

**LICENCE APPEAL
TRIBUNAL**

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



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

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

Citation: Premium Cars Wholesale Limited, Hussein Shahnematollah-Yazde, Daniel Amirjani v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2020 ONLAT MVDA 11221

Date: 2020-01-17
File Number: 11221 MVDA

Appeal from a Notice of Proposal of the Registrar, *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c.30, Sch. B – to Revoke Registrations

Between:

Premium Cars Wholesale Limited, Hussein Shahnematollah-Yazde, Daniel Amirjani

Appellants

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

DECISION and ORDER

ADJUDICATOR: Stephen Scharbach, Member

APPEARANCES:

**For the Appellant
Premium Cars
Wholesale Limited and
Hussein
Shahnematollah-Yazde** Symon Zucker, Counsel

**For the Appellant
Daniel Amirjani:** Cameron J. Wetmore, Counsel

For the Respondent: Michael Burokas, Counsel

**Heard at Toronto,
Ontario:** February 4, 5 and 6, March 5, June 6, 20, 21, 25 and 26
2019.

A. OVERVIEW

- [1] This is an appeal by Premium Cars Wholesale Limited (“Premium”), Hussein Shahnematollah-Yazde (“Mr. Shah”), and Daniel Amirjani (collectively, “the appellants”), of a Notice of Proposal issued by the Registrar *Motor Vehicle Dealers Act, 2002* (“Registrar”) to revoke their registrations under the *Motor Vehicle Dealers Act, 2002* (“the Act”).
- [2] Premium is registered as a motor vehicle dealer and operates a motor vehicle dealership in Newmarket, Ontario.
- [3] Mr. Shah is registered as a salesperson and owns, operates and is an officer and director of Premium.
- [4] Mr. Amirjani is registered as a salesperson with Premium.
- [5] The Registrar proposes to revoke each of the appellants’ registrations based on allegations that:
 - the past conduct of Mr. Shah and Mr. Amirjani affords reasonable grounds for belief that they, and Premium, will not carry on business in accordance with the law and with integrity and honesty.
 - Premium and Mr. Shah violated conditions of their registration.
- [6] The appellants deny the allegations and assert that the Registrar has not proven a factual basis for revocation.

B. ISSUE

- [7] In summary the issues are:
 - Does the past conduct of Mr. Shah and Mr. Amirjani afford reasonable grounds for belief that they, and Premium, will not carry on business in accordance with the law and with integrity and honesty?
 - Have Premium and Mr. Shah violated conditions of their registration?
 - If the answer to any of the above is “yes”, what is the appropriate disposition?

C. DECISION

- [8] I find that the past conduct of Mr. Shah and Mr. Amirjani does afford reasonable grounds for belief that they, and Premium, will not carry on business in accordance with the law and with integrity and honesty.
- [9] Premium and Mr. Shah violated a condition of their registration by failing to comply with regulatory disclosure requirements in several vehicle sale transactions.
- [10] I have decided to direct the Registrar to suspend the registration of Mr. Amirjani for 90 days and suspend the registrations of Premium and Mr. Shah for 120 days.

D. THE MOTOR VEHICLE DEALERS ACT, 2002

- [11] The Act and its regulations attempt to regulate the business of dealing in motor vehicles in Ontario to ensure that the public receives honest, ethical and competent services from motor vehicle dealers and salespersons.
- [12] To achieve that, the Act prohibits anyone from acting as a dealer or salesperson unless that person holds a registration granted under the Act by the Registrar.
- [13] Registration is only granted to applicants who successfully complete qualifying training and have demonstrated their suitability to do business with the public. (Act, s.5.1).
- [14] Once registration is granted, the Registrar may suspend, revoke, or attach conditions to a registration in circumstances specified in the Act. The Act specifies several such circumstances and in this case the Registrar relies upon three of them.
- [15] In the case of an individual registrant (Mr. Shah and Mr. Amirjani), the Act provides that a registration may be revoked if,
 - “the past conduct of the [registrant] affords reasonable grounds for belief that the [the registrant] will not carry on business in accordance with the law and with integrity and honesty.” (Act, s.8(1), s. 6(1)(a)(ii))
- [16] In the case of a corporate registrant (Premium), the Act provides that registration may be revoked if,
 - “... the past conduct of its officers or directors ... affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty...” (Act, s.8(1), s. 6(1)(d)(iii))
- [17] In the case of any registrant, the Act provides that registration may be revoked if,

“[the registrant] is in breach of a condition of registration.” (Act, s.8(1), s.6(1)(f))

[18] The Act gives the Registrar the power to propose to revoke a registration. In this case, the appellants have exercised their right under the Act to appeal the Registrar’s proposal to this Tribunal. The Act then requires the Tribunal to hold a hearing. Following a hearing, the Tribunal may direct the Registrar to carry out the proposal, not to carry out the proposal, or substitute its opinion for that of the registrar. In this case, I have substituted my opinion for that of the Registrar.

[19] Ontario Regulation 333/08 made under the Act (“Regulation”), is a general regulation that deals with, among other things, dealer and salesperson obligations with respect to contracts to sell used motor vehicles. Some of those requirements are particularly relevant to the transactions in issue in this case.

[20] Section 40 of the Regulation requires that a dealer shall ensure:

- there is a **separate contract for each motor vehicle sold** (s. 40(7)),
- the **contract is signed** by the parties (s. 40(9)(a)),
- the **purchaser receives a copy immediately after signing it** (s.40(9)(c)).

[21] Section 40(2) of the Regulation requires dealers to ensure that any contract they enter into to sell a used motor vehicle “...**includes in a clear, comprehensible and prominent manner**...” many listed information items, the following which are relevant in this case:

- An **itemised list of the charges** that the purchaser is required to pay under the contract to conclude the transaction (Regulation, s. 39(2).14)
- The **total sale price under the contract**, including the charges described in paragraph 14 (Regulation, s. 39(2).16)
- The **balance that the purchaser will be required to pay** under the contract. (Regulation, s. 39(2).18)
- If there has been **structural damage** to the motor vehicle or any repairs, replacements or alterations to the structure of the vehicle, a statement to that effect (Regulation, s. 42.10)
- If the **total cost of repairs to fix damage caused to the motor vehicle by an incident exceed \$3,000**, a statement to that effect and if the registered motor vehicle dealer knows the total costs, a statement of the total costs (Regulation, s. 42.19).

- If a permit for the motor vehicle was **previously registered in a jurisdiction other than Ontario**, a statement to that effect and a statement of which jurisdictions (Regulation, s. 42.22).

E. ALLEGATIONS IN THE NOTICE OF PROPOSAL

[22] The Notice of Proposal (“NOP”), alleges that the past conduct of all three appellants (in the case of Premium, the past conduct of Mr. Shah, its director/officer), affords reasonable grounds for belief that the appellants will not carry on business in accordance with law and with integrity and honesty.

[23] It relies on five categories of conduct:

- **Retaining an unregistered salesperson.** The NOP relies on a 2006 conviction under the Act’s predecessor legislation for retaining an unregistered salesperson, as well as the results of a September, 2015 inspection in which the inspector concluded that Premium had used Hooman Shaeghi as an unregistered salesperson. If proven, that would be a violation of both the Act and the conditions of registration of Premium and Mr. Shah.
- **Using identities or accounts of other people to purchase vehicles -** The NOP alleges that the during the September, 2015 inspection the inspector concluded that Mr. Shaeghi purchased vehicles in his own name on behalf of Premium. If proven, that would also be a violation of both the Act and the conditions of registration of Premium and Mr. Shah.
- **Falsifying and furnishing false documents** in connection with three separate motor vehicle sales transactions in which Mr. Amirjani acted as the salesperson.
- **Non-disclosure to purchasers** of required information in 11 vehicle sales transactions. Information alleged to have been withheld included accident damage in excess of \$3,000, prior out of Province registration, and structural damage or repairs.
- **Unfair Business Practices -** The Registrar relies upon a 2008 provincial offences conviction for committing an unfair business practice under the *Consumer Protection Act*.¹

¹ The NOP also referred to a 2016 transaction in which it is alleged that Mr. Amirjani misled a customer into purchasing an extended warranty with the false assurance that the warranty could be readily cancelled. However, that allegation was withdrawn by the Registrar.

- [24] The Registrar asserts that the above conduct affords reasonable grounds to believe that the appellants will not carry on business in accordance with the law and with integrity and honesty.
- [25] The Registrar also states that some of that conduct, if proven, also establishes that Premium and Mr. Shah breached conditions that were placed on their registrations on consent to resolve an earlier notice of proposal to revoke.
- [26] That earlier notice of proposal, issued in May 2012, proposed the revocation of the registrations of Premium and Mr. Shah. They appealed and the appeal was resolved when Premium and Mr. Shah consented to a Tribunal Order (released January 23, 2014) which imposed 12 conditions on each of their registrations. Those conditions have been in place since then and were in place at all material times.
- [27] In the present proposal, the Registrar alleges that Premium and Mr. Shah violated three of those conditions. They are:
- 8. Premium Cars shall not retain the services of a salesperson unless the salesperson is registered under the Act in that capacity. Premium Cars shall ensure that anyone acting as a salesperson on its behalf is registered under the Act as a salesperson.
 - 9. Shahnematollah-Yazde and Premium Cars shall not purchase, sell, trade, title or register motor vehicles at auctions or through any other means using the accounts or identities of other motor vehicle dealers or persons.
 - 11. Shahnematollah-Yazde and Premium Cars shall, at all times, comply with the Act and Ontario Regulation 333/08 and 332/08 prescribed under the Act.
- [28] With respect to conditions 8 and 9, the Registrar alleges that Premium and Mr. Shah breached those conditions by retaining Hooman Shaeghi as an unregistered salesperson and allowing him to purchase vehicles in his own name on behalf of Premium.
- [29] Condition 11 requires Premium and Mr. Shah to comply with the Regulations. The Registrar alleges that they breached that condition by failing to adhere to the disclosure requirements in the 11 transactions referred to above.

F. ONUS, STANDARD OF PROOF, CREDIBILITY

- [30] The onus is on the Registrar to prove the facts that establish the allegations.
- [31] The standard of proof required to establish those facts is “a balance of probabilities”. To make a finding of fact, I must be convinced that the evidence establishes that the

fact is more likely than not. That is a lower standard of proof than applies in criminal cases – “proof beyond a reasonable doubt”.

- [32] While the standard of proof is the lower balance of probabilities standard, the evidence to establish that standard must be, “clear, convincing and cogent”². Whether the evidence is sufficiently clear and convincing will depend on the nature of the case and the evidence capable of being adduced.
- [33] In this case, the Registrar presented detailed evidence of several transactions through the testimony of customers who purchased vehicles from Premium. Responding testimony was provided by the appellants. In many cases, their evidence as to what occurred conflicted in ways that could not be reconciled, and which required an assessment of credibility.
- [34] As stated by the Divisional Court, credibility assessments have two constituent elements: honesty and reliability. Honesty relates to willingness of the witness to tell the truth as he/she believes it. Reliability relates to ability of the witness to observe, recall and recount the events upon which testimony is given³.
- [35] Many factors may be relevant to a determination of credibility including internal consistency, independent evidence confirming one account over another, consistency with documents documenting the transaction created at the time, consistency with accepted practice and legal requirements, and whether the testimony makes sense – is it in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular context?⁴
- [36] Those principles are applicable in this case and were considered in order to reach the findings described below.

