



Citation: *Bukshtein v. Registrar, Motor Vehicles Dealers Act, 2002*, 2020 ONLAT MVDA 12854

Date: 2021-09-23
File Number: 12854/MVDA

An appeal from a Notice of Proposal by the Registrar, Motor Vehicle Dealers Act, 2002, S.O. c. 30 Sch. B to refuse registration

Between:

Beatris Bukshtein

Appellants

and

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

Decision and Order

ADJUDICATOR: Katherine Livingstone, Member

APPEARANCES:

For the Appellants: Self represented and Jonathan Shulman, counsel

For the Respondent: Jane Samler, counsel
Brian Osler, counsel
Michael Rusek, counsel

**Heard by video conference: March 1,2,3,4,5,8,9,10, April 27, 28,
June 11,14,15,16,17,18, 2021**

A. Overview

- [1] From November 1999 to June 2019, the appellant, Beatris Bukshtein, was registered as a licenced motor vehicle salesperson. During this time, she was employed at various dealerships.
- [2] On June 19, 2019, her employment with Richmond Hill Toyota (Richmond) was terminated. As she was no longer employed by a registered dealer, her registration as a motor vehicle salesperson expired.
- [3] On September 5, 2019, and again on September 26, 2019, the appellant filed an application to be registered as a motor vehicle salesperson at another dealership. That dealership subsequently cancelled the application on December 28, 2019.
- [4] On January 17, 2020, the appellant again applied to be re-registered, this time to a different dealership. On August 5, 2020, the respondent Registrar, *Motor Vehicle Dealers Act 2002* (MVDA), issued a Notice of Proposal to refuse her registration as a motor vehicle salesperson. The Registrar alleges that the appellant falsified and/or furnished false information relating to the sale and financing of 15 vehicles while working at Richmond as a Financial Services Manager.¹ The Registrar submits that the appellant's role in these transactions is suspicious, and when looking at the totality of her actions, the Registrar asserts there are reasonable grounds to believe she will not carry on business in accordance with the law and with integrity and honesty.
- [5] The Registrar further alleged the appellant filed false statements in two applications for registration. These are stand-alone grounds for refusing registration.
- [6] The appellant appealed the refusal to this Tribunal on August 19, 2020.

B. Preliminary Issue

Withdrawal of Counsel

- [7] On March 1, 2020, a virtual hearing commenced before me with respect to the Notice of Proposal. At that time the appellant was represented by counsel, Mr Shulman. The hearing proceeded at a very slow pace over the next several days, due in part to repeated technical delays experienced by appellant's counsel, a reluctance by appellant's counsel to avoid interrupting witnesses, lead respondent's

¹ The original Notice alleged contraventions in respect of 2 vehicles. A Notice of Further and Other Particulars added allegations regarding 13 different vehicles in February 2021.

counsel, Ms. Samler, and myself and a hesitation from appellant's counsel to follow directions and hearing protocol.

- [8] Just prior to the continuation of the hearing on June 11, 2021, Mr. Shulman withdrew from the hearing. The appellant decided she would continue with the hearing without representation. She completed the hearing unassisted by counsel.
- [9] In light of the very difficult circumstances that presented themselves during the time the appellant was represented, and the manner in which the representation ended, the appellant is to be commended for her preparedness, articulateness and civility during the remainder of the hearing.

C. Issues

[10] The issues to be decided in this matter are as follows:

- i) Does the appellant's past conduct afford reasonable grounds for belief that she will not carry on business in accordance with the law and with integrity and honesty?
- ii) Did the appellant make a false statement in her application for registration?
- iii) If the Registrar proves one or more of the above grounds for refusal, what is the appropriate outcome?

D. Result

- [11] I find the Registrar has established the past conduct of the appellant affords reasonable grounds for belief that she will not carry on her business in accordance with law and with integrity and honesty. I also find the appellant made a false statement in her application for registration.
- [12] This is not a case where the public interest can be adequately protected by ordering the registration of the appellant on terms and conditions. Accordingly, I direct the Registrar to carry out its Notice of Proposal to refuse the registration of the appellant under the MVDA.

E. The Law

- [13] The MVDA has two principal purposes. First, it provides protection to consumers when making what is, for most individuals, a very significant and expensive purchase. Secondly, it is intended to promote professionalism in persons involved in the automobile sales industry in Ontario. A person registered under the MVDA is required to adhere to the statute and any Regulations made under it, as well as abide by any terms and conditions that may be attached to their registration.

[14] Section 8(1) of the MVDA permits the Registrar to refuse a registration if, in his or her opinion, the registrant is not entitled to registration under section 6 of the Act. In this case the Registrar relied upon s. 6 (1) (a) (ii) and (ii):

s. 6(1) (a) (ii), where the past conduct of the applicant or of an interested person in respect of the applicant affords reasonable grounds of belief that the applicant will not carry on business in accordance with law and with integrity and

s. 6(1) (a) (iii), where the applicant or an employee of the applicant makes a false statement or provides a false statement in an application for registration or for renewal of registration.

