



**Citation: Francis L. Enterprises Inc., Francis Logbo Emeke, Omotola Ayodeji v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2023 ONLAT 14867 MVDA**

**Licence Appeal Tribunal File Number: 14867 MVDA**

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

Between:

**Francis L. Enterprises Inc., Francis Logbo Emeke and Omotola Ayodeji**  
**Appellants**

and

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

**Respondent**

## **DECISION**

**VICE-CHAIR:** Avril A. Farlam

### **APPEARANCES:**

For the Appellants: Justin Jakubiak and Jonathan Gross, Counsel for  
Francis L. Enterprises Inc. and Francis Logbo Emeke

Omotola Ayodeji, Self-represented

For the Respondent: Jane Samler, Counsel

**HEARD:** March 22, 25, 26, 27, 28, April 3, 2024

## OVERVIEW

- [1] Francis L. Enterprises Inc. (the “Dealer”), Francis Logbo Emeke (“Mr. Emeke”), and Omotola Ayodeji (“Ms. Ayodeji”) (collectively the “appellants”) appeal from the Notice of Proposal to Revoke Registration dated April 19, 2023 (“NOP”) issued by the Registrar (“Registrar”) under the *Motor Vehicle Dealers Act, 2002*, (“Act”) to revoke the registration of the Dealer as a motor vehicle dealer under s. 6(1)(d)(iii) of the Act and the registrations of Mr. Emeke and Ms. Ayodeji as motor vehicle salespersons under s. 6(1)(a)(ii) the Act.
- [2] The Dealer’s registration as a motor vehicle dealer is subject to 35 written Terms and Conditions attached to its registration and signed by Mr. Emeke as authorized representative of the Dealer on December 21, 2011 (“Conditions”).
- [3] The NOP is based on grounds summarized as follows:
  - a. The past conduct of Mr. Emeke and Ms. Ayodeji disentitles them to registration under s. 6 (1) (a) (ii) of the Act, and
  - b. As officers, directors and/or interested persons in respect of the Dealer, the past conduct of Mr. Emeke and Ms. Ayodeji disentitles the Dealer to registration as a dealer under s. 6 (1) (d) (iii) of the Act, and
  - c. The Dealer’s breach of the Conditions disentitles it to registration as a dealer under s. 6 (1) (f) of the Act.
- [4] The NOP gives notice that the Registrar may provide further and other particulars and further grounds for refusal/revocation/suspension of registration and the respondent issued a Notice of Further and Other Particulars. No Amended Notice of Appeal was filed in response.
- [5] Ms. Ayodeji submitted no documentary evidence for the hearing but did participate in the hearing.

## PRELIMINARY ISSUES

- [6] The Registrar confirmed that the allegations related to Consumer H (paragraphs 76-79 of the NOP) were withdrawn on January 10, 2024.

- [7] On consent of all parties, an order was made excluding witnesses, but not Mr. Emeke and Ms. Ayodeji, from the hearing.

## ISSUES

- [8] The issues to be decided in this hearing are:
1. Has the Registrar established that the past conduct of either or both Mr. Emeke and Ms. Ayodeji, both personally and as officers and directors of the Dealer, affords reasonable grounds for belief that the appellants will not carry on business in accordance with law and with integrity and honesty which disentitles them to registration under ss. s. 6(1)(d)(iii) and 6(1)(a)(ii) of the Act?
  2. Has the Registrar established that the Dealer has breached one or more of its Conditions, so that it is disentitled to registration under s. 6(1)(f) of the Act?
  3. If so, is revocation of the licences of the Dealer and/or Mr. Emeke and/or Ms. Ayodeji as motor vehicle salespersons appropriate?

## RESULT

- [9] Having considered all of the evidence, and for the reasons that follow, I order the respondent to carry out the NOP as it relates to the registrations of the Dealer and Mr. Emeke. I decline to make any order regarding the NOP as it relates to the registration of Ms. Ayodeji.

## THE LAW

### *The Act*

- [10] Under the Act, the past conduct of an applicant, of its officers and directors (if it is a corporation) and of an 'interested person' in respect of the applicant or its officers and directors is relevant.
- [11] Under s. 6 (4) of the Act a person shall be deemed to be an interested person if the person is associated with the other person or if, in the opinion of the registrar, the person has or may have a beneficial interest in the other person's business, the person exercises or may exercise control either directly or indirectly over the other person, or the person has provided or may have provided financing to the other person's business.
- [12] Section 6(1)(a)(ii) of the Act provides that a person other than a corporation that meets the prescribed requirements is entitled to registration unless the past

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

- [13] Section 6(1)(d)(iii) of the Act provides that a corporate applicant that meets the prescribed requirements is entitled to registration unless the past conduct of its officers or directors or of an interested person in respect of its officers or directors or of an interested person in respect of the corporation affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty.
- [14] Section 6(1)(f) provides that a corporate applicant is entitled to registration unless the applicant is in breach of a condition of registration.
- [15] Section 9(1)(b) provides that the Registrar must provide written notice of the proposed revocation and the applicant may request a hearing by the Tribunal pursuant to section 9(2).
- [16] Section 9(5) provides that the Tribunal shall hold the hearing and following the hearing, may direct the Registrar to carry out the proposal or substitute its opinion for that of the Registrar and the Tribunal may attach conditions to its order.
- [17] The onus is on the Registrar to establish the grounds alleged in the NOP.

## **ANALYSIS**

### ***Do I have jurisdiction to make any order regarding the NOP as it relates to Ms Ayodeji's Motor Vehicle Salesperson Licence?***

- [18] I decline to make any order regarding the NOP as it relates to Ms. Ayodeji for the following reasons.
- [19] Ms. Ayodeji is no longer registered under the Act according to her testimony. Ms. Ayodeji admitted that since January, 2024 she is no longer licensed as a motor vehicle salesperson under the Act. She testified that she did not submit her application to renew her license despite receiving an email in December, 2023 reminding her of the requirement to renew. Ms. Ayodeji testified that she would like to be registered under the Act because it could be a source of work and she does not want her registration revoked as this could reflect adversely on her reputation. Ms. Ayodeji also testified that since 2021 she has been a licensed mortgage agent.

- [20] It is common ground between the parties that Ms. Ayodeji was registered under the Act when the NOP was issued and up until December, 2023. However, the hearing originally scheduled for November, 2023 was adjourned twice at the appellant's request and did not start until March, 2024, by which time, Ms. Ayodeji was no longer registered as she had not submitted an application for renewal.
- [21] At my request, all parties made submissions at the hearing as to how the fact that Ms. Ayodeji was not registered under the Act affected my ability to order the Registrar to carry out, or refrain from carrying out the NOP, or order the Registrar take such action as I consider appropriate, as it relates to the registration of Ms. Ayodeji.
- [22] After taking some time to consider the matter, all parties requested that I rule on the NOP as it relates to the revocation of Ms. Ayodeji's registration despite the fact that she is no longer registered. Counsel for the Registrar and for the Dealer and Mr. Emeke both suggested that I have the authority to do so and suggested that the Tribunal has done so before. However, no authority, statutory or otherwise, was put forward in support of their request.
- [23] The Tribunal is created by statute and may only exercise the powers given to it by legislation. Section 9(5) of the Act provides that the Tribunal may, following a hearing, direct the Registrar to carry out the proposal, or substitute its opinion for that of the Registrar, and the Tribunal may attach conditions to its order.
- [24] However, the question here is whether I have jurisdiction to order the Registrar to revoke a registration, not revoke a registration, or take other action concerning the registration, of a person who is not registered. I have concluded that I do not.
- [25] Section 9(8)(c) of the Act provides that if a registrant is served with notice that the registrar proposes to refuse to grant renewal of registration, if the registrant has applied for renewal of a registration and paid the required fee, the registration shall be deemed to continue until the Tribunal makes its order if the registrant requests a hearing before the Tribunal.
- [26] The Act does not contain a similar provision to that in s. 9(8)(c) in an appeal of an NOP to revoke registration and I cannot infer one. To the contrary, on a purposive reading of s. 9(8) of the Act, I conclude that if the legislature had intended to deem a registration to continue during the appeal of an NOP to revoke registration, it would have said so. There is no such provision in the Act.
- [27] Here, Ms. Ayodeji appealed the NOP which seeks to revoke her registration. There is no appeal before me from an NOP refusing to grant a renewal. That Ms. Ayodeji is not registered was a matter of her choice. Ms. Ayodeji chose not to submit her application to renew her registration when it expired in December,

2023, despite knowing that she had to do so. As a result of her choice, Ms. Ayodeji is no longer registered.