G. OBLIGATION TO DISCLOSE, VEHICLE HISTORY REPORTS

- [37] In 11 of the transactions at issue, the Registrar alleges that Mr. Shah and Premium contravened s. 42(19) and s. 42(22) of the Regulation and their conditions of registration by failing to ensure that purchasers were provided with written disclosure in the retail bill of sale of previous accident damage in excess of \$3000, structural damage/repairs, or previous out of Province registration.
- [38] Those are all information items that the Regulation requires a dealer must ensure are disclosed in a retail contract to sell a motor vehicle.⁵

² F.H. v. McDougall [2008] 3 S.C.R. 41 (paragraph 46)

³ Karkanis v. College of Physicians and Surgeons of Ontario [2014] O.J. No 5797 (paragraph 52)

⁴ Santaguida v. Enroute Imports Inc. [2014] O.J. No. 1577 (paragraph 24)

⁵ Premium’s contract to sell vehicles to its retail customers is entitled “Used Vehicle Bill of Sale”. References throughout this decision to the “bill of sale” refer to the contract between Premium and a customer to sell and purchase a vehicle.

[39] In my view the Regulation places a positive obligation on dealers to disclose that information to purchasers. The obligation to disclose is not limited to just information in the dealer's possession. Dealers are required to inform themselves of the relevant facts and disclose them.

[40] Ms. Laura Halbert, OMVIC's Deputy Registrar and Director of Compliance, testified that there are various sources of information that dealers use to get the information they are required to disclose, including:

- **Visual and mechanical inspection** of the vehicle.
- **Written disclosure by the previous owner or seller (including information announced at auctions).** Customers who trade-in vehicles are routinely asked to complete a written disclosure form and answer questions concerning the vehicle's condition and history.
- **Vehicle history reports.** During the hearing it became apparent that at the relevant times there were at least two well known and widely used reporting services that provide such information – Carfax and Carproof. Both companies provided written reports accessible on-line to anyone for a fee. They both detailed vehicle history, including changes in ownership, repairs and service, accidents, insurance claims, structural damage, previous registration in other jurisdictions etc.

However, the information provided by the two reporting companies is not identical and in several of the transactions at issue structural or accident damage was reported in Carproof reports but not in Carfax reports.

[41] In some of the transactions, Premium argued that although a vehicle history report mentioned structural damage/repair, no damage was later detected by mechanical inspection. Premium essentially argued that the Regulation requires reporting of structural damage/repair and since no actual structural damage was detected in those cases, the obligation to disclose was not triggered.

[42] I disagree. Given the purpose of the regulatory disclosure requirements and the reality of how the reports are used and their importance to the industry, I conclude that Premium was required by Regulation to disclose relevant information contained in either a Carproof or a Carfax report. The fact that no damage was detected later by mechanical inspection is immaterial.

[43] The purpose of the disclosure requirements is to ensure that consumers are given, in writing, certain key information relevant to deciding whether to purchase the vehicle and what price to pay. That information is required to be set out in writing in the

contract of sale to ensure that the purchaser is fully aware of it before signing the contract and committing to a purchase.

- [44] Based on the transactions examined in this case, at the relevant times Carfax and Carproof reports were widely used and routinely relied upon by dealers and the public. References to accidents or structural damage in the reports were taken at face value by dealers and the public and had a significant negative impact on the market value of a vehicle. Many customer witnesses in these proceedings testified that dealers either became uninterested in buying their car, or only at a significantly reduced price once they learned that either a Carfax or a Carproof report described accident or structural damage.
- [45] The protections afforded to consumers by the regulatory disclosure requirements would be considerably weakened if a dealer could withhold reported structural or accident damage on the grounds that the damage was not detected by a mechanical inspection conducted after the sale.
- [46] In summary, based on the evidence presented, any accident or structural damage described in a vehicle history report will be taken at face value by dealers and prospective purchasers and will negatively affect the vehicle's market value, both at purchase and at trade-in. Thus, any such information in a vehicle history must, by Regulation, be disclosed to purchasers of used vehicles. A failure by a dealer or salesperson to disclose that information is not excused by a subsequent inspection that detected no damage.

H. FINDINGS

(a) Retaining an Unregistered Salesperson (NOP paragraphs 7-8)

- [47] The Registrar alleges that Premium pled guilty to retaining an unlicensed salesperson in April 2006. According to the Registrar, in 2015, Premium and Mr. Shah again retained the services of an unregistered salesperson - Hooman Shaeghi - which, if proven, would be a contravention of both s.4(3) of the Act and condition 8 of their registrations.
- [48] I conclude that the evidence is not sufficiently clear and convincing to establish on a balance of probabilities that Premium and/or Mr. Shah retained the services of Mr. Shaeghi as an unregistered salesperson.
- [49] In or around 2015, Mr. Shaeghi operated his own registered dealership – Caspian Auto. However, he was not registered as a salesperson with Premium. The Act provides that a salesperson shall not trade on behalf of a dealer unless registered to

that dealer⁶. Thus, with respect to Premium, Mr. Shaeghi was unregistered salesperson.

[50] The appellants do not dispute the 2006 conviction but state that in 2015 Mr. Shaeghi was retained and performed the services of a driver, not as a salesperson, and therefore neither the Act nor the condition was contravened.

[51] The Act defines a “salesperson” as an individual employed by the dealer to trade in motor vehicles on the dealer’s behalf. “Trade” is defined in the Act as:

“...buying, selling, leasing, advertising or exchanging an interest in a motor vehicle or negotiating or inducing or attempting to induce the buying, selling, leasing or exchanging of an interest in a motor vehicle...”⁷

[52] Therefore, to prove that Mr. Shaeghi was retained by Premium to act as an unlicensed salesperson, the Registrar must establish that Mr. Shaeghi engaged in the trade of motor vehicles – i.e. he bought, sold, or negotiated the purchase or sale or induced or attempted to induce the purchase or sale of motor vehicles on Premium’s behalf.

[53] In my view, the evidence does not establish that. The evidence in support of this allegation is derived from an OMVIC inspection of Premium conducted in September, 2015. I was informed that the inspector who conducted the inspection is no longer employed at OMVIC and that although an attempt was made to summon her as a witness, she would not be testifying. The Registrar introduced the inspection report and supporting documents through the testimony of Ms. Halbert.

[54] Ms. Halbert highlighted the inspector’s findings and supporting information which mainly consists of two vehicle purchases by Premium where Mr. Shaeghi signed a handwritten bill of sale on behalf of Premium.

[55] According to Mr. Shaeghi and Mr. Shah, during the relevant time Premium retained Mr. Shaeghi as a driver to pick up vehicles purchased by Premium and deliver them to their destination, presumably Premium’s lot for re-sale in most cases.

[56] Mr. Shaeghi testified that in the two cases where he signed the bill of sale on behalf of Premium, when he arrived to pick up the vehicles the seller insisted that he sign a handwritten bill of sale before releasing the vehicle and he did so. According to Mr. Shaeghi, he signed for Premium because without his signature the seller would not release the vehicle to him. However, he did not purchase, arrange for, or negotiate the purchase of the vehicles.

⁶ Act s.4(5)

⁷ Act, s. 1

- [57] Mr. Shah confirmed Mr. Shaeghi's testimony. He stated that in the two cases where Mr. Shaeghi signed the bill of sale, he (Mr. Shah), bought the vehicles and negotiated their purchase price. Deposits were normally paid by e-transfer from Premium and the balance was paid by Premium using a bank draft.
- [58] Except for signing the bills of sale on behalf of Premium and picking up the vehicles, there is no evidence that Mr. Shaeghi engaged in the salesperson activity that normally accompanies a purchase. For example, there is no evidence that Mr. Shaeghi located and identified the vehicles, contacted the sellers, had any communication with them before arriving to pick up the vehicle, discussed the condition of the vehicles, negotiated the purchase price or terms of the purchase such as the amount of the deposit or the method by which the balance would be paid.
- [59] The fact that Mr. Shaeghi signed two bills of sale on behalf of Premium is suggestive but insufficient to establish on a balance of probabilities that Mr. Shaeghi traded in motor vehicles on Premium's behalf.

(b) Using Identities or Accounts of Other People to Purchase Vehicles (NOP paragraph 9)

- [60] The Registrar alleges that Mr. Shaeghi bought vehicles in his own name on behalf of Premium. If proven that would be a contravention of condition 9 of the registrations of both Premium and Mr. Shah.
- [61] Based on the evidence presented, I cannot conclude that Premium and Mr. Shah have contravened that condition.
- [62] Again, the evidence in support of this allegation is derived from the 2015 inspection report and testimony with respect to it was given by Ms. Halbert. The evidence essentially consists of copies of 7 cheques detailing payments of varying amounts from Premium to Caspian Auto, Mr. Shaeghi's dealership.
- [63] The cheques were taken from Premium's files. All but one of the cheques contained a short description of the purpose of the payment in the "re" line including "commission including GST", "service", "refund e transfer", "refund loan", "purchase vehicles". It was the Registrar's position that these cheques represented Premium's payments to Mr. Shaeghi for purchasing vehicles on behalf of Premium.
- [64] According to Mr. Shah and Mr. Shaeghi, the one cheque with no notation in the re line was for \$18,973 and was in respect of a purchase of a vehicle by Premium from Caspian Auto.
- [65] According to Mr. Shah and Mr. Shaeghi, four of the cheques represented payments for Mr. Shaeghi's services as a driver. Mr. Shah testified that he paid Mr. Shaeghi

\$300 per vehicle plus gas to pick up vehicles bought by Premium. During Premium's most busy periods, Mr. Shaeghi was picking up approximately 80 vehicles per month. The amounts involved are consistent with that level of remuneration.

- [66] According to Mr. Shah and Mr. Shaeghi, the remaining two cheques were intended to reimburse Mr. Shaeghi for e-transfers of deposits to purchase cars paid through Mr. Shaeghi's account on occasions when Mr. Shah's weekly e-transfer limit had been reached. According to Mr. Shaeghi, Mr. Shah contacted potential sellers, asked questions about the vehicles, determined whether to purchase the vehicle and arrived at a purchase price. Mr. Shah would send a deposit by e-transfer but sometimes asked Mr. Shaeghi to transfer the funds if Mr. Shah had reached his weekly e-transfer limit. In those cases, Premium later reimbursed Mr. Shaeghi as reflected in two of the cheques.
- [67] The Registrar asks that I conclude that the 7 cheques were intended to pay Mr. Shaeghi for vehicles bought in his own name on behalf of Premium. However, both Mr. Shaeghi and Mr. Shah provided explanations for those payments that were plausible and essentially uncontradicted. By themselves the cheques are equivocal and do not amount to clear, convincing evidence that establishes on a balance of probabilities that Premium bought vehicles using Mr. Shaeghi's identity or account.

(c) Falsifying and Furnishing False Documents

(i) Purchase of 2012 Acura MDX by SR (NOP paragraphs 10-12).