[15] The Registrar bears the onus of proving that “the past conduct of the appellant affords reasonable grounds for belief that the appellant will not carry on business in accordance with law and with integrity and honesty”. The standard of proof is “reasonable grounds for belief” which is a lower standard of proof than proof on a “balance of probabilities”. The test however is more than mere suspicion and the evidence providing the foundation of the reasonable grounds must be credible and compelling: *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc. (Famous Flesh Gordon's)*, 2013 ONCA 157 at para.18. The Tribunal must consider evidence of past conduct, both good and bad, and determine whether the Registrar has discharged its burden.

[16] With respect to the false statement allegations, the Registrar bears the burden of establishing that on a balance of probabilities.

[17] Following a hearing, the Tribunal may order the Registrar to carry out its proposal or substitute its opinion for that of the Registrar and may attach conditions to its order or to a registration.

F. Evidence and Analysis

i) Does the appellant’s past conduct afford reasonable grounds for belief that she will not carry on business in accordance with the law and with integrity and honesty?

[18] In the Notice of Proposal, the Registrar relied in part on sections 26 and 27 of the MVDA to find its concerns. The sections are as follows:

s.26. No registrant shall falsify, assist in falsifying or induce or counsel another person to falsify or assist in falsifying any information or document relating to a trade in motor vehicles.

s.27. No registrant shall furnish, assist in furnishing or induce or counsel another person to furnish or assist in furnishing any false or deceptive information or documents relating to a trade in a motor vehicle.

- [19] In June 2018 the appellant was hired by Richmond as a financial services manager (FSM). Richmond is one of five dealerships owned and operated by Phaeton Automotive Group. The evidence established the appellant was sought out by Richmond due to her ability to bring in customers, especially those with poor credit who would require subprime financing.
- [20] The exact nature of the appellant's situation or role at Richmond was never fully fleshed out during the hearing. It appears she was simultaneously an employee working as an FSM with respect to new and pre-owned vehicles and a subcontractor who had total control over her own referrals, from start to finish.
- [21] Mujtaba Hassan was a sales manager at Richmond while the appellant worked there, and he testified about the appellant's work arrangements. He described the appellant as "her own entity". She had pre-existing clients with whom she would work. She would bring in a car her client was interested in and commit to doing the purchase and the financing. A lot of the appellant's clients needed subprime financing and many of them were new to the country. When she worked with her own clients "she did everything from A to Z. She acted as the sales representative, sales manager and FSM and then the general sales manager would sign off on the deal". When she was dealing with her own clients Mr. Hassan had no interaction with her and he never met her clients unless they were there to pick up a vehicle.
- [22] Sometimes the appellant would work in rotation with other FSMs with clients that were not "her own".
- [23] The evidence established that the general practice at Richmond was for the FSMs to collect the necessary information from the clients and forward it to the lender for their approval. If the lender had additional questions or requested additional documentation it fell on the FSM to obtain the requested information.
- [24] When outlining the work of an FSM, Mr. Hassan described the position as the "hub of the dealership to protect both parties, the client and the store". He said he did not confirm any of the information provided by the client and did nothing to authenticate the information as that was the FSM's role. The FSM was entrusted "to do everything as needed and the protocol was not to verify everything from the FSM". He relied on the honesty of the FSM. Mr. Hassan simply made "sure the numbers lined up and updated the worksheet if there had been warranty purchases etc. in order to update the gross profit that the deal had". The delivery date was established by the client and the FSM.
- [25] Typically, the FSM brought the bill of sale for Mr. Hassan for sign off and nothing more. In answer to a question in cross examination, Mr. Hassan acknowledged he had never seen anything untoward about the appellant's activities, although when reviewing some of the file documents prior to the hearing, he said the lack of a driver's licence on the particular file he was reviewing "triggered a thought".