- [28] This is not a case where jurisdiction to deal with misconduct by former registrants has been enacted, unlike the situation in *Taub v. Investment Dealers Association of Canada*, 2009 ONCA 628 or *College of Nurses of Ontario v. Mark Dumchin*, 2016 ONSC 626.
- [29] That leaves me without the legislative authority to make an order as requested by the parties. I cannot order that the Notice of Proposal revoking the registration of Ms. Ayodeji be carried out because she is not registered, her registration is not deemed to continue, and I cannot revoke a non-existent registration.
- [30] If Ms. Ayodeji wishes to obtain registration, there is an application procedure under the Act which she is familiar with.
- [31] While I lack jurisdiction to make an order concerning Ms Ayodeji's registration, she is an officer and director of the Dealer, and evidence of her past conduct in that regard is relevant here. Further, the Registrar submitted that Ms. Ayodeji is also an interested party. Although Ms. Ayodeji submitted that the Dealer was the business of Mr. Emeke, I find that Ms. Ayodeji is an interested party based on the evidence set out below and the admissions of Ms. Ayodeji as to her involvement in the Dealer.

***Issue 1: Has the Registrar established that the past conduct of Mr. Emeke personally and/or that of either or both Mr. Emeke and Ms. Ayodeji as officers and directors of the Dealer affords reasonable grounds for belief that Mr. Emeke and/or the Dealer will not carry on business in accordance with law and with integrity and honesty?***

- [32] For the following reasons, I find that the past conduct of Mr. Emeke personally and that of Mr. Emeke and Ms. Ayodeji as officers and directors of the Dealer affords reasonable grounds for belief that Mr. Emeke and the Dealer will not carry on business in accordance with law and with integrity and honesty. The evidence clearly establishes that Mr. Emeke made false and misleading representations to nine consumers about the condition and safety of the vehicles, the completed repairs, prior damage histories and the true distance travelled by the vehicles, and made or furnished false, deceptive and/or misleading information and/or documents related to the trade of the nine vehicles contrary to s. 26 and 27 of the Act and Conditions 15 and 16.
- [33] The evidence also clearly establishes that although the consumers involved dealt with Mr. Emeke, Ms. Ayodeji made no effort to ensure that the Dealer was in compliance with the Act and Regulation, and with the Conditions, even though she was the named person-in-charge of the Dealer and either knew or ought to

have known about each trade. The evidence is that Ms. Ayodeji largely chose not to be involved with the Dealer for personal reasons although she continued to receive benefit from being part of the Dealer and had knowledge of at least some of the Dealer's breaches of legislated duties, and its Conditions.

- [34] Starting in 2012 and continuing to the present, each of Mr. Emeke and Ms. Ayodeji were both officers and directors of the Dealer based on the corporate search and OMVIC records filed by the Registrar at the hearing and as explained in the testimony of Marc Duval.

### **The Dealer Falsely Represented the Condition of Nine Vehicles**

- [35] I find that the Dealer, through Mr. Emeke, falsely represented the condition of nine vehicles, the repairs completed on the vehicles, prior damage histories and true distance travelled, and also made or furnished false, deceptive and/or misleading information and documents relating to the trade of the nine vehicles, based on the following evidence.
- [36] Robin Lanigan, the respondent's investigator since 2021 testified that he conducted an investigation of the Dealer during which he spoke with the reviewed consumer complaints received by OMVIC, spoke with the consumers involved, reviewed deal records, obtained of certified documents from the Ministry of Transportation ("MTO"), made notes, and prepared a synopsis about the motor vehicle trades he investigated. Mr. Lanigan testified that the Dealer is owned and operated by Mr. Emeke.
- [37] The results of Mr. Lanigan's investigation and the testimony of the consumers who purchased or attempted to purchase the vehicles below establishes the following:

#### **2008 Mazda 3:**

- [38] Mayan Minek testified that she saw an ad for a 2008 Mazda 3 (the "vehicle") on Auto Trader and went to the look at the vehicle in June 2021. Ms. Minek spoke with Mr. Emeke about purchasing the vehicle and asked to test drive it but was unable because it was surrounded by other vehicles. Mr. Emeke said the vehicle was in good working condition, and that he would get it "safetied" and certify it, which led her to purchase the vehicle. Ms. Minek gave Mr. Emeke a deposit and returned later in June and paid the balance of the \$3890.00 purchase price. Mr. Emeke told Ms. Minek she had to pay an additional \$90.00 to refill the air conditioning. Although this additional payment was not discussed at the time of purchase and is not on the bill of sale for the vehicle, Ms. Minek paid and did not get a receipt. The bill of sale showed 117,009 km. Mr. Emeke did not give Ms. Minek a safety certificate.

- [39] Not long after Ms. Minek purchased the vehicle, the 'check engine' and oil light came on and she had oil put in it. On August 10, 2021 the engine in the vehicle blew while she was driving to work on a highway and she lost power steering and brakes. Ms. Minek put her flashers on, used her horn, and rolled down her window and yelled at people to get out of her way. Ms. Minek was able to get to an off ramp and drive the vehicle to her boyfriend's complex. Ms. Minek understood later from her mechanic that her engine had blown because of an oil leak. Ms. Minek paid \$3,019.82 to have the vehicle repaired. In June, 2022, Ms. Minek was told by a lubrication business that the frame of the vehicle was rotted and unsafe to drive. They told her not to drive it. She had the vehicle towed and ultimately had to pay someone to take it away.
- [40] Mr. Lanigan testified that his investigation revealed that records involving previous owners of the vehicle show the vehicle mileage in 2019 as 158,637 km and in 2020 as 169,602 km. After having purchased the vehicle, the Dealer registered the vehicle mileage at 120,002 with the Ministry of Transportation ("MTO"), some 47,000 km less than the records indicated. The Dealer's bill of sale to Ms. Minek shows the vehicle mileage as 117,009 km in June, 2021.