- [68] SR, a consumer, purchased a 2012 Acura MDX from Premium on or about February 13, 2016. Mr. Amirjani was the salesperson.
- [69] The Registrar alleges Mr. Amirjani falsified the bill of sale by adding a financing fee and the price of a warranty to the total purchase price in the bill of sale without SR's knowledge or consent. Based on the evidence presented, I conclude that this allegation has been proven.
- [70] According to SR, on February 13, 2016 he took the Acura for a test drive and decided to purchase it. A deal was struck that day and SR signed and initialled a bill of sale dated February 13, 2016.
- [71] According to the bill of sale, the total balance due after the trade-in allowance and deposit was \$10,080.44. The bill of sale does not include a financing fee or charges for a warranty. According to SR, this was the only bill of sale that was ever provided to him.
- [72] It was agreed that SR would pick up the Acura and pay the balance on February 20, 2016 after touch-up work on the vehicle was completed.

- [73] According to SR, when he returned to the dealership that day he had decided to finance the balance of the purchase price through Premium. Mr. Amirjani recommended extended warranty coverage at an additional cost that could be added to the amount being financed.
- [74] According to SR, Mr. Amirjani was insistent about selling the warranty. He offered an enhanced warranty package at a reduced cost, the precise cost of which would have to be determined by the warranty company based on the model, year and condition of the car. Mr. Amirjani told him that in order to find out the precise cost of the coverage, he (Mr. Amirjani) would have to submit SR's application to the warranty company. However, if financed, it would amount to about \$12/month.
- [75] SR was adamant in his testimony that he did not believe in warranty coverage, had never bought it in the past, and did not want it in this case. However, he signed a document entitled "Extended Limited Warranty Application" thinking that once the cost was determined, Mr. Amirjani would get back to him to confirm his intention to purchase. He would decline at that point because, in the face of Mr. Amirjani's insistence, it would be easier to decline over the phone.
- [76] In fact, although the document is stated to be a warranty application, it also states on its face that it is an offer by the purchaser to buy warranty coverage and requires only acceptance by the warranty company for the purchase to become binding. In other words, once the "application" is submitted to and accepted by the warranty company, the applicant has purchased the coverage.
- [77] According to SR, Mr. Amirjani did not make that clear to him when he signed the application. He left Premium that day with the impression that he had applied for, but not purchased, warranty coverage.
- [78] According to SR, the only copy of the bill of sale which he signed and initialed was the one given to him by Premium on his first visit. He did not sign any subsequent or modified bill of sale in which he agreed to an additional financing fee or warranty charge. He was therefore unpleasantly surprised when, a couple of weeks later, he received correspondence from the bank that financed his car loan indicating that the amount he borrowed to purchase the Acura was \$12,343.16 and not \$10,088.44 as indicated on his bill of sale.
- [79] SR eventually received a copy of the bill of sale that Premium submitted to the bank and that second bill of sale was made an exhibit. It appears to be identical to SR's original bill of sale except that certain numbers have been changed to reflect the addition of the extended warranty cost (\$1500 plus tax), a financing fee of \$450, lien registration fee (\$108.85) and a plate transfer fee of \$50. SR's initials do not appear beside any of the changed numbers.

- [80] The Registrar states Mr. Amirjani falsified the first bill of sale by altering it to add the warranty purchase cost and the financing fee to which SR was unaware and did not consent.
- [81] Mr. Amirjani testified that he met with SR twice; once on February 13, 2016 when he test-drove the vehicle and decided to purchase it, and again on February 20, 2016 when the transaction was finalized and most of the paperwork was generated and signed.
- [82] According to Mr. Amirjani, on February 13, he and SR struck a deal and he completed the original bill of sale based on the purchase price of the Acura and the value of SR's trade-in. At that point SR did not want to purchase a warranty and had not yet decided to finance the vehicle through Premium so those charges were not included in the original bill of sale.
- [83] Mr. Amirjani testified that when SR returned on February 20 to finalize the deal, he decided to finance the purchase through Premium and purchase a warranty. The price of the warranty was discussed and agreed upon.
- [84] According to Mr. Amirjani, the financing documents were generated by Rose Gallardo, Premium's administrative staff person⁸. According to both Mr. Amirjani and Ms. Gallardo, rather than generating a new bill of sale, the numbers on the original bill of sale were whited out and changed to reflect the new deal - mainly the addition of Premium's financing fee and the cost of the warranty.
- [85] According to both Mr. Amirjani and Ms. Gallardo, the bill of sale was modified in SR's presence and with his knowledge and consent. SR reviewed the financing documents which reflected the new charges and signed them indicating his agreement. Mr. Amirjani testified that a copy of the modified bill of sale was provided to SR on the same day he picked up the vehicle.

Finding

- [86] Having heard and observed SR's testimony in chief and in cross-examination, I conclude on a balance of probabilities that the bill of sale created by Mr. Amirjani which includes the cost of the warranty and the financing fee was false in that SR did not consent to the purchase of the warranty or the financing fee.
- [87] SR's testimony struck me as genuine. He presented as a person who likely did not carefully review the paperwork that was prepared and signed during his second visit and his understanding of the transaction relied heavily on what he was told by Mr. Amirjani.

⁸ Those documents included a conditional sales contract for consumer purchase, application for credit and authorisation for pre-authorized debit plan.

- [88] Premium argues that SR's credibility is suspect because although his trade-in vehicle had been accident damaged, SR ticked off a box in the disclosure form that indicated otherwise. SR testified that the accident was brought to his attention by Mr. Amirjani after he obtained a vehicle history report and Mr. Amirjani himself ticked off the boxes on the disclosure form after learning of the accident. In these circumstances I am not convinced that SR knowingly attempted to mislead Premium or that it reflects negatively on SR's credibility.
- [89] In my view, it is more likely than not that SR sincerely believed that he signed an application only for warranty coverage and did not understand that the document was a binding commitment to purchase. Similarly, I believe that SR was genuinely unaware that by financing the vehicle through Premium it would charge him a \$450 fee.
- [90] The appellants point out that the cost of the warranty is reflected in the financing documents which SR signed during his second visit and the financing fee is disclosed in the credit application form signed by SR on his first visit.
- [91] That is true but SR testified that Mr. Amirjani did not bring the financing fee specifically to his attention and he did not read the transaction documents carefully - he understood the application for warranty coverage was just an application and not a binding commitment.
- [92] SR instead relied upon the bill of sale to set out the relevant charges. The only bill of sale SR signed and initialed was the original one which he signed on his first visit to Premium. The modified bill of sale produced by Premium lacks SR's initials indicating his agreement to the modifications.
- [93] SR's reliance on the bill of sale to set out all relevant charges is consistent with the Regulation. Under the Regulation, it is the dealer's obligation to ensure that any contract to sell a used motor vehicle is signed by the parties, given to the purchaser, and includes, in a clear, comprehensible and prominent manner,
- an itemized list of the charges that the purchaser is required to pay...
 - the total sale price under the contract...
 - the balance that the purchaser will have to pay under the contract.
- [94] Mr. Amirjani testified that his practice was to get customers to initial changes on the bill of sale. That is also a regulatory requirement – contracts are required to be signed by the parties and, although the Regulation does not explicitly address modifications after signing, industry practice is that the parties initial modifications to signify agreement.

- [95] If SR agreed to the financing fee and the warranty charge, the Regulation required them to be itemized on the bill of sale and initialed by the parties or a new contract that clearly itemized all of the charges would need to have been drawn up and re-signed by the parties. Either method would have been sufficient to meet the Regulation's requirement. SR's initials are absent from Premium's version of the bill of sale which supports his testimony that he did not understand or agree to the additional warranty cost or financing fee.
- [96] It is possible that there was a genuine misunderstanding - Mr. Amirjani may have believed that SR understood and consented to the additional charges while SR believed there were no additional charges. However, in my view, if Mr. Amirjani did not actually know that SR did not consent to the charges he ought to have known.
- [97] The Regulation requires the dealer to ensure that the bill of sale contains an itemized list of charges, the total sale price, and the balance the purchaser will have to pay. If Mr. Amirjani complied with the Regulation, the additional charges would have been itemized on the bill of sale resulting in a new increased total balance. Those modifications would have been initialed by SR thus bringing them directly to his attention. If there was a genuine misunderstanding in this case, it appears to have been caused by Mr. Amirjani's failure to comply with the Regulation.
- [98] I therefore conclude that Premium's revised bill of sale was false in the sense that Mr. Amirjani added a financing fee and a warranty charge to the bill of sale without SR's knowledge or consent.

(ii) Purchase of 2013 VW Tiguan by AI and LI - NOP, paragraphs 13-15.

- [99] In January 2015, AI and his spouse LI purchased a 2012 VW Tiguan from Premium. Mr. Amirjani was the salesperson.
- [100] The Registrar alleges that:
- The bill of sale provided by Mr. Amirjani to AI failed to disclose that the vehicle was involved in an accident that caused damages worth \$13,750. That was later revealed when AI attempted to trade it in at another dealership.
 - In order to cover-up that non-disclosure, Mr. Shah provided to AI a copy of the original bill of sale that had been falsified by adding to it the value of the accident damage.

[101] Based on the available evidence I conclude that:

- Mr. Amirjani failed to disclose the value of accident damage in writing on the bill of sale as required by the Regulation,
- Mr. Amirjani amended Premium's copy of the bill of sale to falsely indicate that the value of the accident damage had been included on the bill of sale.

[102] The Registrar relied upon the testimony of AI. LI did not testify.

[103] According to AI, he and his spouse were interested in buying a used VW Tiguan and they found a 2012 model for sale at Premium. They went to Premium on January 25, 2015, took the vehicle for a test drive, and decided to buy it.

[104] According to AI, Mr. Amirjani provided the couple with a Carfax report detailing the vehicle's history and which mentions previous damage. AI kept his copy of the report along with the original bill of sale in a file he kept at home.

[105] The report indicates that that the vehicle was in a previous accident. It describes the damage as "moderate" but doesn't mention any monetary value of the accident repairs. According to AI, based on the Carfax report they concluded that the vehicle had not been seriously damaged, and they agreed to purchase the car for \$20,988 plus licencing and registration fees.

[106] The purchase was being made by both AI and LI, and Mr. Amirjani provided them with a bill of sale which listed both as purchasers and which they both signed and initialed. In the comments section Mr. Amirjani disclosed the accident referenced in the Carfax report. He wrote:

safety & E-tested. Accident reported on 11/27/14 front and rear

[107] The bill of sale is dated January 25, 2016 and the couple picked up the vehicle about a week later. In his testimony, AI provided no detail about that second visit except to say that both he and his wife went together to pick up the vehicle. In cross-examination he testified that he could not recall whether his wife went inside the dealership while he stayed outside to check over the car.

[108] AI testified that the couple later decided to purchase a different vehicle from another dealership and use the VW as a trade-in.

[109] That dealership initially told them that the trade-in value of their vehicle would be \$17,500. However, after the dealership obtained a Carproof report which revealed the value of previous accident damages as \$13,962, the dealership advised that the trade-in value would be only \$11,000.

[110] In this case the information contained in the Carfax and Carproof reports for the same vehicle was different - the Carfax report described the vehicle damage as "moderate" but the Carproof report stated that the accident caused damage worth \$13,962.