- [26] Mr. Hassan said although the dealership sometimes received Permanent Residency (PR) cards as a method of identification, most of the clients also presented a driver's licence. If a person did not have a driver's licence, they could not be the one solely financing the car. He added that in her capacity as a salesperson, the appellant would have been required to get a driver's licence from the client.
- [27] I found Mr. Hassan's evidence to be balanced and persuasive. Other management personnel corroborated Mr. Hassan's description of the appellant's responsibilities as an FSM, however I found his evidence to be the most comprehensive in terms of how the appellant carried out her work at the dealership.
- [28] Mark Cuna is a chartered accountant who was the vice president of finance for the Phaeton group during the time of the appellant's employment at Richmond. Although the appellant did not report directly to him, Mr. Cunha had frequent contact with her and was involved in the circumstances that led to her termination from the dealership.
- [29] Mr. Cunha said the appellant's arrangement in terms of compensation was that she received a percentage of the sale. He testified he thought her percentage was higher than others at Richmond in similar positions. For reasons that were never really explained, her subcontracting payments were made to her husband's numbered company.
- [30] Mr. Cunha confirmed the appellant's responsibilities as an FSM included acting as an intermediary between the prospective buyer and the financial institution as well as selling additional products to the buyer such as warranties and insurance. He said the FSM acted as an agent on behalf of the bank and as an FSM she was obliged to provide accurate, and not fraudulent, information. Additionally, the appellant was given authority to source and purchase cars on her own, something normally done through used car managers.
- [31] Mr. Cunha testified that one of their lenders, Scotiabank alerted them to several deals where the customer had stopped making payments on their vehicle loan. Further investigation revealed that the transactions had involved the appellant acting as both the salesperson and the FSM.
- [32] Mr. Cunha conducted an audit of the questionable deals and discovered many irregularities in the transactions. The dates of these deals were between March 23, 2019 and May 23, 2019. They involved Scotiabank, TD Auto Finance and Toyota Financial Services as lenders. Mr. Cunha advised that the vehicles involved were either never located, had been shipped out of Canada or were still in port.
- [33] One of frequent irregularities in the reviewed transactions was that while an individual purported to complete the financing documents, the vehicle ownership was ultimately registered in the name of a numbered company, often one that had been incorporated days before the vehicle was delivered and driven away. Mr. Cunha testified this was a violation of the financing process because the process for applying for a loan is different when a company is applying. Notices of

assessments, bank statements and other documents to ensure the solvency of the company are required if the financing is for a company.

- [34] Additionally, Mr. Cunha said if the loan customer stopped making payments they are put in collection status so if the name of the ownership is different than the bill of sale and financing documents, it is a “challenging” process to repossess the car.
- [35] Although the plate and permit registration are done by a registration clerk at Richmond, the clerk receives the registration instructions from the FSM attached to the transaction. Pina Bitonet, the registration clerk for Richmond, testified. She said if an individual was buying the vehicle then she looked for a driver’s licence or passport. If a company was making the purchase, then Articles of Incorporation were required. She stated the instructions for registration were on the front of the file and that she “never looked at the financing documents”.
- [36] Further, she testified that the appellant told her that at a previous place of employment she was able to use a permanent resident card (PR card) to register a vehicle. However, in Ms. Bitonet’s experience, the Ministry of Transportation (MTO) did not allow the use of a PR card for identification and would always refuse the registration if that was the means of identification.
- [37] Ms. Bitonet was asked about the appellant’s instructions to sometimes register a vehicle in one name and the plate in another. She said no one else did that other than the appellant and she had to call MTO to see if it was allowable. Ms. Bitonet said that since the problems with the appellant’s client’s came to light, she is now required to check and make sure the name on the Bill of Sale and the registration match.
- [38] Ms. Bitonet did agree during cross examination that she never had any concerns about the appellant’s “deals”, nor did she notice any “unprofessional behaviour”.
- [39] As a result of the audit, on June 19, 2019, the appellant was terminated from her employment. The letter of termination read, in part, that “your termination is due to irregularities on customer finance documents that were submitted to the bank-fraudulent in nature as per our banking partners. We have no alternative but to terminate your employment for cause”.
- [40] In the initial stages of the hearing counsel for the appellant raised the possibility of other employees being responsible for the transactions in question. Although there was some evidence other employees of Richmond were involved in unrelated fraudulent activity around the same time period, no evidence was presented to directly link any of those employees to the transactions that are the subject of this hearing. Additionally, in her evidence, the appellant did not dispute these transactions were completed by her. Rather she testified that she too was a “victim” of these fraudulent sales.
- [41] Both Mr. Cunha and Mark Duvall, an investigator employed by the respondent, went through the transactions that are the subject of this hearing. In all the transactions

the appellant was listed as both the salesperson and the FSM acting on behalf of Richmond. All transactions required financing arranged by the appellant. Based on the evidence of Mr. Cunha and Mr Duvall, which I accept, I make the following findings:

- a) On March 23, 2019, a Toyota Tundra was sold to DS. The vehicle was new and was part of the inventory at Richmond. The purchase was financed through Toyota Financial Services. The purchase price was \$77,931.00. After interest and other associated fees, the cost of the loan was \$99,446.

A credit application was submitted by the appellant to Toyota Financial Services, with documentation including employment information and a PR card and Indian passport as identification. A void cheque in the name of DS was also provided. Required signatures on the documents were missing and/or not matching. The loan was approved for DS. However, when the vehicle was registered, it was registered to a numbered company, which had been incorporated in 2018 and listed the same address as the appellant's home address.

Subsequent investigation by Mr Duvall found that the photo on the PR card was in fact the image of another person and the card was a forgery. A check at the address in the application found there was someone else living there who had lived there for 10 years and did not know DS. The company outlined in the employment information provided did not exist.

