



Citation: Prime One Auto Inc. and James Pournader v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2024 ONLAT 15785

Licence Appeal Tribunal File Number: 15785/MVDA

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

Between:

Prime One Auto Inc. and James Pournader

Appellants

And

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

DECISION

ADJUDICATOR:

Rebecca Hines

APPEARANCES:

For the Appellants:

Michael Burokas, Counsel

For the Respondent:

Rishi Nageshar, Counsel

Held by videoconference:

October 10,11, 15, 16, 17 and 18, 2024

BACKGROUND

- [1] This is an appeal from a Notice of Proposal (“NOP”) dated March 26, 2024 issued by the Registrar under the *Motor Vehicles Dealers Act, 2002* (the “Act”), to refuse and revoke the registrations of Prime One Auto Inc. (“Prime One Auto”) as a motor vehicle dealer, and James Pournader (“Pournader”) as a motor vehicle salesperson (collectively “the appellants”) pursuant to s. 9 of the Act.
- [2] Pournader has been a registered salesperson since June 7, 2017, and is the sole Director of Prime One Auto which was registered as a dealership on July 16, 2019. Pournader also owns and operates a mechanic shop out of the same building known as 411 Drives Service and Performance (“411 Service”). Between December 8, 2017 and July 26, 2019, Pournader was also registered as a salesperson with Streetxtreme Midtown and 411 Drives Durham (“411 Drives”), which is a franchise of Streetxtreme. Pournader is also a shareholder of 411 Drives. 411 Drives and Prime One Auto physically operate business out of neighbouring buildings with a shared parking lot. The history of Pournader’s registration is relevant because many of the transactions outlined in the NOP involve the interplay of business between 411 Drives and Prime One Auto.
- [3] The respondent submits that the past conduct of Pournader affords reasonable grounds for belief that both he, along with Prime One Auto, will not carry on business in accordance with the law and with integrity and honesty and are therefore disentitled to registration as a motor vehicle salesperson and dealership pursuant to s. 6(1)(a)(ii) and (d)(iii) of the Act. The onus is on the respondent to prove that the NOP should be carried out.
- [4] The appellants argue that the allegations outlined in the NOP are false. Further, Pournader’s involvement in many of the transactions was after the vehicles were purchased. The appellant concedes that both Pournader and Prime One Auto are interested persons pursuant to s. 6(4) of the Act. Further, Pournader is Prime One Auto’s sole Director.
- [5] The matter proceeded to a six-day videoconference hearing. On behalf of the respondent, I heard the testimony of: Eboni Burrell (“Burrell”), Resolution Support Coordinator, Ontario Motor Vehicle Industry Council (“OMVIC”); Emelita Cerdena (“Cerdena”), Registration Officer with OMVIC, and two OMVIC Investigators, namely Christopher Burke (“Burke”) and Jennifer Andrew (“Andrew”). I also heard the testimony of six consumers witnesses: Melissa Nash (“Nash”), Kreneice Gregoire (“Gregoire”), Marlon Malcolm (“Malcolm”), Donna Wright (“Wright”), Romaine Williams (“Williams”) and Samantha Moraze (“Moraze”). On behalf of the appellant, I heard the testimony of Vansanthaseelan Ratna Ananthan (“Ananthan”), co-owner of 411 Drives; Richard Behnke (“Behnke”), a salesperson employed with Prime One Auto; and Pournader.

ISSUES IN DISPUTE

- [6] I have been asked to decide the following issues:
- i) Does the past conduct of Pournader afford reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty, thereby disentitling him to registration pursuant to s. 6(1)(a)(ii) of the *Act*?
 - ii) Does the past conduct of Pournader afford reasonable grounds for belief that Prime One Auto's business will not be carried out in accordance with the law and with integrity and honesty thereby disentitling it to registration pursuant to s. 6(1)(d)(iii) of the *Act*?
 - iii) Did breaching conditions of their registration disentitle the appellants from registration pursuant to 6(1)(f) of the *Act*?
 - iv) If I find that any of the appellants are disentitled to registration then I must determine whether to direct the respondent to carry out its NOP or whether to substitute my opinion for that of the respondent, as by attaching conditions to the registration.

RESULT

- [7] The respondent has established that the past conduct of Pournader affords reasonable grounds for belief that both he and Prime One Auto will not carry on business in accordance with the law and act with honesty and integrity. Further, I find that the appellants breached the terms and conditions of their registration. I find that terms and conditions and/or a suspension are not appropriate to protect the public interest. I therefore direct the Registrar to carry out its NOP to refuse and revoke the registrations of the appellants under the *Act*.