### **2006 Mazda 3:**

- [41] Ali Syed testified that he saw an ad for a 2006 Mazda 3 (the "vehicle") and went to the look at the vehicle because the mileage in the ad was low. Because he had never purchased a vehicle before, Mr. Syed was accompanied by his brother and friend. Mr. Syed spoke with Mr. Emeke about purchasing the vehicle. Mr. Syed's brother asked Mr. Emeke if the vehicle had been in an accident. Mr. Emeke said there was something but it was minor. Mr. Emeke did not tell Mr. Syed that any repairs were needed to the vehicle. Mr. Syed paid a deposit on the purchase of the vehicle that day and returned later in November, 2021 to pay the balance of the \$4,500.00 purchase price and pick up the vehicle. The bill of sale dated November 5, 2021 showed 145,000km on the vehicle and also stated the vehicle was certified and had a claim of \$3,400. Mr. Syed testified that he thought that meant that the vehicle is safe and the \$3,400.00 meant it had been in a minor accident. Mr. Emeke did not give Mr. Syed a safety certificate.
- [42] After Mr. Syed purchased the vehicle the 'check engine' light came on. He took it to a mechanic, who found the vehicle had a cracked wheel rim and needed various repairs, including the brakes and the window. Mr. Syed paid for various repairs totalling \$1,062.20. in December, 2021. Mr. Syed contacted Mr. Emeke after he realized that he had been sold a vehicle which was not safe and that he was not given a safety certificate. Mr. Syed testified that Mr. Emeke said he would take care of the repairs including fixing the window, but never did. Although Mr. Syed took the vehicle to the Dealer's mechanic, the Dealer did not arrange repair. Mr. Syed testified that he asked Mr. Emeke for a copy of the



safety certificate, but got no response from Mr. Emeke. Mr. Syed then purchased a Carfax report and learned from it that the odometer reading was much higher than shown on his bill of sale and that the vehicle had been in a collision and was a total loss in 2012. When Mr. Syed made Mr. Emeke aware of what he had learned about the vehicle, Mr. Emeke was not responsive. Mr. Syed still has the vehicle although the Dealer offered through OMVIC to allow him to return the vehicle. The reason Mr. Syed says he still has the vehicle is because OMVIC told him there is no guarantee that he would get all his money back if he did this.

- [43] Mr. Lanigan testified that his investigation revealed a previous owner in 2019 recorded the odometer reading as 171,377. The record from the auction where the Dealer bought the vehicle in 2019 shows the vehicle mileage as 171,337 km and discloses a collision in 2012 of \$8,242.00. After it purchased the vehicle, the Dealer registered the vehicle mileage at 145,009 km with the MTO, some 26,000 km less. The Dealer's bill of sale to Mr. Syed shows the vehicle mileage as 145,009 km in June, 2021 and also shows that the vehicle was in a collision in 2012 valued at \$8,242.00. The Carfax report shows that the collision resulted in the vehicle being a "total loss". Mr. Lanigan testified that the vehicle mileage and the collision over \$3,000.00 are both required to be on the Dealer's bill of sale to Mr. Syed but were not.

## **2008 Ford Escape**

- [44] Tashina Yeboah testified that on November 15, 2021 she went to the Dealer and saw a 2008 Ford Escape (the "vehicle"). Ms. Yeboah spoke with Mr. Emeke about purchasing the vehicle and he said it just needed a few repairs. Ms. Yeboah told Mr. Emeke that she needed a vehicle to travel with her newborn baby to northwestern Ontario for Christmas with her family. Mr. Emeke assured her that the vehicle would make that drive. Ms. Yeboah purchased the vehicle that day and was told by Mr. Emeke that the vehicle was certified but needed two new tires. He said he would get it 'safetied' and that it would be ready the next day. Ms. Yeboah purchased the vehicle that day for \$4,720.00. After she purchased the vehicle, Mr. Emeke sent her a picture of a part that needed to be replaced. The vehicle was ultimately ready to be picked up the last week of November, 2021. After she purchased the vehicle, Mr. Emeke sent her a picture of a part that he said needed to be replaced. When Ms. Yeboah picked up the vehicle the dashboard lights were on. Mr. Emeke told Ms. Yeboah that this was because the vehicle was recently repaired and that the lights would go off after a while. Ms. Yeboah testified that Mr. Emeke reassured her that the vehicle was good to go, and she was reassured because Mr. Emeke knew she would be travelling with a newborn baby.
- [45] Not long after Ms. Yeboah purchased the vehicle she noticed other problems, primarily that the vehicle had trouble going uphill and the transmission seemed to

be slipping. Ms. Yeboah contacted Mr. Emeke and asked him for a refund. Mr. Emeke told her to get a quote for repairs and that he would help with the repairs. Ms. Yeboah's mechanic told her that the vehicle was not roadworthy and should be scrapped because it was not worth repairing, and further that the part she had been sent a picture of by Mr. Emeke had nothing to do with what was broken in the vehicle. Ms. Yeboah asked Mr. Emeke to send her the bill for having the part fixed but got no response from him. On December 8, 2021 Ms. Yeboah's mechanic gave a detailed list of the vehicle's mechanical condition and ultimately replaced the transmission and other parts at a total cost of \$4,307.32. Eventually, Mr. Emeke offered Ms. Yeboah \$100.00 toward the repairs. This caused financial and other stress for Ms. Yeboah. She could not take the intended Christmas trip with her newborn in the vehicle. In July, 2022 the vehicle required further repairs of some \$800.00. Eventually Ms. Yeboah's mechanic told her to just scrap the vehicle and ultimately she had to pay someone to take it away. Ms. Yeboah testified that she and her newborn missed Christmas with her family, she is now some \$11,000.00 in debt because of this vehicle.

- [46] Mr. Lanigan testified that his investigation revealed that the vehicle was previously registered out of Province and that this fact was not disclosed to Ms. Yeboah as required in addition to the fact that the transmission required repairs.

#### **2004 BMW X5**

- [47] Fernando Vala testified that he saw an ad on Kijiji for this 2004 BMW X5 (the "vehicle") and went to see Mr. Emeke at the Dealer's premises to discuss purchase. Mr. Vala agreed to purchase the vehicle for \$5,045.00 and gave Mr. Emeke a deposit of \$1,500.00. The Bill of Sale lists the work to be done on the vehicle as "certified, brakes, rotors, pads". Mr. Emeke did not give Mr. Vala a copy of the September 25, 2020 bill of sale after Mr. Vala signed it. Mr. Emeke told Mr. Vala that he would get the work done and have the vehicle 'safetied'. When Mr. Vala went back to the Dealer some two weeks later to pick up the vehicle, he discovered the agreed upon repairs had not been done. Because Mr. Vala lives in another municipality some distance from the Dealer, Mr. Emeke agreed that he would complete the repairs and have the vehicle towed to Mr. Vala's home because Mr. Vala said he could not come back and forth to the Dealer. Mr. Vala paid the balance of the purchase price and left. When the Dealer had the vehicle towed to Mr. Vala's home several weeks later, Mr. Vala discovered that it wouldn't start. Mr. Vala called Mr. Emeke to advise him and then jump started the vehicle and drove it to a BMW dealer, which found that there were no running lights or blinkers functioning, there was only one tail light working, and the light sensors were lit up on the dashboard. The BMW dealer told Mr. Vala that the vehicle should not have passed the safety inspection. Mr. Vala paid the BMW dealer to do a safety inspection and the vehicle did not pass.

Mr. Vala got a list of the things that needed repair on the vehicle and contacted Mr. Emeke.

