of the Regulation requires dealers to **return a deposit paid by a purchaser “immediately”** if the return is requested before the sales contract is signed.
- [22] Section 40 of the Regulation requires that a dealer shall ensure that the customer signs and is immediately provided with a written contract for the sale of a motor vehicle that meets the following conditions:

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<sup>1</sup> *Motor Vehicle Dealers Act, 2002, S.O. 2002, c. 30, Sched. B, ss.8(1), 6 [Act]*.

<sup>2</sup> *Act, s.9(1)*.

<sup>3</sup> *Act, s.9(2)*.

<sup>4</sup> *Act, s.9(4)*.

<sup>5</sup> *Act, s.9(5)*.

<sup>6</sup> *Act, s.9(5)*.

- There must be a **separate contract for each motor vehicle sold**.<sup>7</sup>
- The contract **must be signed** by the parties.<sup>8</sup>
- The purchaser **must receive a copy of the contract immediately after signing it**.<sup>9</sup>

[23] Section 40(2) of the Regulation is particularly relevant to this case. It requires dealers to ensure that any contract they enter into to sell a used motor vehicle “**includes in a clear, comprehensible and prominent manner**” [emphasis added] the following information:

- an **itemised list of the charges that the purchaser is required to pay under the contract to conclude the transaction**;<sup>10</sup>
- the **total sale price under the contract**;<sup>11</sup>
- the **balance that the purchaser will be required to pay** under the contract;<sup>12</sup>
- if the vehicle has been used as a **daily rental**, a statement to that effect;<sup>13</sup>
- if there has been **structural damage** to the motor vehicle or any repairs, replacements or alterations to the structure of the vehicle, a statement to that effect;<sup>14</sup>
- if the **total cost of repairs to fix damage caused to the motor vehicle by an incident exceed \$3,000**, a statement to that effect and if the registered motor vehicle dealer knows the total costs, a statement of the total costs;<sup>15</sup>
- if a permit for the motor vehicle was **previously registered outside of Ontario**, a statement to that effect and a statement of which jurisdictions the vehicle has been registered in;<sup>16</sup> and

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<sup>7</sup> Ontario Regulation 333/08, s.40(7) [Regulation].

<sup>8</sup> Regulation, s.40(9)(a).

<sup>9</sup> Regulation, s.40(9)(c).

<sup>10</sup> Regulation, s.39(2).14.

<sup>11</sup> Regulation, s.39(2).16.

<sup>12</sup> Regulation, s.39(2).18.

<sup>13</sup> Regulation, s.42.7.

<sup>14</sup> Regulation, s.42.10.

<sup>15</sup> Regulation, s.42.19.

<sup>16</sup> Regulation, s.42.22.

- any **other fact about the motor vehicle that, if disclosed, could reasonably be expected to influence the decision of a reasonable purchaser to buy the vehicle on the terms of the purchase.**<sup>17</sup>

**(d) The Registrar's Grounds for Revocation in This Case**

[24] The Act provides that a registration of an individual registrant (i.e. MK), may be revoked, suspended or placed under conditions if (among other things),

the past conduct of the [registrant] affords reasonable grounds for belief that the [the registrant] will not carry on business in accordance with the law and with integrity and honesty, or

the [registrant] [...] provides a false statement in an application for registration or for renewal of registration.<sup>18</sup>

[25] In the case of a corporate registrant (i.e. TQM and Auto Dealer), the Act provides that a registration may be revoked if,

the past conduct of its officers or directors [...] affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty, or

an officer or director of the corporation [...] provides a false statement in an application for registration or for renewal of registration.<sup>19</sup>

[26] In this case, the Registrar proposes to revoke MK's salesperson registration because:

- MK's 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. That past conduct consists of his activity in connection with nine consumer sales transactions and his conduct that led to a charge under the *Criminal Code* and convictions of his companies under the POA. With respect to the consumer transactions, it is alleged that he failed to return deposits on request, failed to disclose previous accident damage and charges in writing on the bill of sale, neglected to provide a copy of the bill of sale to the purchaser upon signing and then later falsified and produced a copy of the bill of sale to which the required accident damage information/charges had been added after signing.
- MK provided false information to the Registrar in applications for renewal submitted on his behalf and on behalf of TQM.

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<sup>17</sup> Regulation, s.42.25.

<sup>18</sup> Act, ss.8(1), 6(1)(a)(ii); Act, ss.8(1), 6(1)(a)(iii).

<sup>19</sup> Act, ss.8(1), 6(1)(d)(ii); Act, ss.8(1), 6(1)(d)(iii).

[27] The Registrar proposes to revoke TQM's and Auto Dealer's registrations because:

- MK is the sole officer and director of both companies, and his conduct (referred to above) affords reasonable grounds for belief that the companies will not carry on business in accordance with the law and with integrity and honesty.
- MK, an officer and director of both companies, provided false information to the Registrar in applications for renewal submitted by MK on behalf of TQM.

**(e) Onus, Standard of Proof**

[28] The onus is on the Registrar to prove that there are reasonable grounds for belief that MK and the companies will not carry business in accordance with the law and with integrity and honesty.<sup>20</sup> In doing so, the Registrar must establish the facts on which the belief is based. Facts are determined on a balance of probabilities. Once I have found the facts of the case, I must then apply the statutory test to determine if they provide reasonable grounds for belief that MK and his companies will not carry on business as required.

[29] The Court of Appeal for Ontario in *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc. (Famous Flesh Gordon's)*, stated that "reasonable grounds for belief" requires something more than mere suspicion but less than proof on a balance of probabilities.<sup>21</sup> In other words, the Registrar does not have to show that MK's past conduct will make it more likely than not that he will not carry on business as required. The Registrar need only show that there are reasonable grounds for belief that his business will not be carried on in accordance with the law and with integrity and honesty.

**E. FINDINGS - PAST CONDUCT – Consumer Transactions**

[30] This section contains my analysis and findings with respect to the nine consumer transactions. In most of the transactions, the Registrar alleges that MK failed to provide purchasers with disclosure about previous accident damage in writing in the bill of sale, failed to provide a copy of the bill of sale upon signing, and then later, when the customer requested a bill of sale, produced a falsified bill of sale with accident disclosure written in.

[31] In seven of the nine transactions, the customer testified at the hearing and, for the most part, I have found the allegations regarding those transactions to be proven.

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<sup>20</sup> Act, ss. 6(1)(a)(ii), 6(1)(d)(iii).

<sup>21</sup> *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc. (Famous Flesh Gordon's)*, 2013 ONCA 157 at paras.18-19.

[32] In the remaining two transactions, the customer did not testify and I have found that those allegations have not been proven on a balance of probabilities.

**(a) Consumer “A” – NOP, paragraphs 6-16**

**a. The Allegations**

[33] This transaction involves the sale of 2014 Mercedes-Benz on Nov. 9, 2018 by TQM to VJ for \$30,995.

[34] The Registrar alleges that:

- VJ gave a \$500 deposit to MK but later changed his mind and asked for the deposit back. Although a bill of sale was not yet signed, MK failed to return the deposit immediately, and falsely told VJ that since his financing application with TQM was approved, he would be unable to get financing if he went to another dealership.
- MK did not disclose to VJ, either verbally or in the bill of sale, that the vehicle had sustained damages, including structural damage, estimated at approximately \$37,000.
- MK failed to provide copy of the bill of sale to VJ immediately upon signing.
- MK later gave to VJ a falsified copy of the bill of sale to which disclosure of vehicle damage and additional charges were added after VJ signed it.

[35] I find that the allegations that MK failed to return a deposit on request and failed to provide a copy of the bill of sale upon signing have been proven.

[36] However, I find that the evidence insufficient to prove the remaining allegations.

**b. The Transaction**

[37] VJ was 20 years old when he purchased the car in November 2018. He was an inexperienced purchaser – he arrived in Canada from India to study in 2016, his parents live elsewhere, and this was his first car purchase.

[38] VJ testified that he first went to TQM’s sales lot in October 2018 and became interested in purchasing the vehicle and dealt with MK.