PROCEDURAL ISSUE

- [8] The appellants opposed the respondent's submission of the decision of the Ontario Court of Justice in *R. v. Pournader*, March 26, 2024, as evidence at the hearing. This decision found Pournader guilty of *Provincial Offence Act* ("POA") charges arising from the consumer transactions which are the subject of the NOP. The appellants argue that because the decision has been appealed it cannot be relied on because the decision does not finally dispose of the matter. Further, allowing this evidence could lead to the danger of me being persuaded by or adopting the court's decision.
- [9] The respondent argues that the decision is relevant to my determination of Pournader's past conduct based on the evidence before me in this hearing. Further, the rules of evidence before administrative tribunals are broad which allow me to admit any evidence that is relevant to the issues in dispute.

[10] I decline the appellants' request to exclude this decision as evidence as I find it relevant to the issues in dispute. However, I have assigned the decision little weight. It is currently under appeal and, as a result, the matter has not been finally disposed of. Furthermore, other evidence before me enabled me to make findings regarding Pournader's conduct.

ANALYSIS

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

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

[12] The respondent argues that it has shown reasonable grounds for belief based on the evidence supporting the allegations outlined in its NOP. The allegations stem from numerous transactions regarding the sale of used motor vehicles. The respondent submits that Pournader has displayed a pattern of deceptive business practices and non-compliance with the law. For example, Pournader failed to disclose his disciplinary history to OMVIC when he filled out his renewal application for registration, failed to provide documents in response to OMVIC's investigation, took out repair loans either that consumers were unaware of or that were on behalf of consumers for services and products the consumers never received. Further, he acted as a salesperson for a dealership he was not registered with, he furnished and falsified information on bills of sale ("BOS"), and sold a defective vehicle to a consumer which was not disclosed.

[13] In addition, the respondent submits that Pournader failed to properly respond to consumer complaints and has acted in an abusive and intimidating manner towards consumers. Finally, the appellants' registration was already the subject of a previous NOP which resulted in terms and conditions which were not abided by. As a result, Pournader has demonstrated that he is ungovernable.

- [14] The appellants argue that Pournader was not responsible for the misconduct involved in the transactions that are the subject of the NOP. More specifically, the transactions were carried out by salespeople employed with 411 Drives. Further, when the co-owner and registered Director of 411 Drives left the business in late 2021, early 2022, Pournader was left to clean up the mess. Alternatively, the appellants submit that the allegations made by many of the consumers are false and that they are attempting to get out of contracts because they could not afford the vehicles. Finally, the appellants submit that if the Tribunal finds that Pournader was responsible for any misconduct, he is worthy of a second chance and a suspension should be applied to both his and Prime One Auto's registrations.
- [15] Due to the number of allegations outlined in the NOP and the fact that each transaction involved different claims of non-compliance with the *Act* and *Regulation 333/08 ("Regulation")*, I will discuss each and my findings regarding same in turn.

False Statement on Application for Renewal of Registration

- [16] The NOP alleges that Pournader made a false statement on the application for renewal of registration.
- [17] Section 6(1) (a)(iii) provides that an applicant is entitled to registration or renewal of registration unless, the applicant or an employee or agent of the applicant makes a false statement or provides a false statement in an application for registration or for renewal of registration.
- [18] Cerdena testified that Pournader submitted an application for renewal of registration on June 15, 2023. Under the Eligibility section of the application, Pournader was asked whether he "ever had a commercial, professional or business registration certificate or licence of any kind refused, suspended, revoked, cancelled or been subject to disciplinary action or has the applicant ever been or are they currently a party to such a proceeding." Pournader answered "no." This answer was false because the appellants' registration was subject to a NOP that was resolved at the Tribunal in 2021 with a consent order attaching terms and conditions to the appellants' licence. Cerdena followed up with Pournader by email asking why he answered "no" to this question to which he responded by claiming his licence had never been refused, suspended, revoked, or cancelled, and the matter before the Tribunal never went to a hearing.
- [19] Pournader testified that when he answered "no" to the question it was an honest mistake as he read the question the wrong way. He did not take the question seriously because OMVIC was aware of the prior NOP. Further, he thought that the prior NOP was not relevant because it was not carried out. The applicant relies on the Divisional Court's decision in *Registrar, Motor Vehicle Dealers Act v. Vernon*, 2016 ONSC 304 CanLII, where the court confirmed that important to the

analysis is whether the applicant knew that the statements made on the application were false.

- [20] I am not persuaded that this was an honest mistake and find that Pournader knew or ought to have known when he answered “no” to this question that it was false. I find the question was clearly worded and unambiguous. Although I acknowledge that Pournader is not a lawyer, he is a sophisticated party as he has taken the OMVIC training course twice. Further, he ought to have been aware of the seriousness of the previous NOP which sought to revoke his licence for non-compliance with the *Act*. For this reason, I find his testimony that he did not think the previous NOP was relevant defies common sense as it had required him to hire counsel and appear before the Tribunal on the appeal. Further, I find the fact that he answered truthfully on prior applications, or that OMVIC was aware of the prior NOP irrelevant because the onus does not shift to the Registrar to ensure an applicant is being truthful on an application.
- [21] For the above-noted reasons, I find that Pournader knowingly made a false statement on his application for renewal of registration. Moreover, I find that this false statement on its own disentitles him to registration.