[111] Al testified that he was surprised that the true value of the accident damage was not disclosed and, after consulting OMVIC, he wrote to Premium to complain and asked for compensation.

[112] Mr. Shah replied in a letter dated December 27, 2016. He stated that the Carproof report was disclosed and signed by the purchaser and the specific amount of the damage was included on the bill of sale. Mr. Shah included with his letter:

- a copy of a Carproof report upon which LI's initials (but not Al's) appear on every page,
- a copy of the bill of sale identical to the original bill of sale but to which "\$13,750" has been added to the comments section. That modification was not initialed by either purchaser.

[113] Al testified that he kept all of the original documents relating to the transaction including the Carfax report given to him during his first visit and the bill of sale provided to him by Mr. Amirjani. A copy of that bill of sale was made an exhibit. He testified that:

- the \$13,750 damage to the vehicle was not revealed to him and his spouse when he purchased the vehicle. If they had been made aware of it they certainly would not have bought the vehicle.
- he had never seen the Carproof report purportedly bearing his wife's initials until it was sent to him by Mr. Shah. He stated that he and his wife bought the car together, signed all the transaction documents together, and his wife did not initial the report.
- The bill of sale sent to him by Mr. Shah does not correspond to the bill of sale given to him and his wife when they purchased the vehicle. It was altered by the addition of the damage value.

[114] Based on AI's testimony, the Registrar alleges that Premium failed to disclose on the bill of sale the value of the accident damage as required and Mr. Shah later produced a falsified version of the bill of sale to which the accident value had been added.

[115] In response, Mr. Amirjani testified that when the couple first came to view the vehicle and take it for a test drive, Premium's paper file containing the Carproof report could not be located. Both Mr. Shah and Mr. Amirjani testified that at that point there were several salespeople working at Premium and sometimes files would be taken but not immediately returned. According to Mr. Amirjani, he therefore printed a copy of a Carfax report to show to the couple. Mr. Amirjani testified that the couple signed the bill of sale, initialed the Carfax report on each page and he (Mr. Amirjani) summarized in the comments section essentially all of damage information contained in the Carfax report.

[116] The couple returned a week later to pick up the vehicle after touch-up work was done. According to Mr. Amirjani, by then the paper file with the Carproof report re-surfaced and upon reviewing it he realized that it contained the value of the damage.

[117] Mr. Amirjani stated that LI came into the dealership while AI stayed outside to check over the vehicle. He testified that he explained to LI that he now had a Carproof report that indicated the damage value and he circled that number on the report.

[118] He testified that LI took the Carproof report outside and showed it to AI. He stated that AI saw the Carproof report and discussed it with LI while they looked over the car again. According to Mr. Amirjani, he spoke to both AI and LI outside about the damage and they were both aware of the Carproof report and the amount of the damage reported. After looking over the car, and seeing no visible damage, they decided to proceed with the transaction.

[119] According to Mr. Amirjani, LI went back inside the dealership and initialed every page of the Carproof report and he added the value of the damage to Premium's copy of the bill of sale in LI's presence. The appellants state that the accident value was disclosed, LI initialed the report, and the bill of sale was modified in LI's presence to add the accident value.

Finding

[120] I conclude that Mr. Amirjani failed to disclose on the bill of sale the value of the accident damage to the purchasers as required under the Regulation and that Premium's copy of the bill of sale was later modified to add the accident value without the purchasers' knowledge.

- [121] According to the appellants, since LI did not testify and AI was not present when (according to Mr. Amirjani), LI initialed the report and the bill of sale was modified, Mr. Amirjani's sworn testimony that LI knew of the damage and agreed to the alteration of the bill of sale was uncontradicted and should be accepted.
- [122] Clearly there is no direct evidence from LI, and I place no reliance on AI's testimony that his wife did not initial the Carproof report. I instead reach my conclusion based on the testimony of AI and the Mr. Amirjani.
- [123] I note that AI provided his testimony in a clear, unvarnished manner. I detected no embellishment and no animosity toward the appellants. His testimony conveyed an air of sincerity and his account contained no internal inconsistency.
- [124] On the other hand, Mr. Amirjani's version of what occurred is inconsistent with his own practice generally, his practice in this transaction, and with the requirements set out in the Regulation.
- [125] With respect to Mr. Amirjani's practice generally, he testified that his practice is to have purchasers initial when changes are made to transaction documents. Yet, neither LI nor AI's initials appear on the bill of sale to signify they knew of the damage amount. In my view, if that very significant information was actually disclosed as Mr. Amirjani described, he would have, consistent with his general practice, obtained the initials of both purchasers to acknowledge it. The absence of either purchaser's initials on the bill of sale suggests that the damage amount was added to Premium's copy of the bill of sale without their knowledge.
- [126] With respect to Mr. Amirjani's practice in this transaction, I note that AI and LI were both purchasers and Mr. Amirjani obtained both of their signatures on the bill of sale, both initialed the Carfax report, and both initialed the comments section of the bill of sale detailing the damage.
- [127] However, according to Mr. Amirjani, he obtained the initials of only LI on the Carproof report and did not obtain the initials of either purchaser on the bill of sale to signify their agreement to the addition of the accident value.
- [128] In my view, if the Carproof report and accident value were disclosed to both purchasers as claimed, Mr. Amirjani would have, consistent with his earlier approach in this transaction, obtained the initials of both purchasers on the report and the bill of sale. The absence of AI's initials on the report or either purchaser's initials the bill of sale is consistent with AI's version of events and suggests that the accident value was not disclosed, and instead was added later to Premium's copy of the bill of sale.

[129] Thirdly, Mr. Amirjani was required by Regulation to provide the purchasers with a written bill of sale. That requirement implies that if the bill of sale is modified, especially to include information required to be disclosed by regulation, a copy of that modified document must be provided to the purchasers. AI testified that he kept a file with all of the transaction documents he obtained, including the original bill of sale. His evidence, which I accept, was that he was unaware of and had never seen Premium's modified version of the bill of sale until it was sent to him by Mr. Shah in response to his complaint. In my view, if Mr. Amirjani's account was accurate, not only would the modified bill of sale be initialed by both purchasers, but the purchasers would have been provided with a copy of the modified document.

[130] I therefore conclude on a balance of probabilities that:

- Mr. Amirjani failed to disclose the value of accident damage in writing on the bill of sale as required by the Regulation,
- Mr. Amirjani amended Premium's copy of the bill of sale to falsely indicate that the value of the accident damage had been included on the bill of sale.

(iii) Purchase of 2013 Ford F150 by JD (NOP, paragraphs 16-18)

[131] JD purchased a 2013 Ford F150 Raptor from Premium on February 23, 2016. Mr. Amirjani was the salesperson. It is undisputed that the roof of the vehicle was damaged when it was purchased. The Registrar alleges that:

- Mr. Amirjani failed to make JD aware of the damage. He did not disclose it verbally or describe it in writing on the bill of sale.
- When JD became aware of the damage and complained, Premium claimed that the damage was disclosed and provided a modified version of the bill of sale to which a description of the damage had been added.

[132] Based on the evidence provided, I cannot conclude on a balance of probabilities that these allegations have been proven.

[133] According to JD, he became interested in purchasing the F150 when he saw it on Premium's lot, but it was displayed on a ramp which made it impossible to clearly see the roof of the cab.

[134] He testified that he test-drove the vehicle and, although he thoroughly looked it over, he did not see the roof damage because it was hidden by snow. According to JD, Mr. Amirjani did not tell him the roof was damaged and he was unaware of it when he decided to buy the vehicle.

[135] A bill of sale was drawn up which JD remembers reading and signing. According to him, roof damage was not disclosed on it. He financed part of the purchase price through Premium and testified that although he was given copies of the financing documents, he was not given a copy of the bill of sale. He was told by Mr. Amirjani that the bill of sale would be sent to him by mail.

[136] Within a few days of taking possession of the vehicle, JD saw the damage. He got two estimates of the cost of repair (between \$4,100 and \$4,200) and contacted Mr. Amirjani. Although discussion took place about repairing the vehicle, ultimately no resolution was reached.

[137] JD contacted OMVIC and sent a written letter of complaint to Premium. Mr. Shah responded in a letter dated February 29, 2016. Mr. Shah stated that Premium would not accept responsibility for the damage because JD was aware of it when he bought the vehicle and it was disclosed on the bill of sale. Mr. Shah included Premium's copy of the bill of sale which contains a handwritten notation in the comments section that refers to roof damage. The bill of sale is signed by JD and appears to have his initials beside the comments section.

[138] The Registrar's theory is that the vehicle was displayed on Premium's lot on a ramp in such a way that the damage was obscured and was sold in February when snow further hid the damage. Since the damage would become obvious eventually, a bill of sale was purposefully not provided to JD so that a description of the damage could be added later to respond to the inevitable complaint.

Finding

[139] The onus is on the Registrar to prove the allegations on a balance of probabilities based on clear and convincing evidence. In this case that onus has not been met.

[140] Unlike the previous two transactions where falsification of the bill of sale is alleged, there is no earlier version of the bill of sale to which the questionable version can be compared. Mr. Amirjani states that he disclosed the damage on the bill of sale and that is consistent with both his regulatory obligation and Premium's copy of the bill of sale introduced into evidence. Without an original bill of sale that lacks reference to the roof damage, I am unable to conclude that the roof damage was not disclosed or that Premium's version was falsified.

[141] The Registrar argues that there is no original bill of sale to which Premium's version can be compared because that bill of sale was intentionally not provided to JD so that it could later be falsified.

[142] That strikes me as speculative and inconsistent with Premium's and Mr. Amirjani's practice (at least as revealed in the several other transactions examined in these proceedings), to provide purchasers with a bill of sale at the time of the transaction.

[143] Based on the available evidence, I am unable to conclude that the allegations raised in this transaction have been proven.

(d) Non-Disclosure to Purchasers (NOP, paragraph 19-21)

[144] The Registrar alleges that in the following 11 transactions, Premium failed to provide written disclosure in the bill of sale as required by the Regulation. The type of information not disclosed varies among the transactions but includes previous accident damage in excess of \$3,000, out of Province registration, and structural damage or repairs.

(i) Purchase of 2010 VW Golf by SM (NOP paragraph 19)

[145] The Registrar alleges that SM purchased a 2010 VW Golf from Premium on July 28, 2015 and that previous damage in excess \$3,000 was not disclosed on the bill of sale contrary to the Regulation.

[146] The essential facts are not in dispute and I find that Premium contravened the Regulation by failing to disclose previous damage to the vehicle that resulted in over \$27,000 of repairs.

[147] SM bought the vehicle from Premium in July, 2015. According to her, the salesperson was Mike Eftehkar. He told her that the previous owner provided a letter saying that the car was in "mint condition" and had no previous accidents. The bill of sale indicates that the selling price was \$22,295 (including an extended warranty) and no previous damage was disclosed.

[148] According to SM, in October 2015 the VW emissions scandal became publicly known and she took the vehicle to a VW dealership to get an estimate of its value. The dealership obtained a Carproof report dated October 19, 2015 which revealed that the vehicle had sustained over \$27,000 worth of damages in two accidents that occurred in 2011 and 2012. The VW dealership estimated that the vehicle for which SM paid \$22,295 was worth \$6,000.