[39] By late October or early November 2018, VJ decided he wanted to purchase the vehicle. According to VJ, MK told him verbally that the vehicle had sustained some



minor damage to the rear bumper, had been repaired, but was in good condition. MK asked for and was given a \$500 deposit. No bill of sale was signed.

- [40] MK arranged for VJ to complete and submit applications for financing. Getting the loan approval and processing the transaction took time and VJ changed his mind about the purchase. In a November 7, 2018 email, VJ asked MK to cancel the deal and return his deposit. He stated in the email: "I was about to get the E350 but would like to cancel the application and would like to get my deposit back for 500 dollars. You can send back the money through my interac."
- [41] According to VJ, MK responded by telling him that his financing application was now approved and if VJ cancelled the purchase he would not be able to get financing or purchase a car elsewhere. VJ testified that he believed and trusted MK and concluded that his only viable option was to complete the purchase.
- [42] According to MK, he didn't see VJ's email requesting return of his deposit. However, he testified that he did tell VJ that since he had financing approval with TQM for this transaction, it would be difficult for him to get approval for another vehicle purchase at another dealership. The sale took place and a bill of sale was signed by VJ on November 9, 2018, two days after the email requesting return of the deposit.
- [43] In fact, the vehicle had been significantly damaged in a previous collision. The Regulation required MK to set out the accident damage information in writing in the bill of sale and, according to MK, he did. The signed bill of sale produced by MK has a "comments" section (apparently initialed by VJ) in which MK wrote: "vehicle has been declared a total loss by the insurer. The manufacturer's warranty has been cancelled. repair estimate: \$37,244.57. structural damage."
- [44] MK testified that before the bill of sale was signed, he showed VJ a copy of the vehicle's Carfax report (which references the damage and the repair estimate), and photos of the car before it was repaired. He produced copies of the Carfax report and photos apparently initialed by VJ.
- [45] According to VJ, the Carfax and photos were shown to him after he signed the bill of sale, not before. He signed that bill of sale but was not sure if he initialed the comments section. He testified that MK asked him to sign several transaction documents with no explanation. He signed them all as instructed without reading or understanding them because, based on what MK told him about his ability to get credit, he felt compelled to complete the transaction.
- [46] With respect to the crucial comments section of the bill of sale, VJ testified that when he signed the bill of sale, there may have been something there, possibly the first two lines. He felt that something had been added to it after he signed it but was not sure what.

[47] According to VJ, MK did not give him a copy of the signed bill of sale when he signed it. He first saw the bill of sale in May 2019 after requesting it from MK at the Ontario Motor Vehicle Industry Council's ("OMVIC") suggestion.

**c. Findings**

- [48] I find that the first allegation, that MK failed to return VJ's deposit immediately upon request, has been proven. VJ's November 7 email to MK was an unambiguous request to cancel the transaction and return the deposit. The Regulation requires a dealer to return a deposit to the consumer "immediately" if no bill of sale has been signed. Mr. MK failed to comply with that requirement.
- [49] MK testified that he did not see VJ's email and was unaware of his request to cancel. I do not accept that. It appears that MK was aware of VJ's request - otherwise there seems to be little point or context for MK's admitted warning to VJ that cancellation of the purchase would impair his ability to get credit elsewhere. I conclude that MK was aware that VJ wanted to cancel the transaction and his deposit returned. Instead of returning it immediately, MK convinced VJ to proceed with the purchase by falsely telling him that otherwise he would be unable to finance a car purchase elsewhere.
- [50] With respect to the allegations that MK failed to provide VJ with written disclosure of the previous accident damage in the bill of sale and then later falsified the bill of sale by adding it after signing, I find they have not been proven on a balance of probabilities.
- [51] According to MK, the comments section was completely filled in when it was signed by VJ. According to VJ, when he signed there may have been something in the comments section, possibly the first two lines. He felt that something had been added after he signed it, but he was not sure what.
- [52] Although I do not doubt VJ's sincerity, his testimony lacks sufficient certainty and clarity on this crucial issue to allow me to conclude that the bill of sale lacked the required disclosure when it was signed. Since I cannot conclude that the bill of sale lacked the required disclosure, I am unable to conclude that MK later falsified the document by adding it.
- [53] With respect to whether MK failed to provide a bill of sale immediately upon signing, I conclude that this allegation has been proven.
- [54] VJ testified that MK did not provide him with a copy of the bill of sale after he signed it. He only received a copy from MK months later, after he requested one in May 2019 at OMVIC's suggestion. VJ's testimony was apparently sincere and was not directly contradicted by MK. MK acknowledged that the bill of sale may not have been provided to VJ upon signing. He thought it likely that VJ received the bill of sale when

he picked up the vehicle, which was TQM's practice at the time, but MK had no specific knowledge of what happened in this case.

**(b) Consumer "B" – NOP, paragraphs 17-24**

**b. The Allegations**

[55] This transaction involves the sale by TQM of a 2017 Hyundai Tucson on March 19, 2019 to SS for \$18,500. The Registrar alleges that:

- SS signed a bill of sale on March 19, 2019. Although the vehicle had sustained significant previous accident damage, including structural damage, estimated at \$19,570, MK failed to disclose that in writing on the bill of sale when it was signed by SS.
- MK failed to provide SS with a copy of the bill of sale immediately upon signing it.
- MK later provided a falsified bill of sale to SS's insurer in which disclosure of the previous accident damage had been added after SS signed it.

[56] I conclude that the Registrar has not met the onus of proving these allegations on balance of probabilities.

[57] SS did not testify at the hearing. Instead, the Registrar proposed presenting evidence about the transaction through Tim Hines, Director of OMVIC's Complaints and Inquiries Department.

[58] MK objected on the basis that Mr. Hines' testimony would be based entirely on notes made by another OMVIC staff member of a telephone conversation with SS's spouse. Neither SS nor his spouse were available to testify or confirm the accuracy of the facts noted by the staff member. According to the appellants, the probative value of Mr. Hines' testimony was low and the potential prejudice to the appellants great.

[59] I decided to allow Mr. Hines to testify. The *Statutory Powers Procedure Act* provides that the tribunal may admit as evidence any relevant testimony or document, and may act on such evidence.<sup>22</sup> I decided to hear the Registrar's evidence, assess its weight and reliability, and determine whether the Registrar had met the onus of proving the allegations on a balance of probabilities.

**b. The Transaction**

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<sup>22</sup> *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, s. 15(1).

- [60] The only evidence in support of the allegations is contained in the OMVIC staff person's notes of a telephone conversation with SS's spouse on April 4, 2019.
- [61] The notes indicate that the spouse said she and SS purchased a vehicle from TQM three weeks earlier. They signed a bill of sale, which did not contain any disclosure about accidents. TQM did not give them a copy of the bill of sale and they obtained one later from her insurance company. According to the spouse, the bill of sale contains disclosure about previous accident damage that was not present on the document when SS signed it.
- [62] The bill of sale was placed into evidence. The comments section includes the following hand-written disclosure: "Vehicle has been declared a total loss by the insurer. Manufacturer's warranty has been cancelled. Accident repair estimate \$19,579. Structural damage."
- [63] What appears to be SS's signature appears in the comments section right beside the disclosure.
- [64] Both MK and Mr. Abou Moustafa, the initial TQM salesperson on this transaction, testified.
- [65] MK testified that the disclosure on the bill of sale is in his handwriting. He stated that he showed SS the Carfax report, which details the accident damage, as well as photos of the damage before repair. SS signed the report, the pictures, and then the bill of sale with the disclosure section complete. He produced a Carfax report, which appears to have been signed on each page by SS, as well as a copy of a page with photos, also apparently signed by SS.
- [66] Mr. Moustafa testified that he showed SS and his spouse the vehicle, told them of the accident damage, and showed them the Carfax report (on a computer screen) and pictures of the vehicle before repair.

### **c. Findings**

- [67] The only evidence in support of these allegations is contained in the OMVIC staff person's notes of a telephone conversation with the purchaser's spouse. As it is, that information is second hand and does not come directly from SS, the purchaser whose signature crucially appears beside the disclosure contained in the comments section of the bill of sale, the photos, and the Carfax report.
- [68] I have no information as to whether SS agrees with his spouse's description of what occurred, or the accuracy of the staff person's notes of the conversation. SS's complaint appears to be contradicted by the transaction documents produced by MK.