- b) On April 16, 2019, the appellant sold a 2015 BMW 4 Series to JP. The vehicle was sourced from Yorkdale Fine Cars (Yorkdale). The total purchase price on the bill of sale was \$39,646 and no down payment was listed. It was financed through Toyota Financial Services.

A note in the file from Toyota Financial Services dated April 16, 2019 indicated "Hi Beatris: several recent inquiries, new loan opened 1/2019 and no comparable borrowing. Please provide proof landed, employment letter and will require money down 5K". A subsequent credit application was completed which indicated a delivery price of \$44,646 with a down payment of \$5000. There was no receipt for a down payment of \$5000 in the file and no explanation in the change of the purchase price. The appellant did not address this apparent discrepancy during her evidence.

The credit application included an employment letter indicating JP was employed at *Fourmen* Construction, a statement of earning for JP from *Fourman* Construction, a written notation indicating *Forman* (bolding and italics added) and a PR card. The documentation regarding employment had discrepancies in how long he had worked there, his job description and his salary. The loan was approved for JP. However, the registration of the vehicle was to Dreamreal Renovations.

Mr. Duvall's investigation disclosed that JP did not live at the residence on the bill of sale, the business where he was purportedly employed was not at the address provided, and the photo on the PR card was of another person. The vehicle was registered to a numbered company that had been inactive for several years and not registered in Ontario.

- c) On March 12, 2019, the appellant sold a 2015 Mercedes Benz to PO. The vehicle was sourced from Yorkdale. The purchase price was \$45,646 and PO provided a down payment of \$2000. The purchase was financed through Scotiabank. Interest on the loan and other fees amounted to a total loan of \$54,925.

The identification on the loan application was a certificate of Canadian citizenship and a document purporting to give a social insurance number. A void cheque from a bank was also provided. The loan was approved for PO and the vehicle was registered to him. However, the plate permit was registered to a numbered company.

A \$1000 payment was authorized to a RM as a referral fee. RM used a driver's licence as identification.

Mr. Duvall's investigation revealed the residence given by PO was occupied by someone who had lived there for 20 years and did not know him, the address for the numbered company didn't exist, and the numbered company had never been registered as an incorporated company. PO gave his employer as Nestle, however no person by that name was employed by it. Additionally, a check with MTO disclosed no driver's licence record for that name and date of birth.

- d) On March 27, 2019, the appellant sold a 2015 Mercedes Benz to AW. The vehicle was sourced from Yorkdale. The purchase price was \$49,042 and it was financed through Scotiabank. The interest on the loan and other fees amounted to a total loan of \$61,698.

The identification on the loan application was a PR card. The loan was approved for AW. However, both the vehicle permit, and plate permit were registered to a numbered company.

Mr. Duvall's investigation disclosed the residence given by AW was occupied by someone who had lived there for 40 years and did not know him, the address for the numbered company was a strip mall with no such business, the telephone number provided was not in service and a check with MTO found no driver's licence for that name and date of birth.

- e) On April 4, 2019, the appellant sold a 2019 Toyota 4 Runner to SS. The vehicle was sourced from Import. The purchase price was \$56,505 and SS provided a down payment of \$1,210. The purchase was financed through TD Auto

Finance. The interest on the loan and other fees amounted to a total loan of \$72,385.

The loan application included information with respect to his employer and his identification was a PR card. The loan was approved for SS, and the vehicle and plate were registered in his name.

Mr. Duvall's investigation could not confirm a residence, SS's email bounced back as undeliverable, and the business he gave as his employer, which was the same as DS's, did not exist.

The appellant authorized payment of \$300 to a SF as a referral fee. The identification SF used to receive the payment was a driver's licence.

- f) On April 9, 2019, the appellant sold a 2018 Audi Q7 to RR. The vehicle was sourced from Import. The purchase price was \$99,321, with a \$10,000 deposit. The purchase was financed through Scotiabank. The interest on the loan and other fees amounted to a total loan of \$119,159.

The loan application included information with respect to RR's employer and his identification was a PR card. A document purporting to provide a social insurance number, as well as a blank cheque in his name and a credit card statement were also provided. The loan was approved for RR. However, the vehicle and plate were registered to a numbered company that had been incorporated the day before the sale.

Mr. Duvall's investigation disclosed the address provided for both RR and the numbered company was occupied by someone who had lived there for a long time and did not know RR. The company name provided as his employer did not exist. There was a referral check in the file for a BC indicating he had referred RR to the appellant, however the investigation revealed BC does not exist. Interestingly, the same BC was a purchaser of a vehicle from the appellant later in the month. Additionally, in the email from Import to the appellant which appears to set up the deal, there is no mention of BC referring RR to the appellant. Instead, it is Import that does the referral.