Nash Transaction – 2007 Yukon

- [22] The NOP alleges that, in the Fall of 2021, Pournader acted as a motor vehicle dealer in the sale of a 2007 Yukon when he was unregistered which was in non-compliance with s. 4(1) (a) of the *Act*.
- [23] Section 4(1) (a) of the *Act* provides that no person shall act as a motor vehicle dealer unless the person is registered as a motor vehicle dealer.
- [24] Nash testified that her husband and Pournader had been acquaintances for five years, and they knew each other because her husband had done some contracting work for Pournader at either 411 Drives or 411 Service. Her husband had advised Pournader that she was interested in buying a Yukon and he agreed that he would keep an eye out for one. Pournader texted Nash advising her that he had a Yukon at the shop. Nash submits that she initially was not interested but Pournader offered to fix the vehicle and they settled on a price of \$12,000.00. She gave Pournader two deposits of \$3,000 and Nash agreed to finance the balance of the purchase by making monthly payments in the amount of \$400 to Pournader’s email address at 411 Drives. She did not receive any paperwork but continued to make monthly payments and it was her understanding that she was buying the vehicle from 411 Drives.
- [25] Nash testified that although they started paying for the vehicle in September, they did not receive it until December 23, 2021. Text messages between Nash and Pournader support communications back and forth in which Nash is looking for a status update on when they could expect to receive the vehicle. During cross-examination, Nash agreed that there were quite a few repairs done to the

vehicle, but it was her understanding that the repairs were included in the cost agreed upon to purchase the vehicle.

- [26] Pournader testified that 411 Drives Service had a Yukon that was towed in, the customer agreed to scrap the car, and the ownership was signed over to him. Pournader submits that there was no BOS because he was giving Nash the vehicle for free. In exchange, it was agreed that 411 Drives Service would do the repair work to the vehicle. Pournader relies on a repair bill which he financed. He submits that Nash agreed to pay the repair bill because she in fact paid for it.
- [27] I find the evidence supports that Nash agreed to purchase the Yukon from Pournader for \$12,000 because, consistent with her oral evidence, bank records show e-transfers to Pournader at 411 Drives between September 23, 2021 to July 2022. In my view, it does not make sense for the consumer to start making e-transfer payments for a vehicle that was being repaired prior to receiving the vehicle or ensuring that the repairs were in fact made. I also note that the consumer made payments to Pournader care of 411 Drives – not Prime One Auto or 411 Drives Service. In addition, the invoice for repairs totalled \$14,721.92 and referenced various payments made by Visa, Mastercard, Cash and American Express which were not supported by the bank records submitted by Nash. Pournader had no explanation for this discrepancy. Based on the evidence before me I find that Pournader was not registered as a motor vehicle dealer, but only as a salesperson for Prime One Auto. However, he independently sold the vehicle to the consumer. For these reasons, I find that Pournader breached s. 4(1)(a) of the *Act* by acting as a motor vehicle dealer when he was unregistered to do so.

Gregoire Transaction – 2015 BMW

- [28] The NOP alleges that on February 17, 2022, Pournader was the salesperson who sold Gregoire a 2015 BMW on behalf of 411 Drives contrary to s. 4(5) of the *Act*. Further, as part of this transaction the consumer traded in a vehicle which still had an outstanding loan registered against it. The NOP submits that Pournader failed to pay off the loan and, as a result, the consumer continued to be charged for a vehicle she did not own. When the consumer demanded that she be reimbursed for the payments made on the trade in vehicle, Pournader made it contingent on the consumer removing negative online reviews, withdrawing any complaints to the Better Business Bureau and not pursuing an OMVIC complaint.

Trading Motor Vehicle When Unregistered

- [29] Section 4(5) of the *Act* supports that a salesperson shall not trade a motor vehicle on behalf of a motor vehicle dealer unless the salesperson is registered to that dealer. At the time of this transaction Pournader was not registered as a salesperson with 411 Drives.