In the absence of sworn testimony from SS and/or his spouse supporting what the notes suggest, I give them little weight.

[69] On the other hand, I have MK and Mr. Moustafa's sworn testimony that they provided the required disclosure to SS in writing in the bill of sale as required. Their testimony is supported by the bill of sale, Carfax report, and photos apparently bearing SS's signatures.

[70] In these circumstances, I am unable to conclude that the allegations in this transaction have been proven on a balance of probabilities.

**(c) Consumer "C" – NOP, paragraphs 25-32**

**a. The Allegations**

[71] This transaction involves the sale by TQM of a 2013 Mitsubishi on October 24, 2018 to KR for \$10,995. The Registrar alleges that:

- KR paid a \$500 deposit to TQM in respect of the purchase of the vehicle. Later, he changed his mind and requested his deposit back. TQM refused although KR had not signed a bill of sale.
- MK falsely asserted that KR signed a bill of sale and produced a falsified bill of sale to which KR's signature had been added.

[72] I find that these allegations have been proven on a balance of probabilities.

**b. The Transaction**

[73] KR testified at the hearing. He stated that he viewed the Mitsubishi on-line and went to TQM's sales lot on October 24, 2018 to take it for a test drive. He initially dealt with a salesperson at TQM and later with MK. The salesperson told KR that the car had been repaired after a "minor accident" but no additional information or detail was provided.

[74] KR was interested but requested that certain items be fixed first. On October 24, KR completed and signed a financing application and handed over a \$500 deposit. No bill of sale was signed at that point.

[75] KR returned to TQM on November 3, 2018 and test-drove the vehicle again to ensure that the repairs had been made. According to KR, the car still did not drive properly. The salesperson told him that TQM would fix the car. No bill of sale was signed.

- [76] After a week went by and the car still wasn't fixed, KR lost interest and asked for his deposit back. MK refused on the basis that KR had signed a bill of sale and produced a copy of a bill of sale dated November 2, 2018 purportedly signed by KR and initialed by him in the comments section.
- [77] The bill of sale was signed by MK on behalf of TQM. The comments section states: "Vehicle has been declared a total loss by the insurer. The manufacturer's warranty has been cancelled. Repair estimate \$12,853."
- [78] KR testified that he never signed the bill of sale and his signature and initials on it are forged. He testified definitively that he wasn't told of the damage described in the comments section, he would have read what was written in that section had the bill of sale been shown to him, and he would never have signed a bill of sale to purchase a vehicle with the damage described. He noted that the bill of sale is dated November 2, but that he visited the sales lot on November 3. This is supported in part by his Visa statement.
- [79] MK testified that the salesperson showed KR the Carfax report detailing the damage and photos of the damage before repair. Afterwards, KR signed the bill of sale on his second visit to TQM on November 2.
- [80] MK testified that as part of the purchase deal KR requested repairs. The repairs were started but before they were completed, KR changed his mind and asked for his deposit back. That was refused because KR had signed the bill of sale and TQM had incurred costs in repairing the vehicle as KR requested.

### **c. Findings**

- [81] The central issue is whether KR signed the bill of sale produced by TQM or whether MK (or someone else at TQM) fraudulently added KR's signature and initials to it. KR and MK provided starkly conflicting evidence on that point. However, I conclude on a balance of probabilities that KR did not sign the bill of sale and that the KR's signature was falsely added to it by MK or someone else at TQM. I come to that conclusion for the following reasons.
- [82] KR's testimony concerning the transaction was convincingly clear and apparently free of embellishment or animosity. His evidence to the effect that as a consumer looking for a vehicle, he would never have signed a bill of sale, which described the vehicle as a "total loss", is convincing.
- [83] His account of what occurred is partially confirmed. His first visit on October 24 is confirmed by banking records relating to his \$500 deposit and his second visit on November 3 is partially confirmed by a visa statement. The bill of sale produced by MK is dated November 2, 2018, which, according to KR's testimony and the Visa

statement, is not a date when he attended at TQM, suggesting that the document is unreliable.

[84] MK testified that TQM's practice was to show customers the Carfax report and photos, have the customer sign or initial them and then, if the customer decides to proceed with the purchase, have them sign a bill of sale. MK testified that is what occurred in this case. However, TQM produced only the disputed bill of sale – no signed Carfax report or photos were placed into evidence. In my view the lack of that documentation is consistent with KR's testimony that he only signed a financing application and is inconsistent with MK's testimony that KR signed the bill after having been shown the Carfax report and photos.

**(d) Consumer "D" – NOP, paragraphs 33 – 47**

**a. The Allegations**

[85] This transaction involves the sale by TQM of a 2017 Kia Sedona on September 18, 2018 to RP for \$30,995. The Registrar alleges that:

- RP was interested in buying the vehicle and paid a \$1,000 deposit. At TQM's request, RP signed a bill of sale with the comments section and transaction charge figures only partially complete.
- The next day RP decided he wanted to cancel the deal and requested return of his deposit.
- MK refused on the basis that RP signed bill of sale. RP contacted OMVIC who requested a copy of the bill of sale. MK provided a copy of the bill of sale to which additional charges for taxes and accident disclosure was added to the comments section after RP had signed.
- TQM and MK falsified the bill of sale by adding accident damage disclosure after it had been signed by the customer.

[86] I find on a balance of probabilities that these allegations have been proven.

**b. The Transaction**

[87] RP testified that on September 18, 2018 he attended at TQM's sales lot to view a Kia Sedona that he had viewed on Auto Trader. He dealt with a salesperson named Adam. He took the vehicle for a test drive and became interested in buying it. Adam told him that the car had been repaired after an accident. The purchase price was agreed upon and RP provided a deposit of \$1,000.

- [88] Adam was apparently in the process of completing the bill of sale when RP had to leave. RP was asked to sign the incomplete bill of sale with the understanding that the remaining portions would be filled in and the completed bill of sale would be given to him when he picked up the car.
- [89] RP took a photo of the signed but incomplete bill of sale before he left and that image was placed into evidence. The bill of sale contains the purchaser's name, vehicle information, and the selling price. The comments section states only "vehicle has been declared a total loss by the insurer."
- [90] After leaving TQM, RP consulted an insurance agent and a mechanic about the purchase and both advised against it. The next day RP contacted TQM and asked for his deposit back. MK refused and RP contacted OMVIC.
- [91] OMVIC got in touch with MK who produced a copy of the bill of sale. That copy appears to be the same bill of sale RP signed and photographed on September 18. However, to it had been added the total price payable on delivery and the following additional disclosure in the comments section: "the manufacturer's warranty has been cancelled. \$42,317 [indecipherable] claim of \$46,860. Accident Repair 12/27/2017."
- [92] MK explained to OMVIC that the purchaser was in a hurry and left before the bill was complete. After OMVIC pointed out that the consumer should not have been asked to sign an incomplete bill of sale, MK returned the deposit.

**c. Finding**

- [93] I find that the Registrar's allegation has been proved.
- [94] MK testified that RP was asked to sign an incomplete bill of sale because he was in a hurry and couldn't wait for the paperwork to be completed. RP acknowledged that he signed the bill of sale knowing it was incomplete. However, regardless of convenience, the Regulation requires that all mandated information - including all charges, the total price payable, the trade in value, and relevant accident information – be present in writing on the bill of sale when the purchaser signs it. Otherwise, the protections afforded by the disclosure requirements would be meaningless.
- [95] When RP changed his mind about the purchase and asked for his deposit back, MK refused on the basis that RP had signed a bill of sale. In other words, MK attempted to keep the deposit and hold RP to the sales contract although it was incomplete when signed, and although accident damage and taxes were added to it after signing. MK refused to return the deposit until weeks later when OMVIC became involved and pointed out that RP should not have been asked to sign an incomplete bill of sale.