- [48] Mr. Emeke said that if Mr. Vala brought the vehicle back, he would have it fixed. Mr. Vala had the vehicle towed to the mechanic as directed by Mr. Emeke for repair. Mr. Emeke then had the vehicle towed back to Mr. Vala's home, supposedly after repair, but Mr. Vala and his mechanic found that nothing had been done. The brake line on the vehicle broke when Mr. Vala's mechanic drove it into his shop due to rust. Mr. Vala asked Mr. Emeke for his money back. Mr. Emeke refused and told Mr. Vala that he is in the business of selling, not buying cars. Mr. Emeke suggested that Mr. Vala send the vehicle back to him again for repair but Mr. Vala did not agree, having done that once already to no avail. Mr. Emeke ultimately offered Mr. Vala a partial refund which Mr. Vala did not accept. An MTO inspection on December 10, 2020 found the vehicle needed significant repairs and was not roadworthy. As a result of the inspection, the plates were removed from the vehicle. Mr. Vala testified that he understood that the vehicle was not new but he did expect it to be safe and not a danger to himself and his family and everyone else on the road and that he trusted Mr. Emeke to do the deal Mr. Vala paid him for.
- [49] Mr. Lanigan testified that his investigation revealed that the vehicle had numerous mechanical issues to be repaired which Mr. Emeke promised but failed to do, including but not limited to those listed on the bill of sale, and that he failed to provide a copy of the bill of sale to Mr. Vala as required. Mr. Lanigan confirmed that the MTO performed an inspection on the vehicle on December 10, 2020, found many mechanical items to be in need of repair including brakes, running lights and other items, deemed the vehicle unfit and removed its plates.

## **2010 BMW 328**

- [50] Helio Fernandes testified that he saw an ad for this 2010 BMW 328 (the "vehicle") online and went to look at the vehicle in August 2021. Mr. Fernandes spoke with Mr. Emeke about purchasing the vehicle and agreed to a purchase price of \$12,000.00, including the safety certification. Mr. Fernandes asked to see service records and Mr. Emeke gave him a Carfax report. Mr. Fernandes gave Mr. Emeke \$430.00 as a deposit and said he would pay the \$12,000.00 when he picked up the vehicle. When Mr. Fernandes picked up the vehicle on August 30, 2021, Mr. Emeke asked him for an additional \$250.00 to pay for the safety certificate. Mr. Fernandes told him that this was not what was agreed to but paid him anyway. Mr. Emeke did not provide Mr. Fernandes with a copy of the bill of sale. Mr. Fernandes testified that Mr. Emeke agreed to mail him a copy but did not.
- [51] Shortly after Mr. Fernandes purchased the vehicle he discovered that the tires were flat. On September 1, 2021 Mr. Fernandes's mechanic told him that the

tires had wire exposed which is a safety concern as the tires can blow out, that there was an oil leak, and that sensors needed to be repaired. Mr. Fernandes testified that Mr. Emeke did not tell him about any of these needed repairs. Mr. Fernandes replaced the tires and complained to Mr. Emeke about these repairs. Mr. Emeke did not reimburse him \$180.00 for the tires. Mr. Emeke offered to cover the cost of a cheaper part but Mr. Fernandes did not want to install non-BMW parts. Mr. Fernandes paid repair costs of some \$463.00 and other repair costs in the fall of 2021. Mr. Emeke dodged his call and emails and never reimbursed Mr. Fernandes for any of the repairs.

- [52] Mr. Fernandes purchased a Carfax report June 1, 2023 which showed 116,673 km as the vehicle mileage. This is higher than the 94,617 shown on the Carfax report that Mr. Emeke provided and higher than shown on the odometer when he purchased the vehicle. Mr. Fernandes testified that BMW told him there was about 130,000 km on the vehicle when he purchased it. Mr. Fernandes tried to sell the vehicle in 2023 but when he became aware of the rollback of the vehicle mileage, he gave up any effort to sell it.
- [53] Mr. Lanigan testified that his investigation revealed that records involving previous owners of the vehicle show the vehicle mileage as 116,673 in 2019 km prior to the Dealer purchasing the vehicle. After purchasing the vehicle, the Dealer registered the vehicle mileage at 94,649 km with the MTO, consistent with the odometer. The Dealer's bill of sale to Mr. Fernandes shows the vehicle mileage as 94,803 km.

## **2007 Acura**

- [54] Raysean Calloo testified that he saw an ad for this 2007 Acura (the "vehicle") on Kijiji and went to look at the vehicle in August, 2021. Mr. Calloo asked Mr. Emeke about accident damage to the vehicle and was told that the vehicle had been in a "fender bender", had been fixed, and was good to go back on the road. Mr. Calloo purchased the vehicle for \$12,430.00. The August 20, 2021 bill of sale showed the vehicle mileage as 105,396 km, and contained a handwritten note, "accident repair rebuilt title, claim amount \$6,800.00" and a separate handwritten note, "certified".
- [55] Not long after Mr. Calloo purchased the vehicle he found documents inside the vehicle showing significant damage, and that the vehicle had been a total loss. He found that the odometer reading was less than told to him. Mr. Calloo also found that the dashboard engine light was on and had not been changed as Mr. Emeke had promised. Mr. Calloo called Mr. Emeke who told him the sensor had been changed. The vehicle required other repairs to the suspension, engine, oil leak, cylinders and ignition repairs. When Mr. Calloo contacted Mr. Emeke about these repairs, Mr. Emeke agreed to cover part of the cost but never did. In June, 2022 Mr. Emeke said Mr. Calloo could tow the vehicle back to him for

repair but the tow would have to be at Mr. Calloo's expense. Mr. Calloo did not have the money to have the vehicle towed. Mr. Calloo testified that he wouldn't have purchased the vehicle if he had known that the vehicle mileage was so much more than 105,000 km because he thought with that mileage the vehicle would last him a while. Mr. Calloo also testified that Mr. Emeke gave him no information about the big accident the vehicle had been in and there was no discussion or explanation before he purchased the vehicle of what "rebuilt title" was. Mr. Calloo financed part of the purchase price and is still paying for the vehicle even though he has had to purchase another vehicle. Mr. Calloo testified that this is causing him financial strain, he has never received any money from Mr. Emeke, and this has been a lot for him to deal with.

- [56] Mr. Lanigan testified that his investigation revealed that the record from the auction where the Dealer bought the vehicle show that the vehicle had been registered in Quebec. This was not disclosed on the bill of sale to Mr. Calloo as required. The auction record also shows that vehicle mileage when the Dealer bought the vehicle was 209,977 km with total distance believed to be higher, which is 104,581 km lower than the vehicle mileage Mr. Emeke put on Mr. Calloo's bill of sale when the Dealer sold to Mr. Calloo. A Carfax obtained by Mr. Calloo after he purchased the vehicle shows the vehicle mileage at some 149,000 km in 2015 and then down to 105,200 km after the Dealer purchased it. The auction record also shows the vehicle was declared a total loss with a repair estimate of \$8,967.11. This information was not disclosed to Mr. Calloo as required. A Carfax report obtained by Mr. Calloo after he purchased the vehicle documents the vehicle as "salvage" and show the vehicle registered in Ontario as "rebuilt".

## **2005 Acura RSX**

- [57] Davide Di Donato testified that he saw an ad on-line for this 2005 Acura RSX (the "vehicle") and went to the look at the vehicle April 2022. When he got there in the early afternoon, no one was there and the Dealer's door was locked. There were other people waiting for Mr. Emeke too. Mr. Di Donato found the vehicle and started the engine. There was a radio but no speakers so no sound came out and the air conditioning didn't work. Mr. Emeke told Mr. Di Donato that he would fix the radio and the air conditioning and said the vehicle came with a one-year limited warranty for an extra \$150.00. Mr. Di Donato paid a \$1,000.00 deposit toward the \$5,150.00. purchase price. The April 20, 2022 bill of sale showed the vehicle mileage as 198,008 km and "accident repair claim amount \$3529.00 certified". During an April 23, 2022 test drive Mr. Di Donato noted that the air conditioning and radio were not working and the passenger side door could not be opened from the inside which is a safety issue. The vehicle was to be delivered April 26, 2022. Mr. Emeke called Mr. Di Donato and asked him to pay one-half of the \$500.00 cost of fixing the radio. Although this was not part of the original agreement, Mr. Di Donato said he would pay one-half.