- [30] Gregoire testified that Pournader sold her the BMW. As part of the agreement, she traded in a Nissan Maxima which had an outstanding loan. Gregoire maintains that she dealt with Pournader the entire time. She submits that shortly after taking ownership of the BMW she noticed that money was being taken out of her bank account for loans on both vehicles. Gregoire stated that she contacted Pournader by text and requested that she be reimbursed for the loan payments for the trade-in vehicle. Before reimbursing her and paying out the loan, he insisted that she remove her negative Google review and complaint to the Better Business Bureau and not complain to OMVIC. Gregoire asserts that it took her three to four months to be paid back the money she was owed for the trade-in vehicle.
- [31] Pournader testified that Tyshin Mitchell (“Mitchell”) was the salesperson responsible for selling Gregoire the BMW, because Mitchell referred her to the dealership because she was dating his brother. Pournader submits that his involvement in this transaction stems from Gregoire’s complaints about the loan on her trade in vehicle not being paid out after the sale was completed. This is supported by his text exchange with Gregoire where he repeated twice that he did not sell her the vehicle but wanted to work towards resolving her complaint. Pournader acknowledged that he should not have pressured the consumer to remove the negative Google review and not complain to OMVIC and the Better Business Bureau in exchange for resolving the payout of her loan for the trade in vehicle.
- [32] I find there to be insufficient evidence to support that Pournader acted as the salesperson on behalf of 411 Drives arising from this transaction. I find that the text messages between Gregoire and Pournader support his version of events because he repeated twice throughout the text messages that he was not the salesperson who sold her the vehicle, and the consumer did not correct him. Further, there was limited documentary evidence to support that he was the salesperson in this transaction because none of the trade or financing documents were submitted for my consideration. In addition, in Investigator Andrew’s electronic interview note of July 4, 2022, Mitchell acknowledged that it was his signature on the BOS.

Unprofessional Conduct

- [33] I find that Pournader demonstrated a lack of integrity and professionalism in his communications with Gregoire in resolving her complaint. In my view, it was inappropriate for Pournader to demand that the consumer remove the Google review and not complain to OMVIC and the Better Business Bureau in exchange for paying the consumer back money that was owed to her because of the dealerships’ error in not paying off the loan on the trade-in-vehicle. As a part owner of 411 Drives and the person who was in charge during this time period, Pournader had an obligation to pay back the consumer’s money without adding

stipulations about the consumer's right to complain to regulatory bodies. In my view, Pournader's actions in response to this complaint demonstrated poor character and a lack of integrity in dealing with this consumer in a professional and honest manner.

Wright Transaction – 2013 Nissan GT-R

[34] The NOP alleges that on March 23, 2022, Wright and her partner attended 411 Drives and met with Pournader for the purpose of purchasing a 2013 Nissan GT-R on behalf of her son B. Wright. Pournader contravened s. 4(5) of the *Act* because he was not registered as a salesperson with 411 Drives. The NOP also alleges that Pournader falsified and furnished false information on the BOS because the name and signature listed on it was a different salesperson who the consumers had never met with. The NOP also claims that the consumer immediately encountered issues with the vehicle's condition. Consequently, the safety certificate falsely represented the condition of the vehicle. The NOP also alleges that the consumer traded in a vehicle which still had an outstanding loan registered against it, and that Pournader failed to immediately pay off the loan, which resulted in the consumer being charged for two vehicles. Finally, when the consumer complained or sought resolution Pournader responded in an abusive and intimidating manner.

Trading Motor Vehicle When Unregistered

[35] I find that Pournader acted as a salesperson on behalf of 411 Drives when he was not registered to do so pursuant to s.4(5) of the *Act*.

[36] Wright testified that her and her husband attended 411 Drives to co-sign for a loan on behalf of her son B. Wright who is on ODSP and has limited income. Wright testified that the only salesperson she ever met with at 411 Drives was Pournader.

[37] Pournader testified that he was not the salesperson involved in this transaction. Instead, it was Dylan Sankar ("Sankar"). However, he did admit that he made arrangements with New Roads for the lease for this transaction.

[38] I find Wright to be a credible witness and believe her version of events that Pournader was the only salesperson she dealt with involved in this transaction. Indeed, the appellants acknowledged that Wright was a credible witness in their closing submissions. The only credible evidence I have of Sankar's involvement was that he referred the Wrights to 411 Drives. Furthermore, I find that Pournader arranged for the lease with New Roads Financing ("New Roads") on behalf of 411 Drives, which in itself is also trading a vehicle on behalf of a dealership he was not registered with. Consequently, I find that Pournader contravened s. 4(5) of the *Act* by acting as a salesperson for 411 Drives when he was not registered to do so.

Falsifying and Furnishing False Information

- [39] Sections 26 and 27 of the *Act* requires that no registrant shall falsify or induce another person to falsify any information or furnish any deceptive information or document relating to a trade of a vehicle.
- [40] Wright testified that she signed a mock BOS with Pournader to apply for financing. The BOS had been pre-signed by Anthony Shaw, a salesperson whom she had never met with. As noted above, I am persuaded by Wright's version of events. Therefore, I find that Pournader contravened ss. 26 and 27 of the *Act* by furnishing and falsifying information on the BOS by signing it with another salesperson's signature or by presenting a pre-signed BOS of a salesperson not involved in the transaction.