- [96] This transaction is significant in my overall assessment of this case. In several of the transactions, purchasers testified that they signed bills of sale with the comments section incomplete or blank and were afterwards surprised when MK produced a copy of the bill of sale with additional disclosure or charges added.
- [97] In this transaction, unlike the others, the purchaser took a photo of the incomplete but signed bill of sale, which made it clear that the bill of sale that TQM provided to OMVIC and relied upon as justification for keeping the deposit had been altered by adding required accident damage information after signing.
- [98] In my view, my finding regarding this transaction lends credibility to the testimony of the other purchasers in this case who also testified that additional damage disclosure information was added to the bill of sale after they signed it.

**(e) Consumer “E” – NOP, paragraphs 48 – 58**

**c. The Allegations**

- [99] This transaction involves the sale by TQM of a 2015 Lexus on March 5, 2018 to YM for \$27,600. The Registrar alleges that:
- YM attended at TQM’s sales lot and gave TQM a deposit in respect of the purchase. No bill of sale was signed.
  - The next day, YM contacted MK and told him that she did not wish to proceed with the purchase and requested the return of her deposit.
  - MK refused based on the false assertion that a bill of sale had been signed.
  - In response to OMVIC’s request, MK provided OMVIC with a copy a bill of sale with YM’s forged signature.
- [100] I conclude that these allegations have not been proven on a balance of probabilities.
- [101] Like the case of Consumer “B” described above, the purchaser in this transaction, YM, did not testify at the hearing (although summoned) and the Registrar proposed calling evidence through Mr. Hines.
- [102] MK objected to Mr. Hines’ testimony on the same basis – the information was second hand and YM was not available to provide sworn testimony or have her assertions tested by cross-examination.
- [103] As in the case of Consumer B, and for the same reasons, I decided to hear Mr. Hines’ testimony, consider its weight and reliability in the context of the case, and determine

whether the Registrar met the onus of establishing these allegations on a balance of probabilities.

**b. The Transaction**

- [104] On March 8, 2018, OMVIC received an on-line complaint from YM about her experience with TQM and MK a few days earlier. She stated that she went to TQM's sales lot and became interested in purchasing a 2015 Lexus. She initially dealt with a salesperson named Kevin. She completed an application for financing and MK asked her for a \$1,000 deposit. Kevin told her that he would call the next day and let her know if the financing application had been approved and the amount of the bi-weekly payments.
- [105] She got in touch with Kevin the next day who told her that the financing was approved and that the bi-weekly payments were \$245 – higher than she had anticipated. She told Kevin that she wasn't accepting that deal and requested her deposit back. Kevin refused, saying that YM had signed the bill of sale. According to YM, she was shocked - she had only signed an application for financing and did not sign, and was not given, a copy of a bill of sale.
- [106] According to Mr. Hines, OMVIC asked TQM to respond. On March 28, 2018, MK spoke to an OMVIC staff person. He claimed that YM had in fact signed the bill of sale and he sent a copy to OMVIC. The bill of sale appears to be signed by MK on behalf of TQM and by YM as the purchaser. It contains disclosure about previous accident damage and estimated repair cost, the terms of financing, and the total price payable. On April 6, 2018 MK informed OMVIC that he returned YM's \$1,000 deposit to her after he sold the vehicle to another customer.
- [107] MK testified at the hearing about this transaction. He stated that YM signed the bill of sale in front of him. She also initialed the comments section containing the description of previous accident damage. He produced a copy of a loan application and Carproof report for the vehicle also apparently signed and initialed by YM.
- [108] According to MK, YM got in touch with him shortly after signing the bill of sale. She told him she had second thoughts about buying an accident-damaged car. He offered to find her another car but refused (at least initially) to return the deposit. YM simply changed her mind about buying a previously damaged vehicle after she signed the bill of sale.

**c. Finding**

- [109] The only substantive evidence in support of those allegations is YM's on-line complaint in which she claims she never signed a bill of sale. As in the case of Consumer "B", the Registrar is asking the Tribunal to accept what is essentially a

complaint made to OMVIC as proof of an allegation. The information in YM's complaint is unsworn and untested by cross-examination.

- [110] On the other hand, MK provided sworn testimony at the hearing and was subject to cross-examination. According to his uncontradicted testimony, YM signed the bill of sale in front of him and he supported his testimony with the apparently signed bill of sale and related transaction documents.
- [111] In these circumstances, I am unable to conclude the allegations have been proven on a balance of probabilities.

**(f) Consumer "F" – Notice of Further and Other Particulars, paragraphs 84-92**

**a. The Allegations**

- [112] This transaction involves the sale by TQM of a 2018 Chevrolet Cruze on April 11, 2019 to SN for \$17,995. The Registrar alleges that:
- TQM failed to disclose to SN in the bill of sale that the vehicle was a previous daily rental and had previously sustained accident damages estimated at over \$14,000.
  - TQM failed to provide SN with a copy of the bill of sale immediately upon signing.
  - When SN later learned of the previous accident damage, she requested a copy of the bill of sale. MK provided a bill of sale to which disclosure about the previous accident damage had been added after it was signed by SN.
- [113] I find that these allegations have been proven on a balance of probabilities.

**b. The Transaction**

- [114] SN testified that she became interested in purchasing a Chevrolet Cruze and, after communicating with MK, attended at TQM's sales lot in April 9, 2019. She stated that MK first showed her a 2017 Cruze that had been repaired after "a minor accident". SN rejected that car because she wanted a "headache-free" vehicle. MK then showed her a 2018 Cruze that he said had been a daily rental but had no previous accident damage. He showed her a Carfax report confirming no previous accidents.
- [115] The sale was completed on April 11, 2019. SN attended at TQM and dealt with MK. She signed a bill of sale prepared by MK. According to SN, the only notation in the comments section when she signed was "previous daily rental", something she had already been told by MK. The rest of the comments section was blank and she

signed it under the assumption that the vehicle was accident-free. She also signed the Carfax report for the vehicle on each page.

- [116] The paperwork from the transaction was given to her in an envelope which she put in the glove compartment without checking its contents. According to SN, she only realised months later that the bill of sale was not included in the envelope.
- [117] Several months later, in December 2019, SN took the vehicle to a dealership for servicing. Dealership staff pointed out to her that the vehicle had been seriously damaged in an accident and poorly repaired afterwards. They showed her evidence that the door had been replaced and screws and brackets were missing. According to SN, she was shocked and got in touch with MK for an explanation. MK first denied it and then suggested that SN knew the vehicle was in an accident when she purchased it.
- [118] She asked for a copy of the bill of sale and MK sent it to her on December 19. According to SN, this was the first time she saw the bill of sale since signing it on April 11. When she signed it then, the comments section contained only the words “previous daily rental”. In the version sent to her from MK, the comments section included the following addition: “vehicle has been declared a total loss by the insurer. The manufacturer’s warranty has been cancelled. Damage estimate \$14,401.99.”
- [119] MK also testified. He stated that he remembered the transaction and recalled showing SN the 2017 Cruze first. According to MK, SN rejected the 2017 Cruze because the Carfax report for that vehicle showed accident damage and she was concerned that would make it less valuable upon resale.
- [120] He then showed her the 2018 Cruze. He disclosed that the vehicle had also been in an accident and repaired. However, the damage was not included in the Carfax report because the car had previously been owned by a car rental company. Car rental companies apparently “self-insure” – meaning they repair their damaged vehicles without the involvement of insurance companies and, as a result, accident damage to their vehicles does not necessarily show up in vehicle history reports. According to MK, SN decided to purchase this vehicle because although it was accident-damaged, it had a clean history report that did not show the accident damage.
- [121] MK testified that SN was aware of the previous accident damage. He showed her pictures of the vehicle before repair and she knew that the driver side door and fender had been repaired. According to MK, all of the comments on the version he provided to SN were there when she signed it in April, and a copy of the bill of sale was provided to her when she later picked up the car.