- [149] SM got in touch with Premium and had several discussions with the salesperson and Premium's manager. The salesperson at first tried to persuade her to agree to exchange the VW for another vehicle but she eventually insisted she wanted her money back.
- [150] On October 22, 2015, SM sent an email to the salesperson as well as a registered letter to Premium saying that in order to avoid a Small Claims Court action, she would accept returning the vehicle to Premium in exchange for \$20,000. Mr. Shah agreed and Premium bought back the vehicle for that amount.
- [151] According to Mr. Shah, Premium obtained the vehicle from another customer as a trade-in. That customer completed a vehicle disclosure form and did not report any previous damage. The salesperson relied upon the previous owner's disclosure and failed to obtain a Carfax report that would have revealed the previous damage. According to Mr. Shah, once he received SM's email and suggested resolution, he agreed to SM's request and settled with her by payment of \$20,000.
- [152] The fact that Premium relied upon the previous owner's disclosure is supported by that owner's disclosure form and correspondence between Premium and that owner in which Premium requested compensation. However, while that may be an explanation, the fact is that Premium failed to disclose accident damage in excess of \$3,000 in the bill of sale as required by the Regulation.
- [153] The information was readily available and was apparently noted in both the Carproof and Carfax reports. It would have been little trouble to obtain and review a vehicle history report before selling the vehicle to SM. I note that the vehicle was acquired by Premium in March, 2015 and the previous owner's disclosure form is dated March 27, 2015. Premium owned the vehicle for several months before it was sold and had ample time to obtain a vehicle history report to verify the previous owner's disclosure.
- [154] I acknowledge that Mr. Shah resolved the matter reasonably quickly by re-purchasing the vehicle. However, I also note that the purchaser owned the vehicle for only three months before she sold it back to Premium at a loss of approximately \$2,295. Premium's failure to disclose as required by the Regulation directly resulted in a monetary loss to SM.
- [155] I conclude that information about the significant previous accident damage was readily available and Premium failed to comply with the Regulation by not providing a written statement in the bill of sale disclosing previous accident damage in excess of \$3,000.

(ii) Purchase of 2005 Honda S200 by JP (NOP paragraph 19)

[156] JP purchased a 2005 Honda S200 from Premium on December 20, 2012. Premium's salesperson was Mr. Cong Ta.

[157] The Registrar alleges that Premium failed to disclose in the bill of sale that the vehicle had sustained previous accident damage in excess \$3,000, previous out of Province registration, and previous structural (frame) damage, and Premium thereby breached both the Regulation and the conditions placed on Premium's registration by Tribunal Order released January 23, 2014.

[158] I conclude that in this transaction Premium contravened the Regulation by failing to disclose the required information on the bill of sale. Since this transaction occurred before the condition was placed on Premium's registration, I cannot conclude that its failure to disclose contravened the condition.

[159] JP testified that when he purchased the vehicle, out of Province registration, accident damage in excess of \$3,000, and frame damage were not disclosed to him either verbally or in writing. None of those information items are included on the bill of sale.

[160] According to JP, approximately 18 months ago, he considered selling the vehicle and took it to a Ford dealership for evaluation. The dealership obtained a Carproof report which indicated that the vehicle had been previously registered in the US, had sustained previous structural (frame) damage, and accident damage of \$11,310.

[161] JP contacted Premium. Discussions took place involving Mr. Shah about Premium re-purchasing the vehicle. However, by this time JP had owned and driven the vehicle for several years. Mr. Shah offered to re-purchase the vehicle at a price that he felt reflected its current condition but ultimately, he and JP could not agree on a suitable price. JP still owns the vehicle.

[162] Premium's salesperson in this transaction was Mr. Cong Ta. He testified the Honda S200 is a unique vehicle and people who buy them are often enthusiasts. According to Mr. Ta, JP appeared informed about the S200 and its value.

[163] Mr. Ta stated that he had a Carfax report for the vehicle that described damage due to accidents but contained no mention of frame or structural damage. He said he was transparent with JP and showed him the Carfax report.

[164] According to Mr. Ta, because of the reported accident damage, JP insisted that his mechanic check the car before the deal was finalized. According to JP, the previous accident damage was not brought to his attention and the deal was made subject to a mechanical inspection because when he took the car out for a test drive the "check engine" light turned on and there was a rumbling sound in the back. His mechanic

was not specifically looking for accident or frame damage, and at that point he was unaware of it.

[165] In fact, the bill of sale is more consistent with JP's version of the transaction. It states that the deal is subject to JP's mechanic checking a "rumble" in the back and the "check engine" light. There is no mention of the car being inspected to check for damage due to previous accidents.

[166] Mr. Ta testified that despite the fact that he did not specifically note the accidents in writing on the bill of sale – an error which he acknowledges - they were verbally discussed with JP and he was aware of them. According to Mr. Ta, the previous damage was reflected in the purchase price. JP purchased the vehicle for \$17,212 (before tax, other fees and charges). Mr. Ta testified that without accident damage the car would have sold for \$20,000 to \$25,000.

[167] That was supported by Mr. Shah's testimony. He provided a calculation of valuation with the assistance of the relevant Black Book excerpts. According to those calculations, which I accept, the black book value of the S200 in 2012 with the same mileage as the one purchased by JP would have been \$29,000.

[168] With respect to structural damage, Mr. Ta essentially testified that he relied upon the Carfax report which did not mention frame damage and he disclosed in good faith all the information available to him.

[169] I conclude that Premium contravened the Regulation in this case by failing to include in the bill of sale a written statement that the vehicle was involved in accidents resulting in over \$3000 in repairs, previous registration outside of Ontario, and had been structurally damaged.

[170] I acknowledge that Mr. Ta verbally disclosed accident damage to JD. However, failure to provide the required information in writing is not excused by providing the information verbally. Written, as opposed to verbal disclosure is required by the Regulation for good reasons. Verbal disclosure is easy to claim and greatly vulnerable to misunderstanding and miscommunication. Disclosure in writing is relatively clear, brings the fact of accident damage to the purchaser's attention in black and white, greatly enhances transparency, reduces the chance of misunderstanding and miscommunication, and creates a documentary record that disclosure was made when the purchaser agreed to the sale.

[171] With respect to structural damage and out of Province registration, I find that JP was not informed of that verbally and it was not disclosed in the bill of sale as required by the Regulation.

[172] The fact that structural damage was not referenced in the Carfax report is no excuse in this case for not reporting it. The damage was clearly described in the Carproof

report for the vehicle and Carproof reports are readily available to dealers and widely used. It was immediately available to the Ford dealership to which JP took his vehicle when he considered selling it.

(iii) Purchase of 2010 Lexus RX350 by ZT (NOP paragraph 19)

[173] In this transaction the Registrar alleges that Premium breached the Regulation and a condition of its registration by failing to provide the buyer with a written statement on the bill of sale that the vehicle had previously sustained structural damage.

[174] This transaction took place on October, 2011, before the relevant condition was imposed in January 2014 and I therefore cannot conclude that the condition was breached.

[175] However, based on the available evidence I conclude that Premium actually knew that that vehicle had sustained structural (frame) damage and failed to provide a statement to that effect in the purchaser's bill of sale. As a result, the purchaser bought the vehicle unaware of frame damage.

[176] The purchaser, ("ZT"), testified that in the fall of 2011, he and his wife were looking for a vehicle and had narrowed their search to a Lexus RX350. Premium had a 2010 model for sale and they attended at Premium and eventually purchased the vehicle on October 1, 2011. The salesperson in this case was Shahal Sharinghas.

[177] According to ZT, Mr. Shah verbally told him that the vehicle had been in a minor "cosmetic" accident. ZT specifically asked whether the vehicle had sustained structural damage and was told that it had not. Mr. Shah showed him a Carfax report that contained reference to an accident but no reference to structural damage.

[178] According to ZT, he was given a copy of that Carfax report which he kept stapled to the bill of sale along with Mr. Shah's business card. In fact, that Carfax report relates to a different 2010 Lexus RX350.

[179] ZT signed a bill of sale and a copy was made an exhibit. The comments section of the bill of sale states:

Previous US car. Carfax shows accident. No amount has been declared. Carfax was given to customer. The car was sold Unibody. The car will be inspected at Lexus at Dealer cost.

[180] The reference to "unibody" was not understood by ZT and it was not explained to him. In fact, the evidence indicated that "unibody damage" is understood in the industry to refer to structural damage.

- [181] The vehicle was inspected by a Lexus dealer before the sale was finalized. No major problems or structural damage was detected and the purchase was completed.
- [182] ZT testified that in or around 2017 his family's needs changed and they attempted to sell the vehicle to a Lexus dealership. The dealer obtained a Carproof report printed in October, 2017 which revealed that the vehicle was reported to have sustained "unibody damage" – structural damage - before it was sold by Premium to ZT.
- [183] ZT took the vehicle to other dealers who told him the same thing. Dealers either did not want to purchase it or offered far less than what it would be worth without reported frame damage. According to ZT, dealers told him that with the reported frame damage the car was worth \$6,000 to \$12,000. Without the reported damage it was worth \$17,000 - \$19,000.
- [184] According to ZT, he got in touch with Mr. Shah and eventually involved OMVIC. Mr. Shah was initially resistant to resolve the matter but eventually, and after receiving approximately 20 photos detailing the car's condition, he agreed to buy the vehicle back for \$16,000.
- [185] According to ZT, he drove the vehicle from Ottawa to Newmarket and bought a plane ticket to return. However, when he arrived at Premium, Mr. Shah examined the car and refused to buy it back for \$16,000 due to its condition. In ZT's view, Mr. Shah was aware of the car's condition through the photographs but took advantage of the fact that ZT had driven from Ottawa to further drive the price down. After some hours of haggling, ZT agreed to accept \$12,500 for the vehicle.
- [186] Premium and Mr. Shah argue that the Regulation was not breached because there is no evidence that the car was actually frame damaged. The vehicle was checked by a dealership before the sale to ZT and at another Toyota dealership after the vehicle was re-purchased by Premium. Both inspections did not detect evidence of frame damage.
- [187] I cannot accept that argument. The fact that structural damage was reported by Carproof is evidence that the car was structurally damaged. The industry and the public rely on those reports. Reported information indicating structural damage is very relevant to purchasers because it will directly impact the market value of a vehicle. Premium was under a legal obligation to clearly and unambiguously disclose reported structural damage in writing in the bill of sale. The fact that no structural damage was detected by dealership inspections is, in my view, immaterial.
- [188] In this case there is compelling evidence that Premium was actually aware that the vehicle was reported to be frame damaged and withheld that information from ZT.
- [189] ZT purchased the vehicle from Premium on October 1, 2011. According to the Carproof report, the vehicle was sold at a US auction on July 5, 2011 and imported to

and registered in Canada on or around July 15, 2011. A new owner is reported registered on October 7, 2011 - likely a reference to the ownership being transferred from Premium to ZT.

[190] Between the time the vehicle was imported into Canada in July 2011 and the time a new owner is reported in October, 2011 there were no reported transfers of ownership. Based on that, I conclude that Premium purchased the vehicle at the US auction in July 2011 and sold it to ZT in October 2011.