- [58] When Mr. Di Donato went to pick up the vehicle the air conditioning was not fixed. Mr. Emeke told him he would have to pay half the cost of fixing the air conditioning if he wanted it fixed. Mr. Emeke then said he was including only a dealer warranty and not a Lubrico warranty which would be another \$500.00.
- [59] Mr. Emeke told Mr. Di Donato that Mr. Di Donato could purchase a Lubrico warranty and then get Lubrico to fix the air conditioning. He ad suggested Lubrico would never know. This concerned Mr. Di Donato, who considered that would be lying to the warranty company and committing warranty fraud. At that point Mr. Di Donato asked for and got his money back and did not purchase the vehicle. Mr. Di Donato purchased another vehicle used vehicle elsewhere and issues with its condition were disclosed to him.
- [60] Mr. Lanigan testified that his investigation revealed that records involving the Dealer's purchase of the vehicle at auction show the vehicle mileage when the Dealer purchased as 199,807 kms but the Dealer's bill of sale to Mr. Di Donato shows 198,008 km. A Carfax report showed a 2008 collision of \$8,916.00 and a fire in 2020 valued at \$4,494.00, neither of which were disclosed on the Dealer's bill of sale to Mr. Di Donato as required.

### **2008 Toyota Highlander**

- [61] Alfred Akinbola testified that he saw an ad for this 2008 Toyota Highlander on Kijiji (the "vehicle") and went to buy the vehicle on November 9, 2021 because it had been advertised as 'safetied'. Mr. Akinbola noticed that the radio was not working and the windshield was cracked. Mr. Emeke said there was no time to fix the radio, the windshield is not part of the 'safety', and there was nothing wrong with the vehicle, it just needed plates. They went to the bank together to get funds and Mr. Akinbola paid the \$14,200.00 purchase price. Mr. Emeke did not give Mr. Akinbola a copy of the bill of sale or the safety certificate.
- [62] On the drive back to his home in northern Ontario in the vehicle, Mr. Akinbola noticed unusual sounds coming from the vehicle. Mr. Akinbola had the oil changed the next day and the lubrication shop told him all plugs and the coil had to be changed because there was a lot of sediment. This was a surprise to Mr. Akinbola because Mr. Emeke had told him that the oil had been changed and he believed Mr. Emeke because he is a dealer. Mr. Akinbola took the vehicle to a mechanic in his home town for examination and was told that the control arms were loose and rusted and unsafe, the ignition coil was defective, and the radio didn't work. Mr. Akinbola paid \$869.88 to have the vehicle repaired and contacted Mr. Emeke who agreed that Mr. Akinbola should bring the vehicle back to the Dealer. Mr. Akinbola drove the vehicle back to the Dealer. Mr. Emeke wasn't at the Dealer's office so he had to stay overnight. Mr. Akinbola asked for

his money back. Mr. Emeke refused and offered a partial refund. Mr. Emeke gave him a bill of sale which showed a balance owing, not showing the amount he paid for the vehicle. Mr. Akinbola testified that he thinks Mr. Emeke wrote this bill of sale and signed it himself. Mr. Akinbola was never given the safety certificate Mr. Emeke said he had for the vehicle. Mr. Akinbola returned home disappointed and angry because Mr. Emeke promised him on the phone that he would give him his money back. Mr. Akinbola continued to spend money repairing the vehicle and ultimately sold it at a loss.

- [63] Mr. Lanigan testified that his investigation revealed that Mr. Emeke failed to provide Mr. Akinbola with a copy of the bill of sale and later falsified it. An MTO inspection noted that there was no dealer or salesperson registration number on the bill of sale.

### **2005 Honda**

- [64] Travis Nan testified that he saw an ad for this 2005 Honda (the “vehicle”) on Kijiji indicating vehicle mileage of 99,390 km. Mr. Nan test drove the vehicle in April, 2021 during which time the brakes were making a grinding noise. Mr. Nan told Mr. Emeke that he would purchase the vehicle if the brakes were replaced and the vehicle was detailed because it smelled bad and had stains on the front seat. Mr. Emeke agreed. Mr. Emeke told Mr. Nan that the vehicle had a rebuilt title because of two accidents. Mr. Nan did not know what this meant and thought it meant that the windshield had been replaced. Mr. Nan paid \$3,000.00 plus tax and licence to purchase the vehicle. When he went back to the Dealer to pick up the vehicle Mr. Emeke had not had it detailed. Mr. Emeke told Mr. Nan to get it detailed and he would pay one-half. The bill of sale showed 99,390 km and “accident repair rebuilt title”.
- [65] On the drive home in the vehicle the engine was overheating. Mr. Nan learned that there were numerous mechanical issues with the vehicle that Mr. Emeke had not told him about, including leaking oil, cracked exhaust manifold, radiator defects, faulty battery, and other issues. When Mr. Nan tried to talk to Mr. Emeke about these repairs, Mr. Emeke was combative, and during one conversation said “so what. I’m sleeping”. During their last conversation Mr. Emeke said to Mr. Nan “It’s seven in the morning. Deal with it.” No one from the Dealer reached out to him about his complaints. Mr. Nan testified that he was never told by Mr. Emeke that the vehicle needed repairs, and he would not have purchased it had he known it would need substantial repair. The brakes that Mr. Emeke had put on the vehicle only lasted about eight months because they were used brakes.

- [66] After he purchased the vehicle Mr. Nan obtained a Carfax report and found out the vehicle had been in one accident over \$10,000.00 and another of \$3,000.00. Mr. Emeke had not pointed either of these out to him prior to purchase. When Mr. Nan contacted Mr. Emeke about the Carfax report Mr. Emeke responded that he showed Mr. Nan the Carfax and discussed it with him prior to purchase. This is not true. Mr. Nan said he has spent some \$9,000.00 repairing the vehicle. Mr. Nan testified that this was the first vehicle he has ever purchased and thinks that Mr. Emeke should have been honest with him.
- [67] Mr. Lanigan testified that his investigation revealed that MTO and Carfax records indicate odometer discrepancies going back to 2014 with recorded vehicle mileage of 160,000 km. The bill of sale from the Dealer to Mr. Nan does not note any odometer concerns or disclose two collisions, both greater than \$3,000.00, which are shown on the Carfax report.
- [68] Richard Virtue, an OMVIC investigator and former police detective, looked into the complaints made by the above consumers and completed an investigation of the Dealer. As part of the investigation Inspector Virtue went to the Dealer's registered place of business at 64 Old Kennedy Road, Markham in June 2023. There was no dealership operating there, and no cars parked outside although there was signage for the Dealer with a phone number. Inspector Virtue called the phone number and was directed to go to 46 Old Kennedy Road, Markham where the Dealer was operating. There was a yard full of cars and a trailer with a sign that said "office".
- [69] Mr. Emeke unlocked the office trailer and started a vehicle that Inspector Virtue had asked about. Inspector Virtue asked Mr. Emeke if the vehicle was 'safetied' and was told that this would be another \$600-\$700.00. Mr. Emeke told Inspector Virtue that the vehicle had not been in any accidents even though the box of the pick-up truck had a different paint colour than the rest of the truck. Inspector Virtue did an MTO search later and found that the vehicle was still registered in the name of an insurance company. The auction company later advised Inspector Virtue that the truck was a total loss.
- [70] Inspector Virtue on another occasion visited the Dealer and asked about another vehicle. Mr. Emeke told him it had a clean title and only minor damage, no accidents. Inspector Virtue searched the records on this vehicle and found that it was a total loss. When Inspector Virtue got a Carfax report on this vehicle he found it had been in 2 accidents, the second of which was valued at more than \$11,000.00. This was confirmed by the police report Inspector Virtue obtained.