### **c. Findings**

- [122] This is another case where the evidence of MK and the purchaser is sharply different on crucial issues. In this case, I accept SN's evidence for the following reasons.
- [123] Firstly, SN provided clear, consistent, straightforward testimony that was definitive on the crucial points. She recalled the events in an even-handed manner, free from any obvious animosity or rancour.
- [124] Secondly, SN's testimony appears to be consistent with her circumstances and MK's testimony does not. SN is a young person who had never purchased vehicle on her own before. She testified quite clearly that she was looking for a vehicle that was "headache-free" which to her meant low mileage, fairly new, requiring no repairs and no previous accident damage.
- [125] According to both parties, MK first showed SN a 2017 Cruze that she rejected because it had previous accident damage. MK then showed her the 2018 Cruze she ultimately bought.
- [126] According to MK, SN was not so much concerned with the vehicle being accident-free - she was more concerned that the car had a clean Carfax, which would assist with resale. He therefore showed her the 2018 Cruze, which he disclosed was accident-damaged but had a clean Carfax.
- [127] I find MK's version unconvincing. I accept SN testimony that she wanted an accident-free car and it seems unlikely that she would purchase the 2018 Cruze knowing it was accident-damaged after refusing the 2017 Cruze for that same reason. MK's explanation that she was more interested in a clean Carfax than a headache-free car appears inconsistent with SN's level of comfort and experience in purchasing vehicles.
- [128] I also find it unlikely that SN would have signed the bill of sale if all of the disclosure in the comments section was there when she signed it. SN had little experience with purchasing vehicles, was buying this car on her own, and specifically wanted a headache-free vehicle. It seems unlikely that someone in her circumstances would sign a bill of sale that said, among other things, that the "vehicle has been declared a total loss by the insurer".
- [129] I consider it more likely that once SN rejected the 2017 Cruze because it was accident-damaged, MK suggested the 2018 Cruze. Although it was also accident-damaged, it could be presented as accident-free because it had a clean Carfax. I find that MK did not detail the accident damage in the bill of sale because if it was clearly brought to SN's attention she likely would not have bought the car. I find that MK failed to provide SN with the bill of sale when she signed it, and later added the accident damage to the already signed bill of sale.

**(g) Consumer “G” – Notice of Further and Other Particulars, paragraphs 93-105**

**d. The Allegations**

[130] This transaction involves the sale by TQM of a 2013 Nissan Altima on March 10, 2018 to ES for \$11,995. The Registrar alleges that:

- TQM failed to disclose to ES in the bill of sale that the vehicle had previously sustained accident damages estimated at \$21,753.
- TQM failed to provide ES with a copy of the bill of sale immediately upon signing.
- When ES later learned of the previous accident damage, she requested a copy of the bill of sale. MK provided a falsified bill of sale to which disclosure about the previous accident damage had been added after ES signed it.

[131] I find that these allegations have been proven on a balance of probabilities.

**b. The Transaction**

[132] ES, the purchaser in this transaction, testified that she purchased a 2013 Nissan Altima in March 2018 from TQM. MK was the salesperson on the purchase.

[133] According to ES, the Altima was the first and only car she has ever purchased. She was looking for a Nissan Altima in particular, and she noted that TQM advertised one for sale on Autotrader. She got in touch with TQM and discussed the details of the car and financing in a series of communications. According to ES, she verbally asked MK if the car had been in a previous accident and he told her it had not.

[134] MK assured ES that he could get her financing to purchase the vehicle and ES went to the dealership with her partner on March 10, 2018. According to ES, they knew they wanted the vehicle and she signed a bill of sale and paid a \$3,000 deposit to purchase the vehicle that day. They did not take it for a test drive.

[135] With respect to disclosure of previous accident damage, ES testified that during her visit on March 10, MK again assured her that the car was “clean” and had been in “no accidents”. He told her that the vehicle had originated in Quebec and showed her the first page of a Carproof report confirming that.

[136] According to ES, MK asked her to sign and initial the Carproof report page, a bill of sale, and other financing and transaction documents. Once the paperwork was signed, ES was given some ownership and financing documents but was not given a copy of the bill of sale. The car required some additional repairs and service and ES picked it up later.

- [137] ES testified that after picking up the car she noted that it was subject to unusual vibration and did not drive properly. She took it back to TQM for repairs but was never informed that the vehicle had sustained previous accident damage.
- [138] About a year later, in March 2019, ES took the vehicle to a Honda dealership as a possible trade-in for a different car. The dealership examined the car and checked a Carfax report. ES was surprised to learn that the dealership considered her car to be worth \$500 because the vehicle had sustained previous accident damage, including structural damage, in three separate collisions in Quebec (damage estimated at \$8,069, \$4,253 and \$11,431).
- [139] ES got in touch with OMVIC and was advised to get a copy of the bill of sale. According to ES, at this point, a year after the purchase, she still did not have a copy. She eventually obtained one from MK. That bill of sale contains a handwritten entry in the comments section, which notes “structural damage. accident repair claim” and includes the value of the previous damage estimates contained in the Carfax report (noted above). The bill of sale is signed by ES and her initials appear in a corner of the comments section.
- [140] According to ES, this was the first time she saw the bill of sale since signing it. She testified definitively that when she signed the bill of sale the comments section was empty, and she initialed the empty section at MK’s direction. ES testified that if she knew the truth about the car, she would have never bought it.
- [141] MK testified that ES got in touch with TQM in connection with the Altima. She had issues with her credit, but he found financing through a private lender. She came in to look at the car on March 10, 2018. MK states that he told ES about the previous accident damage and showed her a Carfax report, which disclosed the accidents and their damage estimates.
- [142] He produced documents from the transaction including a copy of the Carfax report, which appears to contain ES’s initials on each page, and a copy of the bill of sale containing disclosure of the accident damage apparently signed and initialed by ES. MK testified that the comments section of the bill of sale contained the description of the previous damage when it was signed by ES.
- [143] MK testified that he provided ES with a copy of the bill of sale – perhaps not when she signed it on March 10 but certainly when she picked up the car shortly afterwards. According to MK that was the practice at that time. That practice has since changed, and TQM now gives customers a copy of the bill of sale when they sign.

### **c. Findings**

- [144] I find that these allegations have been proven on a balance of probabilities.

- [145] This is another case where the evidence of MK and the purchaser is sharply different on crucial issues. However, I accept ES's evidence for the following reasons.
- [146] Firstly, ES's testimony was clear and unwavering on the essential details. Her narrative appeared to be consistent with the known facts and was supported by the text communications between ES and MK. Her testimony was apparently sincere and genuine.
- [147] ES stated that she never would have bought the vehicle had she known that it had been damaged in three collisions and had suffered structural damage. In my view that has an air of truth to it. ES is a young person, and this was the first vehicle she purchased. Her inexperience, or perhaps her trusting nature, was confirmed by the fact that she did not take the vehicle for a test drive. It seems unlikely that ES, an inexperienced first-time purchaser, would be comfortable purchasing this vehicle without even taking it for a test drive if the true damage information been brought clearly to her attention.
- [148] In my view, it is more likely that MK took advantage of ES's inexperience and trust and sold her the vehicle without bringing the accident damage to her attention.

**(h) Consumer "H" – Notice of Further and Other Particulars, paragraphs 106-119**

**e. The Allegations**

- [149] This transaction involves the sale by TQM of a 2016 Ford Explorer on May 29, 2018 to NW for \$28,500. The Registrar alleges that:
- TQM failed to disclose to NW in the bill of sale that the vehicle had previously sustained accident damages and declared a total loss by an insurer.
  - TQM failed to provide NW with a copy of the bill of sale immediately upon signing.
  - ES later requested a copy of the bill of sale and MK provided a falsified bill of sale to which disclosure about previous accident damage, and an unagreed to insurance charge of \$685 had been added after NW signed it.

[150] I find the Registrar's allegations to be proven on a balance of probabilities.

**b. The Transaction**

- [151] NW testified with that he and his spouse have two small children and wanted a newer, bigger, reliable vehicle. They became interested in a 2016 Ford Explorer



advertised on-line for \$28,500 by TQM and they went to see it at TQM's sales lot on May 22, 2018.