Failure to Pay out Loan on Trade in Vehicle

- [41] Wright testified that they did not qualify for financing because of the high price of the vehicle so Pournader arranged for the vehicle to be leased through New Roads. A BOS supports that New Roads bought the vehicle from 411 Drives to lease the vehicle to Wright. Wright testified that, as part of this agreement, 411 Drives agreed to buy their 2017 Dodge Helcat, which had an outstanding loan at Scotiabank. However, they did not receive any paperwork for this trade in, and after taking ownership of the Nissan GT-R, payments for both this vehicle and the Dodge Helcat continued to be taken out of her son's bank account for a period of one month. Wright followed up with Pournader and did not receive a response.
- [42] Pournader testified that 411 Drives never bought the Dodge Helcat from the consumer. Instead, Sankar was facilitating the sale of the vehicle to Pickering Chrysler on the consumer's behalf and the loan was not paid out right away because it had not been sold yet. The lease through New Roads for the Nissan GT-R and the sale of the Dodge Helcat were separate transactions. However, Pournader submits that when he received a complaint from Wright about it, he sent them money for the double payment to address the concern.
- [43] I find the respondent failed to meet its onus in proving the allegations regarding the payout of the loan on the Dodge Helcat. I find the facts about what happened with the Dodge Helcat unclear because the mock BOS did not make any reference to a trade in vehicle, neither did the lease agreement with New Roads. While there may have been a verbal agreement about the trade in, I do not have sufficient evidence before me to conclude that Pournader failed to payout the loan on the trade in vehicle in a timely manner.

Safety Certificate Misrepresented Condition of the Vehicle

- [44] Wright testified that the engine in the Nissan GT-R blew out two weeks after her son took ownership of the vehicle. New Roads refused to take the vehicle back because they accused B. Wright of doing something to modify it, which she submits was not possible because he did not have the money as he is on ODSP and could not afford it. Wright stated that they took the vehicle to be inspected by SJL Custom Auto which noted that the vehicle came in with no previous tuning. The inspection revealed that no catalytic converters were installed, which likely resulted in the engine being blown. This was confirmed by an invoice from SJL Custom Auto dated April 6, 2022. Wright indicated that it cost her \$50,000 to replace the engine in the vehicle.
- [45] Pournader testified that people who buy these types of vehicles want to drive fast. Regarding the allegation that he sold Wright a defective vehicle the appellants relied on an inspection report completed by Magatronics, a shop hired by New Roads before they purchased the vehicle. Pournader also submits that a few weeks after B. Wright took ownership of the vehicle, he told the consumer to bring it to his shop which revealed that the piston rods had blown. Pournader asked Sankar if the consumer had done any modifications and Sankar stated that it was taken to SJL, a shop in Barrie where they dumped more fuel into it so the vehicle could go faster. Pournader submits that this along with the modifications likely resulted in the blown engine.
- [46] During cross-examination, Wright was adamant that her son did not have the money to modify the car because he is on ODSP, and she already helps pay the balance of his car payment. Further, when asked if it was possible that her son blew the engine while street racing, she replied that he has Aspergers and tells her about everything.
- [47] I believe Wright's version of events because as noted above, I find her to be a credible witness. I find that the vehicle was sold to the consumer in an unsafe condition because the engine blew out within two weeks of ownership being transferred to B. Wright. The appellant submits that Wright was not the most reliable witness to testify on this point. I disagree because she was directly involved in the transaction and I believe her testimony that her son would have told her if he was street racing or had modified the car. Further, I find that the inspection report completed by Magatronics does little to support that there was nothing wrong with the vehicle's engine when the vehicle was transferred to New Roads. By contrast, the inspection report completed by SJL Custom Auto notes that the vehicle's engine blew out because the vehicle did not have catalytic converters. I also find Pournader's theory that it was B. Wright who did this inconsistent with the text messages exchanged between him and B. Wright in which the consumer was upset because he discovered the vehicle was sold to him without catalytic converters.

Unprofessional Conduct

- [48] Finally, I find that the evidence supports that when B. Wright sought remediation for the engine issues and paying off the loan, Pournader responded in an abusive and unprofessional tone. Text messages between B. Wright and Pournader support that Pournader referred to the consumer as a “moron”, a “dumb kid”, “dumb ass” and threatened to sue him in response to negative posts on social media. Pournader acknowledged during his testimony that he sent these text messages, which were inappropriate and against his better judgement. He submits that he has since learned to act with a higher standard. Although I acknowledge that B. Wright’s text messages were hostile, I find Pournader demonstrated a lack of professionalism and integrity in responding to the consumer’s complaint.
- [49] In summary, I conclude that Pournader acted as a salesperson when he was not registered with the dealership, he furnished and falsified information by signing the BOS with another salesperson’s signature (or in the alternative a salesperson signed it who was not involved in the transaction), he sold the consumer a vehicle with an invalid safety certificate and responded to the consumer’s complaints in an abusive and unprofessional manner.