- g) On April 22, 2019, the appellant sold a 2019 Chevrolet Corvette to ML. The vehicle was sourced from Import. The purchase price was \$100,457, with a deposit of \$10,000. The purchase was financed through Scotiabank. Interest on the loan and other fees amounted to a total loan of \$127,573.

The loan application included information with respect to ML's employer and a PR card. A document purporting to provide a social insurance number, a statement of earnings and a credit card statement were also provided. The loan was approved for ML. However, the vehicle permit, and plate were registered to a numbered company that was incorporated six days before the purchase.

The numbered company's address was the same as the home address provided by ML.

Mr. Duvall was unable to confirm the address, the employer listed was not at the address provided and he could not confirm its existence. Mr. Duvall did a driver's licence search with ML's particulars and there was no record for her.

- h) On May 1, 2019, the appellant sold a 2015 BMW to MP. The vehicle was sourced from Yorkdale. The purchase price was \$42,256 and was financed through Scotiabank. Interest on the loan and other fees amounted to a total loan amount of \$54,164.

The loan application included information MP was employed by Bell Canada and a PR card. A void cheque and insurance documents were also provided. The loan was approved for MP. However, the vehicle and plate permit were registered to Bluewave Advertising with the same address as the home address provided by MP.

Mr Duvall's investigation revealed the address provided was occupied by an individual who had lived there for 5 years and did not know MP. The number provided for MP's employer, Bell Canada was a cell phone which was not Bell Canada and it just rang without being answered. A corporate registration was not found for Bluewave. The email address provided by MP came back "undeliverable". The cell phone number he provided came back as "not a valid number".

- i) On May 1, 2019, the appellant sold a 2016 BMW to BC. The vehicle was sourced through Yorkdale. The purchase price was \$65,992 and financed through Scotiabank. After interest and other fees, the cost of the loan was \$84,501. The loan was approved for BC and the vehicle permit was registered in his name. However, the plate permit was registered in the name of a numbered company with the same address as the home address provided by BC.

The appellant authorized a referral fee of \$500 to JP, who had previously bought the 2015 BMW.

The loan application included employment information and a passport as well as residence information. A gas bill and void cheque were also provided.

Mr. Duvall's investigation disclosed that although the employer existed no one named BC had ever worked there. The numbered company on the plate did not exist and the address provided for both BC and the numbered company was a Vietnamese restaurant. A check with MTO revealed no driver's licence matching BC's particulars.

- j) On May 1, 2019, the appellant sold a 2019 Chevrolet Corvette to AH. The vehicle was sourced from Import. The purchase price was \$110,723 with a \$10,000 deposit. It was financed through Scotiabank. After interest and other fees, the cost of the loan was \$142,030. The loan was approved for AH. However, both the vehicle and plate permits were in the name of a registered company with the same address as the home address provided by AH. The numbered company was registered the day before the car was purchased.

The loan application included employment information and a PR card. A document purporting to provide a social insurance number and banking information were also provided.

Mr. Duvall's investigation disclosed the address provided for both AH's residence and the numbered company was occupied by someone else. The employer he named did not exist at the address provided nor was there an incorporated company by that name. A check with MTO revealed no driver's licence matching AH's particulars.

- k) On May 14, 2019, the appellant sold a 2016 Mercedes Benz to NG. The vehicle was sourced through Yorkdale. The purchase price was \$78,416 with a deposit of \$2000. It was financed through Scotiabank. After interest and other fees, the cost of the loan was \$97,825. The loan was approved for NG and the vehicle permit was registered in her name. However, the plate permit was registered in the name of a numbered company.

The loan application included employment information and a Canadian passport. A phone bill and void check were also provided.

Mr. Duvall's investigation could not confirm the home address provided. The numbered company was not created until 13 days after the vehicle was purchased. He went to the numbered company's address which included a unit number and found it to be an industrial building with no units, owned by an unrelated company. The employer referenced in the application form was contacted and they indicated they did not have an employee by that name. A check with MTO revealed no driver's licence matching NG particulars.

- l) On May 15, 2019, the appellant sold a 2016 Land Rover to JC. The vehicle was sourced from Yorkdale. The purchase price was \$77,286 with a deposit of \$3000. It was financed through Scotiabank. After interest and other fees, the total loan amount was \$95,103. The loan was approved for JC. The vehicle permit was registered in her name however the plate permit was registered to a numbered company that was incorporated seven days after the vehicle was purchased. The numbered company had the same address as the home address given for JC

The loan application included employment information and a Canadian passport. A phone bill and banking information were also provided.

Mr. Duvall's attended at the home address provided and determined the owner had lived there for over 40 years and did not know JC. The telephone number provided by JC in her application was always "user busy". Mr. Duvall attended at the employer noted in the application and was advised that JC had never been employed there.