- [152] NW and his spouse met with Anna, a TQM salesperson. According to NW's testimony, the Explorer was not immediately available for viewing and Anna showed them another vehicle that she said had sustained damage in a previous accident. NW and his spouse took a quick look but rejected it immediately because they did not want an accident-damaged vehicle.
- [153] They took the Explorer for a test drive and liked it. According to NW, he directly asked Anna if the vehicle had any previous accidents and she replied "no". He asked for the vehicle history report and Anna told him that MK had the report and would provide it later. When they returned to the dealership, Anna invited them to complete a credit application and had them sign two documents, which she said were loan applications. Although the listed price was \$28,500, according to NW, they agreed on a price of \$27,000 and Anna calculated that the bi-weekly payment on that amount would be \$200.
- [154] NW and his spouse decided to buy the vehicle and left a \$200 deposit. It was agreed that the vehicle would be cleaned, certain items would be repaired, and it would likely be ready for pick-up the following Monday - May 28, 2018.
- [155] NW left a handwritten note with Anna setting out the items they agreed would be fixed. A copy was made an exhibit. It included seven items including detailing and paint touch-ups. The last item on the list is "must not be salvaged or driving previous rental". According to NW, that note confirms what he told Anna verbally - he did not want a vehicle that had been previously damaged. According to NW, that was his main concern and he brought it to Anna's attention several times.
- [156] NW testified that MK later told him the vehicle would be ready on Tuesday, May 29. He went to the dealership with a friend that day in the late afternoon to complete the transaction. The vehicle was not ready when they arrived. NW and his friend waited until approximately 9 pm. At that point, most of his requested repairs were still not complete, the bill of sale had still not been prepared and NW wanted to leave. MK suggested that NW take the vehicle and sign an almost blank bill of sale with only his name and address on it. The finalised copy would be sent to him along with the safety certificate, the bank documents and the Carfax report, which, up to that point, NW had still not seen. NW agreed and took possession of the vehicle.
- [157] According to NW, he didn't receive the documents the next day and he started texting and calling Anna. Many of his communications went unanswered but on June 4 Anna sent him a photo of the bill of sale and NW saw it for the first time since signing it on May 28. According to NW, he was shocked because:

- The bill of sale contained a sale price higher than agreed (\$28,500 instead of \$27,000) and included additional charges not agreed to (\$695 for “safety”, \$885 for insurance, and the \$200 deposit apparently added to the price rather than subtracted from it).
- The comments section of the bill described previous accident damage that directly conflicted with Anna’s assurances that the car had not been previously damaged. It stated: “Vehicle has been declared a total loss by the insurer. The manufacturer’s warranty has been cancelled. Accident Repair Cost \$3000.”

[158] Anna also sent NW a copy of the vehicle’s Carfax report. The report states that the vehicle was a previous daily rental and suffered “moderate” damage in a previous accident.

[159] NW testified that if this information had been disclosed to him as required, he would never have bought the car. He intended to get a vehicle that was safe and reliable for use by his spouse and children. He ended up with a vehicle that was a previous daily rental and was declared a total loss by an insurer.

[160] MK testified that Anna told NW about the vehicle’s accident damage. According to MK, NW’s note specifying that the vehicle must not be “salvaged” does not refer to vehicles that have been previously accident-damaged, it refers to vehicles that have been “branded rebuilt”.

[161] The vehicle bought by NW was branded “normal.” In other words, it was not salvaged. According to MK, NW was aware of that distinction. His note confirms that he was not interested in salvaged vehicles but would consider a vehicle such as this one, which had been repaired after an accident and branded normal.

[162] According to MK, NW was told on the telephone before he came to see the car on his first visit that the car had been a daily rental. However, the dealership had two vehicle history reports. The first one did not disclose the daily rental history but the second one did. When NW came to see the car on his first visit, Anna had reviewed the first report and was unaware that it was a daily rental. According to MK, when NW returned on his second visit, he was shown the more accurate report and was aware of the previous accident damage and daily rental history when he signed the bill of sale.

[163] MK also testified that on NW’s first visit, he signed two financing applications for two different banks. When NW arrived to complete the transaction on May 28, it still wasn’t clear which bank would approve the loan. NW had travelled from his home in Milton to pick up the car. He had waited a while and wanted to leave, so MK had NW sign the bill of sale without the financing information complete on the understanding that it would be filled in later and sent to him. However, according to MK, the comments section containing the accident damage disclosure was complete, the total

price (\$28,500) was included, and all of the dealership charges were on the bill of sale when NW signed it.

**c. Findings**

[164] NW's version of the transaction is consistent with his circumstances. I accept his uncontradicted testimony that, as the father of two small children, he and his spouse were looking for a safe, reliable vehicle for family use. They were willing to pay a substantial amount for the vehicle and were not interested in previous rentals or accident-damaged cars. Given those circumstances it seems unlikely that NW and his spouse would purchase a car intended for family use if the fact that the car had been "declared a total loss by the insurer" was brought clearly to their attention.

[165] NW's version of the transaction is also supported by the note that he gave Anna on his first visit. That note contains seven items that NW requested before the sale was completed. The seventh item on the list was "must not be salvaged or driving previous rental". In my view that note:

- confirms NW's testimony that he was not told during the first visit that the vehicle was a daily rental or had been written off by an insurance company,
- confirms NW's evidence that he wanted to buy a car with a clean accident history, and
- supports his testimony that he would not have signed the bill of sale had the necessary written disclosures been present on the document when he signed it.

[166] MK states that NW was aware of the difference between a salvaged vehicle and an accident-damaged vehicle and NW's note confirmed only that he did not want a vehicle that was salvaged or branded "rebuilt". He was still open to an accident-damaged vehicle.

[167] That assumes that NW was using the term "salvaged" as it is used by those inside the used car sales industry. I accept NW's testimony that he used "salvaged vehicle" in its everyday sense, to mean a vehicle that has been repaired after being declared a total loss.

[168] NW's description of his dealings with TQM are also supported and confirmed in several respects by text communications that were placed into evidence. For example, NW's testimony that he was not given a bill of sale upon signing and had to ask repeatedly to get a copy is supported by text communications.

[169] NW's testimony that he was not told of the accident damage before signing the bill of sale and only learned about it days later after repeated requests, is also confirmed. In

a text to Anna shortly after the transaction and just after she sent to him the Carfax report, NW states:

“he lied to me about the vehicle and I was not told about the previous history of the vehicle and you guys will inshallah lose your licence [...] Also he changed the paperwork after I signed and that is a crime.”

(i) **Consumer I and J – Notice of Further and Other Particulars, paragraphs 120-137**

f. **The Allegations**

[170] This transaction involves the sale by TQM to HW and NW of a 2017 Honda Accord Sport for \$31,983 on February 5, 2019. Although HW was the primary purchaser, his brother NW co-signed the financing agreement and signed the bill of sale. The Registrar alleges that:

- TQM failed to disclose to HW and NW in writing in the bill of sale that the vehicle had previously sustained accident damages and was declared a total loss by an insurer.
- TQM included charges on the bill of sale to which HM and NW did not agree, such as insurance coverages and a \$695 charge for “safety”.
- TQM failed to disclose those charges to NW and HW in the bill of sale.
- TQM failed to provide HW and NW with a copy of the bill of sale immediately upon signing.
- When HW later requested a copy, MK provided a falsified bill of sale to which disclosure about previous accident damage, and several unagreed charges were added after signing.

[171] I find that the Registrar’s allegation that MK added additional unagreed to charges to the bill of sale after signing have not been proven.

[172] However, I find that the allegations concerning the non-disclosure of accident damage and the addition of information to the bill of sale after signing, have been proven.

b. **The Transaction**

[173] Both HW, and his younger brother NW, testified with respect to this transaction.