[191] In reference to the July, 2011 auction at which Premium purchased the vehicle, the Carproof report states:

“Frame Damage – Auction Announced as Unibody Damage”

[192] Frame damage was apparently announced at the US auction where it was bought by Premium and is clearly noted in the Carproof report. In my view, Premium bought the car at the auction aware that it was reported to have been frame (structurally) damaged.

[193] That conclusion is also supported by the bill of sale which states in the comments section “Carfax was given to the customer - the Car was sold unibody”. When ZT later complained to Premium in 2016 that the car was reported to be frame damaged, Premium’s initial response was that he should have known, the car was sold “unibody”.

[194] In my view, Premium knew the vehicle had been structurally damaged and contravened the Regulation by failing to disclose that in writing in the bill of sale. To say “car was sold unibody” is unclear and does not convey in a clear and comprehensible manner that the vehicle sustained any type of damage, much less frame damage.

[195] There are two other matters that the Registrar raised in connection with this transaction. Firstly, ZT testified that when he purchased the car he was given a Carfax report for the vehicle that indicates no frame damage was reported. He later learned that the report related to a different vehicle of the same year, make and model. The Registrar alleges that ZT was given the wrong report – a cleaner report – to intentionally obscure the frame damage. Premium denies that it provided the wrong Carfax report to ZT and suggests that ZT was shopping for that make and model of Lexus and obtained the Carfax report from another dealer when looking at another vehicle.

[196] I accept ZT’s evidence that the Carfax report given to him by Premium was kept by him stapled to the bill of sale and that it relates to a different RX350. However, it appears that the Carfax report for the correct vehicle also contains no reference to frame or structural damage. There appears to have been no advantage to providing

the wrong Carfax report. I cannot conclude that Premium intentionally gave the wrong report to ZT to hide reported frame or structural damage.

[197] Secondly, the Registrar alleged at the hearing and in its submissions that Premium and Mr. Shah acted dishonestly by first agreeing to buy back the vehicle for \$16,000 and then, after ZT drove from Ottawa to Toronto with a return plane ticket, raised flimsy concerns about the vehicle's condition to drive the price down to \$12,500, knowing that ZT was in a weak position and would likely accept a lower amount than previously discussed.

[198] I decline to make a finding on that issue. Firstly, deciding that issue requires evidence of the true value of the vehicle when it was re-purchased and that evidence is lacking. Secondly, the allegation raised in the NOP in connection with this transaction is that Premium failed to disclose structural damage as required by the Regulation. There is no allegation concerning Premium's conduct regarding the re-purchase. That matter appears to be outside the confines of the issues raised in the NOP and I decline to make a finding on it.

(iv) Purchase of 2006 Nissan Frontier by CO (NOP paragraph 19)

[199] The Registrar alleges that in this transaction, Premium breached the Regulation and a condition of its registration by failing to provide the buyer with a written statement in the bill of sale that the vehicle had previously sustained structural damage.

[200] Again, this transaction took place on November 29, 2011, before the relevant condition was imposed (in January 2014) and I therefore cannot conclude that the condition was breached.

[201] However, based on the available evidence, I conclude that Premium actually knew that the vehicle was reported to have sustained structural (frame) damage and failed to disclose that to the purchaser on the bill of sale.

[202] The purchaser ("CO"), testified that he purchased a 2006 Nissan Frontier from Premium on November 29, 2011. The salesperson appears to have been Shahab Shindest.

[203] According to CO, at the time of purchase he was not told that the vehicle had sustained structural or frame damage. Premium provided him with a Carfax report that did not contain any reference to structural or frame damage. The bill of sale does not disclose any structural damage.

- [204] According to CO, in 2017 he took the Frontier to another dealership to use it as a trade-in. f. That dealership initially estimated the Frontier to be worth \$7,000 subject to an inspection. Upon reviewing a Carproof report that indicated that the Frontier had sustained structural damage, the dealership considered the vehicle to be worth \$2,000.
- [205] The Carproof report that CO obtained from the other dealership was made an exhibit. It indicates that the vehicle was sold at a US auction in August 2010 and then imported into Canada. The report's comments relating to the auction include, "structural damage disclosed by seller" and "frame damage".
- [206] In this case the wholesale bill of sale that documented Premium's purchase of the vehicle at the US auction was made an exhibit. The bill of sale clearly states on its face, "Notes: Structural Damage" and is evidence that Premium was aware that the vehicle had sustained structural damage when it bought the car before selling it to CO.
- [207] I conclude that Premium contravened the Regulation. It knew that the vehicle had sustained structural damage and failed to disclose that information in writing to CO on the bill of sale.
- [208] Premium argues that the Regulation was not contravened because there is doubt as to whether the vehicle was actually structurally damaged. The Carproof report mentions structural damage while the Carfax report does not. Neither CO nor the new dealership had the car mechanically inspected to determine which report was correct. Premium argues (essentially) that the Regulation requires disclosure of actual structural damage and in this case actual damage was not confirmed by a mechanical inspection.
- [209] I disagree. The Regulation requires that the dealer disclose structural damage and, in this case, Premium was explicitly informed when it bought the vehicle that it was structurally damaged. Premium was required by Regulation to disclose that information to CO, just as it was disclosed to Premium. Premium failed to disclose it and deprived CO of information necessary to accurately assess the vehicle's value. He likely paid more for the vehicle than he would have if Premium had complied with the Regulation.
- [210] In summary, I conclude that in this transaction Premium contravened the Regulation by failing to ensure that the bill of sale contained a written statement that the vehicle had sustained structural damage.

(v) Purchase of 2012 Lexus RX 350 by KD (NOP paragraph 19)

- [211] This is another transaction in which the Registrar alleges that Premium breached the Regulation and a condition of its registration by failing to disclose in the bill of sale that the vehicle had previously sustained structural damage.
- [212] Based on the available evidence, I conclude that Premium failed to disclose structural damage in the purchaser's bill of sale. As a result, Premium breached both the Regulation and a condition of its registration.
- [213] KD, the purchaser in this transaction, testified that he purchased a 2012 Lexus RX 350 from Premium on March 29, 2015.
- [214] According to him, at the time of purchase he was verbally told that the vehicle had not been in any previous accidents and had sustained no damage. The salesperson provided him with a Carfax report (which was made an exhibit) which states that no accident or structural damage was reported.
- [215] KD bought the vehicle and, consistent with the Carfax report, the bill of sale indicated that the vehicle was previously registered in the US but does not disclose any previous accidents, structural or frame damage.
- [216] About one year later KD attempted to trade-in the vehicle at another dealership. That dealership ran a Carproof report which indicated that the vehicle was sold at a US auction in September 2014 and it was announced at the auction the vehicle had structural damage. After reviewing the Carproof report the dealership refused to buy it.
- [217] KD immediately returned to Premium and asked that Premium buy the car back. According to KD, Premium initially refused but, after KD stated that he would complain to OMVIC, Premium bought the car back. The agreed purchase price was less than what KD paid Premium for the vehicle but reflected the fact that the vehicle had been driven by KD for a year.
- [218] Mr. Shah testified that Premium bought the car back in order to maintain customer satisfaction but takes the position that the car was not actually frame damaged. According to Mr. Shah, after it was bought back, he had the vehicle inspected at a Toyota dealership. The report of that inspection states, "No defects or damages found. Performed frame inspection - OK at this time".
- [219] According to Mr. Shah, the Carproof references to structural damage were inaccurate – they conflict with the results of the inspection and the information in the Carfax report. He testified that he got in touch with Carproof, provided them with his additional information about the vehicle's condition and Carproof later removed the references to frame or structural damage.

[220] As already stated, in my view, the fact that a subsequent inspection detected no frame damage is irrelevant. Premium was required to disclose structural damage and, in this case, the Carproof report clearly reported that the car had been frame damaged. That report affected the vehicle's resale value and was highly relevant to KD in deciding whether to purchase the vehicle and what price to pay - the refusal of the new dealership to accept the vehicle as a trade-in highlights that fact.

[221] In my view, Premium was required to disclose structural damage in this case and failed to do so, thereby breaching both the Regulation and its conditions of registration.

(vi) Purchase of 2012 BMW X6 by NH (NOP paragraph 19)

[222] Information concerning this transaction as well as the following three transactions was provided by Laura Halbert, OMVIC's Deputy Registrar and Director of Compliance.

[223] Ms. Halbert testified that during the September 2015 inspection, the OMVIC inspector reviewed a sampling of Premium's transaction files and found instances where Premium failed to disclose previous out of Province registration. In this and the following three transactions, the inspector obtained from Premium's transaction files copies of the retail bill of sale which, in each case, contained no disclosure about out of Ontario registration. Mr. Amirjani was the salesperson on each of the four transactions.

[224] The inspector was able to compare the retail bill of sale with the wholesale bill of sale and/or a Carfax or Carproof report for the same vehicle. In each case, the wholesale bill of sale and/or the vehicle history report indicated previous out of Province registration that was not disclosed on the retail bill of sale.

[225] In this transaction the retail bill of sale indicates that NH purchased a 2012 BMW X6 from Premium on June 19, 2015. There is no disclosure on the bill of sale of previous out of Province registration.

[226] The wholesale bill of sale refers to a Carfax report as having been provided to Premium when it purchased the vehicle and a copy of that report was in the file. The Carfax report clearly indicates that the vehicle was previously registered in Quebec in 2013 and 2014.

[227] Based on that evidence, I conclude that when Premium sold the vehicle to NH in June, 2015 it contravened the Regulation by failing to provide a written statement on the retail bill of sale that the vehicle had been previously registered outside of Ontario.

(vii) Purchase of 2012 Chevrolet Silverado by MW (NOP paragraph 19)

[228] In this transaction the retail bill of sale indicates that MW purchased a 2012 Chevrolet Silverado from Premium on August 5, 2015. There is no disclosure on the bill of sale that the vehicle was previously registered outside of Ontario.

[229] A Carfax report for the vehicle was in the file and indicates that the vehicle was previously registered in Alberta in 2012 and 2014.

[230] Based on that evidence, I conclude that when Premium sold the vehicle to MW in August 2015, it contravened the Regulation by failing to provide a written statement on the retail bill of sale that the vehicle had been previously registered outside of Ontario.

(viii) Purchase of 2012 Ford F350 by numbered company (NOP paragraph 19)

[231] In this transaction the retail bill of sale indicates that a numbered company purchased a 2012 Ford F350 from Premium on June 6, 2015. There is no statement on the bill of sale indicating that the vehicle was previously registered outside of Ontario.

[232] The wholesale bill of sale shows that the vehicle was purchased by Premium from a Calgary, Alberta company. The Carproof report for the vehicle in the file indicates that the vehicle was previously registered in Alberta in 2012 and 2013.

[233] Based on that evidence, I conclude that when Premium sold the vehicle to the numbered company in June 2015, it contravened the Regulation by failing to provide a written statement on the retail bill of sale that the vehicle had been previously registered outside of Ontario.

(ix) Purchase of 2006 VW Jetta TDI by HM (NOP paragraph 19)

[234] In this transaction the retail bill of sale indicates that HM purchased a 2006 VW Jetta from Premium on April 30, 2015. There is no statement on the bill of sale indicating that the vehicle was previously registered outside of Ontario.

[235] A Carproof report for the vehicle in the file states that the vehicle was previously registered in Texas in 2006 and 2007.