- m) On May 15, 2019, the appellant sold a 2018 Mercedes to SA. The vehicle was sourced from Import. The purchase price was \$106,101 with a deposit of \$10,000. It was financed through Scotiabank. After interest and other fees, the total loan amount was \$128,192. The loan was approved for SA. However, both the vehicle and plate permit were registered to a number company which was incorporated 2 days prior to the purchase.

The loan application included employment information and a PR card. A gas bill, a document purporting to give a social insurance number and banking documents were also provided.

Mr. Duvall was unable to confirm the address noted in the application. The employer listed did not exist and was the same one used in AH's application. There was no indication of a business located at the address provided for the numbered company. A check with MTO revealed no driver's licence matching SA's particulars.

- n) On May 23, 2019, the appellant sold a 2019 Toyota Tundra to IF. The vehicle was sourced from Import. The purchase price was \$76,721 with a deposit of \$10,000. It was financed by Scotiabank. After interest and other fees, the total amount of the loan was \$89,051. The loan was approved for IF. However, both the vehicle and plate permit were registered to a numbered company that had been incorporated one day prior to the purchase. The numbered company had the same address as the home address of IF.

The loan application included employment information and a PR card. A phone bill, void cheque and a document purporting to give a social insurance number were also provided.

Mr. Duvall was unable to confirm the address provided as a residence and place of the numbered company. He attended at the address provided as the place of employment and it was an industrial building owned by another company. A check with MTO revealed no driver's licence matching IFs particulars.

[42] The total loss to the lenders who financed these transactions was \$1,026,043.

[43] A review of the purchases that are the subject of this hearing revealed that on several occasions the lending institution did not initially approve the loan and needed to ask the appellant to obtain further information from the client.

- [44] During cross examination Mr. Duvall indicated two of the PR cards he reviewed had obvious spelling discrepancies and in his mind were easily identifiable as fraudulent.
- [45] He agreed with the appellant that he saw some files contained an Equifax report however he placed no weight on them. There was no explanation from either party as to what an Equifax report is or how it would assist an FSM, therefore I place no weight on the existence of these reports.
- [46] None of the individuals involved in the transactions in question used a driver's licence as a means of identification. In commenting on this fact during his evidence, Khalid Kadrie, the present vice chairman of Phaeton, said "once in a blue moon you end up having a person buying a car that does not have a driver's licence". He said it was expected the FSM would examine documents to ensure they are legitimate and that the "further away a deal is from the norm, the greater scrutiny is required by the FSM". He explained that although several persons had access to the file of an individual purchaser, the FSM was the one charged with exercising the greatest level of due diligence with respect to the bona fides of the purchase and financing. The FSM was expected to exercise more due diligence because they are meeting with the client and speaking with the bank.
- [47] Mr. Kadrie said sometimes accounts become delinquent however Richmond had never had a situation with a lender where there was such a high volume in in a relatively small timeframe.
- [48] Mr. Kadrie testified that if a deal is fraudulent the dealership may be charged the full value of the contract. In this case, the full value of some of the deals was charged back and Richmond paid a total of \$500,000 to Scotiabank and Toyota Financial Services. The frauds resulted in Scotiabank changing their approval process, requiring further training and auditing of Richmond's approval process and ultimately altering Richmond's ability to get their deals funded. With respect to Toyota Financial Services, conducting business with them became "more labour intensive" and Richmond had to go through a manual approval process.
- [49] The appellant testified she had been in the car business for 25 years, the first 15 years at a franchise store as an FSM before becoming an independent contractor with a speciality in subprime clients. She described herself as "a very successful FSM" in the industry and said people sought out her services.
- [50] In the summer of 2018, Richmond asked her to come and work for them as an FSM. She did not want to work as an employee as she had been an independent before, however she agreed to be both. As a sub contractor she was to bring business into the store and as an employee she was to help with other deals.
- [51] When she spoke about the role of an FSM, she curiously made some reference to a google search of the job description. She went on to say that she was to meet with customers and get the necessary documents to be submitted to the bank. She said each bank had different rules.