- [174] HW was interested in buying a Honda Accord Sport and saw one advertised on-line by TQM. He went to TQM's sales lot on February 3, 2019 to view the car and spoke with Abou Moustafa, a salesperson.
- [175] He wanted to take the vehicle for a test drive but was told that wasn't possible because the car was snowed in. He examined the exterior of the car and noted some damage. HW asked whether the car had been in an accident. Mr. Moustafa replied that the car had suffered superficial damage in a minor accident but that the damage would be repaired. HW was interested in buying the car and left a \$500 deposit.
- [176] Afterwards, MK got in touch with HW and told him that he would need someone to co-sign his loan. HW's brother, NW, agreed and on February 5, 2019, NW and HW returned to TQM to complete the transaction.
- [177] NW testified that he was under the impression that he would pick up the car that day but instead he was told that the car wasn't ready yet and was still not available for a test drive. Nevertheless, MK requested that HW and his brother sign several documents. According to the testimony of both brothers, MK did not explain the documents to them, they simply signed where MK directed them to sign.
- [178] The bill of sale was signed by NW only. He testified that he signed where he was told to sign. MK provided no explanation of the documents and seemed to be in a hurry. NW did not recall being shown a Carfax report or photos of the accident damage. He testified that he was not told that the car had been declared a total loss, that the manufacturer's warranty had been cancelled or that the repairs were estimated at over \$14,000. He recalled signing the bill of sale and initialing the comments section but does not recall seeing any content in that section. He also does not recall any figures detailing various charges on the bill of sale.
- [179] According to HW, he and his brother were not provided with a copy of any of the documents just signed, including the bill of sale. MK told them they would be available when HW picked up the car.
- [180] HW picked up the car about two weeks later and the bill of sale was not available. After requesting it again, he went to the dealership on February 22 or 23 and picked it up.
- [181] This was the first time he had seen it since it was signed. According to HW, when it was signed by his brother, the comments section was blank. The version produced by TQM contains the following entry: "Vehicle has been declared a total loss by the insurer. The manufacturer's warranty has been cancelled. Damage rear and right side. \$14,497.31."

- [182] According to HW, TQM did not disclose that information to him verbally, in photos, or in a vehicle history report, and he would never have completed the transaction if that had been included in the comments section of the bill of sale.
- [183] He was also surprised by the transaction figures, TQM had added a \$3,500 for an extended warranty, \$695 for a “safety”, \$2,100 and \$1,995, apparently for two types of insurance. According to HW, there was specific discussion about the extended warranty and he refused it. None of those charges were agreed to or explained and, according to HW, none of them were on the bill of sale when it was signed by NW.
- [184] HW stated that in late February, he took the vehicle to a Honda dealership and was told that the vehicle was noted in their records as “destroyed”. HW got in touch with MK to express his surprise and shock. On February 28, MK sent to HW the Carfax report for the vehicle, which confirms that the vehicle was damaged in a collision. According to HW, this was the first time he saw that report.
- [185] Both MK and Mr. Moustafa, the initial salesperson on this transaction, testified. According to both of them, the previous accident damage was disclosed verbally to HW and he was shown a photo of the damage and the Carfax report. MK produced a copy of the Carfax report apparently signed by HW.
- [186] MK also produced a bill of sale for the transaction, which contained the accident damage disclosure in the comments section and the various charges set out in writing. According to MK, all of that information was contained on the bill of sale when it was signed by NW in HW’s presence. According to MK, HW was aware of, and agreed to, all the charges set out in the bill of sale.

**c. Findings**

- [187] I find that the Registrar’s allegation that MK added additional unagreed to charges to the bill of sale after signing have not been proven. NW was uncertain as to whether all of the figures on the disputed bill of sale were present when he signed it. MK was able to support some of the charges with an application for warranty and insurance protection apparently signed by HW. In my view, the evidence was not sufficiently clear or compelling to support a finding that MK added additional charges to the bill of sale after it was signed.
- [188] However, I find that the allegations concerning the non-disclosure of accident damage and the addition of that information to the bill of sale after signing, have been proven on a balance of probabilities.
- [189] HW’s testimony was clear and certain on the crucial issues of whether he was informed of the accident damage, whether it was disclosed in writing on the bill of sale when it was signed, and whether he or his brother were given a copy of the bill of sale after signing.

- [190] His account of his attempts to get a copy of the bill of sale in the days following the transaction were uncontradicted. His testimony that he was surprised to learn that the car's status with Honda was "destroyed" and his immediate efforts to contact MK to get the Carfax were confirmed by documentation from Honda and email communications from TQM.
- [191] HW's testimony was also generally confirmed by the testimony of his brother NW. NW was at the TQM dealership once and his role was to co-sign on the purchase for his brother. In fact, he signed the bill of sale as purchaser. He testified that the signing process took two to three minutes and nothing was explained to him – he just signed where he was told. He stated that he does not recall anything being in the comments box of the bill of sale when he signed it. He seemed to genuinely have no recollection of being shown the Carfax report, or being told that the vehicle was declared a "total loss". In my view, that has a ring of truth to it – it seems likely that if either of the brothers were told that the car had been declared a "total loss" they would recall it.

**Summary of Findings of Consumer Transactions**

- [192] My findings with respect to the nine consumer transactions are summarised in the following table.

Transaction	Date of Purchase	Buyer	Vehicle	Findings
Consumer A	Nov 9/18	VJ	2014 Mercedes Benz	Failed to return deposit on request Failed to provide customer with a copy of bill of sale upon signing
Consumer B	Mar 19/19	SS	2017 Hyundai Tucson	Allegations not proven
Consumer C	Oct 24/18	KR	2013 Mitsubishi	Failed to return deposit on request Falsely asserted that KR signed a bill of sale Produced a bill of sale with the customer's false signature
Consumer D	Sep 18/18	RP	2107 Kia Sedona	Customer was asked to sign an incomplete bill of sale, MK added accident damage disclosure to the bill of sale and attempted to rely on it to refuse return of deposit
Consumer E	Mar. 5/18	YM	2015 Lexus	Allegations not proven
Consumer F	Apr 11/19	SN	2018 Chev Cruze	Previous accident damage and daily rental history not disclosed on bill of sale

				Bill of sale not provided to customer on signing Accident damage and daily rental added to bill of sale after signing
Consumer G	Mar 10/18	ES	2013 Nissan Altima	Previous accident damage not disclosed on bill of sale Bill of sale not provided to customer on signing Accident damage added to bill of sale after signing
Consumer H	May 29/15	NW	2016 Ford Explorer	Previous accident damage not disclosed on bill of sale Bill of sale not provided to customer on signing Accident damage added to bill of sale after signing
Consumer I&J	Feb 5/19	HW & NW	2017 Honda Accord Sport	Previous accident damage not disclosed on bill of sale Bill of sale not provided to customer on signing Accident damage added to bill of sale after signing

## **F. PAST CONDUCT – Previous Convictions**

[193] As mentioned above, the Registrar proposes to revoke the appellants' registrations in part on the basis that MK's past conduct affords reasonable grounds for the belief the appellants will not carry on business in accordance with the law and with integrity and honesty.

[194] The Registrar mainly relies on MK's conduct as described in the nine consumer transactions above, but the Registrar also relies on MK's conduct that led to a past arrest under the *Criminal Code* and convictions of his companies under the POA.

### **g. Convictions and Charges**

[195] The facts of the convictions are not in dispute:

- On April 22, 2013, MK and TQM pled guilty of two counts of retaining the services of an unregistered salesperson, an offence under the *Motor Vehicle Dealers Act, 2002*, and were fined \$2,500.
- On October 25, 2018, TQM pled guilty to four counts of failing to keep inspection reports and other documents relating to safety standard certificates, and one count of failing to ensure that the premises in which it carries out safety inspections were



equipped with proper inspection devices, offences under the *Highway Traffic Act* and regulations, and was fined \$1,300.

- [196] The conduct that led to the arrest is more contentious. In July 2011, MK was charged with common assault and assault with a weapon (a stapler) in connection with an incident on July 12, 2011 involving Muhammad Butt, a salesperson then employed by TQM.
- [197] The outcome of the charges is not in dispute – on October 30, 2012, the charges were withdrawn and MK entered into a peace bond for 12 months. What is in dispute is the source of the argument that led to the incident.
- [198] Both MK and Mr. Butt testified. According to Mr. Butt, he was dealing with a customer who was looking for a vehicle. The customer directly asked whether the vehicle had been accident-damaged. Mr. Butt told him truthfully that it had. The customer was not interested in an accident-damaged vehicle and left. When Mr. Butt returned to the office, MK asked why the customer left. When MK learned the reason, he became angry, threw a stapler at him, and kicked Mr. Butt's leg a couple of times.
- [199] Mr. Butt testified that he worked at TQM for four to five months but left after this incident. He stated that he was not comfortable working at TQM because disclosure to customers was not done properly and customers were misled. He stated that on a couple of occasions he observed customers angry and upset after finding out about charges added to their transaction without their knowledge. He now operates "Canada Quality Motors," which also operates in Scarborough, and whose customer base is similar to that of TQM.
- [200] According to MK, the argument was not about customer disclosure. Mr. Butt asked a customer of MK's uncle (who shares the premises) to move his car and the uncle complained. MK confronted Mr. Butt and the argument escalated to the point that MK was yelling but, according to MK, there was no assault. The charges were later withdrawn when MK entered into a peace bond. There was no conviction and he complied with the peace bond.