[236] Based on that evidence, I conclude that when Premium sold the vehicle to HM in April 2015, it contravened the Regulation by failing to provide a written statement on the retail bill of sale that the vehicle had been previously registered outside of Ontario.

(x) Purchase of 2013 VW Tiguan by AI (NOP paragraph 19)

[237] This transaction was dealt with in detail above under the section “Falsifying and Furnishing False Documents”. As noted there, I conclude that in this transaction, Premium failed to provide a written statement on the retail bill of sale that the vehicle had sustained previous accident damage in excess of \$3,000.

(xi) Purchase of 2013 Ford F150 by Lockwood Kia (NOP paragraph 20-21)

[238] The Registrar alleges that in this transaction Premium breached the Regulation by failing to disclose in the bill of sale that the vehicle had previously sustained structural damage, damage resulting in over \$3,000 in repairs, and previous out of Province registration.

[239] In addition, the Registrar alleges that Premium demonstrated a lack of integrity by refusing to re-purchase the vehicle at the cost for which it was sold and forcing the purchaser to sue in Small Claims Court and get a default judgment in order to recover its losses.

[240] The purchaser was Lockwood Kia (“LK”), another registered dealer. Mr. Amirjani was the salesperson. Section 5 of Ontario Regulation 332/08 imposes on dealer-to-dealer sales very similar disclosure obligations as are required in retail sales. In such sales, the selling dealer shall ensure that the following information is disclosed in the contract:

- If there has been any structural damage to the vehicle or any repairs, replacements or alterations to the structure of a vehicle, a statement to that effect.
- If the total cost of repairs to fix the damage caused to the vehicle by an incident exceed \$3,000, a statement to that effect and if the dealer knew the total cost, a statement of the total costs.
- If the vehicle has been registered out of Ontario, a statement to that effect

[241] According to Mike DeFreitas, LK’s general manager, LK purchased a 2013 Ford F150 from Premium on September 20, 2016. No disclosure was made on the bill of sale indicating any accident damage, structural damage or out of Province registration. However, Mr. Amirjani provided LK with the vehicle’s Carfax report which indicated no

reported accident or structural damage but does disclose previous registration in 3 other Provinces.

[242] LK was given a Safety Standards Certificate from Premium's Motor Vehicle Inspection Station. The certificate is signed by a licenced technician and states that the vehicle was inspected in accordance with the *Highway Traffic Act* and Regulations and met all prescribed standards.

[243] LK bought the vehicle intending to sell it to one of its customers. It received the vehicle and quickly sold it to its customer. It did not inspect the vehicle mechanically because it had just been inspected by Premium. About 6 months later, the customer returned to LK complaining that the frame was bent. The customer had arranged for the installation of an after-market suspension and the installing facility said the new suspension did not fit properly because the frame was bent.

[244] LK had the frame inspected by LK's own licenced inspection facility as well as an outside body shop (also a licenced inspection facility). They both confirmed that the frame had been damaged and was bent making proper wheel alignment impossible.

[245] According to Mr. DeFreitas, they also identified evidence that a previous attempt had been made to straighten the frame. There were 4 holes drilled – one in each corner of the frame – which Mr. DeFreitas testified is done when repairing a frame. Chains are attached to the holes and a frame straightening device applies force to bend the frame back to its original position.

[246] In view of the fact that LK had sold a vehicle with undisclosed frame damage, LK agreed to buy the vehicle back from its customer and fully refunded the purchase price. Mr. DeFreitas then contacted Premium and requested that Premium reimburse LK.

[247] Mr. Shah took the position that the vehicle was not frame damaged when it was sold to LK relying on both the Carfax report and the safety inspection done by Premium's licenced technician. He suggested that the frame was damaged after the sale by the installation of the new suspension. However, he offered to re-purchase the vehicle for approximately \$6200 less than what LK had paid for it. LK refused that offer.

[248] In order to determine whether the frame had been damaged before or after Premium sold the vehicle to LK, Mr. DeFreitas contacted a previous owner, a construction company in Alberta, and asked for the vehicle's service and repair records. The company obliged and some of those records were made exhibits in these proceedings.

[249] In summary those records show that:

- in January 2014 frame repairs involving 41 hours of labour and costing \$3,874 were completed at Big Rig Collision in Grande Prairie, Alberta
- In February 2014 frame repairs involving 14 hours of labour and costing \$1,428 were completed at Azorcan Collision Center in Terrace, British Columbia

[250] Mr. DeFreitas testified that he sent those records to Mr. Shah but that still did not result in a resolution. As a result, LK sued Premium in Small Claims Court to recover its losses.

[251] Premium did not defend that lawsuit and in August 2017, LK obtained a default judgement. Premium brought a motion to set the default judgement aside but in January 2018 that motion was denied.

[252] According to Mr. DeFreitas, even after the motion to set aside was denied, Premium did not pay the judgement for another 8 months. LK only obtained full payment in August 2018 after contacting the local sheriff's office to collect and making an application to seize Premium's assets.

[253] The Registrar alleges that Premium failed to comply with the Regulation by including a statement on the bill of sale disclosing structural damage and out of Province registration. In addition, the Registrar alleges that Premium and Mr. Shah acted without integrity by:

- refusing to pay LK even after it was clear that it sold to LK a vehicle with significant frame damage,
- forcing LK to commence a court action to recover its losses, and,
- after a court order to pay was obtained, still refusing to pay until LK initiated collection proceedings.

[254] With respect to the alleged failure to disclose, the appellants state that the evidence does not establish on a balance of probabilities that the vehicle was frame damaged when it was sold by Premium. They note that no structural or accident damage was reported in the Carfax report and, just before it was sold to LK, it was inspected by Premium's licenced technician who detected no damage. They point out that the damage only came to light after LK sold the vehicle to a new owner who installed a new suspension system. The appellants allege that the frame damage detected at that point was likely caused by the installation of the new suspension and was not present when Premium sold the vehicle.

[255] I conclude that the vehicle was frame damaged when Premium sold it to LK. The invoices obtained by LK from the previous owner show that significant frame repair involving 56 hours of labour and costing approximately \$5,200 in labour was attempted in British Columbia and Alberta before Premium acquired the vehicle. There is no evidence, aside from Mr. Shah's speculation, that installing the new suspension damaged the frame. On that point, Mr. DeFreitas testified that the facility that installed the new suspension:

...are a reputable facility that I've actually done business with in the past. They specialise in this kind of work, so, no, I have – there's no way you can damage the frame to the point it was damaged installing springs and struts. It's just not possible.

[256] In this case, despite the safety certificate issued by Premium, the Alberta and B.C collision repair shop invoices establish that the vehicle had previously sustained frame damage that was attempted to be repaired, and that damage resulted in over \$5,200 in repairs.

[257] I therefore conclude that Premium and Mr. Amirjani, the salesperson on this transaction, breached the Regulation by failing to disclose previous structural damage or repairs, and out of Province registration. However, with respect to out of Province registrations, I note that they were described in the Carfax report given to Mr. De Freitas and he was aware of them.

[258] Regarding Mr. Shah's failure to respond to LK's lawsuit even after it obtained a court order and Premium's motion to set aside the judgement was dismissed, I decline to find that it demonstrated a lack of integrity.

[259] According to Mr. Shah, he disagreed with LK's claim because the vehicle did not have frame damage when inspected by Premium. He testified that he gave the statement of claim to his lawyer to deal with. His lawyer failed to respond resulting in the default judgement. Mr. Shah instructed his lawyer to bring a motion to set aside the default judgement which was unsuccessful. According to Mr. Shah, his lawyer then advised him to pay the judgement and he did so.

[260] Mr. Shah had the right to dispute LK's claim and have that dispute settled in Small Claims Court. The only available evidence indicates that Premium's failure to file a statement of defence was due to an error by Premium's lawyer. The motion to set aside the default judgment was unsuccessful, and the judgment was eventually paid.

[261] According to Mr. DeFreitas, LK was only paid when collection steps were taken. Mr. Shah testified that the judgment was paid soon after the motion to dismiss was rejected.

[262] In the absence of some additional documentary support confirming collection steps taken and the timing of the payment in relation to those steps, I am not prepared to conclude that Mr. Shah's handling of LK's court claim demonstrates a lack of integrity.

(e) Unfair Business Practices - NOP, Paragraphs 21-23

[263] The Registrar alleges that Premium and Mr. Shah have engaged in unfair business practices which, if proven, would support a conclusion that their past conduct affords reasonable grounds for belief that they will not carry on business in accordance with the law and with integrity and honesty.

[264] The Registrar relies upon a 2008 *Provincial Offences Act* conviction under the *Consumer Protection Act* for making a false, misleading or deceptive representation to a consumer purchaser for failing to disclose to a consumer in a bill of sale accident damage in excess of \$3,000.

[265] The NOP also raised an additional July 2016 transaction where a consumer was allegedly induced to buy a vehicle warranty with false assurances that the warranty could be later cancelled. However, the Registrar stated in his submissions that he is no longer relying on that transaction.

[266] Therefore, the only evidence regarding unfair business practices is the undisputed 2008 *Provincial Offences Act* conviction. According to a transcript of the proceedings, on January 11, 2008, Premium pled guilty to failing to disclose in writing to a consumer purchaser of a motor vehicle the value of previous accident damage.

[267] This conviction took place in 2008, almost 12 years ago. In my view its only relevance is that it involves a failure to disclose key information to purchasers in writing – the same conduct noted in the eleven transactions described above under the heading “Non-Disclosure to Purchasers”. It appears that despite a POA conviction in 2008, Premium continued to contravene the regulatory disclosure requirements in eleven transactions from 2011 to 2016.

I. SUMMARY OF FINDINGS

[268] The Registrar proposes revocation of the appellants’ registrations based on 5 categories of conduct.

- Retaining an unregistered salesperson
- Using identities or accounts of other people to purchase Vehicles
- Falsifying and furnishing false documents

- Non-disclosure to purchasers.
- Unfair Business Practices

[269] The first two categories – retaining an unregistered salesperson and using the accounts/identities of others to buy vehicles – I have determined to be unproven. The last category – unfair business practices – consists only of a 2008 conviction for failing to disclose in writing the value of accident damage on the bill of sale.

[270] Of the two remaining categories, I have found:

- two transactions in which Mr. Amirjani, acting as Premium's salesperson, was responsible for falsifying bills of sale,
- five transactions where Mr. Amirjani, acting as Premium's salesperson, failed to provide purchasers with the required written disclosure,
- 11 instances (including the 5 transactions referred to above) where Premium failed to provide the required written disclosure.

[271] Those failures to disclose each amount to a contravention of the Regulation. In cases where the transactions occurred after January 23, 2014 they are also contraventions of Premium's and Mr. Shah's conditions of registration.

[272] My findings are summarised in the table below.