- [52] She acknowledged it was important that an applicant's information be accurately transmitted to the bank. She said before she submitted any deal, she pulled an Equifax report for the client and if there was a fraud alert on the file, she would have the client come in to confirm his identity. She said every file in question had an Equifax report in it and none of them had fraud alerts.
- [53] Once the deal had been submitted to the lender, they would send back their decision on approval and sometimes add conditions before approval. If there were conditions on the file, she would contact the client and ask for the additional information and forward it to the bank for final approval. The final documents would include a copy of the bill of sale.
- [54] The appellant said there was no possible way to register a vehicle without a certified cheque so an account for that person had to exist.
- [55] Aside from the Toyota Tundra, the cars in question were purchased by the appellant on behalf of Richmond, for her clients. The purchases were from either Yorkdale or Import. The appellant then arranged for the sale of the car from Richmond to her client. She prepared the documentation for financing.
- [56] The appellant said she had been doing business with both Yorkdale and Import for some time. At the end of February 2019, the owner of Import approached her and said he had a good connection with a community of newcomers who had a lot of money and wanted to buy cars for a carshare business. He said he didn't have enough banks to approve the loans. He started to send her deals by email. Often it was cars from Import the client wanted to buy. However sometimes she used Yorkdale as the wholesaler and on one occasion a client bought directly from Richmond.
- [57] She said she was not suspicious of the deals because the customers came from a long-time dealer, they were Equifax confirmed, many gave a down payment and "everyone's demeanour was good".
- [58] She said "we all know the cars were stolen but was I involved? Yes, as a victim". She claimed an FSM is the easiest person to blame, especially when they are a subcontractor such as her.
- [59] In cross examination, she was asked if she was concerned about the clients in question not providing a driver's licence. She stated she was not concerned as she knew they wanted the car for a carshare business. Even though she was the salesperson on the deals, she never took a client for a test drive.
- [60] She admitted she never told the Sales Manager or Mr. Cunha about the arrangement she had in place with Import.
- [61] The appellant was quite insistent that her only obligation as an FSM was to make sure she "accurately transmitted" the loan application information to the lender. She asserted it was not her responsibility to check or verify the information provided by

the customer. She agreed that she did not see the cars before sending in the financial documents to the lender.

- [62] She disputed Mr. Cunha's evidence about a lender's financing of company cars. She said with new cars the lender might require proof of a business but not on pre-owned cars stating, "prime banks don't have an option to put it in the company name if it is a used car". She disagreed there would be difficulty collecting on the loan if the finance documents were in an individual's name and the ownership was in a company name as long as the individual names was on the Articles of Incorporation. The appellant said she did not know she was not to licence cars to a numbered company when the individual was the one financing the vehicle.
- [63] The appellant said she was able to contact customers at the phone numbers or emails they provided.
- [64] The appellant questioned why, given that the irregularities were so obvious, did other people who reviewed them and signed off on the file not pick up on the problems.
- [65] She said about one year after she was terminated one of the customers involved called her and told her that "the car was supposed to disappear and he would get the profits but he didn't and now he wanted my help". She said this was a very shocking phone call for her.
- [66] She agreed on cross-examination that she profited approximately \$42,000 from the deals in question.
- [67] Perhaps most importantly, she further agreed that, while it would have been improper for her clients to drive the vehicle off the dealership lot without having her first see their driver's licence, she did not ask to see the licence.
- [68] I was troubled by the appellant's evidence. Not only did it fail to align with much of the other evidence in terms of the practices at the dealership, significant portions of her evidence were a minimization of her responsibilities as both a salesperson and more importantly as an FSM. She attempted to blame a lack of training by Richmond for her difficulties but then went on to talk about the depth of her experience as an FSM. Where it differed on the issue of Richmond's business practices, I prefer and accept the respondent's witnesses.
- [69] It is this acknowledged experience that calls me to question her actions or lack thereof in these transactions. I agree with respondent's counsel that we are not just looking at one deal that was "a mere oversight and slipped through the cracks" but fifteen deals, each of which should have raised alarm bells, and collectively must have raised serious concerns.
- [70] Many times, the appellant forwarded incomplete information to the lenders. As noted above, on one occasion the purchase price was changed by \$5000 on the loan document to reflect a down payment. But there was no explanation for the change

in price and there is no evidence that the down payment was ever made. Moreover, the appellant was making finance applications on vehicles she had never seen. She gave instructions to the registration clerk to register vehicles in a name different than the financing documents, often to a newly registered corporation.

- [71] Richmond's files for the transactions disclosed there was very little paperwork between Import, who provided the clients, and the appellant, who was responsible for ensuring the accuracy of the information given to the lender. The emails from Import giving a name, address, employment and type of vehicle to be purchased was essentially third hand information. By her own admission, the appellant did not follow up on this information, other than obtaining an Equifax report, before transferring the information to the lender. Aside from obtaining the Equifax report, there was an absence of due diligence on her part.
- [72] The appellant never told her bosses at Richmond about the arrangement with Import to bring these clients into the store. That begs the question – if everything was aboveboard and legitimate, why did the appellant not let management know the source of her success?
- [73] By acting as both the salesperson and the FSM on the transactions the appellant obtained a significant financial benefit.
- [74] Perhaps the greatest indication of her involvement was she allowed the purchasers to drive away from the dealership without checking for a driver's licence. I agree with the respondent that doing so on one occasion can perhaps be considered an oversight. However, permitting a customer to drive away without checking for a driver's licence on 15 different occasions raises significant questions about the extent of her involvement, particularly given her 25 years' experience in the industry.
- [75] I am satisfied the appellant played a role in providing false information to the lenders, whether through active participation in the planning or simply turning a blind eye to the fraudulent activities. She facilitated the paperwork and furnished it to the dealership and the lender. She failed to follow Richmond's usual protocols that someone with 25 years experience would be expected to do.
- [76] In all the circumstances I am satisfied the Registrar has met its onus of proving that the appellant's past conduct affords reasonable grounds for belief that she will not carry on business in accordance with law and with integrity and honesty.

ii) Did the appellant make a false statement on her application for registration?