The auction records showed the Dealer's address as 46 Old Kennedy Road, which Inspector Virtue testified means that the Dealer was operating from a place where it is not registered by OMVIC. Inspector Virtue checked whether there had been any application from the Dealer to OMVIC to change the address of the Dealer but found none.

**Ms. Ayodeji**

- [71] Omotola Ayodeji testified she was the wife of Mr. Emeke for 15 years but they separated in 2023 and she is not currently involved with the Dealer. Ms. Ayodeji testified that she used to work in the office but has not done so since 2018. Subsequent to no longer working in the office, and most recently, she was Mr. Emeke's driver, driving him to pick up vehicles and other appointments.
- [72] Ms. Ayodeji admitted that she identified herself to the Registrar as the person-in-charge of the Dealer but said this was only because when the Dealer was set up Mr. Emeke was not a Canadian citizen and she was. The paperwork has never been changed. Ms. Ayodeji testified that Mr. Emeke was always the person in charge of day to day activities of the Dealer, and that she was not.
- [73] Ms. Ayodeji described her recent involvement with the Dealer as follows. Ms. Ayodeji accompanied Mr. Emeke to a meeting at OMVIC in 2023 and is still an officer and director of the Dealer. Ms. Ayodeji did not notify the Registrar that she was not really in charge of the Dealer. Ms. Ayodeji was aware of the consumer complaints made in 2020 to 2022 and was concerned enough about them to discuss them with Mr. Emeke. Ms. Ayodeji was aware of the business practices of the Dealer from 2020 onwards. She checks in on the Dealer from time to time, prepares the Dealer log of vehicle inventory at the end of the year, and she benefits financially from the Dealer. Ms. Ayodeji also said that she was aware of and helped the Dealer move to a new address in 2023 (i.e. the address which the Dealer failed to register with OMVIC).
- [74] Ms. Ayodeji apologized on her own behalf and on behalf of the Dealer to the consumers who are involved in this hearing. She said she believes that Mr. Emeke was under pressure due to the death of his mother in 2019 and her not having worked in the office for several years, such that some things just fell by the way. Also, Mr. Emeke usually is out of the country from January to March each year visiting family and he did not ask her to cover for him at the Dealer.
- [75] Ms. Ayodeji is currently employed as a mortgage agent. Ms. Ayodeji has not applied to renew her motor vehicle salesperson licence and she is not currently

licenced under the Act, as noted above. Ms. Ayodeji testified that she had no involvement with the nine consumers giving evidence in this hearing.

### **Other Consumers**

- [76] Matthew Moyal, Mr. Emeke's lawyer, testified that he has purchased vehicles from Mr. Emeke and has always had a positive experience. Mr. Emeke allows Mr. Moyal to access the auction records by using Mr. Emeke's log-in information so that Mr. Moyal can obtain information for himself about prospective vehicles to purchase and pick vehicles he is interested in and then Mr. Emeke will help him make the purchase.
- [77] Olusegun Oni testified that she also has had a positive experience in purchasing a vehicle from the Dealer, primarily because Mr. Emeke arranged financing for her when she could not easily obtain it elsewhere. Ms. Oni's understanding of the financing is that her vehicle is registered in her name jointly with Mr. Emeke until it is paid off.
- [78] I give the evidence of these consumers little weight because it establishes only that these two consumers have had positive dealings with Mr. Emeke. This is not probative of whether Mr. Emeke and the Dealer fell below the standard of conduct required of them as alleged by the Registrar.

### **Mr. Emeke**

- [79] Mr. Emeke testified that he took the OMVIC certification course to obtain his motor vehicle salesperson licence but has not taken any additional course regarding the sale of vehicles in Ontario since. When he decided to open his own dealership he was not yet a landed immigrant and he had to have a Canadian citizen sign the dealership paperwork so he asked Ms. Ayodeji to do this. He was the one with the money and ran the Dealership. Mr. Emeke signed the Conditions of registration on the Dealer's licence. In approximately 2018 Ms. Ayodeji ceased to come to work in the Dealer office anymore because they were having a disagreement. No one else helped him with the Dealer. Prior to 2020 he and the Dealer had no issues with OMVIC.
- [80] Mr. Emeke testified that 2020 and 2021 were the toughest years ever for the Dealer because his mother died in December 2019 and he could not go out of the country to her funeral because of the pandemic, his phone was ringing off the hook from his family asking him to come to the funeral, his then mechanics were having problems getting employees to come to work, and there had been a breakdown in his marriage with Ms. Ayodeji who had stopped doing work in the

office. Mr. Emeke tried to do the office paperwork which he is “not great” at, and do everything else too. About the same time, his landlord changed and in 2023 he had to move the Dealer to a new address on Old Kennedy Road. Mr. Emeke said he tried to change the Dealer address with OMVIC on the computer but could not.

- [81] Regarding Mr. Di Donato, Mr. Emeke testified that the air conditioner was working when he suggested Mr. Di Donato purchase a Lubrico warranty contrary to the testimony of Mr. Di Donato. Regarding Mr. Fernandes, Mr. Emeke testified that he had no idea about the condition of the tires on that vehicle and that he forgot to send Mr. Fernandes \$180.00 for the tires until he heard him testify so he sent it to him while he was in the hearing. Mr. Emeke said he has never rolled back any of the odometers on any vehicles he sold. Mr. Emeke said he missed putting the odometer readings on some bills of sale but Carfax never says for sure what the kilometers are. Mr. Emeke denied that there was any problem with Ms. Minek’s vehicle when he sold it to her.
- [82] Mr. Emeke said he knows that the government took the plates off Mr. Valla’s vehicle and found it unroadworthy but said they did this because MTO never blames the mechanic.
- [83] Mr. Emeke testified that he offered to take back eight vehicles but did not do so because the consumers never came back. He gave Mr. Di Donato his deposit back.
- [84] Mr. Emeke admitted that he should have clearly told the consumers about the odometers on each of the vehicles. Mr. Emeke admitted that he didn’t make full disclosure of the history of the vehicles he was selling. He said that he forgot to tell consumers about the accidents the vehicles were in and will make sure he does that in the future. Now he gives a Carfax with the vehicle and makes sure the consumer signs it before they purchase.
- [85] Mr. Emeke admitted in cross-examination that he knew the Dealer purchased Mr. Calloo’s vehicle from the auction and that it had been in Quebec, was a total loss and had travelled 209,977 km according to the auction records. Mr. Emeke admitted that he didn’t disclose the 209,977 km in writing to Mr. Calloo and didn’t disclose that the vehicle had been in Quebec. Mr. Emeke admitted he didn’t clearly disclose the value of the accident and did not disclose that the vehicle had been a total loss.