Malcolm Transaction – 2019 Mazda 3

- [50] The NOP alleges that Malcolm attended 411 Drives for the purpose of buying the 2019 Mazda and Pournader acted as a salesperson involving this trade by selling a car on behalf of 411 Drives when he was not registered to that dealership contrary to section 4(5) of the *Act*. Further, Pournader furnished false information and falsified information by taking out a repair loan in the consumer’s name without the consumer’s knowledge. Nor were the items listed on the repair loan received by the consumer. The NOP alleged that Pournader violated sections 26 and 27 of the *Act*, and sections 14 and 17 of the *Consumer Protection Act* (“CPA”), 2002, S.O. 2002, c. 30, Sched A.

Furnishing False Information and Falsifying Information

- [51] Malcolm testified that he was going through a consumer proposal and had a strict budget, so he was referred to Pournader by his lawyer. He met with Pournader and Mitchell, another salesperson, and agreed to buy a 2019 Mazda. Malcolm submits that he used the computer in Pournader’s office to arrange for car insurance when he went in to pick up the vehicle.
- [52] Malcolm testified that in August 2022, he started noticing that unexplained money was being withdrawn from his bank account. As a result, he opened a new bank account and arranged to have the vehicle’s finance loan be taken out of that account. In September 2022, the vehicle was repossessed by a lender that was different from the lender that provided him with financing. The lender indicated that it had provided a repair loan in the amount of \$4,988.99 to the consumer for

repairs done by 411 Service. Malcolm testified that at no point was he advised that the vehicle needed any repairs, nor did he sign the repair agreement or the loan documentation with Goto loans, because he could not have afforded it. Further, he did not receive any of the services that were listed on the invoice of 411 Service. The consumer's theory was that he left his email open on Pournader's laptop when he was arranging car insurance, and that Pournader applied for this loan on his behalf without his knowledge or permission.

- [53] Pournader admitted that he acted as a salesperson in this transaction on behalf of 411 Drives when he was unregistered. However, he testified that he did not take out the loan on Malcolm's behalf and that the consumer did sign the repair agreement and Goto loan application. Pournader submits that Goto loans has a security feature where they send a verification code to the person's mobile phone by text and then it needs to be entered by email. Pournader also submits that if Malcolm was not aware of the repair loan, he would not have ignored demand letters sent to him prior to the vehicle being repossessed.
- [54] I believe Malcolm's version of events, because the BOS made no mention that the vehicle required any repairs. Further, Andrews' electronic interview with Mitchell, who was involved in this transaction, confirmed that he was unaware of any repairs that needed to be completed. In addition, Mitchell confirmed in that interview that he was aware of the consumer's financial situation. I also find that there is no evidence that any of the repairs listed on the invoice for the repair agreement were in fact carried out by 411 Service. For example, the invoice refers to body and paint work, which Pournader confirmed would have been farmed out to another shop because his shop does not do this type of work. I find that if this work was carried out there would be documentation to prove it.
- [55] Finally, I was directed to a Goto loans security page which supports that the loan documents were reviewed and approved by both Pournader and Malcolm within 30 seconds of the other. In my view, this supports that whoever was reviewing and approving the documents had experience with the application, in order to quickly provide the approval. I find that the timing of the approvals on the security page, coupled with the lack of evidence to support that the repairs were carried out support Malcolm's narrative that he was not aware of the loan repair agreement, did not sign the document, and never received the services. I find Pournader furnished false information and falsified information regarding this transaction by taking out of a loan on behalf of Malcolm for services that were never received and by signing these documents on his behalf.

Unfair Business Practices - Violation of the CPA

- [56] Section 17(1) of the *CPA* provides that no person shall engage in an unfair practice. Section 14(1) defines an unfair practice as making a false, misleading, and deceptive representation.

- [57] The respondent did not address how Pournader breached the CPA in any detail at the hearing. Therefore, I conclude that the respondent did not meet its onus in proving this allegation.

Williams Transaction – 2014 Dodge Caravan

- [58] Regarding this transaction, the NOP alleges that Pournader engaged in trading a motor vehicle on behalf of 411 Drives when he was not registered contrary to s. 4(5) of the *Act*.