Vehicle	Date of Purchase	Buyer	Salesperson	Non-Disclosure
2012 Acura MDX	Feb 13/16	SR	Amirjani	Bill of sale altered to add fee and charge not agreed upon
2011 VW Tiguan	Jan 25/15	AI & LI	Amirjani	Accident damage in excess of \$3,000 not disclosed Bill of sale later altered to add damage amount
2013 Ford F150	Feb 23/16	JD	Amirjani	Allegations not proven
2010 VW Golf	July 28/15	SM	Eftehkar	Accident damage in excess of \$3,000 not disclosed
2005 Honda S200	Dec 20/12	JP	Ta	Accident damage in excess of \$3,000 Structural Damage Out of Province registration All not disclosed
2010 Lexus RX350	Oct/11	ZT	Sharinhas	Structural Damage not disclosed
2006 Frontier	Nov 29/11	CO	Shindest	Structural Damage not disclosed
2012 Lexus RX350	Mar 29/15	KD		Structural Damage not disclosed
2012 BMW X6	June 19/15	NH	Melani	Out of Province registration not disclosed
2012 Silverado	Aug 5/15	MW	Amirjani	Out of Province registration not disclosed
2012 Ford F350	June 6/15	#'d Company	Amirjani	Out of Province registration not disclosed
2006 VW Jetta	Apr 30/15	HM	Amirjani	Out of Province registration not disclosed
2013 Ford F150	Sept 20/16	LK	Amirjani	Accident damage in excess of \$3,000 Structural Damage Out of Province registration All not disclosed

J. DISPOSITION

(a) Daniel Amirjani

[273] I have found that Mr. Amirjani:

- created a bill of sale that to which a warranty charge and financing fee were added without the customer's knowledge or consent.
- failed to disclose accident damage on a bill of sale and then altered the bill of sale to add in the damage amount to give the false impression that it was disclosed.
- failed to disclose on a bill of sale out of Province registration in 3 consumer sales, accident damage value in one sale, and structural damage and out of Province registration in a dealer-to-dealer sale.

[274] The Registrar alleges that Mr. Amirjani's past conduct in that regard affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty.

[275] The Court of Appeal of Ontario in *Registrar, Alcohol and Gaming Commission of Ontario v. 751809 Ontario Inc. operating as Famous Flesh Gordon's*⁹, stated that "reasonable grounds for belief" requires something more than mere suspicion but less than proof on a balance of probabilities. In other words, the Registrar does not have to show that that Mr. Amirjani's past conduct will make it more likely than not that he will not carry on business as required. The Registrar need only show that there are reasonable grounds for belief that his business will not be carried on in accordance with law and with integrity and honesty.

[276] In my opinion, reasonable grounds for such a belief exist in this case. In one case Mr. Amirjani created a bill of sale which reflected charges not agreed to and, in another case, altered a bill of sale to conceal his failure to disclose the value of accident damage on a bill of sale. That conduct suggests a lack of transparency and honesty in his dealings with consumers.

[277] He also failed to act in accordance with the law when he contravened the Regulation by failing to disclose required information on the bills of sale in five transactions.

[278] Past conduct is often an indicator of future behaviour and in my view Mr. Amirjani's past conduct does afford reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty.

⁹ 2013 ONCA 157

[279] Given those findings, what is the appropriate disposition? The Registrar proposes revocation of Mr. Amirjani's registration. Mr. Amirjani suggests that if any allegations against him are proven, conditions on his registration should be imposed.

[280] I consider revocation of Mr. Amirjani's registration to be unwarranted considering the following:

- The two transactions involving false or altered bills of sale are very concerning and suggest a lack of transparency and honesty in dealing with the public. However, they represent a very small fraction of Mr. Amirjani's transactions. No precise figures were provided but Mr. Amirjani testified that in 2013 he was selling 40-50 cars/month and is presently selling 20-30 cars/month. Of those, 50-60% are repeat customers or referrals. It appears that the conduct exhibited in these two transactions does not represent Mr. Amirjani's common or usual practice.
- One failure to disclose involved Mr. Amirjani's failure to disclose in the Lockwood Kia transaction. However, I note that the purchaser was aware of the out of Province registration and was not misled by Mr. Amirjani's failure to note it on the bill of sale. The structural damage/repairs were apparently unknown to Mr. Amirjani - it was not disclosed in any vehicle history report and was apparently undetected by Premium's safety inspection.
- Three of the five failures to disclose cases involved out of Province registration. According to Mr. Amirjani, Carfax reports were likely provided in each case (the inspector found Carfax reports in most of the files) which included that information and consumers were not misled.
- All of the transactions took place approximately 4-5 years ago (in 2015 or 2016) suggesting that the poor practice reflected in my findings has not continued to the present.

[281] While I consider revocation unwarranted, I do not consider the imposition of conditions to be appropriate either. While conditions involving training, monitoring etc. may constructively address deficiencies in standards of practice, I am unconvinced that the proposed conditions would effectively address a failure to be transparent and honest with customers.

[282] I conclude that a period of suspension of 90 days is an appropriate regulatory response that will best protect the public. A 90 suspension will prohibit Mr. Amirjani from carrying on business and earning an income as a salesperson for a three-month period and will sharply demonstrate to Mr. Amirjani and other registrants that such conduct will attract a negative consequence. Any future failing in that regard will likely result in a longer suspension or revocation. In other words, I believe that a 90-day suspension is a sanction that will protect the public by ensuring future compliance with the regulatory scheme.

(b) Premium Wholesale Cars and Mr. Shah

[283] The Registrar argues that the registrations of both Premium and Mr. Shah should be revoked.

[284] According to the Registrar, Mr. Shah's registration should be revoked because:

- his past conduct affords reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty, and,
- he breached a condition of his registration imposed to resolve an earlier notice of proposal to revoke.

[285] Premium's registration should be revoked because:

- the conduct of Mr. Shah – an officer and director of Premium - affords reasonable grounds for belief that Premium will not carry on business in accordance with law and with integrity and honesty, and,
- Premium breached a condition of its registration imposed to resolve an earlier notice of proposal to revoke.

[286] With respect to past conduct, as noted above, the Registrar does not have to show that the past conduct will make it more likely than not that Premium and Mr. Shah will not carry on business in accordance with the law and with integrity and honesty. The Registrar need only show that there are reasonable grounds for belief that their business will not be carried on in accordance with law and with integrity and honesty.

[287] In my opinion, such grounds exist in this case.

[288] With respect to Mr. Shah, he is registered as a salesperson but is Premium's owner, operator, officer and director. According to Ms. Halbert, Mr. Shah is designated in OMVIC's records as Premium's General Manager and "person in charge" – the person at the dealership responsible for day-to-day oversight and compliance with the Act.

[289] The evidence established that at all material times, Mr. Shah was the ultimate decision maker within Premium. He signed off on most vehicle sales transactions before they were concluded. He was also the person who ultimately responded to consumer complaints and decided whether and how they would be resolved.

[290] Mr. Shah was the person within Premium who had the position and power to set standards for the conduct of Premium's business and ensure regulatory standards were met. Clearly those standards were not met, at least with respect to the transactions noted above. Mr. Shah allowed Premium to operate with a lack of integrity and in contravention of the Regulation. I have found that:

- a bill of sale was created by Premium's staff to which a warranty charge and financing fee were added without the customer's knowledge or consent.
- Premium's staff failed to disclose accident damage on a bill of sale and then altered the bill of sale to add in the damage amount to give the false impression that it was disclosed.
- Premium contravened the Regulations by failing to disclose on a bill of sale out of Province registration, previous accident damage in excess of \$3,000 and structural damage/repairs in 10 separate vehicle sales to consumers and one sale to another dealer.
- In some of those transactions it appears that Premium relied solely on a Carfax report for information without checking other readily available sources. In two transactions, it was demonstrated that Premium was actually aware of structural damage and failed to disclose it.
- By contravening the Regulations, Premium and Mr. Shah also contravened a condition of their registrations requiring them to comply with the Regulation which was imposed to address earlier concerns.

[291] In all of the transactions involving failure to disclose the immediate failure was that of the salesperson. However Premium, as the dealer and employer of its sales staff, is

required to take responsibility for the conduct of its salespersons. According to s. 23 of the Act,

A motor vehicle dealer shall ensure that every salesperson that the motor vehicle dealer employs is carrying out his or her duties in compliance with this Act and the regulations.

[292] Given my findings above, Premium contravened s. 23 of the Act by failing to ensure that its salespersons acted in accordance with the Act.

[293] Mr. Shah was the directing mind of the company. He failed in his oversight obligations and allowed Premium to operate in ways that had significant negative consequences for consumers. Past conduct is often a good indicator of future behaviour and in my view Mr. Shah's past conduct does afford reasonable ground for belief that both he and Premium will not carry on business in accordance with the law and with integrity and honesty.

[294] I also conclude that Mr. Shah and Premium contravened a condition of their registration. A condition requiring compliance with the regulations was imposed on their registrations on January 23, 2014. Eight of the 11 transactions involving non-compliance with the regulatory disclosure requirements took place after that date. Four of those 8 (failures to disclose out of Province registration) took place within a few months of the condition being imposed.

[295] What is the appropriate disposition? The Registrar proposes revocation in both cases. However, I consider that to be unwarranted for the following reasons:

- The transactions described above are a very small percentage of Premium's transactions,
- Four of the non-disclosure cases involve failure to disclose in writing out of Province registration. However, the evidence suggests that the customers were aware of it and were not misled.
- Mr. Shah made efforts in several of the transactions to resolve non-disclosure issues by re-purchasing the vehicles.

[296] Mr. Shah and Premium suggest that if any of the allegations are proven terms and conditions should be considered including:

- safety inspections to be completed by a registered dealer for the automaker.
- Carfax report to be provided in each transaction, initialed by the customer and kept in the dealer file,

- All amendments to bill of sale shall be initialed or a fresh bill of sale drawn up.
- a signed witnessed declaration shall be obtained in each case confirming that the purchaser has received the bill of sale and related transaction documents.

[297] I decline to impose conditions in this case. Conditions have already been imposed in an attempt to address an earlier notice of proposal to revoke and the evidence shows that they were breached by Premium and Mr. Shah shortly after they were imposed. Given the appellants' track record with conditions I am not confident that new conditions will effectively address the present concerns.

[298] I conclude that a suspension of the registrations of Premium and Mr. Shah is necessary to bring home the importance of operating with integrity and honesty and in compliance with the Act and regulations at all times. In my view a 120-day suspension is a proportionate regulatory response in all of the circumstances.

[299] During that time, Mr. Shah and Premium will be prohibited from carrying on their apparently active and successful business. That is intended to unequivocally illustrate to Mr. Shah that any future failure to operate with integrity or in compliance with the Act and regulations will attract a negative consequence. Any future failing in that regard will likely result in a longer suspension or revocation. In other words, I believe that a 120-day suspension will protect the public by promoting future compliance with the regulatory scheme.

K. ORDER

[300] Pursuant to s 9(5) of the Act, I substitute my opinion for that of the Registrar and direct the Registrar to:

- (a) Suspend the registration of Daniel Amirjani as a salesperson for a period of 90 days, commencing on a date to be determined by the Registrar.
- (b) Suspend the registration of Premium Cars Wholesale Limited as a dealer for a period of 120 days, commencing on a date to be determined by the Registrar.

- (c) Suspend the registration of Hussein Shahnematollah-Yazde as a salesperson for a period of 120 days, commencing on a date to be determined by the Registrar.

LICENCE APPEAL TRIBUNAL

A handwritten signature in black ink, appearing to read "Stephen Scharbach", written in a cursive style.

Stephen Scharbach, Member

Released: January 17, 2020