- [86] Mr. Emeke said that he contacted Ms. Yeboah's husband when the vehicle was at the mechanic and asked her to be patient and wait for the repairs to be finished but she and her husband did not agree. In cross-examination Mr. Emeke admitted that he did not itemize the repairs on the bill of sale for Ms. Yeboah because the repairs are up to the mechanic.
- [87] Mr. Emeke said that he is the first person to drive every vehicle he is selling and always makes sure the vehicle is safe but sometimes the mechanic does not do the job properly, and customers don't always want to bring their vehicles back to his mechanic to fix. Now he has changed to a better mechanic and asks them to double check before Mr. Emeke picks up the vehicle.
- [88] Mr. Emeke said Inspector Virtue was mistaken about his experience at the Dealer and didn't understand the difference between a vehicle with "no accident" and "non-branded". Mr. Virtue thought Mr. Emeke said the vehicle had no accident but he really said it was non-branded.
- [89] Mr. Emeke said he was distracted in 2021 but is not distracted now. He has hired Yusuf Saree as a full-time employee and Mr. Saree will do whatever Mr. Emeke tells him to do. Mr. Emeke said he would agree to terms and conditions of his registration and that of the Dealer and would take the OMVIC course over again, hire a compliance monitor to visit the Dealer and hire someone to help with paperwork for at least a year. Mr. Emeke said he and the Dealer need their licences because this is all he knows how to do in Canada, he has no other means of supporting his family, and he feels that what he is going through is unfair.
- [90] In cross-examination Mr. Emeke said he receives a lot of informational emails from OMVIC but cannot check all of them because there are so many. Mr. Emeke said he knows he has to disclose accidents over \$3,000.00 on the bill of sale and also disclose the kilometers each vehicle has travelled. Mr. Emeke admitted that he did not disclose to accidents to at least one consumer because he got mixed up between Mazdas and made an error because he was distracted at the time. Mr. Emeke admitted that although the Dealer has moved, the OMVIC certificate displayed at the Dealer has the old address on it.
- [91] Mr. Emeke testified that he has letters of support from other consumers. He went through his files, found consumer names, and "formatted" their letters for these persons who sent them back to him. Mr. Emeke said in being cross-examined by Ms. Ayodeji that the Dealer has had lots of happy customers through the years.

- [92] I prefer the testimony of the consumers who testified over that of Mr. Emeke and Ms. Ayodeji where the consumer's testimony conflicts with that of Mr. Emeke and Ms. Ayodeji. The consumers gave detailed and specific testimony, supported substantially by documentation, and corroborated by the investigation of Mr. Lanigan and the similar experiences of Investigator Virtue.
- [93] There is ample evidence that Mr. Emeke and the Dealer failed to disclose material facts on the bills of sale in relation to the vehicles listed above, including that odometer readings and vehicle mileage were not accurate, and thereby failed to disclose accurate information regarding the true distance travelled as required by s. 42(3) to (6) of Ontario Regulation 333/08 (the "Regulation").
- [94] Based on the MTO and other records brought forward by the Registrar, taken together with the testimony of the nine consumers, Ms. Minek, Mr. Syed, Ms. Yeboah, Mr. Vala, Mr. Fernandes, Mr. Calloo, Mr. Di Donato, Mr. Akinbola and Mr. Nan, Mr. Lanigan's investigation results, Mr. Virtue's testimony, and the admissions of Mr. Emeke and Ms. Ayodeji, I find that Mr. Emeke, as a motor vehicle salesperson, and on behalf of the Dealer, during 2020, 2021 and 2022 made false and misleading representations to consumers about the condition and safety of the vehicles, completed repairs, prior damage histories and out of Province registration, and true distance travelled for all of the nine vehicles as described above.
- [95] I find that the Mr. Emeke and the Dealer made false, deceptive and misleading statements and provided false and misleading information and documents for all of the nine vehicles described above contrary to s. 26 and 27 of the Act. In the case of Mr. Di Donato, Mr. Emeke suggested a course of conduct to him that could have led that consumer to attempt to make a false claim on a vehicle warranty. The fact that Mr. Di Donato recognized the suggestion as such does not relieve Mr. Emeke and the Dealer from the consequences of having done so. In the case of Mr. Akinbola it appears that Mr. Emeke and the Dealer attempted to falsify the bill of sale after Mr. Akinbola had paid the purchase price in full.
- [96] I further find that Mr. Emeke and the Dealer breached Conditions 5 and 16 of its Conditions of registration by engaging in illegal, unethical and/or misleading conduct related to the nine vehicles described above.
- [97] I also find that as the person-in-charge of the Dealer, Ms. Ayodeji either knew or should have known about the circumstances surrounding each of the trades and intended trade and failed to take any steps to ensure the Dealer's compliance with the Act, Regulations, and the Conditions. Ms. Ayodeji, an officer and

director of the Dealer substantially absented herself from the Dealer while continuing to benefit from it.

### **The Dealer Failed to Disclose Material Facts on Bills of Sale**

- [98] I find based on the testimony of the consumers, the investigation of Mr. Lanigan, and the admissions of Mr. Emeke that Mr. Emeke and the Dealer, under the direction of Mr. Aneke, failed to disclose material facts on several bills of sale as to consumers as set out above, as required by s. 42(19) of Regulation 333/08 .
- [99] Although Mr. Emeke attributes the failure to disclose material facts on bills of sale to error, forgetfulness, being distracted by personal and family events, and poor paperwork, the fact remains that the non-disclosure occurred repeatedly, was to his benefit and the benefit of the Dealer, and his response to it demonstrated a consistent reluctance to appropriately address consumer concerns. In the end, Mr. Emeke's actions, both personally and on behalf of the Dealer, caused financial loss and other adverse effects to the consumers involved.
- [100] Mr. Duval, OMVIC's manager of investigations, testified that OMVIC is tasked with regulating motor vehicle dealers in Ontario. Mr. Duval explained that the objective of the Act is consumer protection. Mr. Duval reviewed OMVIC's records that show the Dealer carries on business at 64 Old Kennedy Road, that Mr. Emeke and Ms. Ayodeji are officers, directors, and designated persons and since April 20, 2023 Saheed Yusuf is also a designated person in charge.
- [101] Mr. Duval testified that the Dealer registration is subject to the Conditions which were signed by Mr. Emeke and reviewed the Conditions and particularly the requirements in Conditions 5, 13, 16, 17, 19, 23, 26, 27 and 28. Mr. Duval testified that Condition 19 requires the Dealer to operate from the location approved by the Registrar and Condition 27 prohibits the Dealer from allowing the odometer reading on any motor vehicle sold to be altered in any way. Mr. Duval said that the Condition were imposed to ensure compliance and to protect consumers. Consumers need to know all material facts about a vehicle, including the odometer reading, whether the odometer has been rolled back, in order to make an informed decision about whether to purchase a vehicle.
- [102] Here, Mr. Duval testified that he doesn't believe any conditions could be imposed on the Dealer or Mr. Emeke that could satisfy the Registrar that the Dealer and Mr. Emeke, or either of them, would comply with the Act given their past conduct, past conduct being an indication of future conduct. The Dealer is a relatively low

volume dealership yet has not been able to comply with the Act, Regulation and the Conditions.

- [103] I accept the evidence of Mr. Duval. Based on the testimony of Mr. Lanigan, Inspector Virtue and Mr. Duval I find Mr. Emeke's and the Dealer's disclosure to fall short of their obligations under the Act, the Regulation and the Conditions.
- [104] I find that both Mr. Emeke and the Dealer, under the direction of Mr. Emeke, engaged in the past conduct described above, including falsely representing odometer readings on several vehicles, failing to maintain records, and failing to disclose material facts on bills of sale, affords reasonable grounds for belief that Mr. Emeke and the Dealer will not carry on business in accordance with the law and with integrity and honesty. Therefore, their past conduct warrants Mr. Emeke's, as well as the Dealer's disentanglement to registration under the Act.