Trading Motor Vehicle When Unregistered

- [59] The NOP alleges that, on January 7, 2022, Williams met with Pournader for the purpose of selling a 2014 Dodge Caravan to 411 Drives and that he acted as a salesperson in this transaction when he was not registered.
- [60] I find that the respondent failed to prove the allegation that Pournader acted as the salesperson involving the Williams transaction. Overall, I find what happened with this transaction unclear. Williams testified that he purchased a Honda Civic from 411 Drives and that he traded in the 2014 Caravan for this purchase. However, this transaction did not go through because the 2014 Caravan was co-owned by his mother. Williams also testified that he dealt with Mitchell, a salesperson at 411 Drives, who gave him the keys to his Honda Civic, and communicated about the loan being paid off with Auto Capital. Based on the testimony of both Williams and Pournader, I find Pournader's involvement with this transaction was in assisting Mitchell with arranging for William's outstanding loan on the Caravan to be paid off with Auto Capital. I conclude that the evidence was unclear about Pournader's direct involvement in this transaction as a salesperson.

Other Consumer Allegations

- [61] I also heard the testimony of Moraze regarding various allegations against Pournader in the NOP regarding a transaction involving a 2014 Dodge Caravan. However, Moraze did not make herself available for cross-examination and no explanation was provided for her inability to attend. Given this, I give little weight to her testimony and find it unnecessary to address the allegations in the NOP further.
- [62] The respondent also submitted evidence in support of the other allegations in the NOP involving consumers Corey Collingwood, Mark Levy and Helen Frangos. These consumers did not attend the hearing to testify. I note that Pournader admitted that he failed to comply with OMVIC's request for documentation pursuant to s. 14 (3) of the *Act* in relation to the Frangos transaction, which supports a pattern of disregard for the law. However, none of these witnesses testified at the hearing. Therefore, I have not considered these allegations.

Violating Terms and Conditions

- [63] I find that Pournader violated the terms and conditions imposed by the Tribunal on Prime One Auto in a consent order signed by the parties in response to a previous NOP. The NOP alleges that in 2019, Pournader was charged with various offences under the *Act*, including acting as an unregistered dealer. Although I note that the allegations outlined in that NOP were not proven, I find that he violated several terms and conditions that he agreed to as part of the resolution of the matter. The following are some examples:
- a) He acted as a salesperson on behalf of another dealer when he was unregistered.
 - b) He did not operate exclusively from the location approved by the Registrar and traded vehicles from another location.
 - c) He falsified information on documents, relating to the trade of motor vehicles.
 - d) Did not disclose all material facts about the motor vehicles for purchase or lease to customers; and
 - e) Did not accept full responsibility for the quality of any repairs or alterations to a motor vehicle.

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

- [64] For the above noted reasons, I find the respondent has proven that Pournader's past conduct in relation to several of the above transactions affords reasonable grounds for belief that both he and Prime One Auto of which he is the sole Director will not be carried out in accordance with the law and with integrity and honesty. I have determined that Pournader has falsified information and furnished false information and/or documents by: a) signing bills of sale with another salesperson's signature or presenting a BOS with another salesperson's signature not involved in the transaction; b) applying for a repair loan on behalf of a consumer and by forging the consumer's signature on the repair agreement and loan documents and not providing the services; c) selling a vehicle with an invalid safety and failing to accept responsibility for repairs; and d) acting as an unregistered salesperson in respect to various trades. Finally, Pournader did not act with honesty and integrity in responding to consumer complaints. I agree with the respondent that Pournader has displayed a pattern of deceptive business practices in the sale of vehicles. As an interested person in respect of the corporate appellant and its sole Director, Pournader's conduct can be fixed on Prime One Auto.
- [65] For these reasons, I find that the appellants are disentitled to registration in accordance with ss. 6(1)(a)(ii) and 6(1)(d)(iii) of the *Act*.

Should registration(s) be granted with conditions attached?

- [66] The Tribunal has the statutory discretion under s. 9(5) of the *Act* to consider the appellants' circumstances and determine whether the public interest requires outright revocation of registration or whether the purpose of the *Act* can be adequately protected through other means, including attaching conditions to its order or to a registration.
- [67] The *Act* has two broad purposes: first, to provide protection to consumers; and second, to promote professionalism amongst dealers and salespeople within the automobile industry.
- [68] The respondent argues that terms and conditions are not appropriate in this case because the appellants have displayed a pattern of deceptive business practices. Further, this NOP is not the first instance of regulatory involvement. As highlighted above, the appellants failed to comply with previous terms and conditions which supports that he is ungovernable. In addition, he has taken the OMVIC recertification course twice which has not assisted in curbing his conduct and non-compliance with the law.
- [69] In support of its position that revocation of the appellants' registrations is the appropriate remedy, the respondent relies on the Divisional Court's decision in *1855456 Ontario Inc. (c.o.b. 1st Class Auto Sales) v. Ontario (Registrar, Motor Vehicle Dealer's Act, 2002)*, 2022 ONSC 645 where the court determined that two proven breaches of serious misconduct warrants revocation.
- [70] The respondent also relies on the decision of this Tribunal in *Toronto Quality Motors Inc., 2291683 o/a The Auto Dealer and Khaled Mousa-Khaled v. Registrar, Motor Vehicle Dealers Act, 2002*, 2021 CanLII 11891 (ON LAT) revoking an appellant's registration, which was upheld by the Divisional Court at 2022 ONSC 645. The respondent submits that the appellants' conduct in *Toronto Quality Motors* was similar to the conduct of the appellants in this case and revocation was deemed to be the appropriate penalty by the court. It submits that similar to this case, the registrant took advantage of unsophisticated consumers through dishonesty and manipulation. In that decision, the Tribunal highlighted that terms and conditions may be appropriate to address sloppiness, but it will not address a failure to deal with consumers with honesty and integrity.
- [71] The appellants argue that they deserve a second chance, and a suspension of registration is the appropriate penalty. Further, they argue that this case involved mitigating circumstances because Rajiv Samuels ("Samuels"), former Director of 411 Drives, walked away from the business in late 2021 leaving Pournader to clean up the mess. Ananthan, the majority shareholder and co-owner of 411 Drives testified that Samuels walked away from the business which left Pournader responsible for carrying out the day-to-day operations at 411 Drives because he was the only shareholder left registered with OMVIC. Ananthan submits that according to his knowledge, Pournader has not broken any laws.