### **b. Findings**

- [201] The POA convictions are not in dispute and I take them into account in determining whether MK's past conduct warrants revocation of the appellants' registrations.
- [202] With respect to the conduct that resulted in the *Criminal Code* charges, I give it little weight.
- [203] The Registrar argues that its real significance is the context of the alleged assault - MK's angry response to Mr. Butt disclosing accident damage to potential purchasers.

According to the Registrar, it confirms that MK and TQM were deliberately withholding accident damage information from customers as far back as 2011 and it lends support to what many of the purchasers in the nine transactions testified they experienced in 2018 and 2019.

[204] However, even if I accept that the incident was sparked by an argument about disclosure of accident damage and not about parking space, this incident took place in 2011.

[205] The issue for the Tribunal at this point is whether MK's past conduct affords reasonable ground for belief that he and his company will not carry on business in accordance with the law and with integrity and honesty today. This incident took place over nine years ago and I consider it to be too remote in time to afford reasonable grounds for belief that the appellants will not carry on business properly today.

#### **G. FALSE INFORMATION ON RENEWAL APPLICATIONS**

[206] In addition to MK's past conduct as described above, the Registrar also asserts that the appellants' registrations should be revoked because of false statements made by MK in applications for registration renewal he submitted on behalf of himself and his companies.

[207] Those false statements are listed below and are not in dispute:

- In his January 31, 2012 application for renewal, MK answered "no" to a question asking whether he has been convicted of an offence under any law or whether there are any charges pending. That answer was false as at that time the assault charges were pending.
- In the May 25, 2012 TQM application for the renewal of TQM's registration, MK answered "no" to a question asking whether "the registrant" has been convicted of an offence under any law or whether there are any charges pending against the registrant. The application form states that "registrant" includes a corporate registrant's officer/director. That answer was false as at that time the assault charges were pending against MK, TQM's officer and director.
- In TQM's May 15, 2013 application for renewal, MK answered "no" to a question asking whether there were any court orders pending against the registrant. The form states that "registrant" includes a corporate registrant's officer/director. That answer was false as at that time the peace bond, a court order, was pending against MK, TQM's officer and director.
- In TQM's June 11, 2019 application for renewal, MK answered "no" to a question asking whether there are any prior charges or convictions against TQM. That

answer was false as on October 5, 2018, TQM plead guilty to five offences under the *Highway Traffic Act* for violations of requirements relating to safety inspection premises.

[208] MK asserts that any errors he made in those renewal applications was inadvertent and he did not intend to deliberately mislead the Registrar. He testified that when he completed the first two renewal applications above, he read the questions quickly and mistakenly thought they only referred to convictions, not pending charges. With respect to the third application above (May 15, 2013 TQM application), MK testified that he was not aware that the peace bond was a court order and did not understand that it should be disclosed.

### **Finding**

[209] The Act provides that a registration may be revoked if a registrant provided a false statement on an application for renewal.<sup>23</sup> In this case, while it is indisputable that MK provided false answers, especially in relation to his pending criminal charges, I am prepared to grant to MK the benefit of the doubt and accept that his answers to the question on the first three applications noted above were inadvertent.

[210] However, no explanation was provided for the fourth, most recent application (June 11, 2019 TQM application for renewal). In that case MK answered “no” to the question of whether TQM had been convicted on any offences. That answer was wrong, and I conclude there was no reasonable confusion about whether they should have been disclosed.

[211] I therefore conclude that MK knowingly provided a false statement in TQM’s June 11, 2019 application for renewal.

### **H. DISPOSITION**

[212] I have found that in seven of the nine consumer transactions in issue, MK engaged in a pattern of deception intended to avoid the dealer’s obligation to disclose to purchasers previous accident damage in writing on the bill of sale.

[213] In most cases that deception involved the following elements:

- withholding information about previous accident damage,
- not including this information in writing on the bill of sale as required,

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<sup>23</sup> *Act*, ss 6(1)(a)(iii), 6(1)(d)(iv); *Registrar, Motor Vehicle Dealers Act v Vernon*, 2016 ONSC 304 (CanLII) at para 8.

- requesting that the customers sign a bill of sale with the comments section empty or almost empty,
- failing to provide the customers with a bill of sale upon signing, and
- later providing a copy of the signed bill of sale with the required disclosure written in.

[214] I conclude that MK's conduct in that regard, along with the conduct that led to the POA convictions in 2013 and 2018 and his deliberate provision of false information to the Registrar in connection with the June 11, 2019 renewal application, affords reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty.

[215] My findings above with respect to the 7 consumer transactions demonstrate a lack of transparency and honesty in dealing with customers. MK's willingness to manipulate unsophisticated, inexperienced customers into signing bills of sale without the proper disclosure and then afterwards producing a bill of sale with the accident disclosure written in, effectively undermined the extremely important disclosure protections set out in the Act.

[216] The deception was apparently carried out to make accident-damaged vehicles more attractive to unsuspecting purchasers by hiding their true history. MKs' conduct negatively impacted all of the purchasers. Most of them testified that they felt cheated. Many of them ended up with vehicles that they would never have agreed to buy had they known the truth.

[217] Perhaps the clearest example of the damage done to consumers is the case of ES (Consumer "G"). ES testified that she bought the Nissan Altima for \$11,995 without taking it for a test drive under the trusting impression that it was not previously accident-damaged. It was her first and only car purchase and she testified that she saved five years for the down payment. She was shocked and dismayed when, about a year later, a Honda dealership later assessed the value of her vehicle as \$500 due to previous accident damage not disclosed to her by MK.

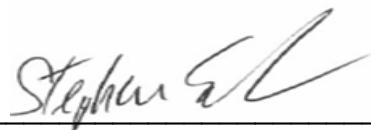
[218] Past conduct is often an indicator of future behaviour and in my view MK's past conduct does afford reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty. MK is the sole director, officer and owner of the two registered companies and the evidence presented indicated that he was their directing mind. As such, MK's past conduct also affords reasonable grounds for belief that the registered companies will not carry on business in accordance with the law and with integrity and honesty.

- [219] Given these findings, what is the appropriate disposition? The Registrar proposes revocation. MK suggests that I should consider imposing conditions or a suspension of the appellants' registrations.
- [220] I do not consider conditions to be appropriate in this case. While conditions, such as additional training and/or monitoring, may constructively address sloppiness or deficiencies in standards of practice, it seems doubtful that they can effectively address a failure to deal with customers with honesty and integrity.
- [221] I also consider a suspension to be inappropriate. I have found that MK failed to disclose key aspects of vehicle damage history to customers and then falsified transaction documents to cover up his lack of disclosure. It appears that this was a pattern of doing business. Most of the customers who testified described similar experiences – lack of disclosure before signing the bill of sale, lack of written disclosure in the bill of sale, failure to provide the bill of sale upon signing, and then production of a bill of sale with additional accident damage written in. That pattern of conduct was not just dishonest, it contravened and undermined regulatory requirements that are fundamental to the protections that the legislation affords to consumers.
- [222] In my view, revocation of the appellants' registrations is warranted both to protect the public and to promote public and industry confidence in the used motor vehicle sales industry.

## **I. ORDER**

- [223] Pursuant to s. 9(5) of the Act, I direct the Registrar to carry out his proposal to revoke the registrations Mr. Khaled Mousa-Khaled, Toronto Quality Motors Inc. and 2291683 Ontario Inc.

**LICENCE APPEAL TRIBUNAL**



**Stephen Scharbach, Member**

**Released: February 06, 2021**