**Issue 2: Has the Registrar established that the Dealer has breached one or more Conditions of its registration, such that it is disentitled to registration under s. 6(1)(f) of the Act?**

- [105] The Dealer's registration is subject to 35 Terms and Conditions which were signed by Mr. Emeke on December 21, 2011 as authorized representative of the Dealer ("Conditions").
- [106] The evidence is clear that the Dealer breached multiple Conditions of its registration on multiple occasions. Specifically, I find that the following Conditions were breached.
- [107] **Condition 16** requires the Dealer to maintain books and records which accurately record the nature of the transaction involving the purchase and sale of a motor vehicle and prohibits the Dealer from being involved in the creation of books and records which are misleading as to the nature of a transaction involving the purchase and sale of a motor vehicle.
- [108] **Condition 17** requires the Dealer to maintain records in accordance with s. 52, 53, 54, 55, 56 and 57 of the Regulation. I find that the Dealer breached this by failing to provide a copy of the bill of sale to Mr. Akinbola and later altering the bill of sale to reflect a balance owing.
- [109] **Condition 23** requires the Dealer to disclose in writing on the bill of sale all material facts about the vehicles it sells and to make reasonable efforts to research the history of vehicles prior to sale to ensure all material facts are disclosed. I find that the Dealer breached this by failing to disclose to Ms. Minek

that the engine required repairs, to Ms. Yeboah that her transmission required repairs, to Mr. Vala that brakes and other repairs were required, to Mr. Fernandes that tires needed to be replaced and other repairs, to Mr. Calloo the condition and history of his vehicle, to Mr. Akinbola that his vehicle required repairs to be safe on the road, to Mr. Nan on his bill of sale in writing that his vehicle had been in two collisions of more than \$3,000.00.

- [110] **Condition 26** requires the Dealer to disclose in writing on the bill of sale the distance travelled of motor vehicles sold in accordance with the Act and Regulation. I find that the Dealer breached this by allowing the odometer reading on Ms. Minek's vehicle to be altered, and by failing to disclose accurate information regarding the distance travelled by his vehicle to Mr. Syed, Mr. Fernandes, Mr. Calloo, Mr. Nan.
- [111] **Condition 28** requires the Dealer to accept full responsibility for the quality of repairs or alterations to a motor vehicle completed by anyone acting on behalf of the Dealer. I find that the Dealer breached this by failing to take responsibility for the quality of repairs it had done to vehicles purchased by Ms. Minek, Ms. Yeboah, Mr. Vala, Mr. Calloo, Mr. Nan.
- [112] Therefore, as it has breached Conditions of its registration, the Dealer is not entitled to registration.

**Issue 3: Is revocation of the licences of the Dealer and/or Mr. Emeke and/or Ms. Ayodeji as motor vehicle salespersons appropriate?**

- [113] I have found that the past conduct of the Dealer, Mr. Emeke, and Ms Ayodeji affords reasonable grounds for belief that Mr. Emeke's and the Dealer's business will not be carried on in accordance with the law and with integrity and honesty, and the Dealer has breached its Conditions of registration. However, it remains for me to consider whether carrying out the NOP is appropriate.
- [114] Mr. Emeke testified and both he and the Dealer submitted that conditions on their registrations would be appropriate. I disagree.
- [115] Nothing in the evidence led me to believe that further assistance, monitoring or supervision of either the Dealer or Mr. Emeke, or any other conditions attached to their licences would be appropriate or effective in protecting consumers. I agree with the testimony of Mr. Duval in this regard. The evidence set out above clearly establishes that Mr. Emeke does not feel constrained by the Act, the Regulation or the Conditions, in how he deals with consumers. It has been established by the evidence set out above that the Dealer and Mr. Emeke



repeatedly prefer their own interests over those of consumers and consequently consumers have suffered financially and otherwise.

- [116] I do not accept Mr. Emeke's submissions that he should be allowed to work as a motor vehicle salesperson because he needs to work. It is Mr. Emeke who, on behalf of the Dealer, engaged in the conduct set out above and was the directing mind behind the impugned conduct. Motor vehicle salespersons deal with the public. The actions of Mr. Emeke show that he has little regard for the consumer protection requirements of the legislation and he is willing to abide by them only at his own option rather than as an imperative.
- [117] Continued registration of the Dealer and Mr. Emeke is not tenable in the face the conduct of Mr. Emeke, who decided to provide false information about odometer readings to the MTO and to consumers, and to fail to disclose material facts in the bills of sale.
- [118] Mr. Emeke is the controlling mind of the Dealer and testified that he views the Dealer as his business. As a result, he directs and is responsible for the actions of the Dealer. The Registrar has established that Mr. Emeke's past conduct both personally, and in directing the Dealer, has shown that that Mr. Emeke is willing to not comply with the Act, the Regulation and the Conditions as set out above.
- [119] The Dealer and Mr. Emeke submit that I should allow them to retain their licences, perhaps with conditions attached, based on other Tribunal decisions where this was found to be the appropriate outcome. However, t other Tribunal decisions are not binding on me, are specific to their own facts, and I decline to follow them based on the facts of this case. I am also not persuaded by the submission of the Dealer and Mr. Emeke that only nine consumers were involved here in a period of time from 2020 to 2022, and the Dealer and Mr. Emeke have no record of transgressions prior to that so I should allow them to retain their licences. The consumers here were harmed by the above breaches of the Act, the Regulation and the Conditions and to allow the Dealer and Mr. Emeke to continue to be licenced, even with conditions, is to place consumers at risk of harm, something the Act is intended to guard against.
- [120] There is ample evidence that affords reasonable grounds for belief that both Mr. Emeke and the Dealer will not carry on business in accordance with law and with integrity and honesty, and that this is the case regardless of whatever conditions may be placed on their registration. Although Mr. Emeke testified that he realizes he has made mistakes and is trying to do better, even if that is true, this simply amounts to now saying that he will comply with obligations he has had –

but has failed or refused to comply with - all along under the terms and conditions of the Dealer's licence, and under the Act and its regulations.

### **Conclusion**

- [121] The Registrar has established that Mr. Emeke's past conduct and Ms. Ayodeji's past conduct, both personally and on behalf of the Dealer, and the resulting conduct of the Dealer, affords reasonable grounds for belief that the Dealer and Mr. Emeke will not carry on business in accordance with law and with integrity and honesty which disentitles them to registration pursuant to ss. s. 6(1)(d)(iii) and 6(1)(a)(ii) of the Act. I order the Registrar to carry out the NOP as it relates to the registrations of the Dealer and Mr. Emeke. Revocation of the registrations of the Dealer and Mr. Emeke is appropriate given the conduct of Mr. Emeke in the trade of motor vehicles and dealing with consumers as found above. Conditions on their registration would not appropriately protect consumers.
- [122] I decline to make an order regarding revocation of Ms. Ayodeji's registration as she is no longer registered.

### **ORDER**

- [123] For the reasons set out above, I order the respondent to carry out the NOP as it relates to the registrations of the Dealer and Mr. Emeke. I do not have jurisdiction to make any order regarding the NOP as it relates to the registration of Ms. Ayodeji.

**Released:** May 21, 2024

  
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**Avril A. Farlam**  
Vice-Chair