- [77] On June 19, 2019 Richmond sent the appellant a letter which set out the reason for her termination from employment. The letter stated the termination was due to "irregularities on customer finance documents". As a result of her termination, the appellant's licence was cancelled.
- [78] On September 5, 2019 the appellant applied to the Registrar to be registered as a salesperson for a dealership. This application was later abandoned.

- [79] On September 26, 2019 the appellant submitted another application to the Registrar to be registered as a salesperson for the same dealership. This application was ultimately abandoned by the dealership in December of 2019.
- [80] Section C of both the September 5 and September 26, 2019 application forms submitted by the appellant directed her to provide the reason for leaving Richmond. In the response section the appellant answered, "better offer".
- [81] On September 26, the appellant was contacted by a representative from the Registrar who requested that she provide a further explanation as to her reason for leaving Richmond. The appellant replied in an email on September 30, 2019 stating "I receive an email that my employment was terminated due to fraudulent paperwork with no explanation or any proof provided to me. The reason I put 'better offer' is because I had so much mental (sic) stress over it that I just did not want to get into this issue again".
- [82] The respondent argued the answer "better offer" was false and misleading.
- [83] In her evidence the appellant said she had not worked for the summer after her termination as her mother had health issues. She admitted not initially telling the Registrar about the real reason for her termination however she said she did tell them when she got the email asking for more details. This late admission of truth is not helpful to appellant's position.
- [84] On the evidence presented I am satisfied the appellant intentionally completed an application for registration that she knew was false and misleading. In her email to the Registrar she acknowledged as much by giving a reason for her falsehood.
- [85] Her statement was not an oversight as she admitted she did not work after she was terminated and only applied in September for registration. So, she did not leave for a better offer in addition to being terminated by Richmond. Simply put, the appellant was not truthful when she completed the application for registration.
- [86] In all the circumstances I am satisfied the Registrar has met its onus of proving that the appellant made a false statement in an application.
- [87] Looking at the transactions in their totality, I find that the Registrar has met the burden of proof. I find that there are reasonable grounds for belief that the appellant will not carry on business in accordance with law and with integrity and honesty. I also find, as admitted by the appellant, that she made a false statement in two applications for registration or for renewal of registration. Under ss. 6(1)(a) (ii) and (ii), these are grounds for the denial of registration.

iii) What is the Appropriate Outcome in this Case?

- [88] I am aware the appellant has been in the automotive sales industry for a long period of time with a previously unblemished record. It was clear from her evidence that she is proud of her past work as a salesperson. She is anxious to be able to continue

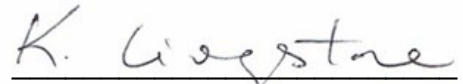
working in that field. I took her past record into account when determining whether conditions could be attached to her registration that would allow her to continue to work as a salesperson while at the same time protecting the public.

- [89] Given her previous untroubled history, on its own, the false statement made to the Registrar may have been sufficiently addressed through the imposition of conditions on her licence.
- [90] However, I find the same cannot be said for her actions involving the transactions detailed above.
- [91] The appellant submitted that she has learned her lesson and will be more diligent in the future. However, during the hearing she did not accept responsibility for her conduct and instead has positioned herself as a victim. She often minimized her conduct.
- [92] At its highest her conduct revealed a pattern of carelessness and a lack of reasonable scrutiny and due diligence with respect to the deals she was engaged in, which in turn put both her employer and the lender in jeopardy on several occasions. Her lack of diligence clearly facilitated fraudulent activity. Given the complex behaviour required to carry out the fraudulent transactions, particularly releasing cars without seeing a driver's licence, I find this to be unlikely. At its lowest, her conduct constituted active participation in a sophisticated scheme to defraud her employer and its lenders of a significant amount of money.
- [93] It is the appellant's experience and her lack of acceptance of responsibility that rule against the imposition of conditions. The appellant was very knowledgeable about the industry and I find that her actions were not just a result of sloppiness or inexperience.
- [94] Her actions at Richmond, followed shortly thereafter by her false statements to the Registrar, suggest that she cannot be governed by conditions. In fact, considering the totality of the circumstances, I am not satisfied that the public can be protected via conditions. As a result, in my view the appropriate outcome in this case is to direct the Registrar to carry out its proposal.

G. Order

- [95] Pursuant to s.9(5) of the MVDA the Registrar is directed to carry out its proposal.

LICENCE APPEAL TRIBUNAL

A handwritten signature in black ink, appearing to read "K. Livingstone", is written over a horizontal line.

**Katherine Livingstone,
Member**

Released: September 23, 2021