- [72] Ultimately, I do not find Ananthan's testimony helpful because he had very limited knowledge of the allegations against Pournader outlined in the NOP. Further, as highlighted above, I find that Pournader violated the *Act* and was directly responsible for the conduct involving many of the consumer transactions. The fact that Pournader took over responsibility for 411 Drives when Samuels left does not justify his non-compliance with the law. In my view, this is not a mitigating factor.
- [73] The appellants also submits that the Tribunal should not just consider Pournader's past negative conduct, but should also consider Pournader's positive conduct. The appellants rely on the Divisional Court's decision in *Baxter v. Registrar* (REBBA), 2011 ONSC 2497 (CanLII) which supports consideration of positive conduct in determining whether revocation is the appropriate penalty. The appellants submits that Pournader's past positive conduct was supported by the testimony of Behnke who testified that he has never witnessed Pournader break the law. Further, Pournader has gained the trust of many customers who love him. The appellants also submit that Pournader took responsibility for the acts of other salespeople at 411 Drives by paying money out of his own pocket to Gregoire and Wright for the outstanding loans for trade in vehicles that had not been paid or properly dealt with by 411 Drives.
- [74] I find Behnke's testimony did little to support that Pournader will comply with the *Act* or that his past conduct has been positive. I find Behnke appeared to have little understanding of the allegations against Pournader outlined in the NOP. Moreover, I find he has a motive to say positive things about Pournader because Pournader is his employer, and the outcome of this matter will have an impact on his employment. Finally, other than making vague comments that consumers love him, I was not provided with any concrete examples of past positive conduct.
- [75] In addition, I find Pournader's submissions that he took responsibility by appropriately dealing with consumer complaints unfounded. Although he may have paid Gregoire and Wright back for money owed on outstanding loans, I have determined that his conduct in doing so was unethical and unprofessional. Further, he also behaved in an abusive manner in responding to B. Wright's complaint. Because of this, I do not find his responses to consumer complaints to be mitigating evidence of positive conduct.
- [76] The appellants also relied on this Tribunal's decision in *Premium Cars Wholesale Limited, Hussein Shahnematollah Yazde, Daniel Amirjani v. Registrar, Motor Vehicle Dealers Act, 2002*, 2020 CanLII 27360 (ON LAT) where the adjudicator ordered a suspension as opposed to revocation. In that decision, the Tribunal determined that terms and conditions were not appropriate because the appellant had not complied with terms and conditions in the past. As a starting point, I am not bound by this Tribunal's decisions. In addition, I find that Pournader was already given a second chance in response to the previous NOP which resulted in terms and conditions. I agree with the respondent that Pournader has

demonstrated a pattern of non-compliance with the law and do not think a suspension or terms and conditions will address Pournader's behaviour or protect the public interest.

[77] I find that revocation of the appellants' registrations is the appropriate penalty in this case for the following reasons:

- i) First, Pournader's conduct has been the subject of a previous NOP which resulted in terms and conditions imposed on Prime One Auto which he has not complied with.
- ii) Second, Pournader he has taken the OMVIC recertification course twice, which has not resulted in compliance with the law.
- iii) Third, I find Pournader has displayed a pattern of non-compliance with the law and deceptive business practices in a short period of time since the appellants have been registered.

[78] These findings support that Pournader is ungovernable, and that Prime One Auto which he is the sole Director will be as well. For these reasons, I find that the public interest cannot be adequately protected with terms and conditions or a suspension.

ORDER

[79] For the reasons set out above, pursuant to s. 9(5) of the *Act*, I direct the respondent to carry out the NOP to refuse and revoke the registrations of the appellants.

Released: January 9, 2025



Rebecca Hines
Adjudicator